

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	20 Feb 1969
	Entered into Force	21 May 1969
The Hague Protocol - 1955	Signed	
	Adhered to	20 Feb 1969
	Entered into Force	21 May 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	30 Jan 1967
	Ratified	17 Mar 1988
	Entered into Force	17 Mar 1988
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Albania appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

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## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	2 Jun 1964
	Entered into Force	31 Aug 1964
The Hague Protocol - 1955	Signed	
	Adhered to	2 Jun 1964
	Entered into Force	31 Aug 1964
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	13 Apr 1964
	Entered into Force	12 Jul 1964
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	25 Mar 1969
	Entered into Force	26 Mar 1969
Space Liability Convention - 1972	Signed	20 Apr 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	10 Mar 1998
	Entered into Force	8 Jun 1998
The Hague Protocol - 1955	Signed	
	Adhered to	10 Mar 1998
	Entered into Force	8 Jun 1998
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	24 Feb 1998
	Entered into Force	25 May 1998
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

ANTIGUA & BARBUDA

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	3 Mar 1935
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Succeeded to	26 Jan 1989
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Succeeded to	16 Nov 1988
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	21 Mar 1952
	Entered into Force	19 Jun 1952
The Hague Protocol - 1955	Signed	
	Adhered to	12 Jun 1969
	Entered into Force	10 Sep 1969
Guatemala City Protocol - 1971	Signed	28 Aug 1972
	Not Ratified	
Montreal Additional Protocols – 1975 - No. 1 See Annex C – Note 1	Signed	14 Mar 1990
	Ratified	14 Mar 1990
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 1	Signed	14 Mar 1990
	Ratified	14 Mar 1990
	Entered into Force	15 Feb 1996
- No. 3 See Annex E – Note 3	Signed	14 Mar 1990
	Ratified	14 Mar 1990
- No. 4 See Annex F – Note 1	Signed	14 Mar 1990
	Ratified	14 Mar 1990
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Adhered to	26 Sep 1972
	Entered into Force	25 Dec 1972
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	25 Mar 1969
	Entered into Force	25 Mar 1969
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	14 Nov 1986
	Entered into Force	14 Nov 1986

**PART II- NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

Until 1951 the legal liability arising from passenger air transport was ruled by common law: but said situation fundamentally changed when on 16 October of the said year the Convention for the Unification of Certain Regulations related to International Air Transport signed in Warsaw on 12 October 1929, was approved by Law No. 14,111.

As regards the Protocol of The Hague of 28 September 1955, the Argentine approval to said instrument took place in Law No. 17,386 of 8 August 1967.

The Convention of Guadalajara of 8 September 1961 has not yet been taken into consideration by the Argentine Government.

Consequently, the Warsaw Convention and the Protocol of The Hague are applied to international air transport defined by said agreements.

**INTERNAL CARRIAGE**

During thirteen years starting as from 1954, internal and international air transport not included within the scope of the Warsaw Convention and The Hague Protocol were ruled by an Aeronautical Code, on 22 June 1967 that was annulled, when the present Aeronautical Code was put into operation (Law No. 17,285 of 17 May 1967).

As regards the responsibility for passenger transport, the principal provisions of the new Aeronautical Code are shown in the following paragraphs (Title VII, Chapter 1).

**Article 139**

The carrier is responsible for the damage caused by death or bodily injury suffered by any passenger when the accident that caused the damage occurs on board the aircraft or during the loading or unloading operations.

**Article 141**

The carrier will not be responsible if he is able to prove that he and his employees have taken all the necessary steps to prevent the damage or that it was impossible to take said steps.

**Article 143**

The responsibility of the carrier may be diminished or exempted if it is established that the person who has suffered the damage has caused same or has contributed to causing same.

**Article 144**

In the transport of persons, the responsibility for the carrier in relation to each passenger is limited up to the amount equivalent in pesos Argentine currency of one thousand Argentine gold coins, in accordance with the exchange rate in force at the time that the act that generated the responsibility happened. Said exchange rate will be fixed by the competent body of the national Administration.

[Explanatory Note: The 1981 Argentine Market Report explains that under Article 144 and 145 of the Argentine Aeronautical code the liability of air carriers is limited to a maximum of 1,000 Argentine gold for death or injury of a passenger and 2 Argentine gold per kilo for destruction loss or damage to cargo or luggage.]

Per Decree No. 75/76 the Central Bank of Argentina fixes each calendar quarter, the value of the Argentine gold. The valuation is made on the last working day of each calendar quarter upon the basis of the free market gold value in the markets of London and New York. This value must be applied during the following calendar quarter.

The report advised that the liability limit for death or injury of a passenger, and per kilo of cargo and/or luggage, under the Aeronautical Code was the equivalent of 233.35 and 0.4667 ounces gold troy, respectively.

**Article 146**

Any clause that tends to exempt the carrier of its responsibility or fix a limit below that established in this chapter is annulled; but the nullity of said clauses does not involve that of the contract. On the other hand, a higher limit may be fixed by mutual agreement between the carrier and the passenger.

**Article 147**

The carrier will not have the right of protection granted by the provisions of this Chapter that limit its responsibility, when the damage arises from its fraud, or fraud from any person under its dependence, acting in the discharge of its duties.

**THIRD PARTY LIABILITY**

The Aeronautical Code regulates liability for losses caused to third parties on the ground outlined in the paragraphs below.

**Article 155**

A person suffering loss on the ground shall be entitled to compensation in the circumstances laid down in this Chapter, subject only to his showing that the loss was caused by an aircraft in flight or by a person or object falling or thrown therefrom or by the abnormal noise thereof. There shall be no occasion for compensation however, where the loss is not the direct result of the occurrence giving rise thereto.

**Article 157**

The liability laid down in Article 155 shall rest with the operator of the aircraft.

**Article 160**

The operator shall be liable for every accident up to the limit of the sum in pesos of the national currency equivalent to the number of gold Argentines appearing in the following schedule, at the current quotation thereof at the time of occurrence of the incident giving rise to the liability:

- a. 2,000 gold Argentines for aircraft not exceeding one thousand kilograms in weight.
- b. 2,000 gold Argentines plus 1½ gold Argentines for every kilogram above one thousand, for aircraft weighing more than one thousand but not more than six thousand kilograms.

- c. 10,400 gold Argentines plus 1 gold Argentine for every kilogram above six thousand, for aircraft weighing more than six thousand but not more than twenty thousand kilograms.
- d. 25,000 gold Argentines plus ½ of a gold Argentine for every kilogram above twenty thousand, for aircraft weighing more than twenty thousand but not more than fifty thousand kilograms.
- e. 43,600 gold Argentines plus 0.37 of a gold Argentine for every kilogram above fifty thousand, for aircraft weighing more than fifty thousand kilograms.

The compensation for death or personal injury shall not exceed 2,000 gold Argentines for every person sustaining death or injury.

Where losses are sustained both by persons and by property, one half of the sum to be distributed shall be devoted preferentially to compensation for losses sustained by persons. The remainder of the total sum to be distributed shall be divided pro rata between compensation for losses sustained by property and the uncovered portion of the other compensation cases.

For the purpose of this Article, "Weight" shall mean the maximum weight authorized by the certificate of airworthiness of the aircraft.

#### **Article 161**

Should losses be sustained by a number of parties in one and the same accident, and should the total sum payable exceed the limits laid down in the foregoing article, the entitlement of each shall be reduced in such a way as not to exceed, jointly, the said limits.

#### **MANDATORY INSURANCE REQUIREMENTS**

As regards insurance on Internal Carriage, Article 192 of the Aeronautical Code specifies that the operator is obliged to constitute an insurance for the damages foreseen in the limits of title VII. The insurance may be substituted by a deposit, in cash or in National Bonds, or by a bank guarantee.

#### **PRODUCTS LIABILITY**

The normal provisions of Argentinian Common Law apply unaltered in the aviation field.

#### **NOISE & POLLUTION**

##### **Noise Damage**

Concerning "noise damage of any kind" this is regulated by Article 155 of the Aeronautical Code (Law No. 17,285, in force as from 22 June 1967). "The person that suffers damage on ground has a right to compensation in the conditions established in this Chapter, only by proving that the damage originates from an aircraft in flight or from a person or object fallen or thrown from same or from the abnormal noise of same. However, compensation will not result if the damage is not the direct consequence of the Act that originated same". This Article - that forms part of Chapter 11 (Damage caused to third parties on ground) of Title VII (Responsibility) of the aforesaid code, carries the following official note:

"The Article considers compensation, through the application of the principles of objective responsibility, of all the damages suffered by third parties on the ground, including those

originating from abnormal noise of the aircraft. Same implies an innovation in relation to the solutions of the 1952 Agreement in Rome, but is adjusted to the spirit that presided over the deliberations of the meeting of the Sub-Committee held in Oxford during March and April 1966 where, in accordance with the change of circumstances, due to the advent of the supersonic aircraft, the need of modifying the

Agreement was pointed out, in order to establish the principle of indemnification for damages originated from the noise which is not tolerated by the person on the ground.

Undoubtedly there are serious technical difficulties to determine the exact consequences of the noise, especially as regards crossing the sound barrier, but it cannot be ignored that there may be persons injured by the sound wave of the aircraft which are similar to third parties on the ground, totally foreign to the aeronautical activity and which, for said reason, must be very specially protected, which is obtained through the application of the objective responsibility regime, that constitutes one of the most typical manifestations of the Aeronautical Law.

On the other hand, same dealing with a system complemented with the adoption of the limitation of responsibility the operators of aircraft may cover their obligations without great expenses”.

The present General Conditions for the Aeronautical Legal Liability Insurance, in force as from 20 January 1969 with a practically uniform character (Resolution No. 9,553 of the Argentine Insurance Superintendence), does not exclude damage due to noise from the respective coverage.

The damage originated from noise is not the object of a specific coverage, but is generically included in that granted to maintain the Insured undamaged for what is owned to a third party, originated from the responsibility based on Title VII of the Aeronautical Code ...“ (Clause 2 of the aforementioned General Conditions).

For the determination of the covered risk there is only the generic stipulation mentioned in the previous paragraph.

There is no clause used at present in the Argentine market regarding damage due to noise.

Up to the present no claim has been received regarding noise or sonic impact of aircraft.

## **ICAO Annex 16**

Argentina have notified ICAO that no differences will exist between their national regulations and practices and the international standards and recommendations of ICAO Annex 16 Volume I.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	25 Nov 1998
	Entered into Force	23 Feb 1999
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 - No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
- No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention – 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

Armenia is a party to the Warsaw Convention.

**MANDATORY INSURANCE REQUIREMENTS**

The General Department of Civil Aviation in Armenia has certain requirements for air carriers licensed in Armenia and foreign air carriers serving Armenia to provide insurance coverage for passenger and third party liability. The “reasonable” level of cover is not, however, defined.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	12 Oct 1929
See Annex A – Note 1		
	Adhered to	1 Aug 1935
	Entered into Force	30 Oct 1935
The Hague Protocol – 1955	Signed	12 Jul 1956
	Adhered to	23 Jun 1959
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 - No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	24 Apr 1991
	Not Ratified	
- No. 4	Signed	24 Apr 1991
	Ratified	13 Jan 1997
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	19 Jun 1962
	Ratified	1 Nov 1962
	Entered into Force	1 May 1964
Rome (Third Party) Convention – 1952	Signed	
	Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	
	Acceded to	20 Jan 1975
	Entered into Force	20 Jan 1975

**PART II - NOTES ON AVIATION LIABILITY**

**PASSENGER CARRIAGE**

The *Civil Aviation (Carriers' Liability) Act 1959* (the *Act*) gives force of law to the Warsaw System, imposing strict but limited liability on international air carriers for the carriage of passengers, baggage and cargo by air in Australia. The *Act* gives effect as the law of Australia those components of the Warsaw System which have been signed and ratified by Australia; that is the Warsaw Convention, The Hague Protocol, the Guadalajara Convention and Montreal Protocol No. 4.

Australia signed and ratified the various treaties as follows:

<b>Treaty</b>	<b>Australia Signed</b>	<b>Australia Adhered to /Ratified</b>
The Warsaw Convention -1929	12 October 1929	1 August 1935
The Hague Protocol -1955	12 July 1956	23 June 1959
The Guadalajara Convention -1961	19 June 1962	1 November 1962
Montreal Protocol No. 4 -1975	24 April 1991	13 January 1997

The Treaties entered into force on 30 October 1935, 1 August 1963, 1 May 1964 and 14 June 1998 respectively.

However, Australia has unilaterally taken a number of steps to address the perceived deficiencies of the Warsaw System. Since 1996, the *Act* has provided a A\$500,000 liability limit for Australian domestic carriers and 260,000 Special Drawing Rights (SDRs) for Australia's international carriers. Mandatory non-voidable insurance is required for all domestic carriage and most international carriage of passengers for hire or reward. The purpose of the Regulations is to ensure that insurers are not able to avoid payments to passengers following an accident because of breaches of safety regulations. There are no insurance requirements for private aircraft operations.

The *Act* itself was adopted in 1959 to give effect to the Warsaw Convention as amended by The Hague Protocol (Warsaw-Hague Convention). The *Act* comprises the following Parts, which recognise instruments of the Warsaw System and provide for Australia's higher liability limits and mandatory insurance for commercial passenger carriers.

Part II enacts the 1929 Warsaw Convention as amended by The Hague Protocol 1955 (text at Schedule 2 of the *Act*). It applies to carriage between Australia and a foreign country that adheres to the two agreements.

Part III of the *Act* gives force of law to the 1929 Warsaw Convention without the Hague Protocol (text at Schedule 1 of the *Act*). This Part applies to carriage between Australia and a foreign country that is only a party to the Warsaw Convention.

Part IIIA of the *Act* enacts the 1961 Guadalajara Convention as a law of Australia (text at Schedule 3 of the *Act*). The Guadalajara Convention distinguishes between the actual and contracting carrier and provides that both are liable to the passenger as if they were the contracting carrier for the purposes of the Warsaw Convention. It ensures that the passenger is entitled to claim against either or both the actual or contracting carrier for bodily injury, loss or damage to baggage and cargo or delay, depending on the circumstances.

Part IIIB provides for enacting into law the Guatemala City Protocol of 1971 and the Montreal Protocol No. 3 (text at Schedule 4 of the *Act*). The Part is not in force, and is unlikely to be enacted as law of Australia as the two instruments have been superseded and are unlikely to come into force.

Part IIIC covers air carriage to which Montreal Protocol No.4 applies; that is the Warsaw Convention as amended at The Hague in 1955 and by Protocol No. 4 of Montreal in 1975 (text at Schedule 5 of the *Act*).

Part IV of the *Act* sets the rules for carriers' liability for the carriage of passengers, baggage and cargo both domestically and between Australia and countries that are not party to the Warsaw Convention, The Hague Protocol, the Montreal protocol No. 4 or the Guadalajara Convention. It covers carriage between States and Territories. It essentially adopts the Warsaw rules subject to the following important modifications:

Limits of liability are set at A\$500,000 for domestic carriers and 260,000 SDRs for international carriers for passenger death or personal injury, A\$1,600 for registered baggage and A\$160 for non registered baggage (hand luggage).

Liability for domestic carriers is absolute. The carrier has no 'all necessary measures' defence. The liability limits are unbreakable and there is no capacity for a person to receive compensation in excess of the limits by establishing intentional or reckless conduct, wilful misconduct, gross negligence etc.

While application of the Montreal Convention is limited to bodily injury, under the *Act*, carrier liability and mandatory insurance extends to personal injury. Personal injury although not defined may include bodily injury, sickness, disease, fright, shock or mental anguish and psychological injury.

Part IVA – Mandatory insurance for air operators against liabilities for death or injury caused to passengers carried under the *Act* commenced on 20 January 1996. Part IVA imposes mandatory non-voidable insurance requirements on air carriers flying to, from, or within Australia. No operator is allowed to carry passengers for hire or reward without appropriate insurance cover. In the case of domestic carriage, the minimum insurance level is A\$500,000 per passenger. International carriers, including foreign carriers serving Australia, are required to provide documentary evidence that they are insured to a level of 260,000 SDRs per passenger. Carriers must have these levels of insurance irrespective of their liabilities under Warsaw or Warsaw-Hague, and include liabilities under Guadalajara and Montreal Protocols Nos. 3 and 4. The mandatory non-voidable insurance requirements prevent insurers from avoiding payment of compensation in respect of passengers who are killed or injured because of a breach of a legal aviation safety requirement, by an operator.

The Civil Aviation Safety Authority (CASA) is responsible for administering these arrangements.

The arrangements under the Commonwealth *Act* do not apply to intrastate operations by the holders of Regular Public Transport or Charter Air Operators' Certificates. However, the States have adopted complementary legislation to ensure a uniform regime of carriers' liability and mandatory non-voidable insurance in Australia.

The relevant State legislation (as amended) is:

Commonwealth of Australia	<i>Civil Aviation (Carriers' Liability) Act 1959</i>
Queensland	<i>Civil Aviation (Carriers' Liability) Act 1964</i>
New South Wales	<i>Civil Aviation (Carriers' Liability) Act 1967</i>
Victoria	<i>Civil Aviation (Carriers' Liability) Act 1961</i>
South Australia	<i>Civil Aviation (Carriers' Liability) Act 1962</i>
Western Australia	<i>Civil Aviation (Carriers' Liability) Act 1961</i>
Tasmania	<i>Civil Aviation (Carriers' Liability) Act 1963</i>

Extracts of Part IV, IVA and V of the (Commonwealth) *Act* as amended are quoted hereunder. It is noted in respect of the carriage specified in Section 27 that the *Act* makes a carrier liable for damage sustained through the death or injury of a passenger resulting from an accident on board an aircraft or in the course of embarking or disembarking. This liability exists whether or not there is negligence on the part of the carrier. "Contracting out" is not permitted and the carriers' liability under the *Act* is in substitution for any civil liability under any other law.

The *Act* specifies limits on the carriers' liability and provides for reduction of damages where it is proved that the passenger caused or contributed to the damage. In the case of each passenger, the liability of the carrier is limited to A\$500,000 or such higher sum as specified in the contract of carriage. There are similar provisions in respect of baggage i.e. A\$1,600 for registered baggage and A\$160 for baggage other than registered baggage. The protection of the *Act* is extended to servants and agents of the carrier.

The right of a person to damages is extinguished if an action is not brought within two years.

Part IVA - Carriers to be insured against liability to passengers for death or personal injury - amendments to the *Civil Aviation (Carriers' Liability) Act* (and accompanying Regulations) introduced mandatory non-voidable insurance cover. These provisions commenced on 20 January 1996. The current limit under the *Act* for domestic carriers of A\$500,000 was set on 18 October 1994. There is no provision for regular review of the limit to maintain parity as a result of inflation.

Note: In July 2004, 1.00 SDR was equivalent to AUD 2.041.

Extract from *Civil Aviation (Carriers' Liability) Act 1959 (Commonwealth)* as amended:

**Part IV – Other carriage to which this Act applies**

**26 Interpretation**

(1) In this Part, unless the contrary intention appears:

**airline licence** means:

- (a) an international airline licence in force under the Air Navigation Regulations; or
- (b) an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising airline operations;

**baggage**, in relation to a passenger, means:

- (a) registered baggage; or
- (b) baggage, personal effects or other articles, not being registered baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier) on behalf of the passenger, while the passenger is on board an aircraft for the purposes of carriage to which this Part applies or during the course of any of the operations of embarking or disembarking.

**charter licence** means:

- (a) a charter licence in force under the Air Navigation Regulations; or
- (b) an Air Operator's Certificate in force under the *Civil Aviation Act 1988* authorising charter operations.

**commercial transport operations** means operations in which an aircraft is used, for hire or reward, for the carriage of passengers or cargo.

**contract** includes an arrangement made without consideration.

**domestic carrier** means a carrier operating a flight for the carriage of passengers:

- (a) between a place in a State and a place in another State; or
  - (b) between a place in a Territory and a place in Australia outside that Territory; or
  - (c) between a place in a Territory and another place in that Territory ;
- other than carriage to which Part 2 or 3 applies.

**registered baggage**, in relation to a passenger, means baggage, personal effects or other articles registered with the carrier as baggage intended to be carried under a contract for carriage of the passenger to which this Part applies.

**the Air Navigation Regulations** means the Air Navigation Regulations in force under the *Air Navigation Act 1920*, and includes those Regulations as in force by virtue of a law of a State.

(2) For the purpose of this Part, where, by reason of a contract of charter or other contract between the holder of an airline licence or a charter licence and another person, persons or

baggage are or is carried, or are or is to be carried, in an aircraft while it is being operated by the holder of the airline licence or charter licence, that contract shall be deemed to be a contract of carriage providing for that carriage.

## **27 Application of Part**

(1) This Part applies to the carriage of a passenger where the passenger is or is to be carried in

an aircraft being operated by the holder of an airline licence or a charter licence in the course of commercial transport operations, or in an aircraft being operated in the course of trade and commerce between Australia and another country, under a contract for the carriage of the passenger:

- (a) between a place in a State and a place in another State;
- (b) between a place in a Territory and a place in Australia outside that Territory;
- (c) between a place in a Territory and another place in that Territory; or
- (d) between a place in Australia and a place outside Australia;

not being carriage to which the Warsaw Convention, the Hague Protocol, the Montreal Protocol No. 4 or the Guadalajara Convention applies.

(3) For the purposes of this section, where, under a contract of carriage, the carriage is to begin and end in the one State or Territory (where at the one place or not) but is to include a landing or landings at a place or places outside that State or Territory, the carriage shall be deemed to be carriage between the place where the carriage begins and that landing place, or such one of those landing places as is most distant from the place where the carriage begins, as the case may be.

(4) For the purposes of this section, where:

- (a) the carriage of a passenger between two places is to be performed by two or more carriers in successive stages;
- (b) the carriage has been regarded by the parties as a single operation, whether it has been agreed upon by a single contract or by two or more contracts; and
- (c) this Part would apply to that carriage if it were to be performed by a single carrier under a single contract;

this Part applies in relation to a part of that carriage notwithstanding that that part consists of carriage between a place in a State and a place in the same State.

## **28 Liability of the carrier for death or injury**

Subject to this Part, where this Part applies to the carriage of a passenger, the carrier is liable for damage sustained by reason of the death of the passenger or any personal injury suffered by the passenger resulting from an accident which took place on board the aircraft or in the course of any operations of embarking or disembarking.

## **29 Liability of the carrier in respect of baggage**

(1) Where this Part applies to the carriage of a passenger, the carrier is liable under this Part, and

not otherwise, for damage sustained in the event of the destruction or loss of, or injury to, baggage of the passenger, if the occurrence which causes the destruction,

loss or injury takes place during the period of the carriage by air unless the carrier proves that he and his servants and agents took all necessary measures to avoid the destruction, loss or injury or that it was impossible for him or them to take such measures.

(2) For the purposes of the last preceding subsection but subject to the next succeeding subsection, the period of the carriage by air comprises:

- (a) in relation to baggage other than registered baggage - the period during which the passenger is on board the aircraft or is in the course of any of the operations of embarking or disembarking; and
- (b) in relation to registered baggage - the period during which the baggage is in the charge of the carrier, whether on board the aircraft or elsewhere.

(3) In proceedings under this section in respect of registered baggage, if the carrier proves that the baggage was, within a period of twelve hours after the arrival of the aircraft at the place to which the baggage was to be carried in the aircraft, available for collection by the passenger at a place at which, under the contract, the baggage was to be or could be made available to the passenger, the period of the carriage by air shall not be deemed to include any time after the expiration of that period of twelve hours.

(4) In the application of section 39 in relation to an action under this Part in respect of baggage other than registered baggage, the carrier shall be deemed to have proved that the damage was caused by the negligence of the passenger, except so far as the passenger proves that he was not responsible for the damage.

(5) Where, in relation to carriage referred to in subsection (4) of section 27, registered baggage has been destroyed, lost or injured in circumstances in which, if the carriage had been performed by a single carrier, that carrier would be subject to liability under this section, the carriers (other than a carrier who proves that the baggage was not in his charge at the time of the destruction, loss or injury) are jointly and severally subject to that liability.

### **30 Complaint to be made in respect of baggage**

(1) For the purposes of an action under this Part, evidence proving receipt of registered baggage, without complaint, by the persons entitled to delivery is evidence that the baggage has been delivered in good condition and in accordance with the contract of carriage.

(2) An action does not lie against a carrier under this Part in respect of baggage, except in case of fraud on the part of the carrier, unless the passenger, or a person acting on his behalf, has complained by writing delivered to the carrier or served on the carrier by post or in such manner as is prescribed:

- (a) in the case of injury to registered baggage or of loss or destruction of part only of an item of registered baggage - within the period of three days after the date of receipt by or on behalf of the passenger of the baggage, or of the remainder of that item of baggage, as the case may be;
- (b) in the case of loss or destruction of the whole of an item of registered

baggage - within the period of twenty one days from the date on which the baggage should have been placed at the disposal of the passenger;  
or

- (c) in the case of injury to, or loss or destruction of, baggage other than registered baggage - within the period of three days from the date on which the carriage of the passenger ended.

(3) A court having jurisdiction in actions under this Part in respect of baggage may, by order, grant

leave to a person to institute or continue an action in that court in relation to baggage notwithstanding that there has been a failure to complain in accordance with the last preceding subsection within the time fixed by that subsection, where the court is satisfied that it is just and equitable to do so by reason of special circumstances.

(4) Subsection (2) of this section does not apply in relation to an action in respect of which leave has been granted under the last preceding subsection.

### **31 Limitation of liability**

(1) Subject to the regulations relating to passenger tickets, the liability of a domestic carrier under this Part in respect of each passenger, by reason of his injury or death resulting from an accident, is limited to:

- (a) where neither paragraph (b) nor paragraph (c) applies - \$500,000;
- (b) where, at the date of the accident, a regulation was in force prescribing an amount higher than \$500,000 for the purposes of this subsection but paragraph (c) does not apply - the amount prescribed by that regulation;  
or
- (c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as an amount that exceeds \$500,000 - the amount so specified; or
- (d) if, at the date of the accident, a regulation prescribing an amount was in force as mentioned in paragraph (b) but the contract of carriage under which the passenger was carried specified an amount that exceeds that amount as the limit of the carrier's liability - the amount so specified.

(1A) Subject to the regulations relating to passenger tickets, the liability under this Part of a carrier to which this Part applies, other than a domestic carrier, in respect of each passenger, by reason of the passenger's injury or death resulting from an accident, is limited to:

- (a) if neither paragraph (b) nor (c) applies - 260,000SDRs; or
- (b) if, at the date of the accident, a regulation was in force prescribing a number of SDRs that exceeds 260,000 for the purpose of this section and paragraph (c) does not apply - the number of SDRs so prescribed; or
- (c) if, at the date of the accident, no regulation was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds 260,000 - the number of SDRs so specified; or
- (d) if, at the date of the accident, a regulation prescribing a number of SDRs exceeding 260,000 was in force under paragraph (b) but the contract of carriage under which the passenger was carried specified the limit of the carrier's liability as a number of SDRs that exceeds the number so

prescribed - the number of SDRs so specified.

(2) Subject to the regulations relating to baggage checks, the liability of a carrier under this Part in

respect of the destruction or loss of, or injury to, the baggage of any one passenger, being baggage that is, or includes, registered baggage, is limited to:

- (a) where neither paragraph (b) nor paragraph (c) applies - \$900;
- (b) where, at the date of the occurrence that caused the destruction, loss, or injury, a regulation was in force prescribing an amount higher than \$900 for the purposes of this subsection but paragraph (c) does not apply - the amount prescribed by that regulation; or
- (c) where an amount that exceeds:
  - (i) if, at the date of the occurrence referred to in paragraph (b), no regulation was in force as mentioned in that paragraph - \$900; or
  - (ii) if, at the date of the occurrence referred to in paragraph (b), a regulation prescribing an amount was in force as mentioned in that paragraph - the amount prescribed by the regulation;is specified, in the contract of carriage pursuant to which the passenger was carried, as the limit of the carrier's liability - the amounts so specified.

(3) The liability of the carrier under this Part in respect of the destruction or loss of, or injury to, the

baggage, other than registered baggage, of any one passenger is limited to:

- (a) where neither paragraph (b) nor paragraph (c) applies - \$90;
- (b) where, at the date of the occurrence that caused the destruction, loss or injury, a regulation was in force prescribing an amount higher than \$90 for the purposes of this subsection but paragraph (c) does not apply - the amount prescribed by that regulation; or
- (c) where an amount that exceeds:
  - (i) if, at the date of the occurrence referred to in paragraph (b), no regulation was in force as mentioned in that paragraph \$90; or
  - (ii) if, at the date of the occurrence referred to in paragraph (b), a regulation prescribing an amount was in force as mentioned in that paragraph - the amount prescribed by that regulation;is specified, in that contract of carriage pursuant to which the passenger was carried, as the limit of the carrier's liability - the amount so specified.

*Author's Note: Current prescribed amounts of the Schedule under the Civil Aviation (Carriers' Liability) Regulations 1991 are \$1,600 for Section 31 (2) and \$1 60 for Section 31 (3).*

### **32 Contracting out**

(1) Any provision of an agreement tending to relieve the carrier of liability in accordance with this

Part or to fix a lower limit than the appropriate limit of liability provided by this Part is null and void, but the nullity of such a provision does not involve the nullity of the whole contract of carriage.

(2) The last preceding subsection does not apply to provisions governing loss or damage resulting

from the inherent defect, quality or vice of goods carried.

### **33 Servants and agents of carrier**

(1) If an action in respect of any damage is brought against a servant or agent of a carrier, the servant or agent, if he proves that he acted within the scope of his employment or authority, is entitled to avail himself of the limits of liability, if any, which the carrier himself would be entitled to invoke under section 31 in an action against him in respect of that damage.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents shall not exceed the limits referred to in the last preceding subsection.

(3) The right to bring an action against a servant or agent of a carrier in respect of any damage, being damage which gave rise to a cause of action against the carrier under this Part, is extinguished if the action is not brought within the time specified in the next succeeding section.

### **34 Limitation of actions**

The right of a person to damages under this Part is extinguished if an action is not brought by him

or for his benefit within two years after the date of arrival of the aircraft at the destination, or, where the aircraft did not arrive at the destination;

(a) the date on which the aircraft ought to have arrived at the destination; or

(b) the date on which the carriage stopped;

whichever is the later.

### **35 Liability in respect of death**

(1) The provisions of this section apply in relation to liability imposed by this Part on a carrier in respect of the death of a passenger (including the injury that resulted in the death).

(2) Subject to section 37, the liability under this Part is in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that has resulted in the death of the passenger.

(3) Subject to the next succeeding subsection, the liability is enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

(4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or funeral, medical or hospital expenses paid or incurred by the passenger before his death or by his personal representative, the liability is enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.

(5) For the purposes of subsection (3), the members of the passenger's family shall be deemed to be the wife or husband, de facto spouse, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger, and, in ascertaining the members of the

passenger's family, an illegitimate person or an adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

(6) The action to enforce the liability may be brought by the personal representative of the passenger or by a person for whose benefit the liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in respect of the death of any one passenger, and such an action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is so enforceable who are resident in Australia or, not being resident in Australia, express the desire to take the benefit of the action.

(7) The damages recoverable in the action include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.

(8) In awarding damages, the court or jury is not limited to the financial loss resulting from the death of the passenger.

(9) Subject to the next succeeding subsection, the amount recovered in the action, after deducting any costs not recovered from the defendant, shall be divided amongst the persons entitled in such proportions as the court (or, where the action is tried with a jury, the jury) directs.

(10) The court may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of this Part limiting the liability of the carrier and of any proceedings which have been, or are likely to be, commenced against the carrier, whether in or outside Australia.

### **36 Liability in respect of injury**

Subject to the next succeeding section, the liability of a carrier under this Part in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, is in substitution for any civil liability of the carrier under any other law in respect of the injury.

### **37 Certain liabilities not excluded**

Nothing in this Part shall be deemed to exclude any liability of a carrier:

- (a) to indemnify an employer of a passenger or any other person in respect of any liability of, or payments made by, that employer or other person under a law of the Commonwealth or of a State or Territory providing for compensation, however described, in the nature of workers' compensation; or
- (b) to pay contribution to a tort-feasor who is liable in respect of the death of, or injury to, the passenger;

but this section does not operate so as to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with this Part.

### **38 Proceeds of insurance policies etc.**

In assessing damages in respect of liability under this Part there shall not be taken into account by

way of reduction of the damages:

- (a) a sum paid or payable on the death of, or injury to, a passenger under a contract of insurance;
- (b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person;
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent upon the death of, or of an interest in, a dwelling used at any time as the home of that spouse or child, or of, or of an interest in, the household contents of any such dwelling; or
- (e) a premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived beyond the time at which he died.

### **39 Contributory negligence**

(1) If, in an action against a carrier under this Part, the carrier proves that the damage was caused or contributed to by the negligence of the passenger, the damages recoverable shall be assessed in accordance with this section.

(2) The court, shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with this Part and there had been no negligence on the part of the passenger.

(3) The damages determined under the last preceding subsection shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger in the responsibility for the damage.

(4) If the damages as reduced in accordance with the last preceding subsection exceed the maximum liability of the carrier fixed by or in accordance with this Part, the court shall further reduce the damages to the maximum amount.

(5) Where any case to which subsection (1) applies is tried with a jury, the jury shall determine the damages referred to in subsection (2) and the amount of the reduction under subsection (3).

### **40 Regulations relating to passenger tickets and baggage checks**

The regulations may make provision relating to passenger tickets and baggage checks in respect

of passengers or baggage in relation to whom or which this Part applies, being provision for:

- (a) the circumstances in which such tickets and checks must be issued by carriers;
- (b) matters to be included in such tickets and checks; and
- (c) the non-application of a provision of section 31 (except in cases where the limit of liability under that provision is a sum specified in the contract of carriage) where specified provisions of the regulations relating to the issue, form and contents of such tickets or checks have not been complied with.

#### **41 Application of Part to cargo**

The regulations may provide for applying, with such exceptions, adaptations and modifications as are prescribed, the provisions of the Montreal No. 4 Convention and any of the provisions of this Act to and in relation to the carriage of cargo, being carriage in relation to which, if it were the carriage of passengers, this Part would apply, but so that no adaptation or modification of the provisions of Article 22 of the Montreal No. 4 Convention shall have the effect of limiting the liability of the carrier to a sum less than the sum to which his liability would be limited if those provisions were applied without adaptation or modification.

#### **Part IVA - Carriers to be insured against liability to passengers for death or personal injury**

##### **41A Object of Part**

The object of this Part is to require carriers to hold, in respect of carriage to which Part II, III or IV applies, insurance that will ensure, as far as practicable, that compensation within the limits of liability prescribed by this Act will be paid in respect of death or personal injury suffered by passengers on aircraft.

##### **41B Definitions**

In this Part:

***acceptable contract of insurance*** means a contract of insurance in respect of which a certificate is in force under subsection 41C(7).

***business day*** means a day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

***carrier*** means a person engaged, or offering to engage, in an air transport operation for the carriage of passengers to which Part II, III or IV applies.

***contract of insurance*** means a contract between a carrier and an insurer under which the insurer indemnifies the carrier against personal injury liability in respect of each passenger carried, or to be carried, by air by the carrier.

***CASA*** means the Civil Aviation Safety Authority established by the *Civil Aviation Act 1988*.

**Director** has the same meaning as in the *Civil Aviation Act 1988*.

**member** has the same meaning as in the *Civil Aviation Act 1988*.

**personal injury liability**, in relation to a carrier, means liability under this Act in respect of the death of, or personal injury suffered by, passengers carried, or to be carried, by air by the carrier.

**41C Carriers may be required to produce evidence that an acceptable contract of insurance is in force between the carrier and an insurer**

(1) CASA may, at any time and from time to time, by written notice given to a carrier (other than a carrier that is, or is an agent of, the Crown in any capacity), require the carrier, within a period set out in the notice, to produce evidence, satisfactory to CASA, that there is in force between the carrier and an insurer a contract of insurance that meets the prescribed requirements.

(2) The prescribed requirements are:

- (a) the requirements of subsection (3) and (4); and
- (b) any other requirements made by the regulations for the purposes of this section.

(3) It is a requirement in relation to a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability, in respect of each passenger carried, or to be carried, by air by the carrier, is for an amount that is not less than:

- (a) in respect of carriage by a domestic carrier to which Part IV applies - \$500,000; or
- (b) in respect of any other carriage - 260,000 SDRs.

(4) It is a requirement of a contract of insurance that, under the contract, the insurer's liability to indemnify the carrier against personal injury liability:

- (a) is not affected by any breach of a safety-related requirement imposed by or under any Act or by the Civil Aviation Safety Authority; and
- (b) is not contingent upon the financial condition or solvency of the carrier or upon the carrier not being or not becoming bankrupt or not beginning to be or not being wound up.

(5) The prescribed requirements do not prevent a contract of insurance from including provisions indemnifying the carrier against a liability other than personal injury liability.

(6) A contract of insurance under which:

- (a) the insurer indemnifies the carrier against liability as required by Part 205 of the Federal Aviation Regulations of the United States of America made under the law known as Title 49 United States Code - Transportation; and
- (b) the insurer's liability to indemnify the carrier:
  - (i) extends to carriage in, to or from Australia; and
  - (ii) is not affected by any breach of a requirement referred to in

paragraph (4)(a);  
is taken to meet the requirements referred to in subsection (4).

(7) If CASA is satisfied that there is in force between a carrier and an insurer a contract of insurance that meets the prescribed requirements, CASA may give the carrier a written certificate stating that CASA is so satisfied.

**41CA Carrier that is, or is an agent of, the Crown may be required to show that adequate financial arrangements exist to discharge personal injury liability of the carrier**

(1) CASA may, at any time and from time to time, by written notice to a carrier that is, or is an agent of, the Crown in any capacity, require the carrier, within a period set out in the notice, to produce evidence, satisfactory to CASA, that financial arrangements exist that are adequate to discharge any personal injury liability that has accrued or may accrue to the carrier.

(2) If CASA is satisfied that such financial arrangements exist, CASA may give the carrier a written certificate stating that CASA is so satisfied.

**41D Insurer's liability not affected by exclusions or breaches**

Except as prescribed by the regulations, an insurer's liability under a contract of insurance to indemnify the carrier against personal injury liability to the extent mentioned in subsection 41C(3) is not affected by any warranty or exclusion in the contract of insurance or by any breach of the contract of insurance by the carrier.

**41E Carriers to be covered by acceptable insurance**

(1) A carrier (other than a carrier that is, or is an agent of, the Crown in any capacity) must not carry passengers by air unless an acceptable contract of insurance is in force in relation to the carrier.

(1A) If a carrier who is, or is an agent of, the Crown in any capacity has been required by CASA under section 41CA to produce evidence, satisfactory to CASA, of the existence of financial arrangements referred to in that section, the carrier must not carry passengers by air unless the carrier has produced such evidence.

(2) A carrier who intentionally contravenes subsection (1) is guilty of an offence punishable on conviction by imprisonment for a period of not more than 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose in respect of an offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount that is not greater than 5 times the maximum fine that could be imposed by the court on an individual convicted of the same offence.

**41F Conduct by directors, servants and agents**

(1) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against this Part, it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the individual within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Part, to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) a person who is an individual is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of, or to a member of a board or other group of persons administering or managing the affairs of, a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) A reference in this section to an offence against this Part includes a reference to an offence created by section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to this Part.

#### 41G Grounds of cancellation of contract of insurance not affected

Nothing in this Part affects:

- (a) the grounds on which an insurer may cancel a contract of insurance between the insurer and a carrier; or
- (b) any right that an insurer may have to recover from a carrier an amount paid by the insurer under a contract of insurance between the insurer and the carrier.

#### 41H Conflict of laws

If:

- (a) the proper law of a contract of insurance would, except for a term that it should be the law of a foreign country or a term to a similar effect, be the law of any part of Australia; or
- (b) a contract of insurance contains a term that purports to substitute, or has the effect of substituting, the law of a foreign country for all or any of the provisions of this Part;

this Part applies to the contract despite that term.

#### 41J Injunctions

(1) In this section:

**prohibited carriage** means carriage by a carrier at a time when an acceptable contract of insurance is not in force between the carrier and an insurer.

(2) If CASA has reason to believe that a carrier has engaged, or is proposing to engage, in prohibited carriage, CASA may apply to a court of competent jurisdiction for an injunction restraining the carrier from engaging in the carriage.

(3) If the carrier does not satisfy the court that it is not engaging, or proposing to engage, in prohibited carriage, the court must grant the injunction.

(4) If in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (2).

(5) The court may discharge or vary an injunction or an interim injunction granted under this section.

(6) The power of the court to grant an injunction or an interim injunction restraining a carrier from

engaging in prohibited carriage may be exercised:

- (a) whether or not it appears to the court that the carrier intends to engage again, or to continue to engage, in prohibited carriage of that kind; and
- (b) whether or not the carrier has previously engaged in prohibited carriage of that kind.

(7) A court must not require CASA as a condition of granting an interim injunction, to

give any undertakings as to damages.

(8) The Federal Court of Australia is invested with federal jurisdiction in matters where CASA applies for an injunction or an interim injunction under this section.

#### **41K Regulations**

The regulations may make provision for or in relation to:

- (a) the manner and form in which notices may be given under subsection 41C(1); and
- (b) the period that may be set out in such notices; and
- (c) the manner and form in which evidence is to be produced under that subsection; and
- (d) the giving by persons referred to in the regulations (who may be individuals not resident in Australia or corporations not incorporated or carrying on business in Australia) of notice (whether in advance, or after the occurrence of the event concerned) to CASA of any modification, cancellation, non-renewal or expiry, or of any proposed modification, cancellation or non-renewal, or of any impending expiry, of an acceptable contract of insurance; and
- (e) the consequences (including any effect on the contract of insurance) of failure to give a notice referred to in paragraph (d).

#### **41L Delegation**

(1) The Director may, in writing, delegate all or any of CASA's powers under this Part to:

- (a) a member; or
- (b) a member of the staff of CASA.

(2) The power of delegation referred to in paragraph (1)(b) includes a power to delegate a power to any member of the staff of CASA from time to time holding, occupying, or performing the duties of, a specified office or position, even if the office or position does not come into existence until after the delegation is given.

(3) If:

- (a) the Director has, under this section, delegated a power of CASA contained in a provision of this Part; and
- (b) a delegate exercises the power;

a reference in that provision to CASA is taken, in relation to the exercise of the power by the delegate, to be a reference to the delegate.

#### **41M Saving**

Any action taken or any other thing done by, or in relation to, the Minister or a delegate of the Minister before the commencement of this section is to be treated after that commencement as if it had been taken or done by or in relation to CASA.

#### **Part V - Miscellaneous**

#### **41N Corresponding State laws may confer functions and powers on Commonwealth authorities and officers**

A law of a State may confer functions and powers on Commonwealth authorities and officers for the purposes of any of the provisions of sections 41B to 41M as those provisions apply as a law of the State, either with or without modifications, and those Commonwealth authorities and officers may perform or exercise the functions or powers so conferred.

#### **42 Stowaways**

(1) Where a person travels in an aircraft without the consent of the carrier and Part II, Part III, Part IIIC or Part IV would apply in relation to the carriage of that person if he were a passenger carried under a contract for his carriage for reward between the place where he boarded the aircraft and his place of disembarkation, the liability (if any) of the carrier, or of his servants or agents, in respect of that person and his baggage is subject to the limits as to amounts that are applicable in respect of passengers under that Part.

(2) This section does not impose any liability on a carrier or a servant or agent of a carrier to which he is not subject apart from this section.

(3) For the purposes of this section the place of disembarkation of a person shall be deemed to be the next scheduled stopping place after the place at which he boards the aircraft, or if he continues on board after the aircraft leaves the next scheduled stopping place, the scheduled stopping place next after the last stopping place from which the aircraft departed with that person on board.

#### **43 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **GENERAL AVIATION**

General aviation in Australia is administered by the Civil Aviation Safety Authority (CASA), which was established as an independent statutory authority on 6 July 1995, following an amendment to the *Civil Aviation Act 1988* (Commonwealth). The powers and functions of CASA are defined in Section 9 of the *Act*, with CASA's primary focus in delivering aviation safety to the Australian public by:

- setting aviation safety standards;
- licensing pilots and aviation engineers;
- certifying aircraft and operators;
- carrying out aviation industry surveillance;
- enforcing aviation safety standards;
- providing reviews of the system of civil aviation safety in order to monitor the safety performance of the aviation industry; and
- actively assisting the aviation industry to maintain high safety levels through education, training advice and consultation.

CASA reports to the Federal Minister for Transport and Regional Services. The organisation works in partnership with three other Federal Government aviation agencies within the Transport and Regional Services portfolio being the Department of Transport and Regional Services, the Australian Transport Safety Bureau (ATSB) and Air Services Australia. The Department is responsible for advising the government on aviation policy, regulating international airline operations and administering aviation security.

CASA's primary regulatory functions under the direction of the Director of Aviation Safety, are carried out by its divisions –

- Aviation Safety Standards
- Aviation Safety Promotion
- Aviation Safety Compliance
- Aviation Regulatory Services
- Corporate Development
- Corporate Services

CASA administers all functions and services for the general aviation industry, which covers non-airline operations and private aviation throughout Australia.

Air Services Australia (which is also an independent statutory authority) manages air traffic control and airport rescue and fire fighting services.

The Australian Transport Safety Bureau (ATSB) is an independent body responsible for the investigation of civil aviation accidents.

### **THIRD PARTY LIABILITY**

The *Damage by Aircraft Act 1999* was proclaimed on 8 November 2000, the day Australia's denunciation of the 1952 *Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface* (the Rome Convention) came into force. The *Damage by Aircraft Act* replaced the *Civil Aviation (Damage by Aircraft) Act 1958* which gave the Rome Convention force of law in Australia. The *Act* provides for strict and unlimited liability for compensating third parties on the ground suffering death, injury or damage from aircraft within the Federal Government's jurisdiction. It applies to all aircraft (except Defence Force aircraft) within Australia's territory that cause damage on the ground. Complementary State legislation covers intrastate operations. Accordingly, there exists a uniform strict and unlimited liability regime within Australia's jurisdiction covering all aircraft.

The Australian Government denounced the Rome Convention on the basis that it was markedly out of date. The limits of liability are low and quite inadequate within the Australian environment and it is believed that there is little prospect of the limits being increased to a reasonable level under the Convention.

At present, there is no legal requirement for insurance to cover damage caused by aircraft to third parties and property on the ground.

### **TORT REFORM & CLAIMS RELATED INFORMATION**

Parliaments throughout Australia have passed legislation to restrict the scope of personal injury and professional negligence actions and limit the damages

recoverable, largely in response to the escalating litigation and awards, and the resulting cost of insurance.

The Commonwealth has amended the *Trade Practices Act* by the *Trade Practices Amendment (Liability for Recreational Services) Act 2002* to permit the exclusion of implied warranties in the provision of recreational activities. Each of the States and Territories has introduced tortious law reform by legislation. The main Acts are:

New South Wales	<i>Civil Liability Act 2002</i> <i>Civil Liability Amendment (Personal Responsibility) Act 2002</i>
Victoria	<i>Wrongs and Other Acts (Public Liability Insurance Reform) Act 2002</i> <i>Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003</i>
Queensland	<i>Personal Injuries Proceedings Act 2002</i> <i>Civil Liability Act 2003</i>
South Australia	<i>Volunteers Protection Act 2001</i> <i>Wrongs (Liability and Damages for Personal Injury) Amendment Act 2002</i> <i>Recreational Services (Limitation of Liability Act) Act 2002</i>
Tasmania	<i>Civil Liability Act 2002</i>
Western Australia	<i>Volunteers (Protection from Liability) Act 2002</i> <i>Civil Liability Act 2002</i>
Australian Territory	Capital <i>Civil Law (Wrongs) Act 2002</i>
Northern Territory	<i>Personal Injuries (Civil Claims) Act 2003</i> <i>Personal Injuries (Liabilities and Damages) Act 2003</i>

The legislation varies between the different States and Territories. However, there are measures which are found in a number of the Acts, including:

- caps and thresholds on damages for non-economic loss, impose limits and exclude minor claims;
- limitations on recovery by criminals and intoxicated persons;
- protection from liability arising out of recreational activities and voluntary work;
- inadmissibility of apologies as admissions of liability;
- structured settlements.

In those States where caps or thresholds have been introduced in personal injury

litigation reports suggest that the effect has been a noticeable decrease in the amount of litigation. Notwithstanding the differences in legislation between the States the overall intention is to curb excessive awards and unmeritorious litigation.

## **PRODUCT LIABILITY**

The *Trade Practices Act 1974* (Commonwealth), including subsequent amendments introduced a wide ranging product liability regime providing a statutory right to compensation for loss or injury due to a defective product. It applies to goods supplied by their manufacturer after 9 July 1992. By definition, the legislation extends to aircraft manufactured and/or supplied by a corporation in Australia. It is not necessary to prove negligence on the part of the manufacturer of the goods.

Pursuant to section 75AJ a supplier can be deemed a manufacturer for the purposes of liability under the *Act* in certain circumstances. This provision is designed to assist injured persons who cannot identify the relevant manufacturer by giving them access to local manufacturers, suppliers and importers.

Section 75AC provides that the meaning of defect for the purposes of the *Act* is that "if their safety is not such as persons are generally entitled to expect". This is an objective test and does not require the goods to be absolutely free of risk. The defect can be in design, manufacture or instructions (or lack thereof) provided with the product.

Liability for defective goods causing injury/loss is founded in Sections 75AD, AE, AF and AG where:

If a corporation, in trade or commerce, supplies goods manufactured by it, and they have a defect and because of the defect, either an individual suffers injuries (see Section 75AD), or an individual suffers injuries and a person, other than the individual suffers loss because of the injuries (see Section 75AE), the corporation is liable to compensate for the amount of the persons injuries or loss.

Defences (see Section 75AK)

In a liability action, it is a defence if it is established that:

- (a) the defect in the action goods that is alleged to have caused the loss did not exist at the supply time; or
- (b) they had that defect only because there was compliance with a mandatory standard for them; or
- (c) the state of scientific or technical knowledge at the time when they were supplied by their actual manufacturer was not such as to enable the defect to be discovered; or
- (d) if they were comprised in other (finished) goods that defect is attributable only to
  - (i) the design of the finished goods; or
  - (ii) the markings on or accompanying the finished goods; or
  - (iii) the instructions or warnings given by the manufacturer of the finished goods.

The legislation (Section 75AO) provides that a liability action under the *Act* can only be commenced within 3 years after the plaintiff became aware (or should reasonably have become aware) of the alleged loss, defect and the identity of the manufacturer. However the action must be commenced within 10 years of the supply by the manufacturer of the actual goods causing loss.

The legislation does not extend to pure economic loss claims and no provision is made for exemplary or punitive damages.

In addition to the applicable federal law, there remain rights at common law, under contract and under various State legislation.

## **AIR TRAFFIC CONTROL AND AIRPORTS**

### **(a) Air Traffic Control**

Airspace in Australia is controlled by Air Services Australia via civil air traffic controllers.

Air Services Australia which was established in by the *Air Services Act 1995*, is a Federal government owned commercial authority which has responsibility for managing the airspace and for the provision of air traffic services within this area, and provides navigation services and the associated aeronautical information, to the aviation industry in the Australian Flight Information Region. This Region, which includes not only Australia's sovereign airspace but also international routes over the Pacific and Indian Oceans, encompassing approximately 11% of the world's airspace.

Air Services Australia provides air traffic management and related services including:

- en route and terminal air traffic services;
  - aeronautical data services;
  - tower services at 26 airports;
  - design and management of airspace usage; and
  - aviation rescue and fire fighting services at Australia's 16 busiest international and domestic regular public transport airports
- management of the Australian national air navigation infrastructure.

Services are provided to over three million aircraft movements annually.

Air Services Australia works closely with other Government organisations concerned with aviation, safety and regulation in Australia, namely the Department of Transport & Regional Services, the Civil Aviation Safety Authority and the Australian Transport Safety Bureau. It operates under the auspices of the International Civil Aviation Organization (ICAO).

Air Services Australia completed the technology upgrade program for The Australian Advanced Air Traffic System (TAAATS) aimed at maintaining the corporation's air traffic management system at the leading edge of technology. En route control in Australian airspace is handled from two centres, Melbourne and Brisbane. Through participation in ICAO programs, the corporation led the development of new ADS-B (Automatic Dependent Surveillance–Broadcast) standards, and the implementation of Reduced Vertical Separation Minima into Asia.

Military Air Traffic Controllers however are responsible for any air traffic transiting military air space.

A liability insurance programme with significant limits is arranged on behalf of Air Services Australia.

**(b) Airports**

Major airports (with the exception of Cairns, Ayers Rock and Hamilton Island) were historically owned by the Federal Government and operated by the Federal Airports Corporation (FAC), a Government Business Enterprise. In 1997 the Government commenced a privatisation process, whereby 50 year leases (+ 49 year options) were offered for most FAC airports. The privatisation process was completed in 2002 with the following airports now under long term leases:

Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Essendon, Camden, Canberra, Coolangatta, Darwin, Hobart, Hoxton Park, Jandakot, Launceston, Melbourne, Moorabbin, Mt Isa, Parafield, Perth, Sydney, Tennant Creek, Townsville.

Air traffic services are provided by Air Services Australia for both Government and privately operated airports, with liability cover being arranged for ATS operations. The three large non-Government airports are owned by a port authority and other commercial operators.

There are hundreds of smaller airports/airfields throughout the country operated primarily by Local Councils and Authorities. Insurance is arranged to provide protection for liability exposures arising out of the ownership and/or operation of these smaller airports, although the limits of liability vary widely.

**TAX REGIME**

**(a) Goods and Services Tax**

The Goods and Services Tax (GST) is a 10% tax on most goods and services supplied, including general insurance. GST is payable on general insurance policies for that part of the risk period which is after 1 July 2000.

In relation to aviation insurance specifically, since the introduction of GST, there is a tax on items (parts and labour) which make up the cost of a claim where previously there had been no indirect tax, which has increased the cost of such items. It is also possible that the cost of liability settlements may rise as a result of increased Court awards allowed to cater for the GST.

**(b) Company Tax**

The Company Tax rate in Australia is 30%.

**(c) With Holding Tax**

Tax is charged by the Federal Government on all insurance and reinsurance premiums 'exported' from Australia. The rate is 10% of the corporations tax rate (currently 30%), thus making all premium funds remitted outside Australia subject to a 3% tax.

**(d) Stamp Duty**

Each State and Territory in Australia imposes a duty on all contracts of general insurance, including aviation (both Hull and Liability). The rate of the impost which is a percentage of the premium varies between States and Territories. Since the introduction of the Goods and Services Tax on 1 July 2000, stamp duty is levied on the GST, as well as the premium. Current rates are:

Victoria	10%
New South Wales	5%
Queensland	8.5% (reducing to 7.5% - 1 August 2004)
South Australia	11%
Western Australia	10%
Tasmania	8%
Australian Capital Territory	10%
Northern Territory	10%

Tasmania also levies a 14% Fire Services Levy on hull premiums.

**GOVERNMENT SUPPORT FOR AVIATION (POST SEPTEMBER 11)**

Following the terrorist events of September 11, 2001 in the United States and the subsequent withdrawal of aviation war risk insurance by the market, the Commonwealth Government agreed to provide third party war, terrorist and hijacking cover to airlines, airports and other service and facilities providers, in order to ensure the ongoing viability of the aviation industry. Cover was provided by means of a Government Indemnity. The Indemnity covered the gap between the amount of third party war risk insurance available commercially (if any) and the level of cover previously held by the organisation (under AVN 52C or equivalent) prior to cancellation or withdrawal on or about 24 September 2001.

It was a requirement of the Indemnity that organisations purchase commercial war risk insurance cover from the market, as it became available. Indemnities were reviewed on a month to month basis. Initially the Indemnities were provided without charge by the Government although a charging regime was introduced in the second half of 2002. Various Indemnities continued through to 28 February 2003.

The Government also introduced the *Insurance and Aviation Liability Legislation Amendment Act 2002* (Commonwealth). Included in this legislation are the *Insurance Contracts Amendment Regulations 2002*, which were gazetted on 15 December 2002. As a result, Section 9 of the *Insurance Contracts Act 1984* has been amended to exempt third party war and terrorism risk insurance from section 53 (non variation clause) and section 63 (non cancellation clause); these exemptions are restricted to AVN 52 type writebacks.

The *Damage by Aircraft Act 1999* which imposes strict unlimited liability on owners and operators was also amended, to ensure passive aircraft owners (eg financiers and lessors) are excepted from liability for damage by aircraft to third parties on the ground. The amendment exempts an owner from liability where the owner does not have an active role in the operation of the aircraft immediately before the impact occurs.

The *Terrorism Insurance Act 2003* commenced on 1 July 2003. The *Act* applies to eligible contracts of insurance (as defined); in the event of a declared terrorist incident in Australia, any terrorism exclusion in a policy is written back and insurers are liable to pay for such losses. The *Act* has created a scheme to insure against terrorist risk by allowing insurers to reinsure the risk for eligible terrorism losses through the Australian Reinsurance Pool Corporation. Insurers provide the initial cover, subject to a maximum exposure of A\$1 million; thereafter the pool is supplemented by a back up bank line of credit of A\$1 billion, underwritten by the Commonwealth Government, as well as a Government indemnity of A\$9 billion. The scheme is funded by levies on premiums, based upon risk and location of commercial property. At this time, liability policies do not attract a levy. Importantly, contracts of aviation insurance in relation to aircraft hull and liability cover are excluded from the legislation.

### MISCELLANEOUS

#### (a) Safety Regulation

The Civil Aviation Safety Authority (CASA) is an independent statutory authority, established under the *Civil Aviation Act 1988*, as a body corporate separate from the Commonwealth Government. Other legislation affecting CASA in the exercise of its powers includes the *Air Navigation Act 1920*.

CASA's primary function is to conduct the safety regulation of civil air operations in Australia and the operation of Australian aircraft overseas. It is also required to provide comprehensive safety education and training programmes, cooperate with the ATSB, and administer the *Civil Aviation (Carriers' Liability) Act 1959*.

The *Civil Aviation Regulations 1988* and *1998*, made under authority of the *Civil Aviation Act*, provide for general regulatory controls for the safety of air navigation. The *Civil Aviation Act* and the *Regulations* empower CASA to issue Civil Aviation Orders on detailed matters of regulation. The Chief Executive Officer manages CASA, which is responsible to the Minister for Transport & Regional Services. CASA, the Department of Transport & Regional Services (which includes ATSB) and Air Services Australia constitute a tripartite structure for providing safe aviation in Australia, each with separate and distinct functions, working together as an integrated system.

A liability programme is effected by CASA to provide protection against actions emanating from its activities.

CASA is regularly involved in litigation, as a result of its regulatory functions.

#### (b) Aviation Accident Investigation

The ATSB established on 1 July 1999 is Australia's prime agency for the independent investigation of civil aviation accidents, incidents and safety deficiencies. The task was previously handled by the Bureau of Air Safety Investigation (BASI). The *Transport Safety Investigation Act 2003* was enacted to improve transport safety by providing for:

- (a) the reporting of transport safety matters; and

- (b) independent investigations into transport accidents and other incidents that might affect transport safety; and
- (c) the making of safety action statements and safety recommendations that draw on the results of those investigations; and
- (d) publication of the results of those investigations in the interests of transport safety.

The *Act* commenced on 1 July 2003.

The ATSB performs its functions in accordance with the provisions of Annex 13 to the Convention on International Civil Aviation (Chicago Convention 1944). Annex 13 has legal force through the *Transport Safety Investigation Act* which applies to all investigations commenced from 1 July 2003. The ATSB investigates air safety occurrences, safety deficiencies and also reviews factors that could lead to a deterioration of safety standards. The ATSB also participates as an accredited representative on investigations of accidents and serious incidents involving Australian-registered aircraft overseas. In accordance with Annex 13, from time to time the ATSB assists other foreign agencies in the investigation of accidents that do not involve Australian-registered aircraft.

The investigative process is not intended to apportion blame for an accident or incident, nor provide the means to determine the liability of any person.

### **(c) Insurance Legislation**

The principal legislation applicable to insurance policies is the *Insurance Contracts Act 1984* (Commonwealth) which has also applied to aviation liability policies in relation to private operators since its enactment, and has applied to policies covering aircraft engaged in commercial operations since 30 June 1997. The *Insurance Contracts Act 1984* included provision for the cancellation of Hull War policies, although no similar provision existed for Aviation Liability covers. Following the events of September 11, 2001 the Government amended this *Act* (via the *Insurance and Aviation Liability Legislation Amendment Act 2002*) so that insurers are permitted to vary or cancel insurance contracts that cover risks related war and/or terrorism.

A major review of the banking, insurance and finance sectors by the Federal Government over recent years has culminated in the enactment of the *Financial Services Reform Bill* which had an implementation date of 11 March 2002. There was a two year transitional period prior to the legislation being fully operational on 11 March 2004. It includes the *General Insurance Reform Act 2001* which will have a significant effect on operation and regulation of the insurance industry. It is the most important legislation since the introduction of the *Insurance Act 1973*.

Although not specifically insurance legislation, the *Privacy Amendment (Private Sectors) Act 2000* (Commonwealth) came into effect on 21 December 2002. The Act contains specific rules in relation to the collection, communication, use, disclosure, accuracy and protection of personal information. Accordingly this legislation has a wide ranging impact on the insurance industry and the manner in which it conducts its business. There is a requirement for all organisations to notify customers and stakeholders of the personal information they hold and how that information is being used. Severe penalties apply from breaches of the Act.

QBE - JVB 07/04

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Adhered to	28 Sep 1961
	Entered into Force	27 Dec 1961
The Hague Protocol - 1955	Signed	
	Adhered to	26 Mar 1971
	Entered into Force	24 Jun 1971
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Dec 1965
	Entered into Force	21 Mar 1966
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
See Annex N – Note 10		
	Acceded to	29 Apr 2004
	Entered in to force	28 Jun 2004
Outer Space Treaty - 1967	Signed	20 Feb 1967
	Ratified	26 Feb 1968
	Entered into Force	26 Feb 1968
Space Liability Convention – 1972	Signed	30 May 1972
	Ratified	10 Jan 1980
	Entered into Force	10 Jan 1980

**PART II – NOTES ON AVIATION LIABILITY****MANDATORY INSURANCE REQUIREMENTS****Passenger Liability**

Air carriers licensed by Austria are obliged to have a minimum insurance coverage of 5m ATS (294,000 SDR) in respect of passenger liability.

Foreign air carriers must have insurance cover in line with the Warsaw Convention.

**Third Party Liability**

Both air carriers licensed by Austria and foreign air carriers must have insurance for third party liability as follows:

Model aircraft under 20kg weight	12 million ATS (706,000 SDR)
Model aircraft from 20kg and non-combustion engine aircraft under 750kg weight	17 million ATS (1m SDR)
Other aircraft under 1,200kg weight	40 million ATS (2.35m SDR)
Aircraft from 1,200kg-2,000kg weight	60 million ATS (3.53m SDR)
Aircraft from 2,00kg-5,700kg weight	120 million ATS (7.06m SDR)
Aircraft from 5,700kg- 14,000kg weight	300 million ATS (17.65m SDR)
Aircraft from 14,000kg weight	900 million ATS (52.94m SDR)

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Ratified	24 Jan 2000
	Entered into Force	23 Apr 2000
The Hague Protocol - 1955	Signed	
	Ratified	24 Jan 2000
	Entered into Force	23 Apr 2000
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	24 Jan 2000
	Entered into Force	23 Apr 2000
- No. 2	Signed	
	Ratified	24 Jan 2000
	Entered into Force	23 Apr 2000
- No. 3	Signed	
	Ratified	24 Jan 2000
-No. 4	Signed	
	Ratified	24 Jan 2000
	Entered into Force	23 Apr 2000
Guadalajara Convention - 1961	Signed	
	Ratified	20 Jan 2000
	Entered into Force	19 Apr 2000
Rome (Third Par ty) Convention - 1952	Signed	
	Ratified	23 Mar 2000
	Entered into Force	21 Jun 2000
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## PART II – NOTES ON AVIATION LIABILITY

### INTERNATIONAL CARRIAGE

The State airline “Azerbaijan Hava Yollari” has been a party to the IATA Inter-carrier Agreement since March 1997.

### INTERNAL AND OTHER NON-CONVENTION CARRIAGE

Non-convention carriage (in terms of the Warsaw Convention) is governed by the Air Code of the Republic of Azerbaijan, the Civil Code of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan “On Transport”, and by the “Regulations on carriage of passengers, baggage and mail on airways of the State Concern “Azerbaijan Hava Yollari” and other global and local regulations.

### CLAIMS RELATED INFORMATION

Processing of claims and decision making (particularly on lost, missing, damaged and late delivered baggage and cargo, as well as physical injury to passengers) are conducted by the carrier's *Commission of Claims* in accordance with the procedure provided by the Warsaw Convention for Unification of Certain Rules of international passenger transportations, the Air Code of the Republic of Azerbaijan and the Civil Code of the Republic of Azerbaijan. In particular, the processing of claims in the National Airline “AZAL” is done by the Commissioner of Claims acting on the basis of the “Statute of Commission of Claims” approved by the State concern “Azerbaijan Hava Yollari”. The claims are also processed in accordance with the mentioned legislative acts as well as “Regulations on carriage of passengers, baggage and mail on airways of the State concern “Azerbaijan Hava Yollari” and other global and local regulations.

Upon consideration of similar suits, the courts also issue decisions based on the above legislative acts. As regards to compensation of moral damage, it should be noted that a plaintiff enjoys such rights only according to the appropriate provisions of the Labour Code of the Republic of Azerbaijan (in case of labour relations) and the Law of the Republic of Azerbaijan “On user rights” which, however, **does not apply** to the legislative regulation of air transportation. Legislative acts governing air transportation in the Republic of Azerbaijan do not provide for compensation of moral damages. Normally in court practice, passengers advance claims include compensation of moral damage. However, in view of the above stated, the courts **do not answer** to such claims.

### SOCIAL SECURITY AWARDS

The government and organisations make awards due to disability and due to the loss of the breadwinner to relevant eligible persons with whom they had labour relations at the time of the death or bodily injury occurrence. Such awards are made by the enterprise the person had labour relations with at the time of death or bodily injury in the form of a state pension according to the Law of the Republic of Azerbaijan “On provision of pensions to citizens”, and in the form of lump sum monthly benefits to compensate the caused damage. This is accomplished in accordance with the Civil Code of the Republic of Azerbaijan, the Air Code of the Republic of Azerbaijan and “Regulations on payment of damage by the enterprises, institutions and organisations to the employees who have received severe injury, occupational disease upon performance of duty, or the families of employees who have died

because of these reasons”, which was approved by the Resolution of the Cabinet of Ministers of the Azerbaijan Republic ~129 dated 24 September 1996. As regards to the rights of subrogation against third parties – right of regress claims; according to the Civil Code of the Republic of Azerbaijan, such right may arise at an enterprise compensating the damage to the employee, and with respect to a third party in case an enterprise is faulty in causing the damage.

### **THIRD PARTY LIABILITY**

Both air carriers licensed by Azerbaijan and foreign air carriers must have insurance for third party liability as follows:

Aircraft less than 2,000kg	500 000 USD
Aircraft from 2,000kg-6,000kg weight	1 500 000 USD
Aircraft from 6,00kg-20,00kg weight	5 000 000 USD
Aircraft from 20,000kg- 100,000kg weight	10 000 000 USD
Aircraft from 100,000kg weight	20 000 000 USD

### **OBLIGATORY INSURANCE REQUIREMENTS**

The Air Code requirement is the obligatory passenger insurance (Article 121 of the Air Code). In accordance with the Labour Code (Article 225), the insurance against accidents with regard to persons working at increased hazard zones is also obligatory. A list of industrial and non-industrial branches concerned with the increased hazard zones is drawn by the appropriate executive authorities (Article 211 of the Labour Code).

### **TAX REGIME**

It should be noted that upon transfer of insurance and reinsurance premiums abroad, a tax of 4% is levied from the paid premium.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 2		
	Succeeded to	23 May 1975
	Entered into Force	10 Jul 1973
The Hague Protocol – 1955	Signed	
See Annex A – Note 2		
	Succeeded to	23 May 1975
	Entered into Force	10 Jul 1973
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 - No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
- No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
See Annex G – Note 1		
	Ratified	15 May 1975
	Entered into Force	10 Jul 1973
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	
Outer Space Treaty – 1967	Signed	
	Succeeded to	11 Aug 1976
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into	

Force

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	12 Mar 1998
	Entered into Force	10 Jun 1998
The Hague Protocol - 1955	Signed	
	Adhered to	12 Mar 1998
	Entered into Force	10 Jun 1998
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	12 Mar 1998
	Entered into Force	10 Jun 1998
- No. 2	Signed	
	Acceded to	12 Mar 1998
	Entered into Force	10 Jun 1998
- No. 3	Signed	
	Ratified	12 Mar 1998
-No. 4	Signed	
	Acceded to	21 Jan 1999
	Entered into Force	21 Apr 1999
Guadalajara Convention - 1961	Signed	
	Adhered to	12 Mar 1998
	Entered into Force	10 Jun 1998
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	3 Mar 1997
	Entered into Force	1 Jun 1997
Montreal Convention	Signed	
	Acceded to	2 Feb 2001
	Entered in to force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II - NOTES ON AVIATION LIABILITY**

**1. MINIMUM INSURANCE REQUIREMENTS**

**Passenger Liability**

All carriers shall maintain adequate insurance covering their responsibility under the Montreal Convention 1999.

**Third Party Liability**

All carriers shall maintain adequate insurance covering their responsibility under the protocol to amend the convention on damage caused by foreign aircraft to third parties on the surface, signed at Rome 1952.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 3		
	Succeeded to	1 Mar 1979
	Entered into Force	26 Mar 1971
The Hague Protocol – 1955	Signed	
See Annex A – Note 3		
	Succeeded to	1 Mar 1979
	Entered into Force	26 Mar 1971
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	14 Jan 1986
	Entered into Force	14 Jan 1986
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 4		
	Succeeded to	29 Jan 1970
	Entered into Force	30 Nov 1966
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	18 Nov 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
- No. 2	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
- No. 3	Signed	25 Sep 1975
	Not Ratified	
-No. 4	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	2 Jan 2002
	Entered into force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Acceded to	12 Sep 1968
	Entered into Force	12 Sep 1968
Space Liability Convention - 1972	Signed	
	Acceded to	26 Dec 1988
	Entered into Force	26 Dec 1988

## PART II- NOTES ON AVIATION LIABILITY

### INTERNATIONAL CARRIAGE

Barbados has acceded to the Warsaw Convention, 1929, succeeding air law instruments and the Guadalajara Convention 1961 mentioned in Part I, the latest being the Montreal Convention on 2 January 2002. Although no national legislation has so far been enacted in relation to these instruments, they have the force of law in Barbados. However, Part V of the Civil Aviation Act, Cap 288A states as follows:

### LIABILITY FOR DAMAGE CAUSED BY AIRCRAFT

16. (1) No action lies in respect of trespass or nuisance in respect of

- (a) the flight of aircraft over any property at a height above the ground that, having regard to wind, weather and all the circumstances of the case, is reasonable; or
- (b) the ordinary incidence of the flight of aircraft referred to in paragraph (a) so long as there is compliance with this Act.

(2) Any person who suffers; injury to the person or damage to any property on land or water by, or by a person in, or an article or person falling from, an aircraft in flight, taking off or landing is entitled to recover damages in respect of the injury or damage without proof of negligence or intention or other cause of action as if the injury or damage has been caused by the willful act, neglect or default of the owner of the aircraft, unless that injury or damage was caused or contributed to by the negligence of the person by whom it was suffered.

(3) Notwithstanding subsection (2), where

- (a) damages are recoverable under that subsection; and
- (b) a legal liability is created in some person other than the owner of the aircraft to pay damages in respect of the damage referred to in that subsection,

the owner is entitled to be indemnified by that other person in respect of such damage.

17. No action lies in nuisance in respect of noise or vibration caused by an aircraft at an airport if the prescribed level of noise or vibration is not exceeded by that aircraft.

18. 'Where an aircraft is let or hired out for any period exceeding 14 days by the owner to any other person and no pilot, commander, navigator or other member of the crew of the aircraft is in the employment of the owner, this part has effect as if for references therein to the owner there were substituted references to the person to whom the aircraft was let or hired out.'

### THIRD PARTY LIABILITY AND MANDATORY INSURANCE

There is no specific legislation dealing with mandatory insurance and third party liability. However, part of the application process, there is an administrative requirement that all airlines desirous of operating at Barbados must produce evidence of insurance coverage, including

third party liability. The grant of a license or permit is not considered unless this evidence is received.

**AIR TRAFFIC CONTROL**

The Grantley Adams International Airport, the sole international airport in Barbados is owned and operated by the Government of Barbados through its Ministry of International Transport. A decision has been taken that the airport should be corporatized, namely that the airport will shortly be operated by a publicly incorporated company, In thus regard, action is in train to up-date the regulatory environment including the Civil Aviation Act, Cap 288 and the Airports Act, Cap 285A to ensure that in this new arrangement, the relevant ICAO SARPS are still observed.

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	26 Sep 1959
	Entered into Force	25 Dec 1959
The Hague Protocol - 1955	Signed	9 Apr 1960
	Ratified	17 Jan 1961
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	17 Oct 1983
	Entered into Force	14 Jan 1984
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	10 Feb 1967
	Ratified	31 Oct 1967
	Entered into Force	31 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	27 Dec 1973
	Entered into Force	27 Dec 1973

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	7 Apr 1936
	Entered into Force	11 Oct 1936
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	30 July 1963
	Entered into Force	25 Nov 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	25 Sep 1975
	Ratified	
-No. 4	Signed	25 Sep 1975
	Ratified	19 Mar 2003
	Entered into Force	17 Jun 2003
Guadalajara Convention - 1961	Signed	28 Nov 1961
	Ratified	1 Apr 1969
	Entered into Force	4 Aug 1969
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Ratified	14 Jul 1966
	Entered into Force	9 Nov 1966
Montreal Convention	Signed	28 May 1999
See Annex N - Note 1 and Note 15	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	2 Feb 1967
	Ratified	30 Mar 1973
	Entered into Force	30 Mar 1973
Space Liability Convention - 1972	Signed	29 Mar 1972
	Acceded to	13 Aug 1976
	Entered into Force	13 Aug 1976

## **PART II- NOTES ON AVIATION LIABILITY**

### **1. INTERNATIONAL CARRIAGE**

1.1 With effect from the 28th June 2004 international carriage is governed by the Montreal Convention 1999 and the EU Regulation 889/2002, replacing the Warsaw and Hague system on air carrier liability to passengers and the EC Regulation 2027/97 on air carrier liability.

1.2. In the past, SABENA has adopted special agreements according to art 22.1 of the WC. This article became obsolete under the IATA Inter Carrier agreement

1.3. SABENA became party to the IATA agreement of 31.10.1995 and as far as known, the SN BRUSSELS AIRLINES, succeeding to SABENA as the new national carrier, has adopted the same conditions of carriage.

1.5. Belgium signed, but did not ratify, the ECAC resolution 25-1 on minimum level of insurance cover for passenger (250.000 SDR) and third-party liability (depending the MTOM).

Since the EU regulation 785/2004, which will enter into force on the 1st of May 2005, has been adopted, similar minimum insurance levels for PLL (250.000 SDR/pax), baggage (1000 SDR/pax), cargo (17 SDR/kg) and TPLL (between 0.75m SDRs and 700m SDRs depending MTOW) apply, not only for EU-carriers, but also for any aircraft operator, even for private use, except parachutists, kites, captive balloons, foot launched gliders and small aircraft models.

### **2. INTERNAL CARRIAGE**

The MC and EU regulation 889/2002 apply also on internal carriage by operators who are licensed for commercial transportation.

Commercial and general aviation are governed by the air navigation law of 27.06.1937, the royal decree of 1954 which implements the ICAO regulations for registration, airworthiness, licences, airfields and commercial operation (carriage and aerial work) and the royal decree of 15.09.1994 on the air traffic rules.

### **3. GENERAL AVIATION**

In the past there was discussion whether the WC applied on aerial work (which includes passenger flights against remuneration in hot air balloons, gliders, light aircraft, parachute jumps, training flights, aerial photography etc...).

As only licensed EU-operators fall under the scope of the EU regulation 889 /2002, aerial work should be governed by the national Civil Code.

In execution of the above legislation, several ministerial decrees are dealing with items such as airworthiness and licences for different types of aircraft except gliders, which are delegated to the NAC.

Further regulation can be found in several administrative circular letters of the Belgian CAA.

Up to now JAR regulations for maintenance, airworthiness and licences were also implemented by Ministerial Decree or circular letters. Since EASA became operational we may expect that in the future these regulations will be implemented directly by European legislation.

The "ad hoc" regulations can be consulted in the Belgian A.I.P.

#### **4. THIRD PARTY LIABILITY**

Third party liability for damages on the surface is governed by the Rome Convention of 7.10.1955. The ratification law of 14.06.1966 extends its scope to all aircraft, irrespective of their nationality, except governmental and military A/C.

Other TPL, except PLL is governed by the Civil Code general liability rules ( art. 1382 – 1386 CC).

#### **5. MANDATORY INSURANCE REQUIREMENTS**

On basis of the Royal Decree on Air Navigation (15.03.1954), the Belgian CAA only delivers licences for commercial carriage or aerial work on condition that the applicant provides proof of sufficient insurance to meet the liabilities that he may sustain from his activities.

Up to now, no special insurance requirements existed for general aviation. With the implementation of EU regulation 785/2004 (1.5), minimum insurance requirements apply on both commercial and private operators. These vary between 0.75m SDRs and 700m SDRs, depending on MTOW.

The law of 16.02.1994 regarding the tour operators and travel agents contracts (Official Gazette of 01.04.1994) provides for both contracts the compulsory mention of the conditions of the applicable insurances of any kind and name and address of the insurance company.

#### **6. CLAIMS RELATED INFORMATION:**

In case of death, only husband and relatives depending economically on the victim can claim economic and/or more substantial moral damages. For the others, damages will be limited to funeral costs and symbolic moral damages.

In case of victims suffering from severe injuries with hospitalisation and long periods of temporary and permanent incapacity, important amounts for moral and esthetical prejudice may be allocated besides costs for special efforts, reeducation and damages caused by loss of revenue. In case of important permanent incapacity capitalisation techniques applies more often.

(Legal) interests are due from the day of the accident (actual interest rate 7%).

#### **7. SOCIAL SECURITY AWARDS:**

The health insurance system makes that expenses of the victims for hospitalisation and medical care are rather limited, but the social health care services are legally substituted against the responsible third parties for their expenses which might be very substantial in intensive care and for special treatments. Law provides direct action against the insurance company of the responsible party.

#### **8. PRODUCTS LIABILITY**

Belgium adapted its legislation concerning product liability to the EEC Directive No. 85/374 (25.07.1985) by means of the law of 25.02.1991. From now the manufacturer and the importer (who

imported the defective product to the ECC) are liable for physical damages (and certain material damages) which occur as a result of a malfunction or deficiency of the product they commercialised. They can only avoid responsibility in certain circumstances related to "force majeure". This no-fault liability does not affect the application of the national liability systems.

## **9. AIR TRAFFIC CONTROL AND AIRPORTS**

### **Types of Airports**

Airfields in Belgium may be divided in several categories: civilian and/or military, private or state owned airfields with or without customs facilities, etc. In addition, there are several airfields for the exclusive use of ultra light motorised aircraft. Airfields operated by public bodies are either operated at national level (Brussels Zaventem National Airport) or at a regional level (Antwerp, Charleroi, Ostend, etc). The other airfields are either operated by the military (Brasschaat, Florennes, Gosselies, etc) or privately operated (Balen-Keiheuvel, Grimbergen, etc).

### **Responsibility for Providing Local and Upper Airspace ATC**

Controlled airspace of Brussels FIR up to 19.500 ft. is operated by the military (Belga Radar) during military operational hours and by the civilian Air Navigation Service (Belgocontrol) outside military operational hours, except of the arrival/departure services in the control zones of the airports of Brussels, Charleroi, Antwerpen, Ostend and Liege. Outside controlled airspace local radio services "information only" may be provided. Eurocontrol is in charge of traffic control above 19,500 feet.

## **10. TAX REGIMES**

No special tax regime applies on aviation insurance contracts, which are subject to the same tax regime as insurance in general.

## **11. GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

As a result of 11 September 2001 the Government (Delcredere - Ducroire Service) covers (with special premiums) the difference between market needs and policy limits for the Belgian licensed carriers having the avn 52 war risk clause.

## **12. MISCELLANEOUS MATTERS**

Pollution claims in relation with aircraft accidents become more and more important. Regulation is transferred to the regional authorities, resulting in different procedures depending the accident location (Flemish, Walloon or Brussels region).

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	24 Aug 1999
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 5		
	Succeeded to	27 Jan 1962
	Entered into Force	1 Aug 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 5		
	Succeeded to	27 Jan 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	30 Mar 2004
	Entered into Force	28 Jun 2004
Montreal Convention	Signed	28 May 1999
	Ratified	30 Mar 2004
	Entered into Force	29 May 2004
Outer Space Treaty - 1967	Signed	
	Acceded to	19 Jun 1986
	Entered into Force	19 Jun 1986
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	25 Apr 1975
	Entered into Force	25 Apr 1975

## **BHUTAN**

**Date Entry Reviewed: September 2004**

### **PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Bhutan appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	29 Dec 1998
	Entered into Force	29 Mar 1999
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	9 Jul 1998
	Entered into Force	7 Oct 1998
Montreal Convention	Signed	28 May 1999
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**BOSNIA & HERZEGOVINA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 6	Signed	
	Succeeded to	3 Mar 1995
	Entered into Force	6 Feb 1993
The Hague Protocol – 1955 See Annex A – Note 6	Signed	
	Succeeded to	3 Mar 1995
	Entered into Force	6 Feb 1992
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 2	Signed	
	Succeeded to	3 Mar 1995
	Entered into Force	15 Feb 1996
See Annex D – Note 2 - No. 2	Signed	
	Succeeded to	3 Mar 1995
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
See Annex F – Note 2 -No. 4	Signed	
	Succeeded to	3 Mar 1995
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 2	Signed	
	Succeeded to	21 Mar 1995
	Entered into Force	6 Mar 1992
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Succeeded to	15 Aug 1994
	Entered into Force	15 Aug 1994

**PART II- NOTES ON AVIATION LIABILITY**

Based on Article IV 4. a) of the Constitution of Bosnia and Herzegovina, Parliamentary Assembly of Bosnia and Herzegovina, on the Session of the Representative House, that took place on 18 December 2003 and on the session of the House of People, that took place on the 10 December 2003 adopted

**THE AVIATION LAW OF  
BOSNIA AND HERZEGOVINA**

**PART I**

**GENERAL PROVISIONS**

**CHAPTER 1**

**Scope of application, Authorities and General Principles for Civil Aviation in BH**

**Article 1.**

**Scope of Application**

1.1. This Law defines conditions for safe air traffic within the airspace of Bosnia and Herzegovina, particularly related to: authorisations in civil aviation and air traffic control; general conditions for civil aviation; air navigation duties and responsibilities; aviation inspection; air traffic control services; aerodromes; search and rescue; aircrafts; aviation personnel; air operators and other aviation activities; investigation of accidents and incidents; civil aviation security and aviation penalties.

1.2. Aviation activities within the airspace above the territory, as defined in the Convention on International Civil Aviation, of Bosnia and Herzegovina may only take place according to the conditions stipulated by this Law and the Regulations based on this Law. In the context of this Law, a Regulation is any by-law, technical rule and regulation, order, instruction or decision issued by a competent authority.

1.3. Any Regulation shall comply with the Convention on International Civil Aviation and, to the maximum extent practicable, with the Standards, Recommended Practices and Procedures issued thereunder. General principles of International Law, as well as other International Conventions, Treaties, Agreements and Protocols to which Bosnia and Herzegovina is a party, shall also be observed.

1.4. Outside the territory of Bosnia and Herzegovina the provisions of this Law and Regulations based on this Law shall apply to any aircraft registered in Bosnia and Herzegovina provided that these provisions do not contradict the legislation of the state where the aircraft is situated at that moment.

**PART 11  
CIVIL AVIATION**

**CHAPTER 3**

**Airspace, Air Traffic Control, Aerodromes, Search and Rescue**

**Article 12.**

**Airspace Organisation and Rules of the Air.**

12.1. Airspace organization and rules of the air of Bosnia and Herzegovina shall be developed by BH DCA in co-ordination with SCMM and be approved by the Ministry and promulgated as a Ministerial Order on Aviation within 6 months after this Law becomes effective.

12.2. The rules of the air for military air traffic shall not endanger the safety of civil aircraft.

12.3. The Ministry shall ensure that the management of the airspace of Bosnia and Herzegovina is carried out for the most efficient, safe and effective use by civil aircraft, considering also airspace demands for military purposes.

12.4. No aircraft shall enter into or operate within the airspace of Bosnia and Herzegovina unless permitted to do so as herein provided and in accordance with the applicable laws and Regulations.

12.5. For national defense or safety reasons, the Council of Ministers in co-ordination with SCMM may declare parts of the airspace a prohibited, restricted or danger area for civil aircraft and may issue special procedures in this respect. Prohibitions and restrictions shall as far as possible be temporary and be lifted as soon as the reasons for their application disappear.

**Article 13.**  
**Air Traffic Control and Related Services**

13.1. BH DCA shall ensure that air traffic control and related services are being provided to flights above the territory of Bosnia and Herzegovina.

13.2. Within the airspace of Bosnia and Herzegovina, air traffic control and related services shall be provided jointly for civil and military air traffic. BH DCA shall ensure efficient co-ordination between civil and military air traffic. The procedures for such co-ordination shall be agreed with SCMM.

13.3. BH DCA shall, in consultation with the respective Entity Directorate for Civil Aviation, regulate the services to be provided by each air traffic control unit and issue the necessary Regulations and manuals in accordance with Annex 11 of the Convention on International Civil Aviation.

13.4. Some aerodromes, which have been selected and accordingly classified by BH DCA, shall be designated as controlled aerodromes, where air traffic control services consisting of aerodrome, approach and terminal control services must be provided. For controlled aerodromes adequate controlled airspace will be allocated.

13.5. BH DCA shall delegate to the respective Entity Directorate for Civil Aviation the authority to provide aerodrome, approach and terminal control services to each controlled aerodrome.

13.6. All air traffic controllers in Bosnia and Herzegovina must comply with the licensing provisions of Annex 1 of the Convention on International Civil Aviation and EUROCONTROL flight controller licensing regulations.

13.7. In order to ensure efficient air traffic control of international civil flights, BH DCA may delegate air traffic control services and related services within defined areas and height limits to a provider of these services operating under the authority of another state, provided that Bosnia and Herzegovina has concluded with the other state an agreement whereby areas and height limits as well as the conditions for delegation are defined. Correspondingly, BH DCA may accept delegation of air traffic control services and related services from another state, provided that Bosnia and Herzegovina has concluded an agreement with such state.

13.8. For services to civil aviation BH DCA shall ensure that the establishment, construction,

maintenance and operation of air navigation and communication facilities are being provided.

13.9. BH DCA shall ensure that efficient meteorological services are being provided to civil aviation in Bosnia and Herzegovina.

13.10. BH DCA shall ensure that an aeronautical information service is provided according to the obligations of Bosnia and Herzegovina as specified in Annex 15 to the Convention on International Civil Aviation.

**Article 14.  
Aerodromes**

14.1. The construction and operation of aerodromes is the privilege and responsibility of the Entities of Bosnia and Herzegovina, unless in specific cases the privilege and responsibility has been transferred to a special body established by agreement between the competent authorities of the Entities of Bosnia and Herzegovina.

14.2. International and air transport within Bosnia and Herzegovina may be allowed only on aerodromes that have been certified by BH DCA pursuant to this Law. Nobody may operate an aerodrome, or allow it to be used, for international or air transport within Bosnia and Herzegovina unless the aerodrome operator is in possession of a valid aerodrome certificate issued by BH DCA.

14.3. An aerodrome certificate shall be issued when the following points are fulfilled:

1. the applicant is the operator of the aerodrome or has been duly designated by the operator to operate the aerodrome and be the holder of the aerodrome certificate to be issued;

**Article 74.  
Delivery of the Cargo**

74.1. The detailed provisions of the Warsaw Convention about Right to Dispose of the Cargo and Delivery of the Cargo shall apply.

**Article 75.  
Liability of the Carrier**

75.1. Except as otherwise provided below, the carrier shall be liable for injury sustained by a passenger, if the occurrence that causes the injury takes place on board the aircraft or in the course of embarking or disembarking. The damages shall be determined in accordance with the laws of Bosnia and Herzegovina.

75.2. With the exceptions stated below, the carrier shall be liable for damage sustained through the loss or destruction of or damage to any registered baggage or cargo, if the occurrence which causes the damage takes place while the baggage or cargo is in the carrier's charge, either at an aerodrome or on board an aircraft or, in the case of a landing outside an aerodrome, wherever the cargo may be.

75.3. If, subject to the contract of carriage, in the course of loading, delivery or transshipment, carriage by land or by sea has been effected outside an aerodrome, any damage sustained by the baggage or cargo shall nevertheless, unless the carrier can produce proof to the contrary, be deemed to be the result of an occurrence which has taken place during the time referred to in Article 72 of this Law.

75.4. Unless otherwise stated below, the carrier shall be liable for damage occasioned by any delay in the carriage by air of passengers, registered baggage or cargo.

75.5. The carrier shall not be liable if he can prove that he and his agents have taken all necessary measures to avoid the damage, or that it has been impossible for him or them to take such measures.

75.6. If the carrier can prove that the person who has suffered the damage has contributed to it through his own negligence, the damage shall be reduced to the amount considered reasonable.

**Article 76.  
Limitations of Carrier Liability**

76.1. In the carriage of persons the liability of the carrier is limited to the sum of 16600 Special Drawing Rights for the aggregate of the claims, however founded, in respect of damage suffered as a result of the death or personal injury of each passenger. Where damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed the limit stated above. If a carrier of Bosnia and Herzegovina performs the transport the liability shall instead be limited to 100000 Special Drawing Rights. The carrier shall, in its tickets or standard conditions for transport, undertake to apply this limit. If only part of the transport is carried out by a carrier of Bosnia and Herzegovina, the higher limit stated above shall only apply to the part of the transport performed by this carrier. However, a contract can be made stipulating higher limits of liability than those stated above can.

76.2. The liability of the carrier for registered baggage or cargo is limited to 17 Special Drawing Rights per kilogram, unless the consignor has made, at the time when the baggage or cargo was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.

76.3. In the case of loss, damage or delay of part of the registered baggage or cargo only the total weight of the package or packages concerned shall be taken into consideration when determining the limit of the carrier's liability. However, if the value of other packages covered by the same baggage check or air waybill is affected, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

76.4. The liability for such objects that remain in the custody of the passenger is limited to 332 Special Drawing Rights for each passenger.

76.5. The sums mentioned above in terms of Special Drawing Rights shall be deemed to refer to the Special Drawing Rights as defined by the International Monetary fund.

**Article 77.  
Additional Rules**

77.1. Additional rules concerning the liability of the carrier, carriage by air performed by a person other than the contracting carrier, combined carriage and other special issues shall be applied in accordance with the provisions of the Warsaw and Guadalajara Conventions.

**CHAPTER 12  
LIABILITY FOR DAMAGE CAUSED BY AVIATION TO PERSONS AND PROPERTY NOT CARRIED  
ON BOARD**

**Article 78.  
Liability of Owners and Users**

78.1. For damage or injury, which occurs through the operation of an aircraft to persons or property not carried on board, the owner of the aircraft shall be liable although he may not have caused the damage. The liability may be reduced if the person affected contributed to the damage or injury.

78.2. If damage or injury has occurred through the operation of two or more aircraft, for which their owners are liable according to this chapter, they shall be liable jointly and severally. They shall share between them the resulting payments as is judged reasonable by the appropriate court. If, through such operation, damage or injury occurs to any of the aircraft or to persons or property carried on board any of the aircraft, the provisions of Article 78.1 shall not apply to such damage or injury.

78.3. If a person uses an aircraft without the consent of its owner, the user instead of the owner shall be liable for damage or injury thereby occurring.

78.4. When an aircraft is possessed on the basis of a purchase on credit with a provision for right to retract, the purchaser is liable according to this Law.

78.5. When an aircraft is possessed with a right of use, the user instead of the owner is liable, if

- 1) the owner and the user have made an agreement that the liability shall rest with the user; and
- 2) the right of use is valid for a period of not less than one year; and
- 3) the user, by the agreement, has the right to assign pilots to the aircraft or to use the aircraft for remuneration; and
- 4) an entry has been made in the aircraft register about the right of use.

78.6. When an aircraft is possessed with a right of use but Article 78.5.2 is not applicable, the user and the owner shall be jointly and severally liable according to this Law, if the user

- 1) according to the agreement with the owner has the right to assign pilots to the aircraft, or
- 2) although he has no such right assigns a pilot other than one employed by the owner and damage occurs at such occasion.

### **Article 79. Claims for Recovery of Payments**

79.1. What an owner or other person has paid out according to this law, he may seek to recover from the person who caused the damage or injury.

79.2. Should anyone performing duties on board an aircraft incur the obligation to make good damage caused, as a result of aviation, by a fault or omission of his while on duty, the Court may, in view of the limited nature of the fault or omission, the extent of the damage, or other circumstances, reduce the compensation to the amount considered reasonable.

79.3. The provision of Article 79.2 shall also apply to those performing duties under an aerodrome organization, air traffic services organization or elsewhere, except on board an aircraft, in a capacity on which the safety of air traffic depends.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 7		
	Succeeded to	21 Mar 1977
	Entered into Force	30 Sep 1966
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	28 Mar 2001
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	11 Mar 1974
	Entered into Force	11 Mar 1974

**PART II- NOTES ON AVIATION LIABILITY**

**LEGISLATION ETC.**

The Department of Civil Aviation has confirmed that the government of Botswana has indicated that it is in the process of legislating for minimum insurance requirements.

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	2 May 1931
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	16 Jun 1964
	Entered into Force	14 Sep 1964
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	27 Jul 1979
	Entered into Force	15 Feb 1996
- No. 2	Signed	25 Sep 1975
	Ratified	27 Jul 1979
	Entered into Force	15 Feb 1996
- No. 3	Signed	25 Sep 1975
	Ratified	27 Jul 1979
-No. 4	Signed	25 Sep 1975
	Ratified	27 Jul 1979
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	8 Feb 1967
	Entered into Force	9 May 1967
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Ratified	19 Dec 1962
	Entered into Force	17 Mar 1963
Montreal Convention	Signed	3 Aug 1999
	Not Ratified	
Outer Space Treaty – 1967	Signed	30 Jan 1967
	Ratified	5 Mar 1969
	Entered into Force	5 Mar 1969
Space Liability Convention - 1972	Signed	13 Jul 1972
	Ratified	9 Mar 1973
	Entered into Force	9 Mar 1973

**PART II- NOTES ON AVIATION LIABILITY**

**LEGISLATION ETC.**

The Department of Civil Aviation of Brazil has confirmed that there are currently no minimum insurance requirements in respect of either passenger or third party liability.

**BRUNEI DARUSSALAM**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 8		
	Succeeded to	28 Feb 1984
	Entered into Force	1 Jan 1984
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	25 Jun 1949
	Entered into Force	23 Sep 1949
The Hague Protocol - 1955	Signed	
	Adhered to	14 Dec 1063
	Entered into Force	13 Mar 1964
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	10 Nov 2003
	Entered into Force	9 Jan 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	28 Mar 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	16 May 1972
	Entered into Force	16 May 1972

**PART II – NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

**The Constitution of the Republic of Bulgaria**

Pursuant to the Constitution of the Republic of Bulgaria the international treaties, ratified in the order provided for by Constitution, promulgated and enforced for the Republic of Bulgaria represent a part of the internal law of the country. The Warsaw Convention 1929 is valid for the Republic of Bulgaria since 25 September 1949 and the amendments of the Hague Protocol are operative since 13 March 1964. The international treaties have priority over the provisions in the national legislation, which are in contradiction with them.

The National Assembly ratifies and denounces international treaties by passing a law to this effect. The treaties ratified by the National Assembly are subject to alteration or denunciation only following the order specified therein or in accordance with the generally accepted norms of international law. The conclusion of international treaties, which requires alteration in the Constitution, should be preceded by adoption of this alteration. The acts are debated and adopted after being voted twice in two separate sessions. The acts are promulgated in the State Gazette within 15 days at the latest after their adoption and come into force on the third day after their promulgation, unless another term is stipulated therein.

**The Law on Regulatory Acts**

With a view to providing a better service to society and enhancing its democratic development the current Law on Regulatory Acts aims at improvement in the preparation, adoption and application of regulatory acts. Only the bodies authorized therefore by Constitution or by law can issue regulatory acts.

**The Montreal Convention 1999**

The process of harmonization of Bulgarian legislation with that of the European Community envisages the signing of this Convention and its ratification to take place in the near future.

The national carrier has entered into no special agreements.

No national carriers are party to the IATA Inter-carrier Agreements.

**National Regulation on the Convention France**

Instructions of the Bulgarian National Bank have been issued which however have not been applied so far because over the past years no legal proceedings have been initiated in Bulgarian courts.

**Regional Legislation**

National carriers are governed by the European Council Regulation No 2027/97 and Regulation 25-1 of ECAC from December 2000 regarding the advisable levels of passengers' liability.

**2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

Passengers' carriage on domestic airlines as well as agricultural aircraft and first aid aircraft and other specialized carriage are regulated in the Civil Aviation Act of the Republic of Bulgaria and special Ordinances of the Minister of Transport

### **3. GENERAL AVIATION**

The Convention on International Civil Aviation /Chicago Convention/ has been in force in Bulgaria since July 1967. Based on the Civil Aviation Act some ordinances were issued by the Minister of Transport concerning the fitness of aircraft as well as the rules for checking the medical ability of the crew. The provisions of these Ordinances were adopted in 1999 and are uniform to those of the European Union.

### **4. THIRD PARTY LIABILITY**

According to Art. 64a of the Civil Aviation Act the airline operators are obliged to insure their third party liability. By virtue of this Act an insurance certificate must be available on board of the aircraft to certify the insurance cover against such liability. Bulgarian laws and regulations relating to aviation are applied to the aircraft of all other states, irrespective of their nationality. As far as possible, Bulgaria has provided uniformity to the international standards, procedures and organisation, according to the Convention on International Civil Aviation /Chicago Convention!.

### **5. MANDATORY INSURANCE REQUIREMENTS**

See item 4 above. The Civil Aviation Act also provides for insurance of the passenger liability and the luggage. The Insurance Act specifies the minimum sums insured per passenger for any one event.

### **6. CLAIMS RELATED INFORMATION**

Indemnities are determined and awarded by the Court of Justice. The amount of the indemnity depends on the severity of the bodily injury (light, medium, and heavy), the age of the injured party, his social and professional status and on some other factors. In case of death the lawful heirs are entitled to compensation. The Court determines the limit of indemnity after consideration whether the heirs have been dependents on the victim (children, spouse, parents) and taking into account the relations between the heirs and the legator before his death.

### **7. SOCIAL SECURITY AWARDS**

As from 01.01.2002 a new mandatory Public Security Code has been in force. According to it the state shall secure a pension to any person, who has been disabled, as a result of an accident, and the funds will be provided by the national budget. No right of subrogation is allowed.

### **9. AIR TRAFFIC CONTROL**

The air space is publicly state-owned. The Air Traffic Control is performed by a public body, which has the state functions to provide navigation services in the air space of the Republic of Bulgaria. The rights and liabilities of this entity are in respect of all aircraft and aerial devices, which perform flights in the

civil air traffic.

**10. TAX REGIMES**

According to the Corporate Taxation Act the insurance and reinsurance premiums of the insurance companies as well as their income from other activities are subject to taxation instead of their profit. The tax basis is the net premium (the difference between the gross premium and premium ceded to reinsurers).

**11. GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

The state has provided no assistance to airlines following the events of 11 September 2001 due to restrictions imposed by the IMF.

**BURKINA FASO**  
(Previously known as Upper Volta)

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	9 Dec 1961
	Entered into Force	9 Mar 1962
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	2 Jul 1992
	Entered into Force	30 Sep 1992
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	3 Mar 1967
	Ratified	18 Jun 1968
	Entered into Force	18 Jun 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	12 Dec 1996
	Entered into Force	12 Mar 1997
The Hague Protocol - 1955	Signed	
	Adhered to	12 Dec 1996
	Entered into Force	12 Mar 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

## CAMEROON

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 9		
	Succeeded to	2 Sep 1961
	Entered into Force	1 Jan 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 9		
	Succeeded to	2 Sep 1961
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	23 Jul 1969
	Entered into Force	21 Oct 1969
Montreal Convention	Signed	27 Sep 2001
	Ratified	5 Sep 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929 See Annex A - Reservation	Signed	
	Ratified	10 Jun 1947
	Entered into Force	8 Sep 1947
The Hague Protocol - 1955	Signed	16 Aug 1956
	Adhered to	18 Apr 1964
	Entered into Force	17 Jul 1964
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	17 Nov 1995
	Ratified	17 Nov 1995
	Entered into Force	15 Feb 1996
- No. 2	Signed	17 Nov 1995
	Ratified	17 Nov 1995
	Entered into Force	15 Feb 1996
- No. 3	Signed	31 Dec 1975
	Not Ratified	
-No. 4 See Annex F – Reservation	Signed	30 Dec 1975
	Ratified	27 Aug 1999
	Entered into Force	25 Nov 1999
Guadalajara Convention - 1961	Signed	
	Adhered to	1 Sep 1999
	Entered into Force	30 Nov 1999
Rome (Third Party) Convention – 1952 See Annex H – Denunciation	Signed	*
	Adhered to	*
	Entered into Force	*
Montreal Convention See Annex N – Note 6	Signed	I Oct 2001
	Ratified	19 Nov 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty – 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention – 1972	Signed	
	Acceded to	20 Feb 1975
	Entered into Force	20 Feb 1975

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The Carriage by Air Act implements the Warsaw Convention, Hague Protocol, Guadalajara Convention and Montreal Additional Protocol No. 4.

### **INTERNAL AND NON-CONVENTION CARRIAGE**

Non-Convention carriage is governed generally in Canada under the Aeronautics Act and the Canada Transportation Act.

### **GENERAL AVIATION**

General aviation is governed generally in Canada under the Aeronautics Act and the Canada Transportation Act.

### **THIRD PARTY LIABILITY**

There is no specific liability governing third party liability. There are, however, provisions under both Aeronautics Act and the Canada Transportation Act that require aircraft operators to carry public liability insurance.

### **MANDATORY INSURANCE REQUIREMENTS**

Mandatory insurance requirements are established under section 603.02 of the Canadian Aviation Regulations made under the Aeronautics Act and sections 6 to 8 of the Air Transportation Regulations made under the Canada Transportation Act.

Sections 6 to 8 of the Air Transportation Regulations state that:

6. In section 7 and Schedule I 'passenger seat' means a seat on board an aircraft that may be permanently occupied by a passenger for the period during which the aircraft is being used for a domestic service or an international service.

7.(1) No air carrier shall operate a domestic service or an international service unless, for every accident or incident related to the operation of that service, it has

a) Liability insurance covering risks of injury to or death of passengers in an amount that is not less than the amount determined by multiplying \$300,000 by the number of passenger seats on board the aircraft engaged in that service:

and

b) insurance covering risks of public liability in an amount not less than

i) \$1,000,000 where the MTOW of the aircraft engaged in that service is not greater than 7,500 pounds.

ii) \$2,000,000 where the MTOW of the aircraft engaged in that service is greater than

7,500 pounds but not greater than 18,000, and

iii) where the MTOW of the aircraft engaged in the service is greater than 18,000 pounds. \$2,000,000 plus an amount determined by multiplying \$150 by the number of pounds by which the MTOW of the aircraft exceeds 18,000 pounds.

(2) The insurance coverage required by paragraph (1) (a) need not extend to any passenger who is an employee of an air carrier if workers' compensation legislation governing a claim for damages against that air carrier is applicable.

(3) No air carrier shall take out liability insurance to comply with subsection (1) that contains an exclusion or waiver provision reducing insurance coverage for any accident or incident below the applicable minima determined by that subsection unless that provision

(a) consists of standard exclusion clauses adopted by the international aviation insurance industry dealing with

- (i) war, hijacking and other perils
- (ii) noise and pollution and other perils, or
- (iii) aviation radioactive contamination:

(b) is in respect of chemical drift.

(c) is to the effect that the insurance does not apply to liability assumed by the air carrier under any contract or agreement unless such liability would have attached to the air carrier even in the absence of such contract or agreement; or

(d) is to the effect that the entire policy shall be void if the air carrier has concealed or misrepresented any material fact or circumstance concerning the insurance of the subject thereof or if there has been any fraud, attempted fraud or false statement by the air carrier touching any matter relating to the insurance or the subject thereof, whether before or after a loss.

(4) An air carrier may have a comprehensive single limit liability coverage where liability risks are covered by a single policy or a combination of primary and excess policies, but no single limit coverage of that air carrier shall be for an amount that is less than the applicable combined insurance minima determined pursuant to paragraphs (1) (a) and (b).

8.(1) Every applicant for a licence or for an amendment to or renewal of a licence, and every licensee, shall file with the Agency, in respect of the service to be provided or being provided, as the case may be, a valid certificate of insurance in the form set out in Schedule I.

(2) A person referred to in subsection (1) who files a certificate of insurance electronically shall, on the request of the Agency, file forthwith a certified true copy of the certificate.

## **AIR TRAFFIC CONTROL**

Airports in Canada are variously owned and operated. The government of Canada is the operator of some airports but is in the process of divesting itself of that responsibility. However, Transport Canada remains the landowner in respect of airports that are part of the National Airports System but those lands are leased to airport authorities which operate the airport. Other airports are either municipally or privately operated.

Air traffic control is provided by NAV CANADA, a private entity, which has a statutory monopoly over the provision of the air traffic control services.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	7 Feb 2002
	Entered into Force	8 May 2002
The Hague Protocol - 1955	Signed	
	Adhered to	7 Feb 2002
	Entered into Force	8 May 2002
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	23 Aug 2004
	Entered into Force	22 Oct 2004
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## PART II- NOTES ON AVIATION LIABILITY

### INTERNATIONAL CARRIAGE

The Aeronautical Code on its Title X consecrated the fundamental principles stated on the Warsaw Convention (1929) and the amendments introduced by the Hague Protocol.

Note: However, it has settled the principle of the compensation for bodily and emotional injuries, on one hand, and the principle of unlimited liability in the case of damages caused to passengers (people), on the other hand.

The solutions provided by the Guadalajara Convention (1961) were totally absorbed by the Art.226 of the Aeronautical Code.

#### **Article 226 (Successive and Combined Transportation)**

1. Transportation that must take place by air and successively by various carriers, under a single contract or a series of contracts, shall be deemed single transportation when considered by the parties to be a single operation.
2. In the case specified in the previous item, passengers may bring action directly against the first carrier or against the carrier that provides the transportation during which the accident or delay took place.

### INTERNAL AND OTHER NON-CONVENTION CARRIAGE

On internal air carriage, the Aeronautical Code consecrated a liability system for body and emotional injuries based on an unlimited regimen, for damages caused to passengers.

The Aeronautical Code also establishes the principle of fully liability for damage caused to third parties on the ground (Art. 233), abandoning the solution within the Rome Convention (1952), which provides compensation based on the aircraft weight.

#### **Article 233 (Scope of Liability)**

1. The aircraft operator shall be fully liable for damage caused to third parties on the ground.
2. If there are multiple injured persons in the same accident, the aircraft operator shall be fully liable for the damage suffered by each.
3. In addition, the aircraft operator may be liable for the complete repair of the damage incurred as a result of fraudulent facts caused by it or the persons under its control, in the performance of their duties, regardless of the amount it may have to pay.

Furthermore the Aeronautical Code regulates liability for damage caused by delay (Art. 221) and liability for damage arising from air collision (Art. 237); settles fully liability for the Airfield Operator (Art. 242), Air Traffic Control Entity (Art. 244), Aircraft Manufacturer (Art. 248) and Air Work Operator (Art. 252).

Joint liability between the owner and the operator of the aircraft is also foreseen.

## **GENERAL AVIATION**

The Aeronautical Code also applies to general aviation.

## **THIRD PARTY LIABILITY**

In Cape Verde the operator of the aircraft shall be obligated to take out insurances for the damages specified in point 2. above. (Art. 274 of the Aeronautical Code).

### **Article 274 (Mandatory Liability Insurance)**

The operator of the aircraft shall be obligated to take out insurance for the damage specified in Title X of this Code.

No foreign aircraft shall be authorized to travel in Cape Verde air space without proving that it has an insurance policy for damage that may be caused to persons or objects transported or to third parties on the ground. (Art. 276 of the Aeronautical Code).

### **Article 276 (Foreign Aircraft Insurance)**

No foreign aircraft shall be authorized to travel in Cape Verde air space without proving that it has an insurance policy for damage that may be caused to persons or objects transported or to third parties on the ground.

## **MANDATORY INSURANCE REQUIREMENTS**

The Art. 280 of the Aeronautical Code establishes that in the mandatory insurance specified in this Code, the insurer shall be liable to the injured parties even if the damage is caused by the fault or gross negligence of the carrier or operator, without prejudice to the refund suit.

### **Article 280 (Insurer Liability)**

In the mandatory insurance specified in this Code, the insurer shall be liable to the injured parties even if the damage is caused by the fault or gross negligence of the carrier or operator,

without prejudice to the refund suit.

## **CLAIMS RELATED INFORMATION**

There are no examples of jurisprudential cases. Realistic situations were solved upon extra-judicial basis. However, Art. 209 of the Aeronautical Code foresee compensation for emotional damages.

### **Article 209 (Damage for Death or Bodily and Emotional Injury of Passengers)**

1. The carrier shall be liable for damage caused by accidents that occurs onboard aircraft or during loading or disembarkation operations, which result in the death or bodily or emotional injury of passengers.
2. For the purposes of the previous items, the following shall have the meaning indicated:
  - a) Loading operations shall be those carried out during the period the passengers are under the orders of the carrier, until they enter the aircraft,
  - b) Disembarkation operations shall be those carried out from the time the passengers leave the aircraft until they cease being under the orders of the carrier.

## **SOCIAL SECURITY AWARDS**

The Art. 273 of the Aeronautical Code states that the operator of the aircraft shall be obligated to insure its personnel who normally or occasionally work onboard against accidents, which occur during service missions.

### **Article 273 (Mandatory Insurance for Personnel Onboard)**

The operator of the aircraft shall be obligated to insure its personnel who normally or occasionally work onboard against accidents, which occur during service missions. In all other circumstances, in the absence of specific insurance, applies the "Regime Juridico Geral das Relagbes de Trabalho" (national legislation on general labour relations and others general legislations).

## **PRODUCT LIABILITY**

### **Art. 248 (Aeronautical Code)**

1. The builder or manufacturer of an aircraft shall be liable to its buyer for the damage incurred by the latter due to manufacturing defects in, in general, any compliance failure or partial, incomplete or late compliance with its contractual obligations.

2. For the purposes of the previous item, manufacturing defects of an aircraft shall be those arising from:

a) Defects of any type in the design, models or drawings used and in the materials used in its construction, whether they are produced by the builder or purchased from third parties;

b) Defective performance of the tasks by any employee of the builder, failure to use or inappropriate or incorrect use of the rules of the article

3. The builder or manufacturer of an aircraft must guarantee to its buyer the product of its manufacture for a minimum period of 24 months in the case of aircraft with a maximum weight up to 5,700 kilograms authorized for flight by the Standard Certificate, and no less than 36 months in the case of aircraft that exceed this tonnage.

4. The terms set forth in the previous items shall commence on the date of final receipt of the aircraft and after its airworthiness is certified by the aviation authority.

5. The aircraft builder or manufacturer shall also be liable for damage caused to any person due to defects in its construction or manufacture that occur during the terms established in Item 3, depending on the type of aircraft in question.

6. The compensation payable by the buyer to injured third parties due to manufacturing failures shall also be considered covered by the liability of the aircraft builder or manufacturer.

### **AIR TRAFFIC CONTROL**

There is only one publicly owned (limited company) responsible for the operation of the Airfield and air traffic control ( ASA).

### **GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

After the events of 11 September 2001 new tax were applied by the air carrier for internal carriage (USD 3) and for international carriage (USD 5).

**CENTRAL AFRICAN REPUBLIC**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	25 Sep 2001
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	27 Apr 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	9 Mar 1971
	Entered into Force	7 Jun 1971
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
Reservation – See Annex A		
	Adhered to	2 Mar 1979
	Entered into Force	31 May 1979
The Hague Protocol - 1955	Signed	
	Adhered to	2 Mar 1979
	Entered into Force	31 May 1979
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	23 Nov 1984
	Ratified	19 May 1987
	Entered into Force	15 Feb 1996
- No. 2	Signed	23 Nov 1984
	Ratified	19 May 1987
	Entered into Force	15 Feb 1996
- No. 3	Signed	23 Nov 1984
	Not Ratified	
-No. 4	Signed	23 Nov 1984
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	8 Oct 1981
	Entered into Force	8 Oct 1981
Space Liability Convention - 1972	Signed	
	Acceded to	1 Dec 1976
	Entered into Force	1 Dec 1976

**PART II - NOTES ON AVIATION LIABILITY**

**1. MINIMUM INSURANCE REQUIREMENTS**

**Passenger Liability**

Carriers must have insurance cover of 2000 Unidades de Formento

**Third Party Liability**

Carriers must have insurance cover of 2.5 Unidades de Formento per kg of aircraft weight.

(1 Unidades de Formento currently represents USD25)

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 10	Signed	
	Adhered to	20 Jul 1958
	Entered into Force	18 Oct 1958
The Hague Protocol - 1955	Signed	
	Adhered to	20 Aug 1975
	Entered into Force	18 Nov 1975
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961 See Annex G – Note 3	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty – 1967	Signed	
	Acceded to	30 Dec 1983
	Entered into Force	30 Dec 1983
Space Liability Convention – 1972	Signed	
	Acceded to	20 Dec 1988
	Entered into Force	20 Dec 1988

## PART II – NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

1.1 Carrier's liability on international flights is governed by the Warsaw/Hague Convention/Protocol except for those flights touching the USA, which are to be governed by the Montreal Agreement of 1966. The Department of International Affairs of CAAC participated in the Montreal Agreement as a carrier in 1981.

1.3 The following national carriers are party to the IATA Inter-carrier Agreement:

Air China  
China Eastern  
China Southern

### 2. INTERNAL CARRIAGE

The State Council of the People's Republic of China promulgated the "Provisional Regulation Governing Liability for Bodily Injury to Passengers on Domestic Air Transport" which took effect on 1 May 1989. On 29 November 1993 the liability limit was revised to RMB yuan 70,000.

The following are extracted from the Civil Aviation Law of the People's Republic of China:

#### Chapter IX – Public Air Transport/ Section 3 – Liability of the Carrier

**Article 124** – The carrier shall be liable for the death or personal injury of a passenger, if the accident took place on board the civil aircraft or in the course of any of the operations of embarking or disembarking from the civil aircraft provided the carrier is not liable if the death or injured resulted solely from the state of health of the passenger.

Article 125 – The carrier shall be liable for the destruction or loss of, or damage to, any carry-on articles of the passenger, if the occurrence took place on board the civil aircraft or in the course of any of the operations of embarking or disembarking from the civil aircraft of the passenger. The carrier shall be liable for the destruction or loss of, or damage to any checked baggage of the passenger, if the occurrence took place during the transport by air.

The carrier shall not be liable for the destruction or loss of, or damage to, any carry-on articles or checked baggage of the passenger if such destruction or loss or damage resulted solely from the inherent defect, quality or vice of the baggage.

"Baggage" referred to in this Chapter includes both checked baggage and the carry-on articles of the passenger.

The carrier shall be liable for the destruction or loss of, or damage to, any cargo if the occurrence took place during the transport by air provided that the carrier is not liable if he proves that the destruction or loss of, or damage to, the cargo resulted solely from one of more of the following:

- 1) Inherent defect, quality or vice of that cargo;
- 2) Defective packaging of that cargo performed by a person other than the carrier or his servants or agents;

- 3) An act of war or an armed conflict; or
- 4) An act of public authority carried out in connection with the entry, exit or transit of the cargo.

The "period of the transport by air" referred to in this Article means the whole period during which the checked baggage or cargo is in the charge of the carrier, whether in an airport or on board a civil aircraft, or, in the case of a landing outside the airport, in any place whatsoever.

The period of the transport by air does not extend to any transport by land, sea or by river performed outside an airport, provided that if such transport is used for loading, delivery or transshipment for the performance of a contract of transport by air, any damage took place during such transport is presumed, subject to proof to the contrary, to have been the damage taken place during the period of transport by air.

**Article 126** – The carrier shall be liable for damage occasioned by delay in the transport by air of passengers, baggage or cargo, provided that the carrier is not liable if he proved that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

**Article 127** – In the transport of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the fault of the claimant, the carrier may be wholly or partly exonerated from his liability in accordance with the extent of the fault that caused or contributed to such damage.

Where a person other than the passenger claims compensation with respect to the death or injury of the passenger, the carrier may similarly be wholly or partly exonerated from his liability in accordance with the extent of the fault that caused or contributed to such damage, if the carrier proves that the death or injury was caused by or contributed to by the fault of the passenger himself.

In the transport of cargo, if the carrier proves that the damage was caused by or contributed to the fault of the person claiming compensation, or the person from whom he derived his right, the carrier shall be wholly or partly exonerated from his liability in accordance with the extent of the fault that caused or contributed to such damage.

**Article 128** – The limit of the carrier's liability in domestic air transport shall be formulated by the competent civil aviation authority under the State Council and put in force after being approved by the State Council.

If the passenger or the shipper has made, at the time when the checked baggage or cargo was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires, the carrier shall be liable to pay a sum not exceeding the declared sum, unless he proves that the sum declared by the passenger or shipper is greater than the actual interest of the checked baggage or cargo in delivery at destination; the other provisions of Article 129 of this Law shall be applicable to domestic air transport except the limits of liability.

**Article 129** – In international air transport, the liability of the carrier shall be as the following:

- 1- The liability of the carrier for each passenger is limited to the sum of 16600 units of account. Nevertheless, the passenger may agree with the carrier in writing to a limit of liability higher than that prescribed by that sub-paragraph.
- 2- The liability of the carrier for each kilogram of checked baggage or cargo is limited to a sum of 17 units of account. If the passenger or shipper has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires, the carrier shall be liable to pay a sum not

exceeding the declared sum, unless he proves that the sum declared by the passenger or shipper is greater than the actual interest of the checked baggage or cargo in delivery at destination.

In the case of destruction, loss, damage or delay of a part of checked baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall only be the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the checked baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, then total weight of such package or packages shall also be taken into consideration in determining the limit of liability of the carrier.

3- The liability of the carrier for carry-on baggage of a passenger is limited to 332 units of account per passenger.

**Article 130** – Any provision tending to relieve the carrier of the liability prescribed by this Law or to fix a lower limit than that which is laid down in this Law shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract of transport by air.

**Article 131** – Any action for damage occurred in air transport, however founded, can only be brought subject to the conditions and limits of liability set out in this Law, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.

**Article 132** – The carrier shall not be entitled to avail himself of the provisions of Articles 128 and 129 of this Law concerning the limit of liability if it is proved that the damage in the air transport resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result, provided that, in the case of such act of omission of a servant or agent of the carrier, it is also proved that he was acting within the scope of his employment.

**Article 133** – If an action is brought against a servant or agent of the carrier arising out of damage during air transport, such servant or agent, if it proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability as provided in Articles 128 and 129 of this Law.

The aggregate of the amounts recoverable from the carrier, his servants and agents, in the case provided in the preceding paragraph, shall not exceed the legal limits of liability.

The provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage in air transport resulted from an act or omission of the servant or agent of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

**Article 134** – Receipt by the passenger of checked baggage or receipt of cargo by the consignee without complaint shall be prima facie evidence that the same have been delivered in good condition and in accordance with the document of transport.

In the case of damage to checked baggage or cargo, the passenger or consignee must complain to the carrier forthwith after the discovery of the damage, and at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo.

In the case of delay the complaint must be made within twenty-one days on which the checked baggage or cargo have been placed at the disposition of the passenger or consignee.

Every complaint must be made in writing upon the document of transport or by separate notice

dispatched within the periods prescribed in the preceding paragraph.

Failing complaint within the periods provided in paragraph 2 of this Article, the passenger or consignee shall be deprived of the right to claim compensation from the carrier, save in the case of fraud on the part of the carrier.

**Article 135** – The time for bringing up an action concerning air transport is limited to two years, reckoned from the date of arrival of a civil aircraft at the destination, or from the date on which the civil aircraft ought to have arrived, or from the date on which the transport stopped.

**Article 136** – In the case of transport to be performed by various successive carriers, each carrier who accepts passengers, baggage or cargo shall be subject to the provisions of this Law, and shall be deemed to be one of the contracting parties to the contract of transport in so far as that part of the transport is concerned which is performed by it in accordance with the contract.

In the case of transport of this nature, the passenger or his successor can take action only against the carrier who performed the part of transport during which the accident or delay occurred, save in the case where, by express agreement, the first carrier shall assume liability for the whole journey.

As regards checked baggage or cargo, the passenger or shipper shall have the right of action against the first carrier, and the passenger or consignee shall have the right of action against the last carrier, and further, each may take action against the carrier who performed the part of transport during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the shipper or consignee.

## **Chapter XII**

### **Liability for Damage to Third Parties on the Surface**

**Article 157** – Any person on the surface (including water surface, the same below) who suffers death or personal injury or damage to property caused by a civil aircraft in flight or by any person or thing falling therefrom shall be entitled to compensation. Nevertheless, the person who suffers damage shall have no right to compensation if the damage is not a direct consequence of the incident giving rise thereto, or if the damage results from the mere fact of passage of the civil aircraft through the airspace in conformity with air traffic regulations concerned of the State.

The term “in flight” mentioned in the preceding paragraph means the period beginning from the moment power is applied by a civil aircraft for the purpose of actual take off until the moment when the landing run ends. In the case of civil aircraft lighter than air, the expression “in flight” relates to the period from the moment when it becomes detached from the surface until it becomes again attached thereto.

**Article 158** – The liability for compensation contemplated by Article 157 of this Law shall attach to the operator of the civil aircraft.

The term “operator” mentioned in the preceding paragraph means the person who was making use of the civil aircraft at the time the damage was caused. However, if the control of the navigation of the civil aircraft was retained by the person from whom the right to make use of the civil aircraft was derived, whether directly or indirectly, that person shall be considered the operator.

The operator shall be considered to be making use of a civil aircraft when his servants or agents are using the civil aircraft in the course of their employment, whether or not within the scope of their authority.

The registered owner of the civil aircraft shall be presumed to be the operator and shall be liable as such unless, in the proceedings for the determination of his liability, he proves that some other person was the operator and, in so far as legal procedures permit, takes appropriate measures to make that other person a party in the proceedings.

**Article 159** – If a person makes use of a civil aircraft without the consent of the person entitled to its navigational control and causes a damage to third parties on the surface, the person entitled to the navigation control, unless he proves that he has exercised due care to prevent such use, shall be jointly and severally liable with the unlawful user.

**Article 160** – Any person who would otherwise be liable under the provisions of this Chapter shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance.

Any person who would otherwise be liable under the provision of this Chapter shall not be liable if such person has been deprived of the right to use the civil aircraft by the public authority according to law.

**Article 161** – Any person who would otherwise be liable under the provisions of this Chapter shall be exonerated from liability for damage if he proves that the damage was caused solely by the fault of the person who suffers the damage or of the latter's servants or agents. If the person liable proves that the damage was contributed to by the fault of the person who suffers the damage, or of his servants or agents, the compensation shall be reduced to the extent to which such fault contributed to the damage. Nevertheless, there shall be no such exoneration or reduction if, in the case of the fault of a servant or agent, the person who suffers the damage proves that his servant or agent was acting outside the scope of his authority.

Where an action is brought by one person to recover the damage arising from the death or injury of another person, and the damage was caused by the fault of such other person, or of his servants or agents, the provisions of the preceding paragraph shall apply.

**Article 162** – When two or more civil aircraft have collided or interfered with each other in flight and damage for which a right to compensation is contemplated in Article 157 of this Law results, or when two or more civil aircraft have jointly caused such damage, each of the civil aircraft concerned shall be considered to have caused the damage and the operator of each civil aircraft shall be liable.

**Article 163** – The persons referred to in paragraph 4 of Article 158 and Article 159 of this Law shall be entitled to all defences which are available to an operator under the provisions of this Chapter.

**Article 164** – Neither the operator, the owner, any person liable under Article 159 of this Law, nor their respective servants or agents, shall be liable for damage on the surface caused by a civil aircraft in flight or any person or thing falling therefrom otherwise than as expressly provided in this Chapter, except any such person who has caused the damage deliberately.

**Article 165** – Nothing in this Chapter shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

**Article 166** – The operator of a civil aircraft shall be covered by insurance against liability for third parties on the surface or obtain corresponding guarantee.

**Article 167** – The insurer or the guarantor may, in addition to the defences available to the operator, and the defence of forgery, set up only the following defences against claims brought up in accordance with the provisions of this Chapter:

(1) That the damage occurred after the insurance or guarantee ceased to be effective. However, if the

insurance or guarantee expires during a flight, it should be continued in force until the next landing specified in the flight plan, but no longer than twenty-four hours; and

(2) That the damage occurred outside the territorial limits provided by the insurance or guarantee, unless flight outside of such limits was caused by force majeure, assistance justified by the circumstances or an error in piloting, operation or navigation.

The continuation in force of the insurance and guarantee under the provisions of the preceding paragraph shall apply only for the benefit of the person suffering damage.

**Article 168** – Without prejudice to any right of direct action which the person suffering damage may have under the law governing the contract of insurance or guarantee, such person may bring a direct action against the insurer or guarantor only in the following cases:

(1) Where the insurance or guarantee is continued in force under the provisions of sub-paragraphs (1) and (2) of Article 167 of this Law; and

(2) The bankruptcy of the operator.

Excepting the defences specified in paragraph 1 of Article 167 of this Law, the insurer or guarantor may not, with respect to direct actions brought by the person suffering damage in accordance with the provisions of this Chapter, avail himself of any ground of nullity of the insurance or guarantee or any right of retroactive cancellation in setting up defences.

**Article 169** – If insurance or guarantee is furnished in accordance with Article 166 of this Law, it shall be specifically and preferentially assigned to payment of claims under this Chapter.

**Article 170** – Any sum due to an operator from an insurer shall be exempt from seizure and execution by creditors of the operator until claims of third parties under this Chapter have been satisfied.

**Article 171** – Actions concerning indemnity for damage to third parties on the surface shall be subject to a period of limitation of two years from the date of the incident which caused the damage; but in any case such period shall not go beyond a period of three years from the date of the incident which caused the damage.

**Article 172** – The provisions of this Chapter shall not apply to the following damage:

(1) The damage caused to a civil aircraft in flight, or to persons or cargo on board such aircraft;

(2) The damage which is regulated either by a contract between the person who suffers such damage and the operator or the person entitled to use the civil aircraft at the time the damage occurred, or by the law relating to workman's compensation applicable to a contract of employment between such persons; and

(3) Nuclear damage.

## **Chapter XIV**

### **Application of Law to Foreign-related Matters**

#### **Article 184**

Where the provisions of an international treaty concluded or acceded to by the People's Republic of China are different from those of this Law, the provisions of that international treaty shall apply, except

## CHINA, The People's Republic of (CONT'D)

the provisions for which reservation has been declared by the People's Republic of China.

In respect of cases which are not provided by the law of the People's Republic of China or by international treaties concluded or acceded to by the People's Republic of China, international practices may apply.

**Article 185** – The law of the State in which the nationality of the civil aircraft is registered shall be applicable to the acquisition, transference and extinction of ownership of the civil aircraft.

**Article 186** – The law of the State in which the nationality of the civil aircraft is registered shall be applicable to the mortgage of the civil aircraft.

**Article 187** – The law of the location of the court which takes up the case shall be applicable to civil aviation liens.

**Article 188** – The parties to a contract of civil air transport may choose the law applicable to the contract unless otherwise provided by law. In case the parties to the contract have made no such choice, the law of the State most closely related to the contract shall apply.

**Article 189** – The law of the place where an act of tort occurred shall be applicable to indemnity for damage caused by a civil aircraft to third parties on the surface.

The law of the location of the court which takes up the case shall be applicable to the indemnity for damage caused by civil aircraft over the high seas to third parties on the surface.

**Article 190** – The application of foreign laws or international practices in accordance with the provisions of this Chapter shall in no way violate the public interest of the People's Republic of China.

COLOMBIA

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	15 Aug 1966
	Entered into Force	13 Nov 1966
The Hague Protocol - 1955	Signed	
	Adhered to	15 Aug 1966
	Entered into Force	13 Nov 1966
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Ratified	19 Jun 1974
Montreal Additional Protocols – 1975 – No. 1	Signed	20 May 1982
	Ratified	20 May 1982
	Entered into Force	15 Feb 1996
- No. 2	Signed	20 May 1982
	Ratified	20 May 1982
	Entered into Force	15 Feb 1996
- No. 3	Signed	20 May 1982
	Ratified	20 May 1982
-No. 4	Signed	20 May 1982
	Ratified	20 May 1982
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	2 May 1966
	Entered into Force	31 Jul 1966
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	15 Dec 1999
	Ratified	28 Mar 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**MANDATORY INSURANCE REQUIREMENTS**

**Passenger Liability**

Air carriers licensed by Colombia are obliged to have a minimum insurance coverage of 25,000 grams\* per passenger.

**Third Party Liability**

The Colombian Commercial Code lays down the following minimum insurance requirements for third party liability.

Aircraft less than 1,000kg	33.333 grams*
Aircraft from 1,000kg-6,000kg weight	33.333 grams*
Aircraft from 6,00kg-20,00kg weight	166.633 grams*
Aircraft from 20,000kg- 50,000kg weight	399.863 grams*
Aircraft from 50,000kg weight	699.863 grams*

\* Amounts specified are in pure gold.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	11 Jun 1991
	Entered into Force	9 Sep 1991
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

CONGO, Democratic Republic of

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 16		
	Succeeded to	1 Dec 1962
	Entered into Force	30 Jun 1960
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
- No. 2	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 11		
	Succeeded to	19 Jan 1962
	Entered into Force	15 Aug 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 11		
	Succeeded to	19 Jan 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	29 Apr 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	4 Apr 1972
	Not Ratified	
	Entered into Force	

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Cook Island appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	10 May 1984
	Entered into Force	8 Aug 1984
The Hague Protocol - 1955	Signed	
	Adhered to	10 May 1984
	Entered into Force	8 Aug 1984
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Ratified	20 Dec 1972
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	20 Dec 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 12		
	Succeeded to	22 Feb 1962
	Entered into Force	7 Aug 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 12		
	Succeeded to	22 Feb 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929 See Annex A – Note 13	Signed	
	Succeeded to	14 Jul 1993
	Entered into Force	8 Oct 1991
The Hague Protocol – 1955 See Annex A – Note 13	Signed	
	Succeeded to	14 Jul 1993
	Entered into Force	8 Oct 1991
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 3	Signed	
	Succeeded to	14 Jul 1993
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 3	Signed	
	Succeeded to	14 Jul 1993
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4 See Annex F – Note 3	Signed	
	Succeeded to	14 Jul 1993
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 4	Signed	
	Succeeded to	7 Oct 1993
	Entered into Force	8 Oct 1991
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **MANDATORY INSURANCE REQUIREMENTS**

The Croatian Civil Aviation Authority has indicated that the government of Croatia is in the process of enacting legislation that will impose minimum insurance requirements in line with the ECAC Resolution ECAC/25-1.

In the meantime, all air carriers licensed by the Republic of Croatia, with the exception of those providing carriage by air of passengers, mail and/or cargo using non-power driven aircraft and/or ultralight power driven aircraft as well as local flights not involving carriage between different airports, have been informed of their obligation, when entering ECAC member states, to comply with the requirement to maintain their legal liability insurance coverage to passengers and third parties at least in the amounts corresponding to the minimum insurance coverage set out in the Resolution. In addition, carriers have been informed that they must also demonstrate compliance with the minimum insurance coverage figures when entering European Union countries, in particular either from Croatia or any other "third" (non-European) country, as required by the decision of the EC ad-hoc group on insurance.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
Reservation – See Annex A		
	Adhered to	21 Jul 1964
	Entered in to Force	19 Oct 1964
The Hague Protocol - 1955	Signed	
	Adhered to	30 Aug 1965
	Entered in to Force	28 Nov 1965
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
See Annex C – Note 4		
	Acceded to	21 Apr 1998
	Entered in to Force	20 Jul 1998
– No. 2	Signed	
See Annex D – Note 4		
	Acceded to	21 Apr 1998
	Entered in to Force	20 Jul 1998
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered in to Force	
Guadalajara Convention - 1961	Signed	29 Jan 1963
	Not Ratified	
	Entered in to Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	8 Sep 1965
	Entered in to Force	7 Dec 1965
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	3 Jun 1977
	Entered in to Force	3 Jun 1977
Space Liability Convention - 1972	Signed	
	Acceded to	25 Nov 1982
	Entered in to Force	25 Nov 1982

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 14		
	Succeeded to	8 Apr 1963
	Entered into Force	16 Aug 1960
The Hague Protocol - 1955	Signed	
	Adhered to	23 Jul 1970
	Entered into Force	21 Oct 1970
Guatemala City Protocol - 1971	Signed	30 Nov 1992
	Ratified	30 Nov 1992
Montreal Additional Protocols – 1975 – No. 1	Signed	10 Nov 1992
	Ratified	10 Nov 1992
	Entered into Force	15 Feb 1996
- No. 2	Signed	10 Nov 1992
	Ratified	10 Nov 1992
	Entered into Force	15 Feb 1996
- No. 3	Signed	10 Nov 1992
	Ratified	10 Nov 1992
-No. 4	Signed	10 Nov 1992
	Ratified	10 Nov 1992
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	31 Aug 1970
	Entered into Force	29 Nov 1970
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	20 Nov 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	5 Jul 1972
	Entered into Force	5 Jul 1972
Space Liability Convention - 1972	Signed	28 Apr 1972
	Ratified	15 May 1973
	Entered into Force	15 May 1973

**PART II – NOTE S ON AVIATION LIABILITY**

**MANDATORY INSURANCE REQUIREMENTS**

Cyprus Civil Aviation implemented the ECAC Resolution ECAC/25-1 in March 2001.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929 See Annex A – Note 15	Signed	
	Succeeded to	29 Nov 1994
	Entered into Force	1 Jan 1993
The Hague Protocol - 1955	Signed	
	Succeeded to	29 Nov 1994
	Entered into Force	1 Jan 1993
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961 See Annex G – Note 5	Signed	
	Succeeded to	5 Dec 1994
	Entered into Force	1 Jan 1993
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention See Annex N – Note 3	Signed	28 May 1999
	Ratified	16 Nov 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty – 1967	Signed	
	Succeeded to	1 Jan 1993
	Entered into Force	
Space Liability Convention – 1972	Signed	
	Succeeded to	24 Sep 1993
	Entered into Force	

## PART II- NOTES ON AVIATION LIABILITY

I

### 1. International Carriage

1. The Warsaw Convention was implemented into the national legislation by the Law No.: 15/1935 Coll.

The 1999 Montreal Convention was implemented into the national legislation by the Law No.: 123/2003 Collection of International Conventions.

2. As from 1st July 1988 Czechoslovak Airlines have adopted a voluntary special limit of the equivalent of USD 75,000 for passenger liability in respect of services to/from Canada.

As from 1st July 1995 Czechoslovak Airlines were re-named Czech Airlines as a consequence of the division of Czechoslovakia. Czech Airlines are considered as the successor of Czechoslovak Airlines, taking over their rights and liabilities.

3. The Czech Airlines signed the IATA Inter-carrier Agreement on 23rd January 1998.
4. At the present time there is no legal regulation on the convention in force.
5. The European Regulation will be in force for Czech carriers as from 2005.

### 2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE

The internal and other non-convention carriage is governed by the Act on Civil Aviation No.: 49/1997 Coll.

### 3. GENERAL AVIATION

The operation of general aviation is governed by the Act on Civil Aviation No.: 49/1997 Coll. and Act No.: 108/1997 Coll. giving details especially in respect of the definition of microlight aircraft and more detailed conditions of their operation.

The insured minimum liability limits are specified below under 5.

### 4. THIRD PARTY LIABILITY

The Czech Republic is not a party to the Rome Convention 1952. The aircraft operator or air carrier bears unlimited third party liability in respect of internal carriage. The insured minimum liability limits are specified below under 5.

## 5. MANDATORY INSURANCE REQUIREMENTS

<b>Aircraft</b>	<b>Minimum TPL Limit</b>
Aircraft without Motor	CZK 1 000 000
Aircraft up to 1 200 kgs MTOW	CZK 2 000 000
Aircraft over 1 200 kgs up to 2 000 kgs MTOW	CZK 3 000 000
Aircraft over 2 000 kgs up to 5 700 kgs MTOW	CZK 6 000 000
Aircraft over 5 700 kgs up to 14 000 kgs MTOW	CZK 100 000 000
Aircraft over 14 000 kgs MTOW	CZK 200 000 000
<b>Microlights</b>	<b>Minimum TPL Limit</b>
up to 150 kgs MTOW + parachute	CZK 100 000
over 150 kgs up to 220 kgs MTOW	CZK 500 000
over 220 kgs up to 450 kgs MTOW	CZK 1 000 000
<b>Passengers</b>	<b>Passenger liability limit</b>
each passenger seat	CZK 700 000

## 6. CLAIMS RELATED INFORMATION

On 1st January 2003 a specialized authority Air Accidents Investigation Institute was founded, which is responsible for aviation related accidents in the Czech Republic.

## 7. PRODUCT LIABILITY

Product liability is generally governed by the Civil Code No.: 40/1964 Coll. and in respect of personal injuries and damage to personal property by Law No.: 59/1998 Coll. as amended by Law No.: 209/2000 Coll. There is no limit of product liability.

## 8. AIR TRAFFIC CONTROL

In the Czech Republic there are numerous airfields and four internationally recognized airports. Air traffic control is managed by the Air Navigation Services of the Czech Republic.

## 9. TAX REGIMES

There is no national tax regime applicable to aviation insurance contracts.

## 10. GOVERNMENT SUPPORT FOR AVIATION INSURANCE

State assistance to aviation insureds (as a result of 11th September 2001 event) is provided in accordance with the Law No.: 409/2001 Coll. This law is still in force.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	3 Jul 1937
	Entered into Force	1 Oct 1937
The Hague Protocol - 1955	Signed	16 Mar 1957
	Ratified	3 May 1963
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	1 Dec 1976
	Ratified	29 Jun 1983
	Entered into Force	15 Feb 1996
- No. 2	Signed	1 Dec 1976
	Ratified	29 Jun 1983
	Entered into Force	15 Feb 1996
- No. 3	Signed	1 Dec 1976
	Ratified	4 May 1988
-No. 4	Signed	1 Dec 1976
	Ratified	4 May 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	20 Jan 1967
	Entered into Force	20 Apr 1967
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
See Annex N – Note 1 and Note 11	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention – 1972	Signed	19 Apr 1972
	Ratified	1 Apr 1977
	Entered into Force	1 Apr 1977

**PART II- NOTES ON AVIATION LIABILITY****AIR CARRIER LIABILITY****Legislation**

The Council Regulation no. 2027/97 of 9 October 1997 applies to air carrier liability in the event of accidents. The regulation has been amended by Regulation no 889/2002 of 13 May 2002, but it does not apply yet as its entry into force is depending on the entry into force of the Convention for the unification of certain rules for international carriage by air (the Montreal Convention). The Council regulation being in force lays down the obligations of community air carriers (including Danish air carriers) in relation to liability in the event of accidents to passengers. The new council regulation will also include liability for baggage and delay.

Liability of Community air carriers as well as of non-Community air carriers is also covered by the Danish Air Navigation Act (Consolidated Act no 543 of 13 June 2001). An English version of the Air Navigation Act can be found in our web-site ([WWW.SLV.DK](http://WWW.SLV.DK)).

In case of a conflict between the above Council Regulations and the Air Navigation Act, the Council regulations will prevail.

The Air Navigation Act implements the so-called Warsaw System regarding air carrier liability for passengers, baggage and cargo. Chapter 9 of the above act (the "new chapter 9") applies to domestic air traffic only and air traffic not covered by the Warsaw Convention and chapter 9 (the "old chapter 9") enclosed as an Appendix of the act applies to international air traffic covered by the Warsaw Convention.

The old chapter 9 implements the Warsaw Convention as amended by the Hague Protocol, the Guadalajara Convention and Montreal Protocols 1 and 2. The new chapter 9 implements the Guatemala Protocol, the Montreal Protocol 3 (increase of liability limit, strict liability i.a.) and the Montreal Protocol 4 (cargo). As you will notice these two chapters (new and old chapter 9) are not identical - especially regarding the limits for liability and the legislation on cargo.

The Montreal Convention has been implemented in the Air Navigation Act no 1074 of 17 December 2002 and will enter into force after the entry into force of the Montreal Convention. Denmark is able to deposit its instruments of ratification but is awaiting the ratification of the other EU-countries.

The following SDR limits are applicable to carriage as per 1 March 2003:

**Death and Injury:**

Domestic carriage:

Community Air Carriers: Unlimited

Non-Community Air Carriers: 100.000 SDR/passenger

International carriage:

Community Air Carriers: Unlimited  
Non-Community Air Carriers: 16.600 SDR/passenger  
(For carriers from Greenland and the Faroe Islands: 100.000 SDR/passenger)

**Delay (persons)**

Domestic carriage:

4.150 SDR/passenger

International carriage:

16.600 SDR/passenger.  
(For carriers from Greenland and the Faroe Islands: 100.000 SDR/passengers)

**Registered Baggage (damage and delay)**

Domestic carriage:

1000 SDR/passenger

International carriage:

17 SDR/kilo

**Cargo (damage and delay)**

17 SDR/kilo

**Special Agreements**

We are not aware of other special arrangements entered into by Danish carriers than the IATA Intercarrier Agreements. According to TATS lists of carriers signatory to the IIA and MIA as at 10 April 2001, the Danish air carriers, Maersk Air A/S and Scandinavian Airlines System (SAS) are parties to the agreements.

**NON-CONVENTION CARRIAGE AND GENERAL AVIATION**

As to liability in relation to non-convention carriage and general aviation Denmark does not have specific legislation other than general rules on damage.

**THIRD PARTY LIABILITY**

Third Party Liability is regulated in the Danish Air Navigation Act, § 127, according to which the owner/user of an aircraft has a strict and unlimited liability for any personal injury or property damage caused outside the aircraft and outside an authorised airfield, whilst damage occurring within such an airfield is governed by the culpa rule.

All aircraft operating within Denmark, either domestic or foreign must have covered third party legal liability insurance according to the minimum requirements laid down in Danish regulation 504/1991.

These minimum requirements are:

1. For aircraft with maximum take-off mass (MTOM) below 10 tons - DKK 60 million covering personal injury and DKK 5 million covering damage to property.
2. For aircraft with MTOM between 10 and 349 tons - DKK 150 million covering personal injury and DKK 20 million covering damage to property
3. For aircraft with MTOM of 350 tons and above - DKK 300 million covering personal injury and DKK 40 million covering damage to property.

## **MANDATORY INSURANCE REQUIREMENTS**

Apart from the above requirements for third party insurance we do not have specific requirements on the exact minimum level of insurance for air carrier liability.

Under Council Regulation (EEC) no 2407/92 of 23 July 1992 on licensing of air carriers, air carriers, including Danish air carriers, shall be insured and according to practice also carriers from Greenland and the Faeroe Islands shall be insured.

The EU air carriers, including Danish air carriers, shall be insured up to 100.000 SDR and thereafter up to a reasonable level, cf. Art. 3 in Council Regulation (EC) no 2027/97 on air carrier liability in the event of accidents. The wording of the new Regulation no 889/2002 of the European Parliament and of the Council amending Council Regulation no 2027/97 (not being in force yet) is that the air carriers shall be insured to a level that is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with the existing legislation.

We do not have specific requirements for insurance for other air carriers. Carriers from Greenland and the Faeroe Islands, however, shall also be insured to a level that is adequate and when the Montreal-Convention enters into force, all air carriers covered by the Montreal Convention i.a. and operating in Denmark (domestic or international flights) may be asked to produce evidence that they are duly insured.

As to general aviation we do not have requirements for insurance apart from corporate aviation (a company's carriage by aircraft of own employees), cf. Order no 387/2000 on corporate Aviation. For such companies a passenger insurance shall be taken out covering at least the sums stated in Council Regulation no. 2027/97.

## **CLAIMS RELATED INFORMATION, PRODUCT LIABILITY AND TAX REGIMES**

As to claims related information, product liability and tax regimes we recommend that you contact a Danish lawyer. We can confirm, however, that there exists no specific aerospace product liability legislation. Product liability is normally based on strict liability.

## **SOCIAL SECURITY AWARDS**

To our knowledge there is no national scheme to support those incapacitated (social security awards) other than the general social security system.

## **AIR TRAFFIC CONTROL**

The responsible for providing air traffic services in Denmark is NAVIAIR, Naviar Alle 1, DK-2770 Kastrup. Denmark has both privately and publicly owned airfields and they are both operated privately and by public bodies.

## **GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

As a result of the events of 11 September 2001 when the insurance market 14 days later cancelled coverage for third party liability over 50 million USD for each aircraft, the Danish state established as from 24 September 2001 a scheme based on the ECOFIN conclusions of 22 September 2001 to provide guarantee for insurance coverage over 50 million USD for each aircraft for war and terror risks. This state guarantee scheme was withdrawn as from 31 July 2002.

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Djibouti appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

**DOMINICAN REPUBLIC**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	25 Feb 1972
	Entered into Force	25 May 1972
The Hague Protocol - 1955	Signed	
	Adhered to	25 Feb 1972
	Entered into Force	25 May 1972
Guatemala City Protocol - 1971	Signed	
	Acceded to	30 Jan 1987
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	21 Nov 1968
	Entered into Force	21 Nov 1968
Space Liability Convention - 1972	Signed	26 Apr 1972
	Ratified	23 Feb 1973
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	1 Dec 1969
	Entered into Force	1 Mar 1970
The Hague Protocol - 1955	Signed	
	Ratified	1 Dec 1969
	Entered into Force	1 Mar 1970
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	12 Feb 1999
	Entered into Force	12 May 1999
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	12 May 1958
	Entered into Force	10 Aug 1958
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	7 Mar 1969
	Entered into Force	7 Mar 1969
Space Liability Convention - 1972	Signed	25 Apr 1972
	Ratified	17 Aug 1972
	Entered into Force	17 Aug 1972

**PART II- NOTES ON AVIATION LIABILITY**

The Director General of Civil Aviation of Ecuador has advised as follows:

"I hereby inform you of the Insurances which apply in my country:

One Million Suces (S/. 1,000,000.00) to answer for any harm or damage which may be sustained by each of the Flight Crew members.

Six Hundred Thousand Su ces (S/.600,000.00) to insure all Crew members against any harm or damage.

Five Hundred Thousand Suces (S/.500,000.00) to insure each of the passengers against any accident and any consequential damage or loss sustained thereby.

Three Million Suces (S/.3,000,000.00) and Five Million Suces (S/.5, 000,000.00) in respect of aircraft of up to 6,000 kilograms of weight and more than 6,000 kilograms of weight, respectively, to cover losses or damages which may be caused by the aircraft to third party's property on the ground.

Three Million Suces (S/.3,000,000.00) and Five Million Suces (S/.5,000,000.00) for aircraft weighing up to 6,000 kilograms and more than 6,000 kilograms, respectively, to cover losses or damages caused to persons on the ground, whether a s a direct result of an air accident or of objects thrown from a flying aircraft. In this event, the provisions of the Rules Book on the matter shall apply, all the same as if they were passengers of an aircraft."

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 17		
	Adhered to	6 Sep 1955
	Entered into Force	5 Dec 1955
The Hague Protocol – 1955	Signed	28 Sep 1955
See Annex B – Note 17		
	Ratified	26 Apr 1956
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	17 Nov 1978
	Entered into Force	15 Feb 1996
- No. 2	Signed	25 Sep 1975
	Ratified	17 Nov 1978
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	25 Sep 1975
	Ratified	17 Nov 1978
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	4 May 1964
	Entered into Force	2 Aug 1964
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Adhered to	23 Feb 1954
	Entered into Force	4 Feb 1958
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	6 Jun 1972
	Not Ratified	
	Entered into Force	

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The representatives of the National Airline at the IATA meetings during May 1966, accepted the limits of liability of \$58,000 exclusive costs, or \$75,000 inclusive costs, which have been in force since 16 May 1966 for passengers travelling to, from or via USA.

According to the Regulations of the Civil Aviation Department, National Airlines should insure its liability regarding passengers and third party. No authorisation is granted to any airline for aircraft landing at the Arab Republic aerodromes unless the carrier submits documents that his liability both for passenger or third party is insured.

#### **Indemnities**

The majority of passenger claims have been filed against the National Airlines. The average settlement awarded depends largely upon the circumstances of each accident and the social and economic factors of victims. The average settlement never exceeds the treaty limits applicable.

### **INTERNAL CARRIAGE**

The liability of the carrier is ruled by the provision of the civil code.

Articles 163-170-171-178-221 and 222 of the Civil Code provide for the principals and til e basic rules to bring an action against the person who caused damage to another and allowing recovery for the loss of damage sustained. Under the above provisions no limitation to the amount to be recovered. The estimation of indemnity is left to the discretion of the Court.

Usually Court decisions in respect of passengers cases are affected by the limitation of the Warsaw Convention. Domestic Flights

Since 1958 all passenger claims have been settled and no single aviation case was brought to court. The average settlement has not exceeded Warsaw Limits.

### **AIR TRAFFIC CONTROL AND AIRPORTS**

In Egypt airports are in government ownership; the government is responsible for Local and International Airports.

The Civil Aviation Authority (a public body) is responsible for providing local air traffic services at each type of airfield also for providing upper airspace and en route navigation facilities.

Both the Egyptian Government and the Civil Aviation Authority are self-insurers for most of their liabilities.

**NOISE & POLLUTION**

The Arab Republic of Egypt has not yet advised ICAO whether there will be any differences between its National regulations and practices, and the International Standards and Recommendations of Annex 16 - 3rd Edition.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	17 Sep 1956
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	11 Jan 1980
	Entered into Force	10 Apr 1980
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	13 Feb 1980
	Entered into Force	13 May 1980
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	15 Jan 1969
	Entered into Force	15 Jan 1969
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

**EQUATORIAL GUINEA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	20 Dec 1988
	Entered into Force	19 Mar 1989
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	16 Jan 1989
	Entered into Force	16 Jan 1989
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Eritrea appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	16 Mar 1998
	Entered into Force	14 Jun 1998
The Hague Protocol - 1955	Signed	
	Adhered to	16 Mar 1998
	Entered into Force	14 Jun 1998
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	16 Mar 1998
	Entered into Force	14 Jun 1998
- No. 2	Signed	
	Acceded to	16 Mar 1998
	Entered into Force	14 Jun 1998
- No. 3	Signed	25 Nov 1997
	Ratified	16 Mar 1998
-No. 4	Signed	25 Nov 1997
	Adhered to	16 Mar 1998
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Apr 1998
	Entered into Force	20 Jul 1998
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	4 Feb 2002
	Ratified	10 Apr 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **MANDATORY INSURANCE REQUIREMENTS**

#### **Passenger Liability**

Both carriers licensed by the Estonian CAA and foreign carriers are required to carry passenger liability insurance at a minimum level of 100,000 SDRs.

#### **Third Party Liability**

Both carriers licensed by the Estonian CAA and foreign carriers are required to carry third party liability insurance at a minimum level of 471,795 SDRs per case and one applicant.

The Estonian government is in the process of implementing legislation that will bring the minimum insurance requirements to the levels indicated in the ECAC Resolution ECAC/25-1. The new minima will apply to Estonian- and foreign-registered carriers.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	14 Aug 1950
	Entered into Force	12 Nov 1950
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	14 Jul 1987
	Ratified	14 Jul 1987
	Entered into Force	15 Feb 1996
- No. 2	Signed	14 Jul 1987
	Ratified	14 Jul 1987
	Entered into Force	15 Feb 1996
- No. 3	Signed	14 Jul 1987
	Ratified	14 Jul 1987
-No. 4	Signed	14 Jul 1987
	Ratified	14 Jul 1987
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 19	Signed	
	Succeeded to	15 Mar 1972
	Entered into Force	10 Oct 1970
The Hague Protocol – 1955 See Annex B – Note 19	Signed	
	Succeeded to	15 Mar 1972
	Entered into Force	10 Oct 1970
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961 See Annex G – Note 6	Signed	
	Adhered to	18 Jan 1972
	Entered into Force	10 Oct 1970
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty – 1967	Signed	
	Succeeded to	18 Jul 1972
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	4 May 1973
	Entered into Force	4 May 1973

## PART II- NOTES ON AVIATION LIABILITY

### LEGISLATION ETC.

The principal Fiji Civilian Aviation Legislation is:

- Civil Aviation Act 1976
- Civil Aviation Authority of Fiji Act 1979
- The Air Navigation Regulations 1970
- Civil Aviation (Licensing of Air Services) regulations 1978 and A mendment 1979
- Civil Aviation (Investigation of Accidents) Regulations and Amendment (1979)
- The Penal Code (re-hijacking)

A copy of the Civil Aviation Authority of Fiji's Annual Report for 1979-80 is held in IUAJ Central Office. The report covers many aspects of Fiji Civil Aviation but there is no reference to liabilities of air operators nor to insurance.

Fiji is a former British Territory which, whilst under British rule, became subject to the Carriage by Air (Non-International) (Colonies Protectorates and Trust Territories) Order 1953, which applied for internal carriage law similar to the Warsaw Convention, with certain alterations such as there being no requirement for the issue of a passenger ticket. This gave a limitation of liability for passenger's death or injury of 125,000 Convention Francs, 250 Convention Francs for checked baggage or cargo and 5,000 Convention Francs for personal objects retained by the passenger. It would appear that on attaining independence the existing law was continued with and it seems that the Carriage by Air (Non-International Carriage) Order 1953 is likely to be still applicable.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	3 Jul 1937
	Entered into Force	1 Oct 1937
The Hague Protocol - 1955	Signed	
	Adhered to	25 May 1977
	Entered into Force	23 Aug 1977
Guatemala City Protocol - 1971	Signed	4 Nov 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	2 May 1978
	Ratified	17 Jun 1980
	Entered into Force	15 Feb 1996
- No. 2	Signed	2 May 1978
	Ratified	17 Jun 1980
	Entered into Force	15 Feb 1996
- No. 3	Signed	2 May 1978
See Annex E – Note 5		
	Ratified	
-No. 4	Signed	2 May 1978
	Ratified	4 May 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	26 May 1977
	Entered into Force	23 Aug 1977
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	9 Dec 1999
See Annex N – Note 4		
	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	12 Jul 1967
	Entered into Force	12 Jul 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	1 Feb 1977
	Entered into Force	1 Feb 1977

## **PART II - NOTES ON AVIATION LIABILITY**

### **1. INTERNATIONAL CARRIAGE**

The Finnish Act No. 45 of 14 January 1977 with subsequent alterations and additions is fully based on the Warsaw Convention and the Hague Protocol as regards the question of a carrier's liability towards passengers, registered baggage etc. and cabin goods - but not mail.

There is Finnish Legislation effective 1 May 1980 which provides for the following SDR equivalents of the Poincaré Franc in the Warsaw system:

<b>Poincaré Francs</b>	<b>SDRs</b>	<b>Poincaré Francs</b>	<b>SDRs</b>
250	17	125,000	8,300
5,000	332	250,000	16,600

The limits of liability applicable both to international carriage subject to WC and HP are as follows:

Death, Injury or Delay	100,000 SDR per passenger
Registered Baggage etc	17 SDR per kilogram
Cabin goods	332 SDR per passenger

**Note:** Finnish carriers are governed by the Council Regulation (EC) 2027/97.

### **2. INTERNAL CARRIAGE**

The Finnish Act on Air Transport of 23 May 1986 (387/1986) entered into force 1 April 1989. According to this Act the limits of liability are as follows:

Death or Injury	100,000 SDR per passenger
Delay	4,150 SDR per passenger
Baggage and Cabin goods	1,000 SDR per passenger
Freight	17 SDR per kilogram

**Note:** Finnish carriers are governed by the Council Regulation (EC) 2027/97.

### **3. GENERAL AVIATION**

Passenger liability in non-commercial aviation is regulated by general tort law with no specific liability limits.

### **4. THIRD PARTY LIABILITY**

The aviation law statutes absolute unlimited liability for the owner/user for any personal injury or property damage caused to persons or property outside the aircraft. Damage on other aircraft or its occupants is, however, governed by the CULPA rule. Compulsory TPL insurance is required for all aircraft, subject to the following minima:

i)	Aircraft without engines (eg gliders)	<b>FIM 2m</b>
ii)	Hot air balloons	<b>FIM 2m</b>
iii)	Aircraft with engines:	
	MTOW max 5,700kg	<b>FIM 5m</b>
	MTOW 5,701- 40,000kg	<b>FIM 10m</b>
	MTOW 40,001 kg or more	<b>FIM 20m</b>

## **6. CLAIMS RELATED INFORMATION**

### **Social Security Schemes - Impact On Settlements**

Carrier's liability for damages is abated by any payment from the statutory Workmen's Compensation Insurance or statutory Pension Insurance. However, the Workmen's Compensation Insurer has right of recourse against the Carrier.

## **8. PRODUCTS LIABILITY**

No specific aerospace Products Liability Legislation. Generally, Products Liability is based on the CULPA rule.

## **9. AIR TRAFFIC CONTROL**

Airfields in Finland are - with minor and insignificant exceptions - owned by the Civil Aviation Administration, who are responsible for providing air traffic services.

The Civil Aviation Administration is likewise responsible for providing upper airspace and en route navigation facilities.

The CAA do not insure their liabilities as the State is responsible for their activities.

## **10. MISCELLANEOUS MATTERS**

### **Tax Regimes**

All premiums are subject to a tax of 22%, with the exception of insurances for aircraft and maritime vessels primarily employed in international traffic.

### **War Risks**

War risks are excluded from Finnish aviation insurance policies along the lines of AVN48. There are no specific regulations on government liability for war risks.

### **Noise & Pollution**

#### **Liability of Aircraft/Airport Operators for Noise Damage**

Referring to the information given under the TPL section no exceptions can be expected for damage or injury caused by noise.

**ICAO Annex 16**

Finland has notified ICAO that no differences will exist between their national regulations and practices and ICAO Annex 16 - 3rd Edition.

**ECAC/25-1**

The government of Finland is in the process of applying the minimum levels of insurance coverage provided for under ECAC Resolution ECAC/25-1.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	15 Nov 1932
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	19 May 1959
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	30 Dec 1975
	Ratified	11 Feb 1982
	Entered into Force	15 Feb 1996
- No. 2	Signed	30 Dec 1975
	Ratified	11 Feb 1982
	Entered into Force	15 Feb 1996
- No. 3	Signed	30 Dec 1975
	Not Ratified	
-No. 4	Signed	30 Dec 1975
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	24 Jan 1964
	Entered into Force	1 May 1964
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
See Annex N - Note 1	Not Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	25 Sep 1967
	Ratified	5 Aug 1970
	Entered into Force	5 Aug 1970
Space Liability Convention - 1972	Signed	
	Acceded to	31 Dec 1975
	Entered into Force	31 Dec 1975

Date Entry Reviewed: October 2004

## PART II - NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

#### Airlines Special Contract

In view of the position taken by many European companies and after consultation with D.G.A.C. and the national company, Air France, the Employer's Air Transport Federation agreed on its members' behalf to raise the upper limit on passenger liability to 100,000 SDR as of 1 April 1987.

#### Application of Article 29 of the Warsaw Convention

Like for domestic carriage (judgement held on 14 January 1977), the French Supreme Court ("Cour de cassation") decided on 1 June 1977 that the two year stated under Article 29 of the Warsaw Convention was a time-bar period which could be interrupted especially when the victim's rightful claimants are minor (under 18).

Similarly, the limitation period ceases to run if a lawsuit is engaged or if the carrier acknowledges liability.

*In a separate case, the French Supreme Court, by a decision held on March 10, 1981, decided that the opening of a criminal investigation did not interrupt the two year time limit provided under the Warsaw Convention, unless if a victim claims for damages against the carrier before the criminal jurisdiction.*

#### Application of Article 22 of the Warsaw Convention : Carriage of Goods and Baggage

*In the French Supreme Court's ("Cour de Cassation") decision of January 8, 1985, it was considered that the limitation of compensation established by Article 22 included all elements of prejudice, including the cost of transport.*

The DAKAR court of Appeals gave a similar ruling in a judgement on 12 July 1985.

#### Application of Article 17 and 24 of the Warsaw Convention

In its decision of July 15<sup>th</sup> 1999, the French Supreme Court ("Cour de Cassation") held that the air carrier's contractual liability towards its passengers could be sought under article 1147 of the French Civil Code if the loss suffered by the passengers did not occur during the carriage by air.

This case concerned passengers who had been retained hostages by Iraqi troops during a stop-over in Kuwait City on August 2<sup>nd</sup> 1990. The Court took the view that since the loss suffered by the passengers took place once the passengers had disembarked from the aircraft (under the meaning of article 17 of the Warsaw Convention), their claims were to be considered outside the scope of article 24 of the Warsaw Convention.

The French Supreme Court ("Cour de Cassation") confirmed that the air carrier was bound by an obligation of result with regards to passenger safety during the actual carriage by air but merely an obligation of best endeavours with regards to safety during the contract of transport.

#### **1.3 National Carriers party to the IATA Inter-carrier Agreements (MIA)**

The main French airlines entered the IATA Inter-carrier Agreements, among which Air France.

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## 1.5 Regional Legislation

- From October 18 1998, the European Regulation 2027/97 concerning the liability of the air carrier is applicable to any French or European airline operating on and from the French territory.

a) The carrier's liability is unlimited and, in case of death or injury of a passenger, subject to a strict liability up to SDR 100,000. Up to this sum, the carrier cannot exclude or limit its liability by proving that it or its agents took all necessary measures to avoid the damage or that it was impossible for it or them to take such measures.

b) The European Regulation introduces the obligation of an immediate advance payment (of not less than SDR 15,000 by passenger in case of death), in order to face the material prejudice of the victims or their beneficiaries.

- **Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents**

*The Community decided to amend Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents in order to cope with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.*

It should be noted that with regards to the system of unlimited liability in case of death or injury to passengers, there is no difference between Regulation (EC) No 889/2002 and the Montreal Convention. In case of death, the advance payment cannot be lower than SDR 16,000 per passenger.

Regulation No 889/2002 also establishes uniform liability limits for loss of, damage to, or destruction of, baggage and for damage caused by delay, which apply to all Community carriers flights, and which will ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.

Community air carriers shall provide basic information on the liability rules applicable to every passenger so that they can make additional insurance arrangements in advance of travel if necessary.

This regulation only concerns passengers and baggage. It does not concern cargo.

- **Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91**

While Council Regulation (EEC) No 295/91 of 4 February 1991 establishing common rules for a denied boarding compensation system in scheduled air transport created basic protection for passengers, the Community considers that the number of passengers who were denied from boarding against their will remains too high, as does that affected by cancellations without prior warning and that affected by long delays.

Therefore, the Community raised the standards of protection set by that Regulation (EEC) No 295/91 both to strengthen the rights of passengers and to ensure that air carriers operate under harmonised conditions in a liberalised market.

The new Regulation establishes, under various conditions, minimum rights for passengers when they are denied boarding against their will or when their flight is cancelled or delayed.

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It should be noted that Regulation No 261/2004 shall apply to passengers departing from an airport located in the territory of a Member State to which the Treaty applies or to passengers departing from an airport located in a third country to an airport located in the territory of a Member State to which the Treaty applies, unless they received benefits or compensation and were given assistance in that third country, if the operating air carrier of the flight concerned is a Community carrier.

This regulation will enter into force on 17 February 2005.

## **2. FRENCH DOMESTIC CARRIAGE**

In France, the liability of the air carrier for persons or for cargo is governed by the laws dated 31 May 1924 and 2 March 1957, the latter amends articles 41, 42, 43 and 48 of the former. These articles have been summarised and figure now in the "Code de l'Aviation Civile" (Première et Deuxième parties - Livre III - Transport Aérien), published on 30 March 1967 to read as follows :

### **Article L 321.3**

The liability of the baggage or cargo carrier is ruled in case of carriage by air, by the sole provisions of the Warsaw Convention dated 12 October 1929 or any convention modifying it and applicable in France, even if the carriage is not an "international carriage" as defined by this Convention.

### **Article L 321.4**

With a view to the application of Article 25 of the said Convention, the fault regarded as wilful misconduct is an inexcusable fault. The deliberate fault which implies consciousness of the probability of damage and its reckless acceptance without a valid reason, is deemed inexcusable.

Fraud, as provided for under Article 26.4 of the said Convention is where the carrier hides or tries to hide damages, loss of goods or delay, or hinders or tries to hinder by any other means, the consignees from filing charges within the required limits of time.

The plaintiff is likewise released from the foreclosure provided for by this text should he have been hindered from filing charges on grounds of a case of absolute necessity.

### **Article R 321.1**

The action for liability must be brought about, at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident or has his main office, or has an establishment through which the contract has been made, or before the Court of the place of destination.

### **Article L 321.5**

The right of action is suppressed if an action is not brought about within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived.

It should be noted that as provided for under three decisions dated 14 January 1977, the Supreme Court resolving "all courts together" decided that the two year period for bringing an action, provided for under Article L 321.5 which reproduces the resolutions of Article 29 of the Warsaw Convention, is a prescribed period and not a prefixed period, likely to be interrupted or suspended.

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Thus, this period will be suspended owing to the minority of the heirs of the victim of an air accident.

In so doing, for humanitarian reasons, the French Supreme Court gives to the expression "under penalty of a two year prefixed period" the opposite interpretation given by the participants of the Convention such as it is expressed in the preliminary works of the said Convention.

Summary Procedure : the writ served for summary procedure is now a cause for interrupting the time bar period : article 37 of the law dated 5 July 1985 entered into force on 1 January 1986, amending article 2244 of the Civil Code.

So the delay for action continues to run two years from the writ.

### **Article L 322.3**

The law dated 10 July 1989 increased the air carrier's limit of liability at 750 000 French Francs. This new increase created by the law has been introduced in the French Civil Aviation Code by article L 322.3.

Article L 322.3 is worded as follows:

"The liability of the carrier of persons is ruled by the provision of the Warsaw Convention, as provided for under Articles L 321.3, L 321.4 and L 321.5. However, the limit of the carrier's liability for each passenger, provided for under paragraph 1 or Article 22 of the said Convention, is fixed at FRF 750.000. If, as a result of a modification of the Warsaw Convention, the limit of the carrier's liability is fixed at a sum higher than the above mentioned sum, then this new limit will replace the limit of FRF 750.000 as from the introduction of the modification of the said Convention for France.

However, subject to contrary conventional stipulations, the liability of the carrier effecting a non-profit carriage will be involved within the limits provided for under the said Convention, only if it has been proven that the damage was due to the fault of the carrier or of his employees.

The liability of the air carrier may only be called upon under the above conditions and limits, whoever the persons bringing the matter up are, and whatever grounds they act upon".

## **3. GENERAL AVIATION**

### **Microlight Aircraft**

According to the decree of 17 June 1986, any motorised aircraft which fulfils the following conditions is qualified as an Ultra Light Motorised (U.L.M.) aircraft.

**Cat 1 ULM** : single-seat aircraft zero fuel weight less than or equal to 150 kgs, wing surface more than 10 M2 ratio zero fuel weight/wing surface less than 10 kgs/M2.

**Cat 2 ULM** : twin-seat aircraft, zero fuel weight less than or equal to 175 kgs or single seat aircraft, zero fuel weight between 150 and 175 kgs and in both cases wing surface more than 10 M2 and ratio zero fuel weight/wing surface less than 10 kgs/M2.

To be operated, a ULM must be registered and there must be a laissez-passer issued. In addition it must have its registration number on the underside.

An ULM which meets these requirements may be used for sport or leisure. There are specific additional requirements for ULMs for professional use (e.g. agricultural work, towing).

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Unless specially authorised, ULMs may not cross borders nor fly in the surroundings of an aerodrome or inside a controlled air space.

It is necessary to have a ULM pilot's licence in order to pilot a ULM. This may be issued automatically to holders of licences to operate aeroplanes, helicopters or gliders. In other cases, to obtain a ULM pilot's licence, one must :

- be aged over 15 years old
- pass a ground test
- have received clearance to fly solo from a qualified instructor

Also, to carry passengers the ULM pilot must have received a clearance from a qualified instructor.

There are no insurance requirements to use a ULM.

ULMs are exempt from noise nuisance certificate requirements but their noise level will be checked during the registration process.

#### **4. THIRD PARTY LIABILITY**

The liability of an aircraft operator with regard to third parties is governed by a Law of 31 May 1924 (articles 53 to 56).

The content of this law now appears in the Code de l'Aviation Civile (Première et Deuxième parties -Livre I : Dommages et Responsabilités) reading as in the following paragraphs :

##### **Article L 141.2**

The operator of an aircraft is liable without need of sanction for damages caused by the aircraft in motion, or by the objects detaching themselves therefrom, to the persons or property on the ground.

This liability can only be diminished or waived by proving fault of the victim.

Prescription : the delay of prescription of the action in liability, provided that an extra contractual liability is concerned, is ten years and that, not from the event which is the cause of damage but from the first manifestation or aggravation of damage : Article 2270.1 of the Civil Code.

##### **Article L 141.3**

The throwing of goods or objects of any kind from an aircraft in motion is forbidden, with the exception of the usual ballast.

In the event of an object falling from the aircraft due to force majeure or usual ballast being discharged and causing damage to persons or property on the ground, liability will be decided in compliance with the provisions of the preceding article.

##### **Article L 141.4**

If the aircraft is hired, the owner and the operator are jointly liable with respect to the damage caused to third parties. However, if the contract of hire is inscribed in the Registration Books, the owner is liable only if the third party can prove his fault.

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**Article R 141.2**

An action for damages is brought about, at the option of the plaintiff, before the Court having jurisdiction, either at the place where the damage took place, or at the place where the defendant is resident.

*If the claim results from damage to an aircraft in motion the Court of the place where the damage took place is the Court having jurisdiction at the place where the victim was forced to land after the damage.*

**August 2003 law reforms : the triggering of third party liability coverage under insurances policies governed by French Law**

*According to the case law of the Cour de Cassation and administrative courts since 1990, French liability insurers were obligated, in respect of policies governed by French law, to provide coverage for harmful events which occurred during the validity of the relevant policy.*

As a consequence, insurers could not limit, after the policy expiry, the time period during which the insured's claims could be presented and "claims made" clauses included in insurance policies were considered as being void .

Under article 80 of the new law dated August 1<sup>st</sup>, 2003 (in force as November 2nd, 2003), commercial insurance coverage may be provided on either an occurrence of a harmful event or on a claims made basis according to insurer/insured's choice. This new option offered by the law has been introduced in the French Insurance Code by article L 124-5.

For insurance policies governed by the claims made option, the law creates a subsequent period during which claims may be made after the date of termination or expiry of the coverage. The length is specified in the contract. It can not be less than five years.

The second significant change introduced by article 80 is the new definition of the loss as regards to third party liability. Henceforth, the loss is defined as : any damage, in whole or in part, caused to third parties, involving the liability of the insured, resulting from a harmful event and having given rise to one or more claims. The harmful event is the one which causes the damage. Several harmful events having the same technical cause are considered as one and same harmful event (article L 124-1-1 of the French Insurance Code).

For aviation insurers, the harmful event is assimilated to the accident or incident which occurred during the period of coverage.

**5. MANDATORY INSURANCE REQUIREMENTS****Regulation 785/2004 of April 21<sup>st</sup>, 2004 on minimum insurance requirements will enter into force on 30 April 2005**

Following this, Air Carriers/Aircraft Operators will have to comply with minimum insurance requirements set in Regulation 785/2004.

Regulation 785/2004 shall apply to all air carriers and to all aircraft operators flying within, into, out of or over the territory of the Member States of the European Union.

Insurance minima are:

- for liability in respect of passengers (250 000 SDR per passenger)

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- for liability in respect for baggage (1 000 SDR per passenger)
- for liability in respect of cargo (17 SDR per kg)
- for liability in respect of third parties

Regulation 785/2004 not only does apply to Ordinary Risks but it also applies to War Risks/Terrorism Risks.

Minimum Insurance requirements for liability in respect of Third Parties are linked to MTOW (Maximum Take-Off Weight) of the aircraft.

There are 10 categories, from 750 000 DTS (MTOW<500 kg) to 700 000 000 (MTOW > or = 500 000 kg).

For War/Terrorism Risks, in respect of liability to Third Parties, Minimum Insurance is required per aircraft and per accident.

However, if insurance cover is insufficient, air carriers can comply with Regulation 785/2004 by insuring themselves on an aggregate basis.

In exceptional cases of insurance-market failure, the Commission may determine the appropriate measures for the compliance of Air carriers with Minimum Insurance requirements.

It should be remembered that the EC Regulation No. 2407/92 of 1992 already requires a mandatory insurance fore the carrier's third party liability. The new regulation sets up a minimum amount to be insured.

## **6. PAYMENTS TO REDUCE THE IMMEDIATE FINANCIAL DIFFICULTIES OF AIRCRASH VICTIMS OR THEIR FAMILIES**

In order to avoid the creation of a public fund and at the request of governmental authorities, the members of the "Association des Assureurs Aviation de France" had decided, with effect from 1 January 1991, that they would pay an immediate contribution of up to FRF 50,000 for every passenger killed or up to FRF 10,000 per month for every injured passenger but not exceeding FRF 50,000 in an accident involving a French commercial aircraft.

These payments were not be regarded as a recognition of responsibility. They were intended as advance payments supposed to be deducted from the final settlement.

Now, by virtue of EC Regulation (Regulation 2027/97 of October 9, amended by Regulation 889/2002 of May 13, 2002), French air carriers, as member of the European community, shall make advance payments which in the case of death of a passenger cannot be less than the equivalent in Euro of SDR 16 000 (SDR 15 000 according to EC Regulation 2027/97).

EC Regulation 889/2002 entered into force at the same time than the Montreal Convention, i.e. on June 28, 2004.

## **7. SOCIAL SECURITY AWARDS**

### **Social Security Schemes - Impact on Settlements**

In the event of an accident in which one of the passengers is a victim, whether the flight is for a business or private purpose, the Social Security Scheme, or equivalent, has a preferential debt. Thus it has a right to claim for the amount of any compensation paid, not exceeding the indemnity which is provided by the carrier in compensation for the economic loss undergone by the passenger or his rightful claimants. The claim of

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the Social Security cannot however be exercised against any indemnity for non-economic damages, such as for pain and suffering - aesthetic damage, temporary or permanent disablement if the passenger has been injured , or pain and suffering of the rightful claimants in case of fatality.

*Under article L 322-3 of the French Civil Aviation Code or Warsaw Convention, in case of wilful misconduct, or under the conditions set up by the Montreal Convention, the carrier and his liability insurer is bound to support the full cost of the damage, with no limit. As such, they have to calculate the amount due to the Social Security first, and after to calculate and pay the balance to the passenger or his rightful claimants for the damage not absorbed by the Social Security.*

If the indemnity the carrier is supposed to pay is limited to FRF 750,000 or equivalent in Euros, which is the maximum amount established by Article L 322-3 of the French Civil Aviation Code, the insurer pays, on the one hand the claim to the Social Security and on the other hand the indemnity payable to the passenger or his rightful claimants, total of both payments not exceeding FRF 750,000.

## **8. PRODUCTS LIABILITY**

Products Liability may be either contractual or resulting from tort.

### **Contractual Liability of the Manufacturer**

With regard to his co-contracting partner, i.e. the buyer, the manufacturer is held responsible for the latent defect "which renders the sold article improper for the use to which it is devoted" (Article 1641 of the Civil Code).

According to the jurisdiction decisions, the professional salesman is assimilated to the dishonest salesman for the guarantee of latent defect.

*He is therefore strictly liable and cannot exonerate himself by proving the technical impossibility of detecting the defect or preventing it from happening.*

He can never invoke the benefit of a waiver of subrogation clause except if it concerns sales between professionals of the same speciality.

The action for latent defect must be brought about within a short period of time (article 1648 of the Civil Code) unless time-barred, this appreciation being left to the discretion of the Court.

### **Liability resulting from tort**

This concerns the liability of the manufacturer with regard to sub-purchasers of the product as well as third parties, that is to say those not cited on the sales contract.

This liability is involved in conformity with the common law, either on the basis of article 1382, or article 1384 of the Civil Code.

The prescription of the action is 10 years.

### **European Directive Concerning Product Liability**

By virtue of a law dated 19 May 1998, France introduced the European Directive of 1985 concerning product liability.

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Indeed, a new article 1386-1 of the Civil Code sets out that the manufacturer is liable for the damage caused by his product whether he has or has not a contractual relationship with the victim.

A product has a defect when it does not offer the safety one can expect. There is an action against the manufacturer when there is damage caused to any physical person or good.

Nevertheless, several defences are open to the manufacturer who is not liable when he proves that:

1. He did not commercialise the product.
2. The defect did not exist while he commercialised the product.
3. The product was not to be commercialised.
4. The defect was not detectable by the present state of technical knowledge.
5. The defect resulted from the application of the compulsory law and provisions.

Any action resulting from the manufacturer's liability is time barred three years after the damage has been discovered.

## **9. AIR TRAFFIC CONTROL**

### **9.1. Types of Airfield in France by Ownership and Responsibility**

#### **9.1.1. Ownership**

There are three groups of owners of airfields in France :

- a. The State is the owner of the main airfields which are licensed for public air traffic. Obviously the State also owns those airfields reserved for Government Departments (generally branches of the Ministry of Defence).
- b. Airfields that have been built with the agreement of the State (Ministry of Transport in charge of Civil Aviation). These may be owned by public or private owners. Such airfields may be licensed for public air traffic or approved for restricted use such as : gliding, flying school, aerial work, flight test, tourism.
- c. Airfields reserved for private use and for employees and guests. These are owned by private owners (either physical people or legal entities) and can be built after obtaining the agreement of the local authority (Prefect). There are restrictions on use. There is no obligation to contract insurance.

#### **9.1.2. Responsibility**

- a. For State owned airfields, the State itself may be the operator, or, with those licensed for public air traffic, may authorise a third party to be the operator. The third party may be a local community, and may be either a public or a private entity.

*b. In the same way, owners others than the State may operate their airfields themselves or may grant the operation of their airfields to a third party, subject to the States' approval of the third party.*

- c. Third party operators are in most cases public bodies, or the local Chamber of Commerce and Industry may be granted the concession and be responsible for exploiting and operating the airfield. All airfield operators are bound to respect contractual conditions which define their responsibilities as regards : building of equipment, maintenance and running of installations including apron, taxiways and runways, instruction for airfield users, compliance with air traffic safety rules (beaconing of installations and obstacles, ground markings, lighting).

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### 9.1.3. Liability

#### Airfields Licensed for Public Air Traffic

The operator of an airfield licensed for public air traffic is liable for damage caused to third parties following the fitting out, maintenance and use of elements of his concession.

State (and Government Departments) are self-insured. With other operators such liability is covered by the operator's compulsory insurance.

#### Other Airfields

The operator of an airfield approved for restricted use is generally bound to contract similar insurance according to the type of activity involved.

### 9.2. Bodies Responsible for Providing Local Air Traffic Services at each Type of Airfield

On the whole air traffic control, flight information and alert services are the State's responsibility. Air traffic services are provided by the "Direction de la Navigation Aérienne" (DNA), which is a department of the "Direction Générale de l'Aviation Civile" (DGAC). Air Traffic Controllers are officials of the Minister of Transport.

As regards airfields and air traffic control, both airfields licensed for public air traffic and airfields approved for restricted use can be classified in two categories : controlled airfields and non-controlled airfields.

#### 9.2.1. Controlled Airfields

Local air traffic services, i.e. clearances and information provided to aircraft, are performed by the control tower.

When operating the air traffic controllers act on behalf of the State. The State is self-insured.

#### 9.2.2. Non-Controlled Airfields

There is generally a body in charge of Air Flight Information Services (AFIS) at non-controlled airfields. This service is carried out by an airfield operator's agent who has been formed and agreed by the State.

The airfield operator is responsible for appointing this agent but the latter acts on behalf of the State in the exercise of his duties so long as he acts within the limits prescribed by the State.

The operator is generally insured to cover liability resulting from his agent's fault or serious negligence.

### 9.3. Authorities Responsible for Providing Upper Airspace and En Route Navigation Facilities

Upper airspace and en route navigation facilities (control, flight information and alert) are provided by control approach centres, regional control centres and regional flight information centres, which are public bodies under the authority of the Minister of Transport or, within some areas, under the authority of the Minister of Defence.

a. Control is only ensured in controlled classes of airspace and according to the type of flight admitted or

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performed (IFR or VFR).

b. Flight information and alert services are provided in the whole airspace.

These public bodies do not insure liabilities, the State being self insured.

#### **9.4 Jurisdiction**

In principle, proceedings may only be brought against the State (particularly with regard to fault committed by air traffic controllers in the carrying out of their duties) before the Administrative courts. However, in a judgement of 28 May 2002, the Court of Cassation held that the Civil courts had Jurisdiction to hear such proceedings if it could be established that the air traffic controller was linked in some way to the operation of the aircraft.

### **10. MISCELLANEOUS MATTERS**

#### **WAR RISKS ETC.**

##### **Law of 9 December 1986 Relating to the Control of Terrorism**

This law contains provisions relating to compensation in respect of physical and material damage.

- Article 9.I of the law provides for the compensation of victims of terrorist acts committed on national territory. It sets up a guarantee fund for the purpose of ensuring compensation in full for bodily injury resulting from such acts. This fund is sustained by an annual fixed-sum levy on goods insurance contracts. The law of 30 December 1986 makes these provisions applicable to acts committed after 31 December 1984.

- In respect of property damage, Article 9.V of the law stipulates that "goods insurance contracts cannot exclude the insurer's guarantee in respect of damages resulting from acts of terrorism or offences committed on national territory. Any clause to the contract is deemed to be void".

- In the wake of the 11th of September events and subsequent reduction of insurance market capacity for war and the like perils, a French decree of 28<sup>th</sup> December 2001 has introduced a lower minimum limit of coverage for terrorism applicable in particular to aviation, marine and cargo property damage insurance whereby insurers are allowed to reduce coverage to a minimum of 20 % of sums insured for other perils, subject always to a minimum of € 20M (net of deductible).

#### **NOISE & POLLUTION**

As well as in the other states in the European Union, the provisions concerning noise levels and limits of pollution by aircraft are governed by several directives, the last being EC - directive Nr. 92/14 dated 2 March 1992 (EC - Official Bulletin dated 23 March 1992 – Nr : L/076/21 ) which implements the Annex 16 of the Chicago Convention of 7 December 1944.

#### **Liability of the Operators**

In France, the aircraft operator is strictly liable for damage to third party on the ground by virtue of the law of 31 May 1924 which states "Article 53 – The operator of an aircraft is automatically responsible for damages caused by the operation of the aircraft or objects which detach therefrom, to persons and property on the ground."

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One can ask if this clause should apply equally to damage (material or consequential) caused by noise.

With regard to noise affecting the vicinity of airports, the Supreme Court rejected on 17 December 1974 (3 decisions) the appeals which had been lodged against the judgements of the Paris Court dated 6 July 1971.

It confirmed that the automatic liability decreed by Article 53 of the Law dated 31 May 1924 which has since become Article L 141.2 of the "Code de l'Aviation Civile", incumbent on the operator of an aircraft is imposed independent of any fault, error or misuse of aircraft.

French jurisdiction decisions have thus attributed the principle of strict liability to the airlines for the noise of aircraft, which the airlines consider severe.

The Paris Court of Appeals by a decision held on 19 November 1980 ordered five aviation companies to indemnify claimants for the damage caused to them by the noise and pollution resulting from aircraft flying over their homes. An appeal lodged by the companies was dismissed by the Supreme Court of Appeals on 24 May 1982.

### **Liability of the Airport**

The Council of State ("Conseil d'Etat") made a very important decision on 6 February 1987.

By application of article L 141.2 of the Civil Aviation Code, a company was ordered by the Court of Paris in a judgement of 19 March 1979, to pay compensation, to a town located close to Orly Airport, for the cost of sound-proofing council buildings.

The Company, after this decision had been complied with, lodged a petition with the Administrative Tribunal for an order requiring the Airport to reimburse this sum.

*The Council of State considering from the investigation that it is clear that "the sitting and normal operation of the Airport are the direct and indisputable causes of the environment problems suffered by the parish" annuls the judgement of the Administrative Tribunal and orders the Airport to reimburse the sum paid by the Company.*

### **Administrative Measures Aiming to Reduce Noise at Source**

A decree dated 30 October 1979 related to the "Nuisance Limitation Certificates" for propeller aircraft. With the exception of acrobatics aircraft or aircraft used for agriculture or fire-fighting, propeller aircraft whose maximum take-off weight is less than or equal to 5,700 kilos must have a "Nuisance Limitation Certificate" or a "special certificate" or a "laissez-passer".

A decree dated 13 April 1982 set out the rules applicable to helicopters.

With the exception of helicopters used for agricultural work, fire-fighting or slung loads, every helicopter must possess a "Nuisance Limitation Certificate", or a "special certificate" or a "pass document". An ordinance on 28 May 1984 amended the previous regulations for subsonic jet aircraft.

As of 1 January 1987 subsonic jet aircraft registered in France can only be operated in French territory if they are fitted with a "Nuisance Limitation Certificate", a "Special Certificate" of "Limitation of Nuisance" or a "laissez-passer of Nuisance Limitation".

As of 1 January 1988 subsonic jet aircraft non-registered in France can only be operated in French Territory if they are fitted with a certificate delivered by the State where the aircraft has been registered stating that it tallies with the standards under Annex 16 (Volume 1 – Chapter 2) of the Chicago Convention of 7 December

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1944.

Transitional provisions are applied during these two years.

### **ACNUSA**

An independent authority, the Autorité de contrôle des nuisances sonores aéroportuaires (ACNUSA or Authority for the Control of Airport Noise Pollution) was created by a statute of 12 July 1999 (which now appears as articles L. 227-1 of the Code de l'aviation civile). This authority may impose administrative fines by way of punishment on an air carrier who does not comply with measures enhanced by the Ministry of Transport with regard to environmental protection. These include the rules relating to maximum noise levels which must not be exceeded, and take-off and landing procedures designed to limit noise pollution generated during those stages of the flight. The maximum fine which may be imposed per breach established is 12,000 euros for corporate entities and 1,500 euros for individual.

### **Administrative Measures Relating to Buildings**

A law dated 11 July 1985 summarised previous measures applied to buildings constructed in airport vicinities.

A chapter VII titled "Special provisions for airport zones of noise" now figures in the Town Planning Code.

These provisions which are applied to airports classed in zones "A, B and C" must be respected for all constructions: private houses and public equipment.

### **ICAO Annex 16**

France has notified ICAO that no differences will exist between their national Regulations and Practices and the International Standards and Recommendations of Annex 16 - 3rd Edition.

### **Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency**

The principal objective of this Regulation is to establish and maintain a high uniform level of civil aviation safety in Europe.

Objectives are, in the fields covered by this Regulation, as follows :

- (a) to ensure a high uniform level of environmental protection;
- (b) to facilitate the free movement of goods, persons and services;
- (c) to promote cost-efficiency in the regulatory and certification processes and to avoid duplication at national and European level;
- (d) to assist Member States in fulfilling their obligations under the Chicago Convention, by providing a basis for a common interpretation and uniform implementation of its provisions, and by ensuring that its provisions are duly taken into account in this Regulation and in the rules drawn up for its implementation;
- (e) to promote Community views regarding civil aviation safety standards and rules throughout the world by establishing appropriate cooperation with third countries and international organisations.

For the purpose of the implementation of this Regulation, a European Aviation Safety Agency, referred to as

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"the Agency", has been established.

**Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security.**

The main objective of this Regulation is to establish and implement appropriate Community measures, in order to prevent acts of unlawful interference against civil aviation.

The objective is to provide a basis for a common interpretation of the related provisions of the Chicago Convention, in particular its Annex 17.

The means of achieving the objectives shall be:

- (a) the setting of common basic standards on aviation security measures;
- (b) the setting up of appropriate compliance monitoring mechanisms.

In order to achieve the objectives of this Regulation, it was suggested that each Member State adopt a national civil aviation security programme, as well as a corresponding quality control programme and a training programme.

**By a Decree of 12 November 2003**, France has adopted a national civil aviation security programme.

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## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	15 Feb 1969
	Entered into Force	16 May 1969
The Hague Protocol - 1955	Signed	
	Adhered to	15 Feb 1969
	Entered into Force	16 May 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	18 Feb 1971
	Entered into Force	19 May 1971
Rome (Third Party) Convention - 1952	Signed	
	Ratified	14 Jan 1970
	Entered into Force	14 Apr 1970
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	5 Feb 1982
	Entered into Force	5 Feb 1982

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	20 Jun 2000
	Entered into Force	18 Sep 2000
Montreal Convention	Signed	
	Ratified	10 Mar 2004
	Entered into Force	9 May 2004
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	2 Jun 1972
	Not Ratified	
	Entered into Force	

**PART II- NOTES ON AVIATION LIABILITY**

**LEGISLATION ETC.**

The Gambia Department of Civil Aviation advises that the Government plans to legislate on the basis of The Hague and Guada lajara Conventions.

There is at present no legislation defining or restricting liability in accidents involving aircraft engaged in domestic carriage.

Gambia is a former British Territory which, whilst under British rule, became subject to the Carriage by Air (Non-International) (Colonies Protectorates and Trust Territories) Order 1953, which applied for internal carriage law similar to the Warsaw Convention, with certain alterations such as there being no requirement for the issue of a passenger ticket. This gave a limitation of liability for passengers' death or injury of 125,000 Convention Francs, 250 Convention Francs for checked baggage or cargo and 5,000 Convention Francs for personal objects retained by the passenger. It would appear that on attaining independence the existing law was continued with and it seems that the Carriage by Air (Non-International Carriage) Order 1953 is likely to be still applicable.

**GERMANY**

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**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 20	Signed	12 Oct 1929
	Ratified	30 Sep 1933
	Entered into Force	29 Dec 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	27 Oct 1960
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961 See Annex G – Note 7	Signed	18 Sep 1961
	Ratified	2 Mar 1964
	Entered into Force	31 May 1964
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention See Annex N – Note 1 and Note 12	Signed	28 May 1999
	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty – 1967	Signed	27 Jan 1967
	Ratified	10 Feb 1971
	Entered into Force	10 Feb 1971
Space Liability Convention - 1972	Signed	
	Acceded to	18 Dec 1975
	Entered into Force	18 Dec 1975

## PART II - NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

- 1.1 Germany has signed and ratified the Montreal Convention (as well as the Warsaw Convention as amended by the Hague Protocol).
- 1.2 The Montreal Convention and the Warsaw Convention are complemented by national law such as LuftVG (Air Navigation Act).
- 1.3 Deutsche Lufthansa, Eurowings, Augsburg Airways and DBA are the national carriers which are party to the IATA Inter-carrier Agreement.
- 1.4 Regarding the Warsaw Convention and its liability limits there is a Federal German legislation (Vierte Umrechnungsverordnung) dated 4 December 1973 and the current EURO Regulations provide for the following EURO equivalents of the Poincaré Franc in the Warsaw system:  
100/ 250/ 5000 Poincaré Francs correspond to 10.94/ 27.35/ 547.10 EURO  
(i.e. proportion 1: 0.1094)
- 1.5 National carriers which are Community Air Carriers are governed by the Council Regulation No. 2027/97 of 9 October 1997 as amended by the Council Regulation 889/2002. This version has been in effect since 28 June 2004 and extends liability as regulated in the Montreal Convention also to domestic carriage of Community Air Carriers.

### 2. INTERNAL CARRIAGE / DOMESTIC CARRIAGE

Domestic carriage by Community Air Carriers is governed by the Council Regulation No. 2027/97 as amended by the Council Regulation 889/2002. This version extends liability as regulated in Montreal Convention also to domestic carriage of community air carriers.

Liability for Cargo-Claims is governed by the provisions of the "Handelsgesetzbuch" — HGB (German Commercial Code). The limit of liability for cargo claims is 8.33 SDR per kg (§ 431 HGB).

### 3. GENERAL AVIATION

The above mentioned explanations regarding liability also apply to General Aviation if flights are performed on the basis of a contract of carriage (not necessarily for reward). German LuftVG (Air Navigation Act) adopts liability as regulated in the Montreal Convention also for domestic carriage which is not performed by community air carriers but by carriers in General Aviation.

### 4. THIRD PARTY LIABILITY

Germany has not ratified the Rome Convention regarding third party liability but has incorporated into German law its principle of the operator's strict liability with certain limits of liability depending on the maximum take-off weight of the aircraft - §§ 33 to 43 LuftVG. § 37 contains the following liability limits:

<b>Aircraft</b>	<b>TPL Limit</b>
a) Model aircraft up to 20 kgs and aircraft without Motor up to 750 kgs MTOW	EUR 1.5m
b) All other aircraft up to 1,200 kgs MTOW	EUR 3m
c) A/c over 1,200 kgs up to 2,000 kgs MTOW	EUR 4.5m
d) A/c over 2,000 kgs up to 5,700 kgs MTOW	EUR 9m
e) A/c over 5,700 kgs up to 14,000 kgs MTOW	EUR 24m
f) A/c over 14,000 kgs	EUR 60m

Compensation to a single victim is limited up to an amount of EUR 600.000. Should the injury or damage be caused by the operator's or his agent's negligence, the general rules of the BGB (Civil Code) shall apply, i.e. generally unlimited liability according to § 823 of the BGB.

## **5. MANDATORY INSURANCE REQUIREMENTS**

An aircraft shall be licensed for operation only under the provision that the operator of the aircraft proves to the registration authorities that a third party liability insurance is in effect and in accordance with the relevant provisions of the LuftVG (§ 43 LuftVG). This insurance contract has to be concluded with an insurance company established in the European Community or with a branch in the Federal Republic of Germany.

Civil aircraft registered abroad and entering German airspace are required to have insurance covering the third party liability limits as specified above.

Furthermore, there is a requirement for mandatory passenger insurance. All carriers operating in Germany are obliged to insure passenger liability claims with an amount of at least SDR 250.000 per passenger (§§ 50 LuftVG, § 103 LuftVZO). In case of bodily injury or death and in case of delay, loss of or damage to baggage the minimum insurance requirements are the same as the liability limits.

Beside national requirements liability insurance is mandatory according to the Council Regulation No. 2407/92 of 23 July 1992 as a prerequisite for the aircraft operating licence of air carriers. In addition passenger liability insurance is mandatory according to the Council Regulation No. 2027/97 of 9 October 1997 as amended by the Council Regulation 889/2002 for community carriers.

## **6. CLAIMS RELATED INFORMATION**

With effect from August 1, 2002, there is compensation for pain and suffering.

Regarding internal carriage, claims for third party liability and passenger claims are time barred three years after the end of that year the claimant was notified of the damage and the person who is liable.

Regarding third party liability claims the right to compensation shall be forfeited, if the claimant omitted to notify the carrier of the accident within three months after becoming aware of the damage.

In an aviation accident with fatalities, the next of kin, who were entitled to support, can claim their own losses against the liable operator or carrier of the aircraft.

There is no right to direct legal action against the insurer in case of third party liability as well as passenger's liability.

## **7. SOCIAL SECURITY AWARDS**

In Germany, the social security scheme has a significant influence on the settlement of passenger liability claims because the claims of an injured passenger (or, in the event of death, of the passenger's surviving dependants) for indemnity of bodily injury, impairment to health or loss of maintenance devolve by law to the social security authority (health, pension and mandatory accident insurance). A claim devolves to the social security authority to the same extent as it accrued to the injured party/claimant up to the amount paid by the social security authority, provided that amount is designed to compensate the loss (principle of "congruity", whereby payment relates to a specific loss).

The claimant only retains a claim of his own to the extent that his loss exceeds the adequate payment effected by the social security authority. The claimant has a preferential right to payment (i.e. his claim takes priority over that of the social security authority) if the liability of the debtor is limited, as, for instance, under Art. 22 Warsaw Convention as amended by the Hague Protocol, or Art. 21 Montreal Convention.

## **8. PRODUCT LIABILITY**

The main features of the "Product Liability Act" of 1. January 1990 (in accordance with the Product-Liability-EC-Directive) are as follows:

The act regulates the liability of the manufacturer who introduced the product onto the market. The manufacturer shall be liable for product defects; a product is defective if "it does not provide the safety which a person is entitled to expect". Liability shall arise when, as a result of a product defect, a death occurs, impairment to body or health is suffered or property is damaged. The act imposes strict liability. The liability for damages to property shall only be assumed in the case of property assigned to and utilised in private use. The liability for personal injuries caused by one product or a series of products with the same defect is limited to Euros 85 million. The claim is time barred after 3 years.

In addition to the Product Liability Act, claims can be filed on the basis of the German Civil Code. According to § 823 BGB, the manufacturer is liable only in cases of negligence, which

have to be proved by the claimant. The German Courts, however, have partially reversed the burden of proof. It suffices for the claimant to prove that the damage is due to a defect originating from the manufacturer's sphere of responsibility and control. Under the Civil Code the manufacturer's liability in tort is unlimited.

## **9. AIR TRAFFIC CONTROL**

German Air Traffic Control is performed by a private company, which has taken over sovereign functions and performs them. Therefore claims must be brought against

the Federal Republic of Germany. This is only possible in cases in which there is no other party liable for the same claim (principle of subsidiary liability). The state can take subrogation against the Air Traffic Control Company.

**10. TAX REGIMES**

According to German tax regime the insured has to pay the premium plus 16 % tax on aviation insurance contracts. For aircraft with foreign registration, the insurance tax percentage of the registering state is applicable.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	11 Aug 1997
	Entered into Force	9 Nov 1997
The Hague Protocol - 1955	Signed	
	Adhered to	11 Aug 1997
	Entered into Force	9 Nov 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	11 Aug 1997
	Entered into Force	9 Nov 1997
- No. 2	Signed	25 Sep 1975
	Ratified	11 Aug 1997
	Entered into Force	9 Nov 1997
- No. 3	Signed	25 Sep 1975
	Ratified	11 Aug 1997
-No. 4	Signed	25 Sep 1975
	Ratified	11 Aug 1997
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Jul 1997
	Entered into Force	19 Oct 1997
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	11 Jan 1938
	Entered into Force	11 Apr 1938
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	23 Jun 1965
	Entered into Force	21 Sep 1965
Guatemala City Protocol - 1971	Signed	11 Jan 1989
	Acceded to	11 Jan 1989
Montreal Additional Protocols – 1975 – No. 1	Signed	10 Nov 1988
	Ratified	12 Nov 1988
	Entered into Force	15 Feb 1996
- No. 2	Signed	10 Nov 1988
	Ratified	12 Nov 1988
	Entered into Force	15 Feb 1996
- No. 3	Signed	10 Nov 1988
	Ratified	12 Nov 1988
-No. 4	Signed	10 Nov 1988
	Ratified	12 Nov 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	19 Sep 1973
	Entered into Force	17 Dec 1973
Rome (Third Party) Convention - 1952	Signed	5 Apr 1955
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
See Annex N – Note 1	Ratified	22 Jul 2002
		4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	19 Jan 1971
	Entered into Force	19 Jan 1971
Space Liability Convention - 1972	Signed	12 Apr 1972
	Ratified	4 May 1977
	Entered into Force	4 May 1977

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The Civil Aviation Authority of the Hellenic Republic advises that according to Greek legislation domestic air carriage is considered to be treated as for international carriage. The provisions of the Warsaw system apply equally to Internal Carriage.

In 1987 Olympic Airways confirmed that the CAB 18 900 provisions applied to operations to and from the USA. However they added that for other passengers the Warsaw/Hague limitations were strictly applied.

### **NOISE & POLLUTION**

The provisions of ICAO Annex 16 have been accepted in principle but with a reservation concerning application of the NEF method of weighting noise exposure levels rather than the proposed WECPNL (Weighted Equivalent Continuous Perceived Noise Level).

### **MANDATORY INSURANCE REQUIREMENTS**

#### **Passenger Liability**

Carriers licensed by Greece must carry insurance for passenger liability in accordance with the terms of the EC Regulation 2027/97, and the Warsaw Convention as modified.

Foreign carriers must carry insurance in accordance with the Warsaw Convention as modified. In addition, foreign carriers not complying with EC Regulation 2027/97 are obliged to inform their passengers accordingly.

#### **Third Party Liability**

Both carriers licensed by Greece and foreign carriers must carry insurance for third party liability. There is no amount fixed by law for this cover.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	15 Aug 1985
	Entered into Force	13 Nov 1985
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Acceded to	29 Aug 1985
	Entered into Force	27 Nov 1985
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**GUATEMALA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 21		
	Adhered to	3 Feb 1997
	Entered into Force	4 May 1997
The Hague Protocol - 1955	Signed	
	Adhered to	28 Jul 1971
	Entered into Force	26 Oct 1971
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	3 Feb 1997
	Entered into Force	4 May 1997
- No. 2	Signed	25 Sep 1975
	Ratified	30 May 1997
	Entered into Force	28 Aug 1997
- No. 3	Signed	25 Sep 1975
	Not Ratified	
-No. 4	Signed	25 Sep 1975
	Ratified	3 Feb 1997
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	24 Jun 1971
	Entered into Force	22 Sep 1971
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	10 May 1983
	Entered into Force	8 Aug 1983
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	20 Aug 1976
	Entered into Force	20 Aug 1976
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	11 Sep 1961
	Entered into Force	10 Dec 1961
The Hague Protocol - 1955	Signed	
	Adhered to	9 Oct 1990
	Entered into Force	7 Jan 1991
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	12 Feb 1999
	Entered into Force	12 May 1999
- No. 2	Signed	
	Acceded to	12 Feb 1999
	Entered into Force	12 May 1999
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	12 Feb 1999
	Entered into Force	12 May 1999
Guadalajara Convention - 1961	Signed	
	Ratified	13 Nov 1998
	Entered into Force	11 Feb 1999
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	28 May 1990
	Entered into Force	26 Aug 1990
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Guyana appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	24 Mar 1961
	Entered into Force	22 Jun 1961
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

HONDURAS

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	27 Jun 1994
	Entered into Force	25 Sep 1994
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Adhered to	15 Feb 1996
	Entered into Force	15 May 1996
- No. 2	Signed	
	Adhered to	15 Feb 1996
	Entered into Force	15 May 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Not Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	5 Oct 1960
	Entered into Force	3 Jan 1961
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	29 May 1936
	Entered into Force	27 Aug 1936
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	4 Oct 1957
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	29 Jun 1987
	Ratified	30 Jun 1987
-No. 4	Signed	29 Jun 1987
	Ratified	30 Jun 1987
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	23 Nov 1964
	Entered into Force	21 Feb 1965
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	26 Jun 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Acceded to	27 Dec 1972
	Entered into Force	27 Dec 1972

## **PART II – NOTES ON AVIATION LIABILITY**

### **1. INTERNATIONAL CARRIAGE**

**1.1** The liability of the civil air carrier is limited according to the Warsaw Convention as amended by the Hague Protocol.

**1.2** No special agreements entered into by national carrier other than as shown at 1.3.

**1.3** MALEV as national carrier is part to the IATA Inter-carrier Agreements.

**1.4** There is no national regulation on the convention franc. Regarding the conversion of the Convention Franc, a case was reported in 1983, where the Supreme Court of Hungary passed a decision in connection with the Convention Franc in a cargo case against the air carriers. A conversion rate of US\$ 20/kg was adopted in calculating the limit of liability.

### **2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

The regulation of the domestic carriage is laid down in the Rules of Air Carriage published by decree No. 22/1965/XI 14 with effect from 1 January 1966. The inland aviation had mainly rescue, sport or agricultural purposes. Personal air carriage is effected by charter flight or any other non-scheduled flights by small private companies.

### **3. GENERAL AVIATION**

Rules of general aviation are laid down in the Act XCVII of 1995 about Air Traffic. The main subjects of the Act are the following: tasks of authorities, airspace, registration, licences, maintenance of aircraft, airports, crew, safety and insurance.

### **4. THIRD PARTY LIABILITY**

Hungary did not adhere to the Rome Third Party Convention. By virtue of Hungarian Civil Law, the air carrier bears unlimited liability in respect of Third Party Liability.

### **5. MANDATORY INSURANCE REQUIREMENTS**

The Act XCVII of 1995 about Air Traffic contains provisions about mandatory insurance for third party claims caused by civil airports and aircraft. The details of this mandatory insurance (conditions and limits) will be regulated by the government in a special decree which is still under preparation.

### **6. CLAIMS RELATED INFORMATION**

Passenger claims or third party claims resulting in injuries are governed by the Civil Code unless any international convention which is effective contains other rules. Injuries, other than physical are not compensable but there is compensation for the non-pecuniary damage of the damaged person. This shows some similarity to damages for pain and suffering.

**Date Entry Reviewed: August 2002**

**7. SOCIAL SECURITY AWARDS**

There is a national social security scheme to support the incapacitated person having paid contributions to the fund which covers the costs of medical care and a certain disability pension. This social security has rights of subrogation against the parties liable for the injury caused.

**8. PRODUCTS LIABILITY**

Hungary's Act on Product Liability entered into force on 1 January 1994. The Act is in conformity with the EEC Directive in this subject.

**9. AIR TRAFFIC CONTROL**

The airports are owned and/or operated publicly and privately. The international civil airport is state owned but can be operated by a state owned company or by concession.

The local air traffic services are co-ordinated and controlled by the Ministry of Traffic. The air traffic control is supervised by the Ministry of Traffic in co-operation with the Ministry of Defence.

**10. TAX REGIME**

There is a fire tax of 1%.

**11. MINIMUM INSURANCE REQUIREMENTS**

**Passenger Liability**

All carriers must have insurance cover of at least 84,000 SDR per passenger in the event of death or physical injury to the passenger.

**Third Party Liability**

The level of cover is dependant on the Maximum Take-Off Mass of the aircraft:

MTOM 1,000 kg or less	140,000 SDR
MTOM 1,001kg – 2,000kg	280,000 SDR
MTOM 2,001kg – 6,000kg	838,000 SDR
MTOM 6,001kg – 30,000kg	2,790,000 SDR
MTOM 30,000kg or more	14,000,000 SDR

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	21 Aug 1948
	Entered into Force	19 Nov 1948
The Hague Protocol - 1955	Signed	3 May 1963
	Adhered to	3 May 1963
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Acceded to	28 Jun 2004
	Entered into Force	26 Sep 2004
Guadalajara Convention - 1961	Signed	
	Acceded to	12 Jul 2004
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	17 Jun 2004
	Entered into Force	16 Aug 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	5 Feb 1968
	Entered into Force	5 Feb 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY****MANDATORY INSURANCE REQUIREMENTS**

The Icelandic insurance regulation No. 551/1998 of 17 September 1998 requires air carriers licensed by Iceland to cover passenger liability and third party liability. In addition, foreign carriers serving Iceland must carry the same coverage.

The minimum requirements are as follows:

For aircraft weighing less than 25kg	SDR 500,000 complete coverage
For aircraft with MTOW under 10 tons	SDR 6,000,000 for persons SDR 500,000 for other damage
For aircraft with MTOW between 10-350 tons	SDR 15,000,000 for persons SDR 2,000,000 for other damage
For aircraft with MTOW over 350 tons	SDR 30,000,000 for persons SDR 4,000,000 for other damage
Insurance for injury or death of passenger	SDR 500,000
Personal belongings (other than checked baggage)	SDR 332 per passenger
Baggage (checked baggage)	SDR 17 per kilo
For search and rescue operations	SDR 10,000 per aircraft
Prepayments to passenger or next of kin	SDR 15,000 per passenger

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 22		
	Succeeded to	9 Feb 1970
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	14 Feb 1973
	Entered into Force	15 May 1973
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	2 Aug 1955
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	3 Mar 1967
	Ratified	18 Jan 1982
	Entered into Force	18 Jan 1982
Space Liability Convention - 1972	Signed	
	Acceded to	9 Jul 1979
	Entered into Force	9 Jul 1979

**PART II – NOTE S ON AVIATION LIABILITY****1. INTERNATIONAL CARRIAGE****Montreal Agreement**

Air India is party to the Montreal (CAB 18900) Agreement.

**2. INTERNAL CARRIAGE**

Considering that many countries had become signatories to the Hague Protocol, the Indian Government passed the Carriage by Air Act 1972 on 20 December 1972. This Act replaces the Indian Carriage by Air Act 1934. Under the Carriage by Air Act 1972, the First Schedule contains verbatim the Warsaw Convention and the Second Schedule contains the amended Warsaw Convention. In the Act there is a provision that so far as non-international carriage is concerned the provisions of the Hague Protocol could be made applicable with some exceptions and modifications.

A notification has been issued by the Government in exercise of the powers conferred by the Carriage by Air Act 1972 containing Rules as applicable to non-international carriage by air. Under these rules so far as death or total and permanent disablement of a passenger is concerned, the amount of compensation is a fixed pre-determined amount and the scale of compensation payable effective from January 1998 is reproduced below:

- a. Compensation payable in the event of death or permanent disability of a passenger is fixed amount of Rs. 7,50,000 if the passenger is age 12 years or over, and Rs 3,75,000 if the passenger is below twelve years of age on the date of the accident.
- b. In the event of wounding of a passenger resulting in temporary disablement compensation payable is limited to a sum calculated at the rate of Rs. 750 per day during the period of disablement or a sum of Rs. 1,50,000 whichever is less.
- c. In respect of registered baggage and of goods the liability is limited to Rs. 450 per kg., and in respect of objects carried by the passenger (unchecked baggage) liability is limited to Rs. 4,000 per passenger.
- d. In the absence of a contract to the contrary Indian Airlines is not liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

The limits and restrictions stated above apply only in respect of carriage on domestic routes, i.e. for non-international carriage and the liability of the carrier is limited in terms of Indian rupees and not tied to any international currency which is subject to fluctuation.

**9. AIR TRAFFIC CONTROL**

By an Act of Parliament in 1994, the National Airports Authority (NAA) and International Airports Authority of India (IAAI) were merged to form a single Airports Authority of India.

Airports Authority of India (AAI) develops and manages 120 airports (including 5 international and 87 domestic) in India with its two divisions. The International Airports Division of AAI has responsibility for the five current International Airports, namely, Mumbai (Bombay), Delhi, Chennai (Madras), Trivandrum and Calcutta. The Airports Authority of India are making all efforts to improve airport standards in line

with ICAO recommendations and in consultations with operators. For managing current and future air traffic growth, AAI has embarked upon the upgradation of communication, navigation and surveillance facilities. Modern landing and navigational aids such as ADSS and MSSR have been installed at Calcutta, Chennai, Delhi and Mumbai airports. Modernisation of Air Traffic Services has been completed in Mumbai and Delhi, whilst in Chennai and Calcutta work is in progress. This will pave the way to integration with the Future Air Navigation System (FANS). AAI is equipped to undertake measurement of runway surface friction value confirmatory to the mandatory requirements of ICAO. AAI has designed and established modern integrated cargo terminal facilities at the five international airports.

The existing airports at Bhubaneswar, Guwahati, Calicut, Coimbatore, Indore, Hyderabad, Imphal, Nagpur, Jaipur, Patna, Lucknow and Vadodara are being developed as **model airports** with modern communications facilities including VHF Data Link and with the capacity to handle 500 to 700 passengers at a time with improved ground safety services.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 23		
	Succeeded to	21 Feb 1952
	Entered into Force	17 Aug 1945
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	6 Jul 1962
	Not Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	18 Jun 1996
	Entered into Force	18 Jun 1996

**PART II- NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

International carriage undertaken by Indonesian operators is subject to the Warsaw Convention 1929.

**INTERNAL CARRIAGE**

Internal carriage is subject to the Luthvervoer Ordonantie 1939.

**THIRD PARTY LIABILITY**

There is no Indonesian legislation on Third Party Liability, thus there is no provision for limitation of liability.

**PRODUCTS LIABILITY**

There is no relevant Products Liability legislation

**MANDATORY INSURANCE REQUIREMENTS**

There are no mandatory insurance requirements which affect Indonesian aviation operations.

**NOISE & POLLUTION**

There is no legislation covering noise and pollution, but in practice warnings are given about acceptable standards.

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	8 Jul 1975
	Entered into Force	6 Oct 1975
The Hague Protocol - 1955	Signed	
	Adhered to	8 Jul 1975
	Entered into Force	6 Oct 1975
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	17 Jul 1975
	Entered into Force	15 Oct 1975
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	21 Feb 1974
	Entered into Force	21 Feb 1974

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 24		
	Adhered to	28 Jun 1972
	Entered into Force	26 Sep 1972
The Hague Protocol - 1955	Signed	
	Adhered to	28 Jun 1972
	Entered into Force	26 Sep 1972
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	18 Oct 2002
	Entered into Force	16 Jan 2003
- No. 2	Signed	
	Acceded to	18 Oct 2002
	Entered into Force	16 Jan 2003
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	27 Jul 1972
	Entered into Force	25 Oct 1972
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	19 Jul 1972
	Entered into Force	17 Oct 1972
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Feb 1967
	Ratified	4 Dec 1968
	Entered into Force	4 Dec 1968
Space Liability Convention - 1972	Signed	
	Acceded to	4 Oct 1972
	Entered into Force	4 Oct 1972

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The Iraqi Civil Aviation Law No. 148 of 1974 and the Iraqi Law of Commerce No. 149 of 1970 both regulate aviation activities and aviation insurance in Iraq. In the Iraqi Civil Aviation Law No. 148 of 1974 (Section 2 -Article 170), in respect of contractual liabilities of air carriers, it is stated that the Warsaw Convention and its amending protocol are applicable.

### **INTERNAL CARRIAGE**

Supplementary agreements to the abovementioned apply for domestic flights besides Iraqi Transport Law No. 80 of 1983.

### **THIRD PARTY LIABILITY**

There is no legislation covering Third Party Liabilities of air operators. This liability is covered by a separate Third Party Liability insurance policy between Iraqi Airways and the National Insurance Company of Iraq.

### **PRODUCTS LIABILITY**

There is no national legislation nor any practice concerning such liability.

### **NOISE & POLLUTION**

Not applicable.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	20 Sep 1935
	Entered into Force	19 Dec 1935
The Hague Protocol - 1955	Signed	28 Sep 1955
	Adhered to	12 Oct 1959
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	27 Jun 1989
	Ratified	27 Jun 1989
	Entered into Force	15 Feb 1996
- No. 2	Signed	27 Jun 1989
	Ratified	27 Jun 1989
	Entered into Force	15 Feb 1996
- No. 3	Signed	27 Jun 1989
	Ratified	27 Jun 1989
-No. 4	Signed	27 Jun 1989
	Ratified	27 Jun 1989
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	19 Jan 1966
	Entered into Force	19 Apr 1966
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	16 Aug 2000
See Annex N – Note 1	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	17 Jul 1968
	Entered into Force	17 Jul 1968
Space Liability Convention – 1972	Signed	29 Mar 1972
	Ratified	29 Jun 1972
	Entered into Force	29 Jun 1972

## PART II - NOTES ON AVIATION LIABILITY

### 1.1 INTERNATIONAL CARRIAGE

The Warsaw Convention, as amended, was incorporated into Irish Law by the following legislation:-

Convention and Amendments thereto:-	Irish Legislation
Warsaw Convention (1929)	Air Navigation and Transport Act, 1936 - Sections 17-20 and the First Schedule of the Act.
Hague Protocol (1955)	Air Navigation and Transport Act, 1959 - Parts 3 & 4 and Schedule to Act.
Guadalajara Convention (1961) (Supplementary to the Warsaw Convention)	Air Navigation and Transport Act, 1965 - Sections 2-5 and Schedule to Act
Montreal Protocols to the Warsaw Convention (No. 3 of which gives effect to the 1971 Guatemala City Protocol to the Warsaw Convention)	Air Navigation and Transport Act, 1988 - Part 3 and First Schedule to Act.

Ireland ratified Protocol No. 3 in 1989 but it cannot be given force under Irish Law (by Government Order under the Air Navigation and Transport Act, 1988) pending 30 ratifications of same, thereby coming into force internationally. In the meantime, Ireland applies the Warsaw passenger liability limits updated by the 1975 Montreal protocols (SDR 100,000) on an administrative and voluntary basis. This is done by imposing a condition on the licence held by each Irish Carrier to enter into a special contract with every passenger to be carried under this licence, or with a person acting on behalf of such passenger for the increase to be not less than the Irish pound equivalent of SDR 100,000 exclusive of costs, of the limit of his liability as a carrier under the Warsaw Convention as amended at the Hague in 1955.

The Air Navigation and Transport Act 1965 brought into effect the provisions of the Guadalajara Convention and also extended the classes of persons who can maintain claims in fatal cases or in respect of whose deaths claims can be sustained pursuant to Article 17 of the Warsaw Convention or the Guadalajara Convention to include adopted children and persons *in loco parentis*. Proceedings may be brought by the personal representative of a passenger but, if not so brought within six months of the death of the passenger, may be brought by any dependant. Damages awarded may include expenses actually incurred by the passenger, the dependants, or the personal representative of the deceased passenger, as a result of the accident which caused the death of the passenger.

The Courts Act 1981 provides for payment of a sum not exceeding £7,500 for mental distress resulting to dependants from the death of a passenger.

### 1.3 IATA Intercarrier Agreements

Aer Lingus, the national carrier is a party to the IATA Intercarrier Agreements.

## **1.5 EU Legislation/Mandatory Insurance**

The following EU Regulations concerning insurance/liability in the case of accidents are applicable to Irish carriers:-

- 1) Council Regulation No. 2407/92 of 23 July, 1992 on licensing of air carriers. Article 7 requires that "An air carrier shall be insured to cover liability in case of accidents, in particular in respect of passengers, luggage, cargo, mail and third parties".
- 2) Council Regulation No. 2027/97 on air carrier liability in the event of air accidents, which came into effect on 9 October 1998.
- 3) ECAC Resolution ECAC/25-1 in respect of passenger and third party liability applies to both Irish and foreign carriers.

## **2. INTERNAL CARRIAGE**

The provisions of the Warsaw Convention and the Hague Protocol were extended to non-international travel by orders dated 1956 and 1965 respectively made under the original Air Navigation and Transport Acts.

In addition, the comments above regarding the imposition of a condition on licences that air carrier enter into a contract with each passenger carried also apply to internal as well as international carriage.

## **3. GENERAL AVIATION**

### **Microlights**

In Ireland, under various Ministerial Orders, Microlights must be registered and have a permit to fly. In addition, pilots must be licenced and Microlights may not be used for any commercial purpose. It is not a mandatory requirement to carry insurance.

## **4. THIRD PARTY LIABILITY**

Ireland is not a signatory to the Rome Convention 1952.

Section 21 of the Air Navigation and Transport Act 1936 does however impose automatic liability on the owner of an aircraft where material damage or loss is caused to any persons or property on land or water by, or by any person in, or any article or person falling from, an aircraft while in flight, taking off or landing, subject to the exception of damage or loss caused by or contributed to by the negligence of the person by whom the same was suffered.

## **8. PRODUCTS LIABILITY**

The manufacture of aircraft or spare parts is not carried on in Ireland. There is no specific legislation in regard to the liability of manufacturers of an aircraft. They are in exactly the same position as any other manufacturer and subject to any protection which they may get from conditions of sale, etc., the ordinary limits apply. The time limit in respect of claims is set out in the Statute of Limitations 1957 as three years in respect of personal injury and six years in respect of damage.

## **9. AIR TRAFFIC CONTROL**

## Types of Airfields

As at 1 January 1997 there were:

Thirty three airports/aerodromes in the Republic of Ireland, nine of these have commercial aircraft services.

- **Major Civil Airports**

Dublin, Shannon, Cork, Connaught (4)

- **Regional Civil Airports**

Donegal, Waterford, Sligo, Kerry, Galway (5)

Air Traffic Control services are provided at these 9 airports:-

Twenty four of the others are Aerodromes, catering for light aircraft, flying clubs etc. and do not provide ATC services.

The remaining two are Military and ATC is provided by the Military.

## Ownership

- **Major Civil Airports**

Dublin, Shannon, Cork are State owned. Connaught is privately owned.

- **Regional Civil Airports**

All are privately owned except for Donegal which is State owned.

- **Aerodromes**

All are privately owned except four which are State owned being based in Gaeltacht (Irish speaking areas).

- **Military**

Both are State owned.

## Control Areas

The Republic of Ireland is firstly divided into Control Areas (CTAs) - Dublin CTA and Shannon CTA.

- **Dublin CTA**

Includes the area surrounding Dublin Airport and its approaches.

- **Shannon CTA**

Covers all the rest of the country and considerable areas over coastal waters.

Within the Shannon CTA there are 8 Control Zones (CTRs) which are the eight civil airports other than Dublin. The area covered by these Zones varies from a ten to fifteen nautical mile radius.

Responsibilities are as follows:-

- **Dublin CTA**

For all traffic in area up to 24,500 feet.

- **Regional CTRs**

For all traffic in zones up to 5,500 feet.

- **Shannon CTA**

For all traffic in zones above 5,500 feet and up to 24,500 feet; outside of zones, for all traffic up to 24,500 feet.

In addition, for traffic overflying Ireland and above 24,500 feet, airlines etc. are routed through Shannon Oceanic Transition Area (SOTA) which is part of Shannon CTA.

### **Air Traffic Control Services**

The Irish Aviation Authority is responsible for the provision of Air Navigation Services. The vast majority of Air Traffic Controllers are Irish Aviation Authority employees. All controllers must be licensed by the Irish Aviation Authority if they are in private employment.

The Irish Aviation Authority **directly** provides ATC services at Dublin CTA, Shannon CTA and Cork CTR.

Privately owned airports and Donegal (Connaught, Sligo, Waterford, Galway, Kerry and Donegal) employ Air Traffic Controllers who are licensed by the Irish Aviation Authority. The service standards are the guidelines laid down by ICAO.

All providers of ATC services in Ireland (except Military) **do** purchase Liability insurance. Whilst it is compulsory in Ireland to insure Airports/Aerodromes (except Military) it is **not** compulsory to buy ATC services cover, consequently there is not legislative control on the amount or adequacy of such cover.

## **10. MISCELLANEOUS MATTERS**

### **War Risks**

There is no legislation in this area specific to aviation.

The Malicious Injuries (amendment) Act 1986 however, provides a right of action against local authorities in respect of malicious acts in limited circumstances as follows:-

1. In respect of property damaged "unlawfully by one or more of a number (exceeding two) of persons riotously assembled together".
2. In respect of damage caused "as a result of an act committed maliciously by a person acting on behalf of or in connection with an "unlawful organisation" (i.e. unlawful organisation as defined

by Section 18 of the 1939 Offences Against the State Act).

3. In respect of damage caused “as a result of an act committed maliciously by a person acting on behalf of or in connection with an organisation outside the State that engages in, promotes or advocates the use of violence for purposes related to the conduct or administration of the affairs of the State or Northern Ireland”.

The 1986 Act did not abolish entirely the Irish Malicious Injury Scheme as existed hitherto although it did extensively restrict it. It nevertheless remains an important piece of legislation particularly in the area of a terrorist attack.

It should be emphasised that the 1986 Act refers to (property) damage and is silent on the matter of liabilities. The only safe interpretation is that there is no right of recourse under the Act for injuries/death arising from war-like situations.

All aviation policies underwritten in Ireland exclude War, Hijacking and other perils as per AVN48B. Some of these can be written back into the policies per AV51 (Hull) and AV52(Liability) or variants of these clauses. On major risks it is also the practice to underwrite a separate Hull War Policy.

## **Noise and Pollution**

### Legislation

The Air Navigation and Transport Act 1936 provides (Part 6 Section 55)

“No action shall lie in respect of trespass or in respect of nuisance by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather and all the circumstances of the case is reasonable or the ordinary incidents of flights”.

The above provision is not specifically applicable to either aircraft or aerodrome operators.

There have been no court decisions in Ireland in relation to claims in respect of noise, pollution or other similar perils.

## **ICAO Annex 16**

Ireland has advised ICAO that no differences will exist between their national regulations and practices and the International Standards and Recommendations of Annex 16 - 3<sup>rd</sup> Edition.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	8 Oct 1949
	Entered into Force	6 Jan 1950
The Hague Protocol - 1955	Signed	28 Sep 1955
	Adhered to	5 Aug 1964
	Entered into Force	3 Nov 1964
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	16 Feb 1979
	Entered into Force	15 Feb 1996
- No. 2	Signed	25 Sep 1975
	Ratified	16 Feb 1979
	Entered into Force	15 Feb 1996
- No. 3	Signed	27 Nov 1987
	Ratified	16 Feb 1988
-No. 4	Signed	27 Nov 1987
	Ratified	16 Feb 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	27 Nov 1980
	Entered into Force	25 Feb 1981
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	18 Feb 1977
	Entered into Force	18 Feb 1977
Space Liability Convention - 1972	Signed	
	Acceded to	23 Jun 1977
	Entered into Force	23 Jun 1977

## PART II - NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

EI Al has since 1 June 1981 voluntarily increased its liability in respect of personal injury to SDR100,000, and this is covered in EI Al's Insurance Policies.

The relevant law is the Law of Carriage by Air, 1980 (Book of Laws No. 981) which came into force on 7 February 1981 and maintains the effect of the Warsaw Convention (WC) and the Hague Protocol (HP).

According to this law, the Minister of Transportation is authorised to announce in the official gazette the entering into effect of the Guadalajara Convention 1961 (GC), Guatemala Protocol 1971 (GP) and Montreal Protocol (MP) Nos. 1,2, 3 and 4. To date the Minister of Transportation has done so in respect of GC only, (entered into force on 7 February 1981).

The Carriage by Air order (Special Drawing Rights) 1978, 26 October 1978, published in the Kovetz Hatakanot (Official Gazette) No. 3911 of 23 November 1978 (p.169) provides for the following SDR equivalents of the Poincaré Franc in the Warsaw System:

Poincaré Franc	SDRs	Poincaré Franc	SDRs
250	17	125,000	8,300
5,000	332	250,000	16,600

### 2. INTERNAL CARRIAGE

Domestic carriage and carriage outside the scope of the Warsaw Convention are also subject to WC, HP and GC as applicable however the limits of liability are those of HP. (Carriage by Air order [Increase of Limits of Liability] 1971 published in the Kovetz Hatakanot No. 2788 in December 1971).

### 3. GENERAL AVIATION

#### **Microlight Aircraft**

There are some licensing procedures in Israel for microlight aircraft. There is also a minimum pilot training requirement.

### 4. THIRD PARTY LIABILITY

The Rome Convention rules are not applicable in Israel. However, in virtue of Section 9 of the British Air Navigation Act 1920, which is still in effect in Israel, a carrier is liable, without necessity to prove negligence, for any bodily injury or property damage deriving from or due to carriage by air.

The amount of compensation in such cases depends on the actual damage sustained and is determined in accordance with the principles of the Israeli Law of torts.

The Israeli CAA requires from all Air Carriers operating to and from Israel and within Israel, to acquire

liability insurance to cover the liability in respect of passengers and goods. The policy limits must be in accordance with limits stipulated in the protocol for the amendment of the Rome Convention 1952 executed in Montreal in September 1978.

## **5. CLAIMS RELATED INFORMATION**

### **Social Security Scheme - Effect on Settlements**

Under the Israeli National Insurance Institute Law, the National Insurance Institute grants certain compensation in respect of work related accidents. Under this law the National Insurance Institute has subrogation rights against the tortfeasor (other than the injured person's employer). Therefore, when the injury is work related and the National Insurance Institute paid compensation, the National Insurance Institute often brings a subrogation claim against the operator of the aircraft, its insurer and other person who may be deemed liable to the injured person (other than the employer).

On 1 January 1995 the National Health Insurance Law came into force.

The new law provides that every resident of Israel is entitled to a Minimum of Health services which is specified. The funding of the Minimum is under the responsibility of the State. The health services are given through the existing various sick funds.

The law further provides that a sick fund, or any other body that extended services as a result of a tort, is entitled to subrogate the amount it paid from the tortfeasor. The new regime is, then, very similar to the one existing under the National Insurance Law. Hence, in practice it is very rare for sick funds to exercise this right.

## **6. PRODUCTS LIABILITY**

The Products Liability Law, which became effective October 1980, incorporates many of the strict liability principles contained in the EEC Directive on products liability.

Some of the highlights of liability Law 5749-1980 (Books of Laws No. 964) which covers Defective Products are:

- (i) A manufacturer shall be liable to compensate any person who suffers bodily injury, as a result of a defect in a product manufactured by such manufacturer, and it is immaterial whether or not there was fault on the part of the manufacturer. ("No fault" liability)
- (ii) Where the damage is caused by a defective component, both the main and component manufacturers are held liable.
- (iii) A product is deemed defective if it is likely to cause bodily injury (which includes mental damage) due to an inherent defect, or due to lack of warning or operating instructions which were called for and in fact, not given.
- (iv) A product will be assumed to be defective if the circumstances of the case are more consistent with the conclusion that it was defective, than with the conclusion that it was not.
- (v) The Law allows the manufacturers the following defences only:

(1) that the defect arose after the product left the control of the manufacturer;

(2) that the manufacturer could not have known of the defect given the state of technical and scientific knowledge, prevailing at the time the product left the control of the manufacturer;

(3) that the manufacturer had not intended the product to leave his control;

(4) that the injured party knew of the defect and voluntarily exposed himself to the risk;

The last defence shall not apply where the injured party was under 12 years of age.

(vi) Contributory negligence shall not be a defence, however gross negligence by the claimant may result in reduced damages.

(vii) Claims under the law must be made within three years of the injury becoming apparent, and an action may not be brought after 10 years from the end of the year in which the product left the manufacturer's control.

(viii) Limitation of compensation:

- In computing damages for loss of earnings or loss of earning capacity, the Court may not consider income which exceeds three times the average national wages.

- Damages for non pecuniary loss (pain, suffering etc) is limited to approximately US Dollars 11,000.

The Law of 1980 differs materially from the EEC Directive in two areas:

(i) The Israeli law is not applicable to property damages;

(ii) Under the Israeli provisions "state of the art" defence is admissible.

## **10. MISCELLANEOUS MATTERS**

### **Noise & Pollution**

In accordance with the Air Navigation Regulations (Aircraft Noise), 1977, Israel has applied Annex 16 to the Chicago Convention and Part 36 of the US F.A.R. regulations.

## **11. MINIMUM INSURANCE REQUIREMENTS**

Israel has implemented the minima, in relation to passenger and third party liability, contained in ECAC Resolution ECAC/25-1.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	12 Oct 1929
	Adhered to	14 Feb 1933
	Entered into Force	15 May 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Adhered to	4 May 1963
	Entered into Force	2 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Acceded to	26 Mar 1985
Montreal Additional Protocols – 1975 – No. 1	Signed	15 May 1978
	Ratified	2 Apr 1985
	Entered into Force	15 Feb 1996
- No. 2	Signed	15 May 1978
	Ratified	2 Apr 1985
	Entered into Force	15 Feb 1996
- No. 3	Signed	15 May 1978
	Ratified	2 Apr 1985
-No. 4	Signed	15 May 1978
	Ratified	2 Apr 1985
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	15 May 1968
	Entered into Force	13 Aug 1968
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Adhered to	10 Oct 1963
	Entered into Force	8 Jan 1964
Montreal Convention	Signed	28 May 1999
See Annex N – Note 1	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	4 May 1972
	Entered into Force	4 May 1972
Space Liability Convention - 1972	Signed	14 Apr 1972
	Ratified	22 Feb 1983
	Entered into Force	22 Feb 1983

## PART II – NOTES ON AVIATION LIABILITY

### INTRODUCTION

From the inception of air transportation law, it has been clear that there was a need for uniformity, mainly in respect of international air transportation. The first milestone was the entry into force of the Warsaw Convention in 1929. Since then, a significant number of international Conventions and domestic laws have developed together with the framework of rules that the national Courts are expected to examine in order to find the applicable law to an air carriers' civil liability case. Over the years, Treaties, Protocols and Agreements amending the original Warsaw scheme have been signed. Hereafter, we propose to set out an updated overview of the applicable rules which an Italian Court (like other Courts of different States having adopted the same international laws) shall be expected to consider in any matter concerning air transportation of passengers, baggage and cargo. Italy, as member State of the European Union ("EU"), is subject to all legislative and regulatory rules emanating from the EU institutional bodies concerning the civil liability of flag air carriers of Member States.

The most relevant rules promulgated in the latest years have been the following:

- Montreal Convention, signed in Montreal on 28 May 1999 (entered into force in Italy on 28 June 2004).
- Council Regulation (EC) No. 2027/97 of 9 October 1997 (entered into force in all Member Countries of the European Union on 17 October 1998, modified by the Regulation (EC ) No. 889/2002 of the European Parliament and of the Council of 13 May 2002). The Regulation No. 2027/97, instead, is applicable to transports performed by a Community Air Carrier.
- Regulation (EC) No. 785/2004 of the European Parliament and of the Council (it will enter into force on 30 April 2005).

### INTERNATIONAL CARRIAGE

With the entering into force in Italy of the Montreal Convention 1999, all its general provisions are applicable to the carriage of passenger, baggage and cargo.

#### 1. PASSENGERS

The former distinction between international and domestic law governing accidents resulting in damages sustained by a passenger in the event of death, wounding or any other bodily injury, has been removed following the Council Regulation (EC) No. 2027/97 regulating the air carrier liability in the event of accidents.

As mentioned above, on 26 June 2004, the Montreal Convention 1999 has entered into force in all European Union Member States.

For the international carriage outside the scope of the Montreal Convention (those effectuated by Air Carriers with a licence granted by a country which is not a Member State of the European Union operating to / from Italy or any other EU member State), there will be different rules. Such Air Carriers (AC) are not bound by the above-states rules but if operating into or out of any Member State the AC could choose to incorporate the above rules (Montreal Convention) into his Conditions of Carriage.

Therefore, depending on the country of origin and on the country of destination, the applicable legislation shall vary according to the relevant legislation applicable in the countries in question. Any Convention will be applicable if both countries (stipulated departure and destination) have ratified the

same Convention. The Warsaw Convention and the subsequent supplemental amending protocols are

applicable. It could be also applicable the IATA Inter-carrier Agreement on Passenger Liability 1996. This is an agreement amongst a number of air carriers to incorporate these rules into their Conditions of Carriage and Tariffs (Alitalia signed it).

## **2. BAGGAGE**

As to the law governing the transportation of baggage, the traditional distinction prevails between international and domestic transportation. Therefore, a number of different rules are applicable depending on the place of origin and destination of the baggage in question.

For the above mentioned reasons, the following conventions will be applicable:

- Warsaw Convention and the subsequent supplemental amending protocols (Warsaw System)
- Montreal Convention

### **2.1 Damage**

The following international conventions are applicable:

- Warsaw Convention and the subsequent supplemental amending protocols (Warsaw System)
- Montreal Convention

### **2.2 Delay**

The following international conventions are applicable:

- Warsaw Convention and the subsequent supplemental amending protocols (Warsaw System)
- Montreal Convention

The Regulation CE No. 261/2004 of the European Parliament and of the Council of 11 February 2004 (that will enter into force also in Italy on 17 February 2005) establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

## **3. CARGO**

### **3.1 Damage**

The following international conventions are applicable:

- Warsaw Convention and the subsequent supplemental amending protocols (Warsaw System)
- Montreal Convention

### **3.2 Delay**

The principle that the carrier is liable for any damage due to a delay in the transportation of cargo remains the same in all three applicable Conventions. The differences pertain to defences available and time limits within which a claim can be made as per the following international conventions:

- Warsaw Convention and the subsequent supplemental amending protocols (Warsaw System)
- Montreal Convention

#### 4. DOCUMENTATION

Documentation requirements are significantly simplified under the Montreal Convention. An airline will no longer need to include a notice as provided by the Warsaw notice in the tickets in order to be able to rely

on the Convention's liability limits. The airline is still required to notify the passenger in writing that where the Convention applies it may limit the airline's liability, but there is no sanction in case of failure to do so. However, the traditional Warsaw notice is unlikely to disappear in the near future, as it will still be necessary in cases where the Warsaw Convention applies.

A collective document of carriage may be used, which will be useful in case of group charters and taxi operations, and that electronic ticketing is permitted, in which case the airline must offer the passenger a written statement of the basic information concerning the carriage.

The provisions on air waybills closely follow those in Montreal Protocol 4 so that formalities are simplified and non-compliance does not result in inapplicability of the cargo limit.

#### 5. PRODUCT LIABILITY

EC Council Directive No. 384 dated 25 July 1985 was ratified in Italy with the Decree of the President of the Republic No. 224 dated 24 May 1988.

This law introduces the concept of strict liability for damage caused by a defective product. The injured person is required to prove the alleged damage, the defect and the causal connection between the defect and the damage.

**Liability:** The parties potentially liable are the manufactures of the finished product, the producer of any of the raw materials, the manufactures of any component part and, in certain circumstances, the importer and supplier of the said product. The liability of the producer arising from this Directive may not, in relation to the injured person, be limited or excluded by a provision limiting his liability or exempting him from liability.

**Time limitation:** The Directive provides time limitations as follows:

- (i) the injured party has to commence proceeding for the recovery of the damages within three years from the date on which that party became aware or should reasonably have become aware of the damage, the defect and the name of the producer of the defective item;
- (ii) the injured party can file a claim within ten years from the date on which the producer put the defective product into circulation unless the injured party has in the meantime commenced a legal action against the producer.

#### DOMESTIC CARRIAGE

##### 1. PASSENGERS

As mentioned above, and according to the Regulation No. 889/2002, the Montreal Convention 1999 will also be applicable to the domestic transport even if performed by a Community Air Carrier, but only for

the matter concerning the liability for the carriage of persons or baggage.

For these reasons, the different provisions set out by the Italian Navigation Code on this matter, are concretely inapplicable.

## 2. CARGO

As set out in art. 952 of the Italian Navigation Code (Codice della Navigazione), the liability limit is €17.04 as in case of baggage. The above limit shall not apply in case of fraud, gross negligence or a special declaration of value made by the passenger before the loading.

## 3. INSURANCE OF MICRO-LIGHT AIRCRAFT/ULM

The Decree of the President of the Italian Republic dated 5 August 1988 No. 4004 implements the Law No. 106/1985 (as modified by the Decree of the President of the Republic dated 28 April 1993 No. 207) which covers the area of pleasure and sport flights with micro-light/ULM aircraft.

**General rule:** This law contains mandatory insurance provisions covering damage to a third party on the surface and liability for collision. Liability limits must be no lower than €516,456 per occurrence, per person and for property damage.

The policy has also to cover flights of a person who is not the insured and damages caused by gross negligence.

The claim for the compensation of damage may be brought directly against the Insurer. The policy period has to be not less than six months.

**Air shows and Competitions:** In such instances, liability insurance is compulsory for organisers, directors and competition officials for coverage of damage to persons and property.

**Training:** Liability insurance is compulsory for the preparatory activity for student pilots and trainers to cover any personal damage that may incur during the flight training. The liability limit must not be lower than €258,228.

## 4. DAMAGE TO THIRD PARTY ON THE SURFACE

The Italian Navigation Code (Codice della Navigazione) provides mandatory insurance provisions for damages to third parties on the surface and damage to third parties due to in-flight collision. In both cases, liability arises when an aircraft is flying.

An Aircraft is considered to be flying from the moment the take-off operations start until the moment the landing operations terminate.

It is to be noted that damages to a stationary aircraft on the ground caused by a flying aircraft do not fall within the rules of in-flight collision but give rise to a third party on the surface liability.

As per Art. 967 Italian Navigation Code, the liability is limited to €56,81 per kilo of the aircraft weight including the payload as shown in the airworthiness certificate within the following limits:

Minimum: € 480,304,92 and € 193,671,34 p er tourism aircraft and gliders.  
Maximum € 1,601,016.39.

The evidence of the abo ve mentioned insurance coverage has to be produced to the Civil Aviation Authorities prior to the issuance of any flight permit. Any claims for damage based on this type of liability may be addressed directly to the insurer.

## **5. SOCIAL SECURITY SCHEME: IMPA CT ON SETT LEMENTS**

In Italy there is no legal priority or automatic settlement by Social Security Schemes. The Social Security should, after payment of the relevant indemnity, notify in due time the insurers stating the payment effected and file a claim for reimbursement thereof. The amount claimed and refunded to the Scheme shall be deducted f rom the final claim settlement.

## **6. LAW PROVISIONS FOLLOWING TRA GIC EVENTS IN NEW YORK ON 11 SEPT E MBER 2001**

Following the tragic New York events on 11 September 2001, in respe ct of Third Party liability, the Ministry of Transport and Civil Aviation adopted a number of measures un til the 31<sup>st</sup> December 2002, in order to establish temporary Government insurance schemes f or the airline industry. This is in light of EU Authority guidelines.

## **GENERAL PROVISIONS**

### **1. COMPULSORY PASSE NGER PERSONAL ACCIDENT AND LIABILITY INSURA NCE**

The law governing the insurance obligations is set out in Council Regulation (EEC) No. 2407/92 (or Italian Law No. 274/88). Article 3 of the Regulation (or article 2 Law No. 274/88) requires that all Community Air Carriers (or International Carriers) shall be insured at least up to t he limit of liability stated therein (100,000 Special Drawing Rights) and above this amount up to a reasonable level.

Under the Montreal Convention, a new ob ligation is imposed on countries to require their airlines to maintain adequate insurance to cover their liability, and other countries may require airlines to prove this. Nevertheless, the word "adequate" is not defined.

Recently, the European Community has emanated a new regulation that will enter into force on 30 April 2005 (Regulation CE No. 785/2004). This new regulation provides a minimum insurance cover per accident, for each aircraft.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	3 Oct 1964
	Entered into Force	1 Jan 1965
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	29 Jun 1967
	Ratified	10 Aug 1970
	Entered into Force	10 Aug 1970
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	20 May 1953
	Entered into Force	18 Aug 1953
The Hague Protocol - 1955	Signed	2 May 1956
	Ratified	10 Aug 1967
	Entered into Force	8 Nov 1967
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Acceded to	20 Jun 2000
	Entered into Force	18 Sep 2000
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Accepted	20 Jun 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	
	Acceded to	20 Jun 1983
	Entered into Force	20 Jun 1983

## PART II - NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

1.1 The Montreal Convention was promulgated in Japan following its entry into force effective November 4, 2003.

1.2 On November 20, 1992 Japanese air carriers abolished the per passenger limit of liability of international carriage by special contract under Article 22 (1) of the Warsaw Convention. Previously it had been SDR 100,000.

As a result, the legal doctrines of contractual liability of Japanese air carriers to passengers in respect of Convention carriage are as follows;

- (1) The doctrine of "strict liability" applies if the carrier's liability is not more than SDR 100,000 per passenger. Namely, the carrier has waived the "all necessary measures" defense under Article 20 of the Convention up to SDR 100,000.
- (2) The doctrine of "presumed fault basis liability" applies if the carrier's liability is more than SDR 100,000 per passenger. Namely, the carrier is not liable only when it has succeeded in establishing the "all necessary measures" defense under Article 20 of the Convention over SDR 100,000.

1.3 The following 7 air carriers are parties to the IATA Inter-carrier Agreement:-  
Japan Airlines International, Japan Airlines Japan, All Nippon Airways, Japan Asia Airways, Japan TransOcean Air, JALways and JAL Express

1.4 There is no national regulation concerning the conversion franc, but case law of lower courts uses the last official price of 65.5 milligrams of gold fineness nine hundred (US\$ 42.22 per troy ounce) which is converted into US \$20 per kg.

1.5 No specific regional legislation governs Japanese carriers.

### 2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE

#### Non-Convention International Carriage

The doctrine of "fault basis liability" applies. Namely, a claimant has to prove that the carrier was at fault to recover damages from it.

#### Internal Carriage

As there is no specific legislation in existence for internal air carriage as yet, the liability of the Japanese carriers has to be determined by reference to the relevant provisions of the Commercial and Civil Codes and the individual carrier's Conditions of Carriage.

This would mean that, with regard to carriage of both passengers and goods, carriers are unable to relieve themselves of liability unless they prove that they or their employees have exercised due care as provided in Article 590 and 577 of the Commercial Code.

As from April 1, 1982, all the Japanese airlines providing the scheduled services deleted the passenger liability limit of Yen 23,000,000 per passenger, while the limit of liability of baggage of Yen 150,000 per passenger remains the same. Commuter non-scheduled service companies also followed the scheduled airlines abolishing the limit of passenger liability with effect from March 1983.

### 3. GENERAL AVIATION

*Japanese Civil Aeronautics Law was enacted in conformity with the Convention on International Civil Aviation.*

The Minister of Land, Infrastructure and Transport shall, in response to application, register an aircraft in the Aircraft Register and an aircraft shall acquire Japanese nationality when registered. No aircraft may be used for air navigation unless it has a valid airworthiness certificate. Airworthiness certification is valid for one year.

When any operator of an airworthiness-certificated aircraft performs maintenance, repairs or alters the said aircraft, its work plan and the work must be inspected and approved by the Minister of Land, Infrastructure and Transport, before the aircraft is used for air navigation.

The Minister of Land, Infrastructure and Transport grants competence certification for an airman (competence certification) for a person who will perform air navigation services. The Minister of Land, Infrastructure and Transport shall, before issuing a certificate of competence, conduct examinations in order to determine whether an applicant has the aeronautical knowledge and aeronautical proficiency necessary for performing his air navigation services.

As for operation of aircraft, the Civil Aeronautics Law stipulates as follows:-

- Any operator of aircraft shall keep an aircraft logbook. No aircraft shall be engaged in an instrument flight unless it is equipped with devices for measuring aircraft attitude, altitude, position or the course to be flown. It is also required for aircraft to be equipped with parachutes, life jackets, emergency signal lights and other emergency equipment.
- No member of a flight crew shall engage in the air navigation service while he is under the influence of alcohol or drugs or other chemical agents which impairs in anyway his ability to perform normal operation of an aircraft.
- Any person who is piloting an aircraft shall, while in flight, maintain a watch so as not to collide with other aircraft or other objects.
- No aircraft shall takeoff or land at places other than aerodromes. No aircraft shall be flown over such area as is likely to cause a danger concerning operation of aircraft as may be specified by Ordinances of the Ministry of Land, Infrastructure and Transport. No aircraft shall be flown, except for take off or landing, at an altitude lower than that which may be specified by Ordinances of the Ministry of Transport. For example, over the areas with a high density of people and houses, it is stipulated as 300 meters above the top of the highest obstacle within a horizontal radius of 600 meters from the aircraft.
- No aircraft shall engage in a flight at a low-altitude, "buzz" or dive to a low altitude without operational necessity, or shall be piloted in such a manner as is annoying to other persons.
- Any aircraft shall, in a control area or control zone, navigate in accordance with instructions that are given by the Minister of Land, Infrastructure and Transport, for aircraft safety, with regard to the order, time or methods of take-off or landing, or method of flight.
- An aircraft shall, when departing from an aerodrome as may be designated by the Minister of Land, Infrastructure and Transport or engaged in a flight within a control area or control zone under instrument flight rules, report its flight plan to the Minister of Land, Infrastructure and Transport and obtain the approval of the flight plan from him. The same shall apply to any intended changes to the approved flight plan.

#### *Microlight Aircraft*

In 1983 the Ministry of Land, Infrastructure and Transport issued an administrative guideline that microlight aircraft be regarded as "aircraft" regulated by the Civil Aeronautics Law.

However, contrary to other types of aircraft, formal registration is not required but quasi-registration should be obtained from the Japan Aeronautic Association without which flight is not permitted.

The Ministry of Land, Infrastructure and Transport requested the Japan Aeronautic Association to promote the safety of microlight aircraft and to ensure that no flights take place without the above-mentioned authorization of the Ministry of Land, Infrastructure and Transport.

The Association has created a system of safety certification whereby the certifiers appointed by the Association give the members training for flying and then issue certificates to them which in practice work as substitutes for the competence certification for pilots required by Article 28 of the Civil Aeronautics Law.

There are no mandatory insurance requirements, but if a user of a microlight aircraft becomes a member of the Japan Microlight Aircraft Federation which is a subsidiary of the Japan Aeronautic Association there is an arrangement that he is automatically insured for third party liability.

#### **4. THIRD PARTY LIABILITY**

Third Party Liability rules in Japan are subject to general principles of tort in the Civil Code. Article 709 of the Civil Code stipulates that a person who violates intentionally or negligently the right of another is bound to make compensation for damage arising therefrom. There are so far no mandatory insurance provisions applicable to aircraft operators.

#### **5. MANDATORY INSURANCE REQUIREMENTS**

In Japan, there is no specific insurance requirement regarding airlines' passenger liability or third party liability.

#### **6. CLAIMS RELATED INFORMATION**

##### **Fundamental Information on the Legal System in Japan**

Japan belongs to civil law countries and trial by jury is not adopted in Japan. However, recently there is an official discussion for legal reform that we should introduce a system where laymen participate in the court and collaborate with judges.

The number of judges in Japan is approximately 3,000 and this figure has remained basically unchanged for the last one hundred years, although recently there is also a proposal of legal reform to increase the number of judges.

These limited numbers of judges have to handle many cases concurrently and this fact causes delays in litigation. However, the new Civil Procedure Law took effect on January 1, 1998 and this new law is intended to make proceeding progress more quickly than in the past by, for example, concentrating examination of witnesses, limiting delayed submission of evidence etc.

Some jurisdictions in the western world recognize punitive damages as an element of recovery, but Japan does not.

It depends on each case but generally speaking attorneys' fees paid at the outset are usually equal to 5% of the damages awarded sought and reward after victory is usually 10% of the award. Over 15% reward may be paid in case of small amount controversies but the percentage decreases as the amount of judgement sought becomes larger. A contingent fee contract on the principle of "no cure, no pay" is not usual in Japan.

The statute of limitation applied to wrongful death damages is 3 years from the time when the injured party or his legal representatives becomes aware of such damage and the identity of the person who caused it, and the same shall apply if 20 years have elapsed from the time when the unlawful act was committed.

### **How the Japanese Courts assess Wrongful Death Damages including those of Aviation Accidents**

Although there is slight difference in the practical application of the methodology from one court to another, the following manner of assessment is generally taken:

In case of death claims, an amount of loss consists of (a) loss of income, (b) funeral expenses and (c) condolence money or "pains and suffering".

As for loss of income, the most probable amount to be awarded by the courts is almost automatically worked out if the following three figures are given; namely, (i) annual income of the deceased, (ii) age of the deceased when he or she died, and (iii) number of dependents when he or she died.

Loss of income is computed by multiplying the net income of the deceased by his remaining workable years subject to a deduction of interim interest of 5% per annum for the period of the remaining workable years using either the New Hoffman co-efficient or the Ripnitz co-efficient. In any case the Ripnitz co-efficient does not exceed 20. Recently the figure 5% is challenged in the lower courts and some judgements of the lower courts use figures less than 5% such as 4 or 3 % or even 2% but the majority of judgements still use the figure 5%. As a general principle, workable years are presumed to be from age 18 to age 67. For a senior citizen over age of 55, half of his or her remaining life as set forth in the statistics of life expectancy is presumed to be the remaining workable years.

In determining income, future wage increase are not taken into consideration, but if a future wage increase is certain, for example if the deceased is a governmental official or an employee of a large corporation, it is admissible to calculate the loss by taking into account such a wage increase. A 30%-35% reduction is made from the damages for loss of income for living expenses in case of having dependents, and 50% if there are no dependents. Subjective factors such as intention to do harm or recklessness do not make any substantial difference in determining the amount of loss of income. The court in calculating the amount of condolence money takes these factors, in some cases, into consideration.

Condolence money is compensation for mental anguish of the deceased and also of his or her bereaved family. There is some legal controversy as to whether condolence money of the deceased can be inherited or not, but in practice the condolence money of the deceased combined with those of the bereaved parents, spouse and children are paid usually in the region of Yen 20 million.

Funeral expenses are usually admissible within Yen 1,500,000 as a part of the legally liable damages.

Finally, if the deceased was partly negligent, deduction from the total amount of compensation is made on the principle of "comparative negligence". However, in the case of aviation accidents, deceased passengers usually are not to blame and therefore no contribution is sought in assessment of damages.

## **7. SOCIAL SECURITY AWARDS**

The amount of settlement between the victim (passenger) and the liable party (air carrier) is reduced by any payment made from the social security schemes.

However, the social security authority is entitled to recover the whole or part of its payment from the liable party or his insurer by subrogation. The rights of subrogation are usually stipulated in the respective laws concerning the social security schemes; i.e. Article 12-4 of the Workmen's Accident Compensation Insurance Law, Article 64 of the National Health Insurance Law, Article 67 of the Health Insurance Law, Article 40 of the Employee's Pension Insurance Law, Article 22 of the National Pension Law etc.

If the liable party makes any payment before payment by the social security scheme, the victim is not allowed to make double recovery by claiming payment from the social security schemes.

As for the schemes in the civil sector, a victim is allowed to receive both payment from the life insurer and the compensation from the liable party. See Judgement of the Supreme Court, September 25, 1964.

However, Article 662 of the Commercial Code stipulates the right of subrogation of a non-life insurer against the liable party.

## **8. PRODUCTS LIABILITY**

The Products Liability Law was enacted in 1994 and it took effect on July 1, 1995. The scope of applicability of this law is movables that have been manufactured or processed. Therefore, the law naturally applies to aircraft. The features of the law are as follows;

### **Principle**

The manufacturers, processors or importers of defective products, including those who have expressed themselves as manufacturers under the circumstances by attaching labels and otherwise, are subject to liability for harm to persons or property caused by the defect.

### **Non-presumption of Defects**

When the bill was being discussed there was an opinion that it should stipulate that if unusual damage took place through normal use, the existence of defects is presumed per se. The final bill prepared by the Cabinet has dropped this stipulation, but, in the actual court proceedings, it is expected that the claimant's burden of proof in establishing the existence of defects will be lessened by the judge as a matter of fact.

### **State-of-the-Art Defense**

The law states that manufacturers are not held liable if they can prove that using the latest science and technology, they could not have foreseen the defect when the product was delivered.

### **Non-Liability of Parts Manufactures**

Manufacturers are not liable for damages when their products are used as parts or as materials for manufacturing other products. But the manufacturers must show that the defects occurred because they followed the design instructions of other manufacturers and that they, as parts manufacturers, were not negligent themselves.

### **Statute of Limitation**

A claimant is able to file for compensation up to 3 years after he or his legal representative determines those responsible, or 10 years, instead of 20 years under the Civil Code, after the defective product

was delivered or 10 years after either emergence of bodily injury due to accumulation of harmful materials in the body or manifestation of symptoms after a certain period of incubation.

**9. AIR TRAFFIC CONTROL**

In Japan, public airports providing civil air transport services are classified into three classes according to the Law concerning airport construction. The ownership and the entity responsible for local air traffic services and upper air space and en route navigations facilities are as follows;

	Ownership	Local air traffic	Upper air space and en route navigations
First Class			
Narita	Private	Government	Government
Kansai	Private	Government	Government
Chubu	Private	Government	Government
Haneda	Government	Government	Government
Osaka	Government	Government	Government
Second Class (All)	Government	Government	Government
Third Class (All)	Local Government	Government	Government

**10. TAX REGIMES**

Even after the introduction of the Consumption Tax into Japan in 1988, premiums of insurance and reinsurance including those of aviation insurance have been exempt from taxes. However, stamp duties are levied on insurance policies (Yen 200 per policy) and open contracts (Yen 4,000 per contract document held by each party).

**11. GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

The Japanese Government had made an arrangement to enable Japanese airlines to pay for damages suffered by third parties by reason of terrorist attacks etc. to aircraft over the amount they can recover from the commercial insurance market since October 2, 2001, which ceased as of December 1, 2003.

**12. MISCELLANEOUS MATTERS**

*Noise and Pollution*

Japan enacted a law named "Prevention of Aircraft Noise" in 1967 by which subsidies are given to public utilities such as schools and hospitals in the neighborhood of airfields to make anti-noise equipment or to relocate in the case of extreme noise.

The Japanese government notified the ICAO that no difference existed between their national regulations and practices and the International Standards and Recommendations of the ICAO Annex 16.

The Civil Aeronautics Law was amended in 1975 and the system of the aircraft noise certification was introduced. This system prohibits any aircraft to fly without certification that its noise is less than the

classified standards set by the government ordinance. At present there are no Japanese aircraft that do not satisfy these requirements.

Regarding civil compensation given by the State as the manager of airports, it has been established by the Supreme Court of Japan, by repetition of judgements, that (1) the injunction to stop landings and take-offs from airports at night should not be admitted in the civil proceedings, (2) claims for damages for the past pains and sufferings due to noise should be allowed, but (3) claims for damages for the future pains and sufferings should not be allowed.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 25	Succeeded to	8 Dec 1969
	Entered into Force	25 May 1946
The Hague Protocol - 1955	Signed	
	Adhered to	15 Nov 1973
	Entered into Force	13 Feb 1974
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	2 Sep 1999
	Entered into Force	1 Dec 1999
- No. 2	Signed	
	Acceded to	2 Sep 1999
	Entered into Force	1 Dec 1999
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Acceded to	22 Jul 1999
	Entered into Force	20 Oct 1999
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	5 Oct 2000
	Ratified	12 Apr 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	2 Feb 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	6 Jun 1972
	Not Ratified	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

#### 1.1

- A) Article 122 of the Jordan Civil Aviation Law no (50) for the year 1985 states:
- a) The provisions of the (Agreement Unifying Some Rules of International Air Transport) signed in Warsaw on 12th October 1929 and its supplemental and amended agreements to which the Kingdom is party are to be applied in connection with the air transport of persons, luggage and cargo.
  - b) The provisions of Paragraph A are to be applied to domestic air transport unless otherwise indicated.
- B ) The ratification of Montreal Convention 1999 is in process.

#### 1.2

Contact Royal Jordanian Airlines.

#### 1.3

Contact Royal Jordanian Airlines.

### **INTERNAL AND OTHER NON-CONVENTION TRAFFIC**

The Warsaw Convention is applicable on Domestic Air Transport: Art 122 of Jordan civil Aviation Law.

### **GENERAL AVIATION**

**For any further information, Contact Flight Safety Directorate**

Here is the list of Jordan Civil Aviation Regulations (JCARS) governing general aviation operations:

- a) JCARS part 1  
General Rule Making and Definitions/ Abbreviations
- b) JCARS part 2  
Airman Certification, Privileges and Limitations
- c) JCARS part 3  
General Flight Rules for all operations
- d) JCARS part 4  
Aircraft and Component Maintenance, Preventive Maintenance, Rebuilding, and Alteration
- e) JCARS part 8  
Pilot school Certification and Operation

- f) JCARS part 9  
Airworthiness Certificates, Nationality, and Registration Marking
- g) JCARS part 11  
Parachute jumping

### **THIRD PARTY LIABILITY**

- a) Art. 126 to Art. 130 : It covers A/C on foreign as well as national register:

#### **Chapter 7 Damage caused by Aircraft to Others on the Ground**

##### **Article 126**

Any person suffering damage on the ground is entitled to compensation if it is proved that the damage originated from an aircraft in flight. An aircraft is considered to be in flight from the moment it starts using its locomotive power with the purpose of actually taking off until the moment when landing is complete.

In the case of aircraft lighter than the air, the state of flying starts from the moment it separates from the ground until the moment it is attached to it.

##### **Article 127**

The operator of an aircraft is responsible for the compensation specified in the previous article. The owner or leaseholder in whose name the aircraft is registered is considered the operator of that aircraft.

##### **Article 128**

The operator of an aircraft is jointly responsible, together with any person using it without his consent, for any damage, unless it is proved that he took the necessary care and precautions.

##### **Article 129**

1. The person responsible according to the provisions of this chapter is not held liable to pay compensation in the following cases:

A. If the damage results directly from an armed clash or internal disorder, or as a result of stopping that person from using the aircraft on orders from the public authorities.

B. If it is proved that the damage results from an error, negligence or inaction on the part of the injured party or his subsidiaries or agents.

2. Responsibility for an error committed by any of the subsidiaries or agents of the injured party is not waived or reduced if the injured party proves that they were acting beyond their jurisdiction.

### Article 130

If damage to others on the ground results from the collision of two or more aircraft in flight, or from one aircraft obstructing another, and if the damage deserves compensation, each aircraft is considered as having caused the accident and the operator of each will be jointly responsible for the compensation according to the provisions of this chapter.

b) Art 10/f of the Aviation law:

### Article 10

The aircraft which operate within the Kingdom or in its airspace should conform to the following:

A. The aircraft should be registered in its own country or registered in accordance with international or joint registration.

B. It should be airworthy and this should be confirmed by a valid airworthiness certificate, issued by the country in which the aircraft is registered or endorsed by that country,

C. It should display clearly the marks of its nationality and its registration in accordance with the rules laid out.

D. It should be equipped with the devices and equipment prescribed.

E. The flight crewmembers should have valid licenses, issued or endorsed by the Civil Aviation Authorities in the country of registration and they should be as many as specified in the airworthiness certificate.

F. It should be insured for the benefit of its crew, its passengers and the goods it carries and for the third party on the ground, in accordance with the relevant regulations.

The Civil Aviation Authorities may exempt from one or more of these conditions, aircraft which fly for purposes of test flight or training.

c) Art .136 —138

## Chapter 8 Necessary Guarantees covering Responsibilities related to the Operation of Aircraft

### Article 136

A. Each operator of an aircraft working in the Kingdom region or its airspace must insure against liability for damages to passengers, luggage and goods on board and for persons and properties on the ground. The insurance must include all his employees exposed to the dangers of flying and must observe the provisions set out in this chapter.

B. The insurance specified in this article should be assigned to an insurer licensed to practice insurance work in accordance with the laws of the country in which the aircraft is registered.

### Article 137

The insurance specified in Article 136 can be replaced with one of the following guarantees:

- A. Depositing a monetary deposit in the treasury of the country where the aircraft is registered or in a bank licensed by that country to perform this function.
- B. Presentation of a bank guarantee from a bank licensed by the country where the aircraft is registered, on condition that this country has ascertained this bank's suitability and solvency to meet its obligations.
- C. Presentation of a guarantee from the country where the aircraft is registered on condition that that country does not invoke any legal immunity in any dispute involving this guarantee.
- D. In all the cases specified in this article the above guarantees must be within the limits set by the Civil Aviation Authorities in the light of international agreements.

**Article 138**

Every aircraft operating in the Kingdom region or in its airspace must carry a certificate issued by the insurer, confirming the completion of insurance procedures in accordance with the provisions set out in this chapter. It must also carry a certificate confirming the solvency of the insurer issued by the competent authorities in the country where the aircraft is registered or in the country where the insurer resides or where his headquarters are situated.

Alternatively, certified copies of these certificates can be deposited with the Civil Aviation Authorities instead of being carried on board the aircraft.

d) Art .53/I of the Aviation Law:

**Article 53**

The documents and records stated in paragraph B of the previous article are as follows:

**International flights :-**

- A. The aircraft registration certificate.
- B. The airworthiness certificate.
- C. The certificates of the members of the crew.
- D. The aircraft's technical logbook or the general declaration pertaining to the flight
- E. The license for the aircraft wireless.
- F. Operation manuals and maintenance documents relating to commercial air transport operations or air activities.
- G. A cargo and mail manifest, and a declaration of all the details pertaining to them if the aircraft is carrying cargo or mail.
- H. Load and trim sheet if the aircraft is carrying out a commercial air transport operation.
- I. Endorsed copies of the necessary insurance documents.
- J. Any other documents specified by the Civil Aviation Authorities.

**MANDATORY INSURANCE REQUIREMENTS :**

Art 10/f, Art .136 —138

**CLAIM RELATED INFORMATION:**

Art. 131—135

**Article 131**

A. The maximum limit for compensating damage caused by aircraft to others on the ground in the Kingdom region is set in the light of international agreements related to this matter to which the Kingdom is party.

B. There will be no limit to an operator's responsibility for compensation as set out in the provisions of this chapter if it is proved that the damage resulted from an action or inaction on the part of the operator, his subsidiaries or his agents which ran the risk of causing the damage, on condition that, in the case of action or inaction on the part of the subsidiaries or agents, it is proved that they were performing their duties within their jurisdiction.

C If a person takes possession of an aircraft illegally and uses it without the consent of whoever has the right to use it, his responsibility for compensation is unlimited.

**Article 132**

In cases where more than one person is responsible for the damage, according to the provisions of this chapter, the compensation awarded to those deserving of it should not exceed the amount that would have been awarded if only one person had been liable to pay.

**Article 133**

A. If the compensation sums exceed the limit set in paragraph A of Article 131, the following rules apply, provided that responsibility for death or injury does not exceed the limits set for every dead or injured person:

1. If compensation is connected with cases of death or bodily injury alone, or if it is connected with damage to properties alone, the compensation is reduced in proportion to the sums allocated for each.

2. If compensation is connected with cases of death, bodily injury and damage to properties all together at the same time, half the total sum of the compensation is allocated to compensate both the cases of death and bodily injury which should have priority. If this is found inadequate, it should be distributed in proportion to each case.

B. The other half of the total sum should be distributed in proportion to each case of damage to property and if there is excess it should be added to the first half which is allocated to compensate cases of death and bodily injuries.

**Article 134**

Litigation for compensating damage caused by aircraft to others on the ground in the Kingdom are to be submitted to the court of the place of the accident or the defendant's place of residence or his headquarters.

**Article 135**

Claims for compensation for damage caused by aircraft on the ground are forfeited after two years have elapsed from the date on which the accident occurred. If that period is interrupted, lawsuits cannot be filed after three years from the date of the accident.

**AIR TRAFFIC CONTROL**

(Types of Airfields)

Publicly owned

Operated by CAA personnel

Local air traffic control

Upper air space

Route navigation

Are all provided by CAA personnel.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Acceded to	30 Aug 2002
	Entered into Force	28 Nov 2002
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	11 Jun 1998
	Entered into Force	11 Jun 1998
Space Liability Convention - 1972	Signed	
	Acceded to	11 Jun 1998
	Entered into Force	11 Jun 1998

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 26		
	Succeeded to	7 Oct 1964
	Entered into Force	12 Dec 1963
The Hague Protocol - 1955	Signed	
	Adhered to	6 Jul 1999
	Entered into Force	4 Oct 1999
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	6 Jul 1999
	Entered into Force	4 Oct 1999
- No. 2	Signed	
	Acceded to	6 Jul 1999
	Entered into Force	4 Oct 1999
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Acceded to	6 Jul 1999
	Entered into Force	4 Oct 1999
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Ratified	5 Jul 1999
	Entered into Force	3 Oct 1999
Montreal Convention	Signed	28 May 1999
	Ratified	7 Jan 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Acceded to	19 Jan 1984
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	25 Sep 1975
	Entered into Force	25 Sep 1975

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	3 Mar 1935
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	1 Jun 1967
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**KOREA, Democratic People's Republic of**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	1 Mar 1961
	Entered into Force	30 May 1961
The Hague Protocol - 1955	Signed	
	Adhered to	4 Nov 1980
	Entered into Force	2 Feb 1981
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II- NOTES ON AVIATION LIABILITY**

**THE LAW OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA ON CIVIL AVIATION**

Adopted on March 23, Juche 89(2000) by ordinance No 1419  
of the Standing Committee of the Supreme People's Assembly

**ARTICLE 49**

An airline should enter up the departure, destination and transfer points on the airway bill.  
The airline should precisely follow the particulars indicated in the airway bill.

**ARTICLE 50**

A consignor shall submit relevant documents to an airline and go through appropriate procedures to ship goods.  
A consignor may be changed after the delivery of goods to an airline and before the dispatch.

**ARTICLE 51**

A consignor should declare goods as required by the particulars on the airway bill and deliver the goods packed in accordance with the rules to the airline.  
The consignor shall be liable for the damages caused by the delivery of the goods incorrectly declared and improperly packed.

**ARTICLE 52**

If consignee is not present or it is impossible to hand the goods over to the consignee, the consignor may handle the dispatched goods at his or her discretion.

**ARTICLE 53**

When the goods have arrived, the airline should inform the consignee of the fact.  
The consignee who has been notified of the arrival of goods, shall follow the appropriate procedures to collect the goods.

**ARTICLE 54**

An airline shall be liable:

1. if a passenger has died or is injured bodily from embarkation to disembarkation;
2. if damage has occurred to a passenger, baggage or cargo due to the delay of carriage;
3. if a third party has died or is injured or damaged by the accident of aircraft or by something dropped therefrom.

**ARTICLE 55**

An airline shall not be liable for the death, damage, injury or accident caused by mistake of any passenger or consignor, or by force majeure.  
In this case, the airline should present verifying evidences.

**ARTICLE 56**

The liability for the damage and loss of baggage or cargo occurred in carriage shall be limited within the declaration.

The consignor should make an exact declaration of the quantity or value of baggage or cargo

**ARTICLE 57**

An airline should carry the dangerous goods in accordance with the appropriate rules after correctly classifying them.

**ARTICLE 58**

An airline, may conclude a contract for aircraft lease or charter.

The contract should contain such particulars as the name and address of the parties, the aircraft type, the purpose of use, the number of passengers, the quantity of baggage, cargo and mail, the fares and rates, and the aircraft departure point, time and date, the destination, etc.

**ARTICLE 59**

Subject to the contracts made with an airline for aerial work or use of aircraft, an agency, enterprise or organization may use an aircraft for the work of agriculture, construction, forestry, fishery, survey, photography, scientific observation, sport and cultural activities, distress rescue, medical assistance, etc.

Un such an emergency case as distress, the rescue work may be carried out without contracting for the aircraft use. In this case, the airline should obtain the permission of CAMB.

**ARTICLE 60**

An airline and the relevant agency, enterprise or organization should properly conclude a contract for aerial work.

Such contracts shall contain such particulars as the object, quantity and area of work, the aerodrome or landing place to be used in the aerial work, the procedures of using the appropriate facilities and the terms of payment.

**ARTICLE 76**

The distressed person and the members engaged in search and rescue shall keep the accident scene and evidences and send the materials related with the distress to the distress rescue co-ordination center.

**ARTICLE 77**

The civil aviation organization of a foreign country may conduct search and rescue operation for its aircraft distressed in the territorial airspace of DPRK.

In this case, the permission of CAMB shall be needed.

**ARTICLE 78**

The flight control over the aircraft which is engaged in a search and rescue operation shall be undertaken by the relevant air traffic control unit.

The search and rescue region shall be equal to the flight information region.

**ARTICLE 79**

CAMB shall establish an aircraft accident investigation committee to conduct the investigation of an aircraft involved in an accident.

In this case, the permission of the civil aviation guidance body of the State shall be needed.

**ARTICLE 80**

An aircraft accident investigation committee shall undertake to clarify the cause of the accident by conducting a thorough investigation of the aircraft involved in an accident, the properties thereon and the flight supporting equipment.

The local government body and other organs concerned shall give assistance to the aircraft accident investigation committee.

**CHAPTER 9**

**AVIATION INSURANCE**

**ARTICLE 81**

Aviation insurance is an important means to protect the interests of an airline and of the agency, enterprise, organization or citizen that uses the air transport facilities.

Aviation insurance shall include aircraft insurance, passenger insurance, baggage insurance, cargo insurance and the aircraft third party insurance, etc.

**ARTICLE 82**

An airline shall be required to be insured.

Without being insured, an airline shall not be permitted to be engaged in a commercial air transportation operation.

**ARTICLE 83**

The procedures and methods of the conclusion and implementation of an aviation insurance contract shall be subject to the Insurance Legislation of DPRK.

The amount of insurance money may be fixed subject to the international convention.

**CHAPTER 10 CONTROL OVER CIVIL AVIATION ACTIVITIES AND DISPUTE SETTLEMENT**

**ARTICLE 84**

It is a firm guarantee for the correct implementation of the State policy of civil aviation to strengthen the control over civil aviation activities.

The State shall strengthen the control over civil aviation activities in keeping with the development of civil aviation.

**ARTICLE 85**

The unified State control over civil aviation activities shall be conducted by CAMB under the leadership

**KOREA, DEMOCRATIC PEOPLE'S REPUBLIC (CONT'D)**

of the civil aviation guidance body of the State. LAMB shall thoroughly command and control civil aviation activities.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	13 Jul 1967
	Entered into Force	11 Oct 1967
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty – 1967	Signed	27 Jan 1967
	Ratified	13 Oct 1967
	Entered into Force	13 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	14 Jan 1980
	Entered into Force	14 Jan 1980

## **PART II - NOTES ON AVIATION LIABILITY**

### **1. INTERNATIONAL CARRIAGE**

1.1 There is no specific national legislation implementing international instruments.

1.2 -

1.3 Korean Airlines signed the IATA Inter-carrier Agreements (IIA) and the Agreement on Measures to Implement the IIA on 22 October 1996. The relevant amendment of their conditions of carriage was approved by the Ministry of Construction and Transportation on 18 August 1997 in respect of international flights, and on 20 October 1997 in respect of domestic flights.

Asiana Airlines also amended conditions of carriage to eliminate IMF SDR 100,000, which was acknowledged by the Ministry of Construction and Transportation, following its signing of the IIA and the Agreement on Measures to Implement the IIA on 25 August 1997.

1.4 There is no specific regulation.

1.5 There is no specific regional legislation.

### **2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

There is no specific national regulation in commercial or civil codes regarding air carrier liability.

### **3. GENERAL AVIATION**

Korean Aviation Act.

### **4. THIRD PARTY LIABILITY**

Third party liability rules in Korea are subject to general principles of torts in the civil code.

### **5. MANDATORY INSURANCE REQUIREMENTS**

In respect of commercial aircraft, the purchase of aviation insurance is mandatory under the Korean Aviation Act.

### **9. AIR TRAFFIC CONTROL AND AIRPORTS**

#### **a. Types of Airport**

The types of airfield in Korea by ownership and responsibility are as follows:

<b>Airport</b>	<b>Ownership</b>	<b>Responsibility</b>
Kimpo Airport	Ministry of Construction and Transportation	Korea Airports Authority
Kimpo Airport	R.O.K. Airforce	Korea Airports Authority
Jeju Airport	Ministry of Transportation	Korea Airports Authority

The Korea Airports Authority take out Fire Insurance with additional coverage of Bodily Injury Liability and Airport Owner's Liability Insurance for its facilities.

#### **b. Air Traffic Services at Airports**

The authority responsible for the overall administration of air traffic services provided for both domestic and international civil aviation is the Seoul Regional Aviation Office, Ministry of Transportation. That body has effected Hull All Risk and Personal Accident Insurance.

#### **c. Upper Airspace and En Route ATC Facilities**

The authority responsible for providing upper airspace and en route navigation facilities in Korea is the Seoul Regional Aviation Office, Ministry of Transportation.

### **10. MISCELLANEOUS MATTERS**

#### **Noise & Pollution**

##### **General**

The Aviation Act revised by Congress recently has some articles to establish and execute aircraft noise prevention measures at the vicinities of civil international airports. There is no noise prevention measures at local airports.

##### **ICAO Annex 16**

Korea has advised that there will be no differences between its National regulations, and practices, and the International Standards and Recommendations of Annex 16 - Vol 1, First Edition.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	11 Aug 1975
	Entered into Force	9 Nov 1975
The Hague Protocol - 1955	Signed	
	Adhered to	11 Aug 1975
	Entered into Force	9 Nov 1975
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	21 Mar 1995
	Ratified	8 Nov 1996
	Entered into Force	6 Feb 1997
- No. 2	Signed	21 Mar 1995
	Ratified	8 Nov 1996
	Entered into Force	6 Feb 1997
- No. 3	Signed	21 Mar 1995
	Ratified	8 Nov 1996
-No. 4	Signed	21 Mar 1995
	Ratified	8 Nov 1996
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	18 Aug 1975
	Entered into Force	16 Nov 1975
Rome (Third Party) Convention – 1952	Signed	
See Annex H – Note 1		
	Adhered to	27 Nov 1979
	Entered into Force	25 Feb 1980
Montreal Convention	Signed	28 May 1999
	Ratified	11 Jun 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty – 1967	Signed	
	Acceded to	7 Jun 1972
	Entered into Force	7 Jun 1972
Space Liability Convention – 1972	Signed	7 Jun 1972
	Ratified	30 Oct 1972
	Entered into Force	30 Oct 1972

**PART II- NOTES ON AVIATION LIABILITY**

**LEGISLATION ETC.**

The Kuwait Directorate General of Civil Aviation advises that air operators are required to be insured against third party liability.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	9 Feb 2000
	Entered into Force	9 May 2000
The Hague Protocol - 1955	Signed	
	Adhered to	9 Feb 2000
	Entered into Force	9 May 2000
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 27		
	Succeeded to	9 May 1956
	Entered into Force	19 Jul 1949
The Hague Protocol - 1955	Signed	28 Sep 1955
	Adhered to	9 May 1956
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	27 Nov 1972
	Entered into Force	27 Nov 1972
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	20 Mar 1973
	Entered into Force	20 Mar 1973

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Adhered to	15 Nov 1932
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	
	Ratified	2 Oct 1998
	Entered into Force	31 Dec 1998
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 28		
	Succeeded to	23 Feb 1962
	Entered into Force	22 Nov 1943
The Hague Protocol - 1955	Signed	
	Adhered to	10 May 1978
	Entered into Force	8 Aug 1978
Guatemala City Protocol - 1971	Signed	
	Acceded to	19 May 2000
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	4 Aug 2000
	Entered into Force	2 Nov 2000
- No. 2	Signed	
	Acceded to	4 Aug 2000
	Entered into Force	2 Nov 2000
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	4 Aug 2000
	Entered into Force	2 November 2000
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Feb 1967
	Entered into Force	22 May 1967
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	23 Feb 1967
	Ratified	31 Mar 1969
	Entered into Force	31 Mar 1969
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 29		
	Succeeded to	12 May 1975
	Entered into Force	4 Oct 1966
The Hague Protocol - 1955	Signed	
	Adhered to	17 Oct 1975
	Entered into Force	15 Jan 1976
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	20 Oct 1975
	Entered into Force	18 Jan 1976
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **GENERAL AVIATION**

Application for the registration of an aircraft in Lesotho shall be made in writing to the director of Civil Aviation and shall include or be accompanied by such particulars and evidence relating to the aircraft and the ownership and the chartering thereof as he may require to enable him to determine whether the aircraft may properly be registered in Lesotho and to issue the certificate referred to in sub-regulation (8) of this regulation. In particular, the application shall include the proper description of the “General Classification of Aircraft” set forth in part A of schedule 1 to these regulations. (Air Navigation Regulation of 1980 Reg. 5(6))

### **AIR TRAFFIC CONTROL**

With the exception of one military airport, all airports in Lesotho are owned by the government and operated by the department of Civil Aviation.

Air traffic services (Aerodrome and approach/terminal) are only provided at Maseru/Moshoeshoe 1 International Airport by the Department of Civil Aviation. Air traffic services for the upper airspace in Lesotho are delegated to South Africa.

All navigation facilities (approach and en route) are provided and maintained by the department of Civil Aviation.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	2 May 1942
	Entered into Force	31 Jul 1942
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**LIBYAN ARAB JAMAHIRIYA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	16 May 1969
	Entered into Force	14 Aug 1969
The Hague Protocol - 1955	Signed	
	Adhered to	16 May 1969
	Entered into Force	14 Aug 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	22 May 1969
	Entered into Force	20 Aug 1969
Rome (Third Par ty) Convention - 1952	Signed	11 Aug 1954
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	3 Jul 1968
	Entered into Force	3 Jul 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	9 May 1934
	Entered into Force	7 Aug 1934
The Hague Protocol - 1955	Signed	28 Feb 1955
	Adhered to	3 Jan 1966
	Entered into Force	3 Apr 1966
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	24 Dec 1979
	Entered into Force	24 Dec 1979

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	21 Nov 1996
	Entered into Force	19 Feb 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
	Signed	
	Adhered to	9 Dec 1996
	Entered into Force	9 Mar 1997
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**MANDATORY INSURANCE REQUIREMENTS**

Air carriers licensed by Lithuania and foreign air carriers operating in Lithuania are obliged to carry both passenger liability and third party liability cover.

The minimum amount of cover for passenger liability is US\$20,433. With regard to third party liability there is no fixed minimum amount of cover.

The government is taking measures to bring Resolution ECAC/25-1 into force.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	7 Oct 1949
	Entered into Force	5 Jan 1950
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	13 Feb 1957
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	4 Dec 1972
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	23 Aug 1968
	Entered into Force	21 Nov 1968
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Adhered to	19 Feb 1957
	Entered into Force	4 Feb 1958
Montreal Convention	Signed	29 Feb 2000
See Annex N – Note 2	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	27 Apr 1972
	Ratified	18 Oct 1983
	Entered into Force	18 Oct 1983

MACEDONIA, Former Yugoslav Republic of

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 51	Signed	
	Succeeded to	1 Sep 1994
	Entered into Force	17 Sep 1991
The Hague Protocol - 1955	Signed	
	Succeeded to	1 Sep 1994
	Entered into Force	17 Sep 1991
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 9	Signed	
	Succeeded to	1 Sep 1994
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 9	Signed	
	Succeeded to	1 Sep 1994
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4 See Annex F – Note 8	Signed	
	Succeeded to	1 Sep 1994
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 13	Signed	
	Succeeded to	8 Oct 1997
	Entered into Force	17 Nov 1991
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	15 May 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

The Republic of Macedonia succeeded to the Warsaw Convention, the Hague Convention and MAPs 1, 2 & 4 in September 1994, and the Guadalajara Convention in 1997. In addition, the Republic of Macedonia acceded to the Montreal Convention on 15 May 2000.

**MANDATORY INSURANCE REQUIREMENTS**

With effect from 13 December 2000, insurance in line with the minima laid down in ECAC Resolution ECAC/25-1 is required.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 30		
	Succeeded to	27 Aug 1962
	Entered into Force	26 Jun 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 30		
	Succeeded to	27 Aug 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty – 1967	Signed	
	Acceded to	22 Aug 1968
	Entered into Force	22 Aug 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	27 Oct 1977
	Entered into Force	25 Jan 1978
The Hague Protocol - 1955	Signed	
	Adhered to	9 Jun 1971
	Entered into Force	7 Sep 1971
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	28 Oct 1977
	Entered into Force	25 Jan 1978
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II- NOTES ON AVIATION LIABILITY**

**LEGISLATION ETC.**

In 1981 the Malawi Department of Civil Aviation and Meteorological Services advised that International Air Carriage in Malawi was covered by the Carriage by Air Act 1970 and Carriage by Air (Amendment) Act 1977.

There was an Application of Provisions Order of 1976 which enabled certain provisions of the Warsaw Convention to be applied to domestic carriage by air.

The Malawi Department of Civil Aviation has confirmed that there are no minimum levels of insurance required by law.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 31		
	Succeeded to	16 Dec 1970
	Entered into Force	16 Sep 1963
The Hague Protocol – 1955	Signed	
See Annex A – Note 31		
	Adhered to	20 Sep 1974
	Entered into Force	19 Dec 1974
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	20 Feb 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **International Carriage**

International carriage is governed by the Carriage By Air Act 1974 which gives effect to the provisions of the Hague Protocol.

MAS is a party to the IATA Inter-carrier Agreement.

Provisions regarding the convention franchise are included within the Carriage By Air Act 1974 and the Carriage By Air (Ringgit Equivalent) Order 1978.

### **Internal and Other Non-Convention Carriage**

The Civil Aviation Regulation 1996 contains provisions regarding non-convention carriage.

### **General Aviation**

General aviation activities are governed by the Civil Aviation Act 1969 and the Civil Aviation Regulation 1996.

### **Third Party Liability**

Provisions regarding third party liability cover are contained within the Civil Aviation Act 1969 Part V 19.

### **Air Traffic Control**

Airfields, with certain exceptions, are owned by a private body – Malaysia Airport Berhad (MAB). The exceptions are: Butterworth (WMKB), Labuan (WBKL) and Kuantan (WMKD), which are managed by the military and Kerteh Airport (WMKE), which is managed by the National Petroleum (PETRONAS).

Air traffic control is provided by the Department of Civil Aviation, with the exception of WMKB Control Zone, Labuan Control Zone and Kuantan Control Zone where air traffic control is provided by the Air Force.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	13 Oct 1935
	Entered into Force	11 Jan 1996
The Hague Protocol - 1955	Signed	
	Adhered to	13 Oct 1935
	Entered into Force	11 Jan 1996
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	5 Sep 1995
	Entered into Force	4 Dec 1995
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

Maldives is in the initial stages of adopting a Statute relating to Civil Aviation. The regulations in force today can be found on the website of the Civil Aviation Department of the Maldives – [www.aviainfo.gov.mv](http://www.aviainfo.gov.mv) .

### **MINIMUM INSURANCE REQUIREMENTS**

#### **Passenger Liability**

Insurance coverage of at least US\$200,000 per seat is required.

#### **Third Party Liability**

For aircraft up to MTOW5,700kg, cover of US\$2,000,000 is required. For aircraft above this weight, the minimum is US\$2,000,000 plus US\$250 per kg.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	26 Jan 1961
	Entered into Force	26 Apr 1961
The Hague Protocol - 1955	Signed	16 Aug 1962
	Ratified	30 Dec 1963
	Entered into Force	29 Mar 1964
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	2 Feb 1999
	Entered into Force	3 May 1999
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	28 Dec 1961
	Entered into Force	28 Mar 1962
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	11 Jun 1968
	Entered into Force	11 Jun 1968
Space Liability Convention - 1972	Signed	4 Apr 1972
	Ratified	9 Jun 1972
	Entered into Force	9 Jun 1972

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 32		
	Succeeded to	19 Feb 1986
	Entered into Force	21 Sep 1964
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	5 May 2004
	Entered into Force	4 Jul 2004
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	13 Jan 1978
	Entered into Force	13 Jan 1978

**PART II – NOTES ON AVIATION LIABILITY**

**MINIMUM INSURANCE REQUIREMENTS**

The government of Malta requires insurance to be carried in line with ECAC Resolution ECAC/25-1.

## **MARSHALL ISLANDS, The Republic of the**

**Date Part 1 Entry Reviewed: September 2004**

### **PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

The Republic of the Marshall Islands appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	6 Aug 1962
	Entered into Force	4 Nov 1962
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	13 Apr 1978
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	29 Mar 1979
	Entered into Force	27 Jun 1979
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	23 Jul 1962
	Entered into Force	21 Oct 1962
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	17 Oct 1989
	Entered into Force	15 Jan 1990
The Hague Protocol - 1955	Signed	
	Adhered to	17 Oct 1989
	Entered into Force	15 Jan 1990
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	15 Oct 1990
	Entered into Force	13 Jan 1991
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty – 1967	Signed	
	Succeeded to	7 Apr 1969
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II- NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

Air Mauritius apply the Montreal Inter-Carrier Agreement (CAB 18900 ) limits of US\$75,000 including costs/US\$58,000 plus costs, to passengers travelling on routes operated as a joint venture with Air India such as Mauritius/Bombay.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	14 Feb 1933
	Entered into Force	15 May 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	24 May 1957
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	21 Jul 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	21 Dec 1983
	Ratified	18 May 1984
	Entered into Force	15 Feb 1996
- No. 2	Signed	21 Dec 1983
	Ratified	18 May 1984
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	16 May 1962
	Entered into Force	1 May 1964
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	20 Nov 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	31 Jan 1968
	Entered into Force	31 Jan 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	8 Apr 1974
	Entered into Force	8 Apr 1974

**MICRONESIA, Federated States of**

**Date Part 1 Entry Reviewed: September 2004**

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Micronesia appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	20 Mar 1997
	Entered into Force	19 Jun 1997
The Hague Protocol - 1955	Signed	
	Adhered to	20 Mar 1997
	Entered into Force	19 Jun 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	26 May 1997
	Entered into Force	24 Aug 1997
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	31 Oct 2000
	Entered into Force	29 Jan 2001
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

1.1 The provisions of the Warsaw Convention and other international legal instruments in the field of liability, to which Moldova is a party, are obligatory for air carriers. The constitution of Moldova provides advantage for international instruments over national legislation.

1.3 Air Moldova, Air Moldova International and Moldavian Airlines are party to the IATA Inter-carrier Agreement.

1.4 There is no special national regulation on the convention franc. For the purpose of conversion of the sums mentioned in the Warsaw Convention, Moldova refers to the latest official US price of gold.

### **GENERAL AVIATION**

In development.

### **THIRD PARTY LIABILITY**

The provisions of the Rome Convention are applicable, since the Republic of Moldova adhered to the Convention on 17 July 2000.

### **MANDATORY INSURANCE REQUIREMENTS**

Since there are no internal flights in Moldova, local air carriers are insured based on the requirements of the state or region into which they fly. However, insurance for local and foreign air operators must not be less than that established by the Conventions to which Moldova is a party.

In October 2001, the Civil Aviation Administration of Moldova advised that they were taking steps to increase liability limits in line with ECAC Resolution ECAC/25-1. They believed that these new requirements would be in force by the end of 2002.

### **AIR TRAFFIC CONTROL**

National and international aerodromes are publicly owned. The State enterprise "MoldATSA" is responsible for the provision of local air traffic services, upper air space and en route navigation facilities

### **TAX REGIMES**

Insurance and reinsurance services are exempt from VAT. Compensation sums are exempt from income tax.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	9 Apr 1979
	Entered into Force	8 Jul 1979
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	18 Aug 2004
	Entered into Force	17 Oct 2004
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	30 Apr 1962
	Entered into Force	29 Jul 1962
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	14 Sep 1972
	Entered into Force	14 Sep 1972

**PART II- NOTES ON AVIATION LIABILITY**

**CIVIL AVIATION LAW OF MONGOLIA**

In case of legal use, reference should be made to the Mongolian original text.

**CHAPTER I - GENERAL PROVISIONS**

1. Purpose of the Law
2. Legislation on Civil Aviation
3. Definitions
4. Scope of Application of the Law

**CHAPTER II -  
STATE REGULATION OF CIVIL AVIATION**

5. Powers of the State
6. Powers of the Government
7. Powers of the State Central Administrative Body In Charge of Civil Aviation matters
8. Civil Aviation Authority and Its Powers
9. Powers of the Inspector in Charge of Flight Safety
10. Ownership of Integrated Systems of Constructions, Buildings and Facilities Used for Air Traffic Services
11. Civil Aviation Regulations
12. Regulating Civil Aviation during the State of Emergency or War
13. Special Permissions for Engaging in Civil Aviation
14. Use of Foreign Language in Civil Aviation

**CHAPTER III - CIVIL AIRCRAFT**

15. Design, Modification and Alteration of Civil Aircraft
16. Registration of Aircraft
17. Aircrew and Passengers
18. Powers of Pilot-in Command.

**CHAPTER IV – AERODROME**

19. Establishment of an Aerodrome
20. Running of Works and Services within Safety Areas of
21. Markings at Aerodromes
22. Obstruction Lights and Markings on Buildings and Facilities

**CHAPTER V - FLIGHT OPERATIONS**

23. Performing Flights
24. Coordination of Air Traffic
25. Flights over Cities and Villages
26. Airspace Safety
27. Meteorological Information Service
28. Utilization of Public Communication Facilities
29. Assistance to Aircraft in Emergency

## **CHAPTER VI - INTERNATIONAL AIR SERVICES**

- 30. International Flight Permission and Insurance
- 31. International Air Route and Airport
- 32. Passing through Air Gates of the State Frontier of Mongolia
- 33. Recognition of Foreign Aircraft Documents

## **CHAPTER VII - AIR TRANSPORTATION**

- 34. Carriage of Passengers, Baggage, Cargo and Mail
- 35. Carriage of Dangerous Goods
- 36. Insurance of Passengers
- 37. Insurance of Aircrew
- 38. Liability Insurance of Air Carrier

## **CHAPTER VIII - CIVIL AVIATION SECURITY**

- 39. Civil Aviation Security
- 40. Security Checks for Passengers and Baggage

## **CHAPTER IX - AIR ACCIDENT INVESTIGATION**

- 41. Air Accident
- 42. Investigation of Air Accident
- 43. Powers of State Inspector in Charge of Air Accident Investigation

## **CHAPTER X - MISCELLANEOUS**

- 44. Liability for Violation of the Law

## **CHAPTER I - GENERAL PROVISIONS**

### **Article 1. Purpose of the Law**

1.1. The purpose of this law shall be to regulate flight operations performed by civil aircraft and matters related to the civil aviation security and flight safely within the airspace of Mongolia.

### **Article 2. Legislation on Civil Aviation**

2.1. The Civil Aviation legislation consists of the Constitution of Mongolia, this law and other acts of legislation enacted in conformity with them.

2.2. If an international agreement to which Mongolia is a party provides otherwise than this law, then the former shall prevail.

### **Article 3. Definitions**

3.1. Definitions used in this Act shall be interpreted as follows:

3.1.1. "air route" means a designated airspace path with identified width and height, for performing flights safely;

3.1.2. "air navigation" means complex activities which determine aircraft position and movement, and provide air traffic control services of aircraft;

3.1.3. "air gate" means a geographical position at which aircraft can enter or exit the state frontier through the specified air route;

3.1.4. "aircraft" means any machine that can derive support in the atmosphere from the reaction of the air other than the reactions of the air against the earth or water surface;

3.1.5. "pilot in-command" means the pilot who controls aircraft and is responsible for its operation and flight safety;

3.1.6. "aerodrome" means a defined area on land or water designated and equipped for the arrival, departure and surface movement of aircraft;

3.1.7. "aerodrome safety area" means a defined area on the ground or water, selected as a suitable area over which aircraft may perform safe climb and approach;

3.1.8. "dangerous goods" means articles or substances which are capable of posing significant risk to health, safety or property when transported by air;

3.1.9. "state aircraft" means an aircraft used in military, customs and police services;

3.1.10. "civil aircraft" means any kind of aircraft other than state aircraft;

3.1.11. "airspace of Mongolia" means air of the earth's atmosphere above the territory of Mongolia;

3.1.12. "flight" means in the case of a heavier-than-air aircraft, the operation of the aircraft from the moment at which the aircraft first moves to take-off until the moment at which it comes to rest after landing; and in case of a lighter-than-air aircraft, the operation of the aircraft from the moment when it becomes detached from the surface of the earth until the moment when it becomes again attached to the surface of the earth;

3.1.13. "flight safety" means a circumstance and ability to safely maintain flight operations and other aviation related activities without any harm to human health, life and property;

3.1.14. "Flight Mach Number" means the ratio of true air speed to the speed of sound;

3.1.15. "airworthiness" means the compliance of an aircraft, component parts thereof with conditions required for their safe operations after inspection, maintenance, repair and alteration;

3.1.16. "aviation" means activities of designing and manufacture of aircraft and aeronautical products, and operations thereby;

3.1.17. "aviation security" means measures intended to safeguard the aviation against actions of unlawful interference;

3.1.18. "airport" means complex area with aerodrome and facilities for air transportation;

3.1.19. "aviation document" means any license, permit, certificate or other documents issued by the Civil Aviation Authority with respect to activities (any person, aircraft, aerodrome, aeronautical product and aviation related service) which, under conformity with this law and procedures and regulations issued in conformity therewith relate to aviation;

3.1.20. "international flight" means flight performed on the approved international air route and passed through the air gates determined by the competent authority;

3.1.21. "investigation" means a process for the purpose of accident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and, when appropriate, drawing of safety recommendations;

3.1.22. "Chicago Convention" means the Convention on International Civil Aviation opened for signature at Chicago on 7 December 1944, to which Mongolia is a party since 7 September 1989.

#### **Article 4. Scope of Application of the Law**

4.1. This law shall regulate the following aviation related operations within the airspace of Mongolia:

4.1.1. all national civil aviation operations regardless of type and form of the ownership;

4.1.2. all civil aircraft located in the territory of Mongolia or operating within its airspace;

4.1.3. operations of Mongolian civil aircraft in the territory of foreign states, unless otherwise provided in laws of those States.

4.2. This law shall not apply to state aircraft operations, except air traffic services for them.

## **CHAPTER II STATE REGULATION OF CIVIL AVIATION**

#### **Article 5. Powers of the State Ih Hural**

5.1. The State Ih Hural shall exercise the following powers in relation to civil aviation:

5.1.1. to define state policies with regards to the development of civil aviation;

5.1.2. to approve legislation on civil aviation and control its implementation;

5.1.3. to take decisions on ratification or denunciation of the international aviation agreements;

5.1.4. other powers provided in law.

**Article 6. Powers of the Government**

6.1. The Government shall exercise the following powers in relation to civil aviation:

6.1.1. to organize implementation of state policies on the development of the civil aviation;

6.1.2. to appoint the Director General of the Civil Aviation Authority at suggestion of the Member of Government in charge of civil aviation and approve by-laws of the Civil Aviation Authority;

6.1.3. to establish air traffic service procedures for state aircraft;

6.1.4. to adopt National Civil Aviation Security Program;

6.1.5. to adopt rules of the meteorological services for civil aviation;

6.1.6. to approve by-laws of the State Air Accident Investigation Department and appoint the State Inspector-General.

**Article 7. Powers of the State Central Administrative Body In Charge of Civil Aviation matters**

7.1. The state central administrative body in charge of civil aviation matters shall exercise the following powers:

7.1.1. to coordinate and administer matters relating to civil aviation, elaborate and implement policies on development of the civil aviation sector;

7.1.2. to control and coordinate operations of aircraft to be used for the governmental special services;

7.1.3. to designate air routes of Mongolia, inaugurate and reserve routes for international flights;

7.1.4. to ensure flight safely within the scope of international agreements;

7.1.5. to coordinate operations of aircraft registered in Mongolia, grant and register civil aviation certificates and special permissions for engaging in civil aviation services;

7.1.6. to approve operational standards, rules and procedures for civil aviation and control implementation thereof,

7.1.7. to approve the organizational structure of the Civil Aviation Authority;

7.1.8. to approve Civil Aviation Regulations;

7.1.9. to approve procedures for granting special permissions for engaging in civil aviation services;

7.1.10. to approve the design of uniforms and rules of their use specified in Article 8.3 of this law.

7.2. The state central administrative body in charge of civil aviation matters may, from time to time, delegate to the Civil Aviation Authority its powers except those specified in Articles 7.1.7, 7.1.8, 7.1.9 and 7.1.10 of this law.

## **Article 8. Civil Aviation Authority and Its Powers**

8.1. The Civil Aviation Authority is a government executive agency coordinating and regulating civil aviation matters in Mongolia.

8.2. The activities of the Civil Aviation Authority shall be directed to ensuring appropriate level of civil aviation security and flight safely.

8.3. The officials and inspectors of the Civil Aviation Authority in charge of safety surveillance and supervision shall use uniforms.

8.4. The Civil Aviation Authority shall exercise the following powers:

8.4.1. to set up unified standardization system of civil aviation safety and security, and . control implementation thereof;

8.4.2. to conduct professional investigation and review of violations of civil aviation regulations and take preventive actions against them;

8.4.3. to resolve matters relating to air navigation paid services;

8.4.4. to collect, publish, exchange and distribute aviation related information, and collaborate with others in these matters;

8.4.5. to dispose incomes derived from civil aviation services for the purpose of ensuring flight safely within the limits of the legislation;

8.4.6. to approve organizational structure of its subordinate units and organizations, supervise the structure of other civil aviation organizations;

8.4.7. other powers conferred to it by law.

8.5. The Civil Aviation Authority may delegate to employee of the Civil Aviation Authority or an appointed inspector certain part of its powers relating to flight safety on the basis of an agreement. Functions and responsibilities of the employee and inspector shall be specified in the agreement.

8.6. The Civil Aviation Authority shall have its own emblem.

## **Article 9. Powers of the Inspector in Charge of Flight Safety**

9.1. For the purpose of accomplishing objectives of the Civil Aviation Authority, the inspector in charge of flight safety, shall exercise the following rights:

9.1.1. to have an unrestricted access to civil aviation related areas for the purpose of conducting safety inspections;

9.1.2. to demand copies of documents related to civil aviation;

9.1.3. to detain an aircraft in case of necessity;

9.1.4. to suspend, when necessary, civil aviation documents of any person.

## **Article 10. Ownership of Integrated Systems of Constructions, Buildings and Facilities Used for Air Traffic Services**

10.1. Integrated constructions, buildings and facilities designated for air traffic services shall be in the state ownership.

## **Article 11. Civil Aviation Regulations**

11.1. In regulating civil aviation related services in conformity with international conventions and agreements to which Mongolia is a party the Civil Aviation Regulations shall apply.

11.2. The following relations shall be regulated by Civil Aviation Regulations:

11.2.1. registration of aircraft in Mongolia;

11.2.2. issuing airworthiness certificates;

11.2.3. conducting inspections at aircraft and their parts, maintenance and repair stations, other civil aviation related services and access there;

11.2.4. contracting works in civil aviation sector, cooperation with relevant organizations for the purposes of ensuring civil aviation safety, granting aircraft inspection approvals;

11.2.5. entry by aircraft of the state frontier of Mongolia, landing on or taking-off from the specified aerodrome and conditions of flight operations and air traffic control within the airspace of Mongolia;

11.2.6. carriage of passengers and goods by air and use of aircraft for other purposes;

11.2.7. minimizing possible adverse effect in the process of use of air navigation apparatus, installation and utilization of equipment, lights and signs for the purposes of preventing aircraft and air navigation from such adverse effect and hazards;

11.2.8. securing safety, efficiency and regularity of air navigation and safety of aircraft, persons and property carried therein and prevention of air navigation from possible hazards;

- 11.2.9. issuing certificates to aviation meteorological service organization;
- 11.2.10. use of signals and communications to aircraft;
- 11.2.11. flight operations within restricted areas of airspace Mongolia;
- 11.2.12. approval of design of all types of civil aviation certificates, licenses and aviation related documents, issuing, suspending, cancellation and keeping thereof;
- 11.2.13. determining duty time limitations for the employees engaged in flight operations;
- 11.2.14. establishing types and procedures for civil aviation paid services and disposing income therefrom;
- 11.2.15. setting aircraft noise restriction within the airspace of Mongolia.

### **Article 12 Regulating Civil Aviation during the State of Emergency or War**

12.1. In case of declaring state of emergency or war, occurrence of natural disaster or other unforeseen dangers in the territory of Mongolia, civil aviation shall be regulated by the relevant legislation.

### **Article 13. Special Permissions for Engaging in Civil Aviation Services**

13.1. A business entity or individual wishing to engage in the following civil aviation related services shall obtain special permissions:

- 13.1.1. commercial air operations;
- 13.1.2. civil aviation training,
- 13.1.3. construction and operation of aerodromes and airports;
- 13.1.4. air navigation related services;
- 13.1.5. aircraft repair and maintenance;
- 13.1.6. aviation lubricant, fuel and oil supply in the territory of Mongolia;
- 13.1.7. professional services specified in the Annex I to the Chicago Convention.

13.2. The special permissions specified in Article 13.1 of this law shall be granted by the Civil Aviation Authority.

### **Article 14. Use of Foreign Language in Civil Aviation**

14.1. Technological documents or materials to be used in civil aviation may be drawn up and used in the English or Russian languages.

14.2. "Ground/Air" radio communication with international flights shall be performed in the English language.

### **CHAPTER III CIVIL AIRCRAFT**

#### **Article 15. Design, Modification and Alteration of Civil Aircraft**

15.1. Design, modification or alteration of civil aircraft shall be subject to authorization by the Civil Aviation Authority.

15.2. A foreign-manufactured aircraft can be used in Mongolia for civil aviation purposes upon recognition of such aircraft type by the Civil Aviation Authority.

#### **Article 16. Registration of Aircraft**

16.1. Unless an individual, business entity or an organization has registered civil aircraft in its ownership in a foreign state, the aircraft shall be registered in Mongolia and obtain a national identification mark and a certificate of registration.

16.2. In case of non-eligibility of civil aircraft for operations or transfer it to a foreign state, it shall be removed from the state register.

16.3. Including in and removal of a civil aircraft from the state registry shall be performed by the Civil Aviation Authority.

16.4. Mongolian-registered aircraft shall be insured.

#### **Article 17. Aircrew and Passengers**

17.1. Aircrew of civil aircraft shall consist of flight crew and other members of the aircrew.

17.2. Mongolian civil aircraft shall have flight crew as determined by the Civil Aviation Authority.

17.3. Foreign citizens may be flight crewmembers in Mongolian civil aircraft.

17.4. Flight attendants and other persons involved in the flight operations shall be deemed as aircrew, members other than flight crew.

17.5. Flight operations without complete flight crew shall be prohibited.

17.6. The persons on board other than those specified in Article 17.1 of this law during flight shall be deemed as passengers of the civil aircraft concerned.

#### **Article 18. Powers of Pilot-in Command**

18.1. Aircrew and passengers on board shall be obliged to obey the duties given by the Pilot-in command with the purpose of securing flight safely, protecting lives and property of passengers.

18.2. Pilot-in command of civil aircraft shall exercise the following powers during the flight:

18.2.1. to ensure safety of the aircraft and persons carried;

18.2.2. to take final decision concerning the origination, continuance and rejection of the flight and forced landing;

18.2.3. in case of obvious threat to flight safety, for the purposes of saving lives of the persons carried, to reserve the right to take decision deviating from the flight plan and instructions provided by the Air Traffic Controller;

18.2.4. to maintain order in the aircraft during the flight, and take all possible measures to suppress actions of persons who jeopardize flight safety;

18.2.5. in case of impossibility of continuing flight normally, to report immediately the situation to the Air Traffic Controller.

18.3. No Pilot-in-command may leave the aircraft in case of danger to the aircraft until he has taken all possible measures to save lives of the passengers on the board.

## **CHAPTER IV AERODROME**

### **Article 19. Establishment of an Aerodrome**

19.1. Procedures for establishment, operation of aerodrome and suspension of its services, as well for including in and removal it from the state registry, aerodrome certification and operation of provisional aerodrome shall be regulated by the Civil Aviation Regulations.

19.2. It shall be prohibited to operate an aerodrome for regular air services without state registration.

### **Article 20. Running of Works and Services within Safety Areas of Aerodromes**

20.1. For the purpose of securing flight safety, the Civil Aviation Authority shall determine the aerodrome safety areas in consultation with the Governor of the corresponding district or soum.

20.2. Authorization for construction of buildings, breeding of livestock or domestic animals or acclimatization of animals and any other actions in the vicinity of aerodrome safety area shall be subject to agreement in advance between owner of the aerodrome and the Governor of corresponding district or soum as provided in the Civil Aviation Regulations.

### **Article 21. Markings at Aerodromes**

21.1. Visual aids and markings for safety of taking off, landing and taxiing shall be installed at aerodrome and within the safety areas of aerodromes as provided for in the Civil Aviation Regulations.

21.2. Installation of lights or markings similar to the items specified in Article 21.1 of this law

within the safety areas of aerodromes shall be prohibited.

## **Article 22 Obstruction Lights and Markings on Buildings and Facilities**

22.1. For the purpose of securing flight safety, owners and users of buildings and facilities shall install aeronautical obstruction lights and markings on the constructions owned by them as provided for in the Civil Aviation Regulations.

## **CHAPTER V FLIGHT OPERATIONS**

### **Article 23. Performing Flights**

23.1. No flight may be performed until:

23.1.1. the civil aircraft and its aircrew have made pre-flight preparations and obtained permission to flight as provided for in the Civil Aviation Regulations;

23.1.2. an authorized flight crew to perform flight by the respective type of aircraft is completed;

23.1.3. the aircraft to perform flight has obtained national registration, certificates of airworthiness, permission for radio station and had aircraft logbook and other required documents;

23.2. Provisions of Articles 23.1.2, 23.1.3 of this law shall not apply to operations of the ultra-light aircraft, balloons and models of aircraft.

### **Article 24. Coordination of Air Traffic**

24.1. The Air Traffic Service Organization shall perform air traffic control within the airspace of Mongolia.

24.2. Safety separation of flights performed within the airspace of Mongolia, air routes, their width and height shall be determined by the Civil Aviation Regulations.

24.3. Air routes, through which flights are performed within the airspace of Mongolia, shall be equipped with communication and navigation systems at the level as to ensure flight safety.

24.4. Operator of an aircraft performing flight through the state frontier of Mongolia shall in advance notify the air traffic services organization and obtain flight permission.

24.5. An aircraft which failed to comply with procedure for flight operations within the airspace of Mongolia and for overflight through the entry or exit points of the state frontier, as well as an aircraft performing flight through the state frontier without permission from the competent authority, shall be considered as an aircraft committing breach.

24.6. The Air Traffic Service Organization shall report the aircraft specified in Article 24.5 of this law to the competent authority in charge of ensuring safety and security within the airspace of Mongolia and demand from the flight crew to immediately stop the breach or to land in the indicated area.

## **Article 25. Flights over Cities and Villages**

25.1. Flights over cities or villages shall be performed at the altitude from which an aircraft can land outside of the territory of the cities or villages or at the nearest aerodrome, in the emergency case.

25.2. Flights over cities or villages for the training, testing and aerobatics or air show purposes shall be prohibited.

25.3. Flights by civil aircraft over cities or villages at speeds equal to or in excess of Flight Mach 1 shall be prohibited.

## **Article 26. Airspace Safety**

26.1. Artillery shooting, explosions, rocket launching and any other operations carried out within the airspace of Mongolia, which may threaten flight safety, shall be required to obtain permissions from Civil Aviation Authority.

26.2. Article 26.1 shall not apply to missile or rocket launching and artillery shooting carried out for defense purposes.

## **Article 27. Meteorological Information Service**

27.1. Civil aviation shall be supplied with regular meteorological information services in accordance with rules approved by the Government of Mongolia.

## **Article 28. Utilization of Public Communication Facilities**

28.1. In case of failure in communication system used for the air traffic services, an urgent notice related to flight safety and air traffic control services shall come first and be transmitted by all means of public communication without delay.

## **Article 29. Assistance to Aircraft in Emergency**

29.1. Search and rescue services for the aircraft in danger or emergency shall be arranged by the Civil Aviation Authority in cooperation with the aircraft operator and civil defense services, with the use of specially trained staff, forces and technical devices.

29.2. Local administration, business entities and individuals shall be obliged to immediately report information known to them concerning the aircraft in emergency to the relevant authorities, save the humans' lives, render medical and other necessary aid, as well as take the aircraft and documents therein under protection.

29.3. An aircraft shall be equipped with alerting equipment in accordance with the list approved by Civil Aviation Authority in order to immediately inform the aircrew and passengers of the situation in case of danger to the aircraft.

29.4. Costs related to the search and rescue of the aircraft in emergency and elimination of consequences of an incident or accident may be reimbursed from the operator of the aircraft concerned.

29.5. If a Mongolian registered aircraft faces emergency situation while performing flight within the territory of a foreign state, search and rescue for such aircraft shall be carried out in accordance with laws or regulations in force in the territory of that state and commonly recognized international principles and norms.

## **CHAPTER VI INTERNATIONAL AIR SERVICES**

### **Article 30. International Flight Permission and Insurance**

30.1. International flights performed by Mongolian and foreign aircraft shall be subject to authorization from Civil Aviation Authority.

30.2. Foreign aircraft operating within the airspace of Mongolia shall be insured with guarantee of recovering possible losses, which may be caused to a third party.

30.3. Foreign civil aviation organizations and citizens shall in advance notify to the Civil Aviation Authority the national identification mark of the aircraft intending to perform international flights within the airspace of Mongolia and other information related to flight operations.

### **Article 31. International Air Route and Airport**

31.1. Foreign aircraft shall perform flights within the airspace of Mongolia on the international air routes designated by the competent organization specified in Article 7 of this law.

31.2. The Civil Aviation Authority shall approve the list of air routes and airports serving international flights and publish their operational data in the Aeronautical Information Publication.

31.3. Immigration, customs, health and quarantine services shall be located at the international airports.

31.4. Cooperation between organizations engaged in civil aviation services and those specified in Article 31.3 of this law shall be regulated by mutual agreements.

### **Article 32. Passing through Air Gates of the State Frontier of Mongolia**

32.1. Every aircraft intending to enter and exit through air gate of the Mongolian state frontier shall obtain in advance permission to pass through the state frontier from the Air Traffic Service Organization.

### **Article 33. Recognition of Foreign Aircraft Documents**

33.1. Foreign aircraft documents shall be recognized as valid within the territory of Mongolia, provided they comply with the provisions of international conventions and agreements.

## CHAPTER VII AIR TRANSPORTATION

### **Article 34. Carriage of Passengers, Baggage, Cargo and Mail**

34.1. Air carriers shall comply with the provisions of ordinary rules for air transportation.

34.2. Carriage of mail by air shall be regulated by an agreement between air carrier and the organizations in charge of postal and communication services.

### **Article 35. Carriage of Dangerous Goods**

35.1. Carriage of dangerous goods shall be carried out in accordance with laws, international conventions to which Mongolia is a party, and procedures approved by the Civil Aviation Authority.

### **Article 36. Insurance of Passengers**

36.1. Passengers of civil aircraft shall be obliged to insure their lives.

### **Article 37. Insurance of Aircrew**

37.1. The business entity or organization, which employs the aircrew members, shall be obliged to insure their lives and health while on flight duty.

### **Article 38. Liability Insurance of Air Carrier**

38.1. Air carrier shall be obliged to involve in liability insurance for the purposes of compensation in case of any loss or damage caused to a third party, passengers' lives and health as well as missing or damaged baggage, cargo or mail.

## CHAPTER VIII CIVIL AVIATION SECURITY

### **Article 39. Civil Aviation Security**

39.1. The Civil Aviation Authority shall have a national civil aviation security program for ensuring flight safely.

39.2. Domestic and international air carriers and service organizations shall take all necessary measures to prevent from and suppress unlawful interference with civil aviation operations as provided in the legislation of Mongolia.

### **Article 40. Security Checks for Passengers and Baggage**

40.1. In the interests of ensuring flight safety, protecting lives and health of passengers and aircrew, the operators or service organizations shall perform security checks for the aircrew members, passengers and their carry-on items in accordance with the procedure approved by the state administrative central body in charge of civil aviation matters.

40.2. If a passenger refuses to undergo security check, the contract of carriage by air shall be canceled.

## **CHAPTER IX AIR ACCIDENT INVESTIGATION**

### **Article 41. Air Accident**

41.1. The term "air accident" shall be interpreted and applied as specified in Annex 13 to the Chicago Convention.

### **Article 42. Investigation of Air Accident**

42.1. The Air Accident Investigation Department shall conduct investigation, classification and keep the record of the matters of preliminary conditions to the air accident.

42.2. The Air Accident Investigation Department shall be headed by the State Inspector-General appointed by the Government of Mongolia.

42.3. The State Inspector-General shall establish an unrestricted control over the area of the air accident occurring in the territory of Mongolia.

42.4. The State Inspector-General may involve, when he deems necessary, national and foreign experts in the investigation and determining causes of the air accident.

42.5. When an accident occurs in the territory of Mongolia, local administration, police and armed forces shall comply with the provision of Article 29 of this law and render timely assistance in investigation operations to the Air Accident Investigation department where necessary.

42.6. In case of an accident occurring abroad, in which a Mongolian registered aircraft is involved, the investigation shall be conducted in accordance with the provisions of international laws and agreements, and the Air Accident Investigation Department shall carry out the investigation in cooperation with the Civil Aviation Authority on behalf of Mongolia.

### **Article 43. Powers of State Inspector in Charge of Air Accident Investigation L.)**

43.1. The State Inspector in charge of the air accident investigation shall be appointed and released by the Member of Government in charge of civil aviation matters at suggestion of the State Inspector-General.

43.2. The State Inspector shall exercise the following powers:

43.2.1. to accurately determine causes of the air accident;

43.2.2. to carry out the activities specified in the By-laws of the Air Accident Investigation Department;

43.2.3. to bear responsibility for his decisions and conclusions;

43.2.4. in the interests of preventing from possible accidents, to exercise effective control over implementation of this law, other regulations and procedures issued in conformity therewith and submit matters to the relevant law-enforcing authorities;

43.2.5. other powers conferred to him by law.

43.3. The State Inspector in charge of the air accident investigation shall exercise the following rights:

43.3.1. to have unhampered access to the area of the accident, determine the restricted zone, and submit to the competent authority the matter concerning taking the area under protection;

43.3.2. to have an unrestricted access to all objects, buildings, and facilities related to civil aviation while on duty;

43.3.3. to demand from relevant persons to produce information, survey or reference materials and any other documents essential for the investigation;

43.3.4. unless the circumstances specified in Article 28 of this law occur, use the communication facilities at first when necessary;

43.3.5. to use badge and be supplied with labour-protection uniform and other essential items for working in hard conditions;

43.3.6. other rights conferred to him by law.

## **CHAPTER X MISCELLANEOUS**

### **Article 44. Liability for Violation of the Law**

44.1. If any breach of the legislation on civil aviation in the following way does not constitute grounds for criminal liability, the judge or the State Inspector shall impose the following penalties on the person concerned:

44.1.1. an individual engaged in any civil aviation related services without relevant aviation documents or special permits, shall be liable to a fine of 50000 togrogs, an official of 60000 togrogs, and a business entity or an organization of 150000-250000 togrogs, and the illegally gained income shall be confiscated;

44.1.2. person authorized under this law and other legislation who fails to perform flight safety inspection as required by applicable procedures, shall be liable to a fine of 45000-50000 togrogs and his right to inspect shall be suspended for a period up to one year;

44.1.3. an individual who forges documents for the purposes of obtaining special permits for engaging in civil aviation related services shall be liable to a fine of 40000-50000 togrogs, an official of 50000-60000 togrogs, and a business entity or an organization of 150000-200000 togrogs;

44.1.4. an individual who commits breach of regulations and procedures applicable to the civil

aviation shall be liable to a fine of 40000-50000 togrogs, an official of 50000-60000 togrogs and a business entity or an organization of 150000-200000 togrogs;

44.1.5. pilot-in command who, without reasonable excuse, fails to report an in-flight emergency situation as specified in Article 18.2.5 of this law shall be liable to a fine of 50000-60000 togrogs and his right to hold aviation documents shall be suspended for a period of up to one year;

44.1.6. person who illegally enters into restricted area of civil aviation related operations shall be liable to a fine up to 15000 togrogs.

44.2. The fines specified in Articles 44.1.1, 44.1.2, 44.1.4, and 44.1.5 of this law shall be charged on per violation and per day basis.

R. GONCHIGDORJ CHAIRMAN OF THE STATE IH HURAL

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	5 Jan 1958
	Entered into Force	5 Apr 1958
The Hague Protocol - 1955	Signed	31 May 1963
	Adhered to	17 Nov 1975
	Entered into Force	15 Feb 1976
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	18 Oct 1984
	Not Ratified	
	Entered into Force	
- No. 2	Signed	18 Oct 1984
	Not Ratified	
	Entered into Force	
- No. 3	Signed	
	Not Ratified	
-No. 4	Signed	18 Oct 1984
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	7 Nov 1975
	Entered into Force	5 Feb 1976
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	31 Mar 1964
	Entered into Force	29 Jun 1964
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	21 Dec 1967
	Entered into Force	21 Dec 1967
Space Liability Convention - 1972	Signed	4 Apr 1972
	Ratified	15 Mar 1983
	Entered into Force	15 Mar 1983

**PART II – NOTES ON AVIATION LIABILITY**

**MINIMUM INSURANCE REQUIREMENTS**

**Passenger Liability**

Minimum insurance cover of 250,000 SDRs is required.

**Third Party Liability**

Insurance cover as detailed below is required:

<b>MTOW</b>	<b>Amount of Cover Required</b>
<2,000kg	300,000 SDR
<6,000kg	300,000 SDR
<30,000kg	1,000,000 SDR
>30,000kg	2,500,000 SDR

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 33		
	Succeeded to	2 Jan 1952
	Entered into Force	4 Jan 1948
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	22 May 1967
	Ratified	18 Mar 1970
	Entered into Force	18 Mar 1970
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	27 Sep 2001
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

Namibia signed the Montreal Convention on 28 May 1999. On 7 March 2001, the National Assembly of the Republic of Namibia agreed to ratify the Convention. The Namibian Ministry of Foreign Affairs, Information and Broadcasting is in the process of depositing this ratification with ICAO.

Until such time as the Montreal Convention comes into force, the liabilities of Namibian Airlines will be dealt with under the Warsaw Convention as amended.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 34		
	Succeeded to	16 Nov 1970
	Entered into Force	31 Jan 1968
The Hague Protocol – 1955	Signed	
See Annex A – Note 34		
	Succeeded to	17 Nov 1970
	Entered into Force	31 Jan 1968
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Acceded to	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	12 Feb 1966
	Entered into Force	13 May 1966
The Hague Protocol - 1955	Signed	
	Adhered to	12 Feb 1966
	Entered into Force	13 May 1966
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	3 Feb 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

**NETHERLANDS, Kingdom of the**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 35	Signed	12 Oct 1929
	Ratified to	1 Jul 1933
	Entered into Force	29 Sep 1933
The Hague Protocol – 1955 See Annex A – Note 35	Signed	28 Sep 1955
	Ratified	21 Sep 1960
	Entered into Force	1 Aug 1963
Guatemala City Protocol – 1971 See Annex B – Note 1	Signed	10 Jun 1982
	Ratified	7 Jan 1983
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 5	Signed	19 May 1982
	Ratified	7 Jan 1983
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 5	Signed	19 May 1982
	Ratified	7 Jan 1983
	Entered into Force	15 Feb 1996
- No. 3 See Annex E – Note 2	Signed	19 May 1982
	Ratified	7 Jan 1983
-No. 4 See Annex F – Note 4	Signed	19 May 1982
	Ratified	7 Jan 1983
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 8	Signed	18 Sep 1961
	Ratified	25 Feb 1964
	Entered into Force	25 May 1964
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention See Annex N – Note 14	Signed	30 Dec 1999
	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty – 1967	Signed	10 Feb 1967
	Ratified	10 Oct 1969
	Entered into Force	10 Oct 1969
Space Liability Convention – 1972	Signed	
	Acceded to	17 Feb 1981
	Entered into Force	17 Feb 1981

## PART II - NOTES ON AVIATION LIABILITY

### INTERNATIONAL AND INTERNAL CARRIAGE

#### Sources of Law

The Netherlands have incorporated the provisions of the Warsaw Convention in the Air Transport Act ("ATA") of 10 September 1936. Amendments corresponding to the provisions of The Hague Protocol were made by Act of 28 July 1960, which entered into force on the same day as The Hague Protocol entered into force in the Netherlands.

The Act on Conversion of Monetary Units expressed in Gold of 15 May 1982 provides that the Poincaré Francs referred to in the Warsaw Convention, and Article 30(6) ATA are valued at 1/15 SDR. The SDR is converted to Netherlands currency in accordance with the valuation method applied by the International Monetary Fund for its own transactions.

Apart from the enactment referred to above, relevant provisions are also to be found in the Civil Code ("CC") and the Commercial Code ("ComC").

#### Scope of the Air Transport Act

The Warsaw Convention is a self-executing Convention (cf Art. 93 and 94 of the Netherlands Constitution). Article 94 of the Constitution provides that statutory provisions in force within the Netherlands are not applicable to the extent that they are incompatible with, or conflict with the self-executing provisions of Conventions or international agreements to which the Netherlands is a party. Accordingly, the ATA supplements the Warsaw Convention to the effect that it is applicable to all air transportation, including solely inland transportation and transportation to or from a state, which is not a party to the Warsaw Convention.

The ATA is, except for the provisions in Article 39, not applicable to gratuitous transportations by air, which is not performed by an air transportation enterprise. Also excluded is carriage of mail and parcel post, as well as carriage by military, customs and police aircraft on government orders (Art. 2(1) ATA). The ATA may be applicable to purely recreational flights. Article 39 ATA provides that in cases of free transportation not performed by a professional carrier, the person performing the transportation is liable for any injury or damage if it is proven that such carrier or his agents had not taken all necessary precautions to prevent the damage. In case of contributory negligence by the person who suffered the loss or damage, the Court may set aside or reduce the carrier's liability. The limitations of liability (Art. 30, 34 and 34a ATA) are applied correspondingly.

In case of carriage performed by successive air carriers and combined transportation, performed partly by air and partly by another mode of transportation, the ATA provisions do not differ from the terms of the Warsaw Convention.

#### Document of Carriage

In respect of the carriage of a passenger a ticket shall be delivered. The ATA does not state any mandatory particulars which the ticket should contain, but the other provisions in regard to passenger tickets (Art. 5 ATA) are similar to those of the Warsaw Convention.

Similar provisions apply to baggage checks to be delivered in respect of registered baggage (Art. 6 ATA). The Articles 7 through 23 ATA deal with the issue of Air Waybills ("AWB") and the carriage of goods. There are no mandatory particulars as to the contents of the AWB. As in the Warsaw Convention, the consignor is required to make out the AWB, is responsible for the correctness of the

particulars and statements relating to the goods inserted in the AWB, and is liable for damages incurred by the carrier or others by reason of irregularity, incorrectness or incompleteness of data furnished by him. The ATA also contains provisions on storage and sale of goods, matters on which the Warsaw Convention gives no decisive answer.

### **Liability of the Carrier**

The carrier is liable for damage sustained in the event of wounding of, or any other bodily injury suffered by a passenger, if the accident which caused the damage was connected to the transportation by air and took place on board of the aircraft or in the operations of embarking or disembarking (Art. 24(1) ATA). Article 17 of the Warsaw Convention does not contain the condition that in case of an accident there must be a causal relationship with the transportation by air. If the injury causes death, only the spouse, children and parents of the deceased have a claim for damages, provided they were dependant upon the deceased (Art. 24(2) ATA).

With respect to declared baggage or goods, the carrier is liable for damage sustained in the event of destruction, loss or damage to the goods, provided that the occurrence which caused the damage took place during the transportation by air, i.e. whilst the baggage or goods are in the carrier's charge (Art. 25 ATA). Unless otherwise agreed, the carrier is liable for damage occasioned by delay (Art. 28 ATA). In the Warsaw Convention Article 29 is mandatory law, by Article 28 of ATA leaves it to the discretion of the parties whether or not to effect an alternative.

The carrier is not liable if it proves that it and its servants have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures. Contributory negligence of the injured person can exonerate the carrier wholly or partly from its liability (Art. 29 ATA).

Except for the provision in Article 28, any provision tending to relieve the carrier of any liability, or to fix a lower limit of liability, than that which is laid down in the ATA is null and void (Art. 32 ATA). The Supreme Court decided in *Affretair-v-VOB* (HR 12 February 1982, NJ 1982, 589) that a contractual provision holding that the carrier should receive a written notice within 120 days from the date of handing over the AWB, is only void to the extent that such provision would lead to the contractual term terminating earlier than the Convention (or ATA) term.

### **Limitation of Liability**

Article 30 ATA provides for the limitations of liability equivalent to the limitations under the Warsaw Convention as amended by The Hague Protocol. The limits of liability specified in Article 30 do not apply to operators domiciled in EC member states, if their operations are conducted pursuant to an Operating License based on an Air Operator Certificate (cf. EC Regulation 2027/97 w.e.f. 17/10/98). Furthermore, the limits of liability are not applicable if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage could probably result (Art. 34 ATA; this Article and Art. 34a ATA are codifications of the Art. 25 and 25A of the Amended Warsaw Convention).

The Supreme Court decided in *Insurance Company of North America-v-KLM* (HR 6 January 1978, NJ 1978, 450) that the limits of liability referred to in Article 25 of the Warsaw Convention (Art. 34 ATA), include the declared sum. Hence, in a case where the claimant can establish wilful misconduct, a declared amount of value, or for that matter any contractual limitation, cannot limit liability of the carrier.

### **Damage and Compensation**

In the event of personal injury, compensation can be awarded for actual loss and damage, i.e. loss of income, medical costs, costs of rehabilitation, transportation, household assistance, tax disadvantages, reasonable costs of determination of liability and damage, reasonable costs for legal advice out of

court, etc. In general the courts are fairly liberal in awarding such compensation for personal injury.

In personal injury cases, damages for pain and suffering can only be awarded to the injured person (Art. 6:106 jo 6:107). The awards are moderate. In severe cases amounts of up to DFI 200,000 have been granted. The amount depends on, amongst other factors, the type and severity of the injury, duration and age, outward consequences, danger for life and social, labour and disability factors. In general, the amounts are tending to rise.

In wrongful death cases, only loss of support for the dependants mentioned in Article 24(2) ATA is to be compensated (for children, usually up to their 18<sup>th</sup> year, and at most, to the date of death of the claimant, or to the presumed date of decease of the provider as calculated from life-tables). Damages due to the spouse, children and parents are limited to compensation for loss of support and do not include any amounts for pain and suffering or for loss of consortium. Damages for loss of support are only recoverable insofar as the claimant is in need of support, having regard to all circumstances, which includes his financial position.

Accordingly, all benefits are taken into account, irrespective of whether or not they arise as a consequence of the wrongful death.

Under Netherlands law, payments under Social Security Schemes or tender indemnity insurances which provide for compensation for any part of the damage, are taken into consideration when determining the amount of compensation for damage, but for fixed amounts (e.g. accident insurance) is not deducted from the damage recoverable from the carrier by virtue of Article 6:107 (cf Art. 24(1) ATA). In case of wrongful death, however, such fixed amount is deducted. In general, in personal injury cases other benefits and savings will only be deducted from compensation if they can be considered as caused directly by the accident.

With respect to goods and baggage, the compensation payable by the carrier for total or partial loss shall be calculated on the basis of the value that goods of the same kind and quality had at the place of destination at the time when the goods should have been delivered there, deducting the saving in costs and freight due to non-delivery (Art. 26 ATA). In the event of damage, the compensation shall be the amount arrived at after deducting the value of the damaged goods in their damaged condition from the value ex Article 26 and thereafter deducting from the difference the savings in costs and freight due to the damage (Art. 27 ATA).

### **Claims and Claimants**

Article 35 ATA contains the provisions of Article 26 of the Warsaw Convention regarding clear receipts and the complaint procedure. In the *Affretair-v-vVOB* decision the Supreme Court ruled that the word "damage" in Article 26(2) of the Convention includes partial loss (HR 12 February 1982, NJ 1982, 589). Claims for damages must be lodged within two years from the date of arrival of the aircraft at its destination or, from the date on which it ought to have arrived, or from the date on which the transportation stopped (Art. 36 ATA).

With regard to personal injury, only the injured person is entitled to claim (Art. 24(1) ATA, Art. 6:107 CC). Other persons who incurred damage by reason of the injury (e.g. spouse and children who lost support of their husband/father or employers) have no right of action. An exemption is made for reasonable costs made by other persons for the benefit of the injured. Such costs will be compensated only if those are not made pursuant any insurance and only if the injured would have been compensated for those costs if he or she had made them him/herself. With regard to the death of a passenger, only the spouse, children and parents, who were supported by the deceased, are entitled to compensation for loss of support. Other persons – such as other relatives, an employer, a business partner – are not entitled to compensation, even if they have suffered actual damage. Compensation for damages to baggage or goods can be claimed by the estate of the deceased.

Article 284 ComC provides that the insurer is subrogated to the rights of the insured by virtue of payment by the insurer under the insurance contract. With respect to fixed amount insurance payments, no subrogation takes place. Social security agencies have no right of recourse, except for express statutory provisions. Such provisions have newly been implemented in several social security acts, which actually means a substantial expansion of recourse possibilities, and can be found for instance in the Sickness Act, the Disability Act, and the Sick Fund Act. Private employers who are legally bound to pay their employees during sickness have a right of recourse based on the Civil Code. The actual recourse is, however, limited to the amount for which the carrier would be liable had there been no such social insurance payment, reduced by the amount which the carrier is in fact liable to pay to the injured passenger (the so-called "civil ceiling"). Most social insurance schemes do not cover public servants. Government bodies bear these costs themselves. Pursuant to the Act on Recourse for Accidents to Public Servants, the government has a direct right of recourse for such costs. All these rights of recourse of social insurance agencies and the government are independent rights based on statutory provisions. The Social insurance agencies are therefore not bound by the outcome of legal proceedings between the passenger and a carrier.

### **Insurance**

According to EC Regulation 2407/92 in respect of Operating Licences, implemented in the Aviation Act (Art. 16), a liability insurance for passengers, baggage, cargo, mail and third parties is compulsory for carriers operating pursuant to an Operating License granted by the Civil Aviation Authorities of an EC member state.

### **THIRD PARTY LIABILITY**

Liability of civil aviation operators in case of damage to third parties is governed by the general tort provisions of the Netherlands Civil Code (Art. 6:162 – 6:197). Aircraft owners and operators are liable for damage to third parties if such damages are caused by their act or negligence or an act or negligence of their employees. There is no statutory limitation of amount in respect of this liability and no compulsory insurance other than aforementioned.

### **PRODUCTS LIABILITY**

With effect from 1 November 1990, the Netherlands have implemented the EEC Directive on Product Liability. The provisions of the Directive are copied almost completely in the Act, which is in the form of an amendment to the Civil Code (Article 6:185 – 6:193CC). No proof of negligence is necessary to establish liability. In the new statutory the plaintiff has only to prove that damage was caused by a defect in the product. Deliberately, the legal regulation leaves the judge a stretched discretionary competence to determine whether or not the product is defective. Damages are recoverable from any person who may be classified as a "producer" of the product, i.e. not only the manufacturer of the finalised product, but also the producer of raw material, or a component part, or anyone who acts as a producer, or an importer, or (if the producer cannot be identified) any supplier: all are jointly and severally liable.

The Netherlands has not exercised the following options open to EC Members:

! agricultural products and game are not "products" for the purpose of the Act unless they have undergone an industrial process.

! there is no limit on the liability of producers.

The Netherlands has incorporated the "state of the art" defence.

Those who are entitled to claim in accordance with the act cannot be deprived of their rights by contractual means, but the liabilities arising out of the act are in addition to and are not in substitution of other rights.

## **NOISE AND POLLUTION**

Aircraft operator's liability in respect of damage resulting from noise and pollution is governed by the ordinary rules of tort liability (Art. 6:162 – 6:184 CC).

Article 76 of the Aviation Act of 15 January 1958 as amended by the Act of 7 June 1978 ("AA") provides that the Government may issue decrees limiting noise from aircraft. Decrees have been issued limiting night flights and special (operational) measures in the vicinity of airports have been taken in respect of noise abatement.

## **ICAO Annex 16**

The Netherlands has notified ICAO that no difference will exist between National legislation and practices and the International Standards and Recommendations of ICAO Annex 16 – 3<sup>rd</sup> Edition.

## **MICROLIGHT AIRCRAFT**

The Aviation Act defines aircraft as machines, which can be held in the atmosphere as a result of support derived from reactions of air (Art. 1 sub b A). In a Decree of 22 May 1981, a number of categories of aircraft are listed which shall not be regarded as aircraft as defined in the AA. As the Microlight or Ultralight Aircraft is not listed in this Decree, the normal rules for aircraft apply. New rules specifically addressing Ultralight Aircraft are expected to be operative mid-1999.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 36		
	Adhered to	6 Apr 1937
	Entered in to Force	5 Jul 1937
The Hague Protocol - 1955	Signed	19 Mar 1958
	Ratified	16 Mar 1967
	Entered in to Force	14 Jun 1967
Guatemala City Protocol - 1971	Signed	12 Sep 1972
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
See Annex C – Note 6		
	Acceded to	3 Dec 1999
	Entered in to Force	2 Mar 2000
– No. 2	Signed	
See Annex D – Note 6		
	Acceded to	3 Dec 1999
	Entered in to Force	2 Mar 2000
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
See Annex F – Note 5		
	Ratified	3 Dec 1999
	Entered in to Force	2 Mar 2000
Guadalajara Convention – 1961	Signed	
See Annex G – Note 9		
	Adhered to	19 May 1969
	Entered in to Force	17 Aug 1969
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered in to Force	
Montreal Convention	Signed	13 Jul 2001
See Annex N – Note 5		
	Ratified	18 Nov 2002
	Entered in to Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	31 May 1968
	Entered in to Force	31 May 1968
Space Liability Convention – 1972	Signed	19 Jun 1972
	Ratified	30 Oct 1974
	Entered in to Force	30 Oct 1974

## PART II- NOTES ON AVIATION LIABILITY

### LEGISLATION ETC.

The Accident Compensation Act 1972 and its various amendments constitute a complex body of legislation, supplemented by the various statutory regulations made in pursuance of the Act. Every person who suffers personal injury by accident in New Zealand, and the dependants of every person who dies as a result of personal injury so suffered, is completely deprived of his rights to claim damages in any court in New Zealand in respect of that injury or that death except in two specific instances. The exceptions are, where rights exist under the International Carriage by Air Conventions and where there is entitlement to claim damages for breach of contractual rights under insurance contracts.

The legislation provides for:

- a. The constitution and functions of the "Accident Compensation Commission", to which is entrusted the whole of the administration of the legislation.
- b. The setting up of various funds to be held in the name of and invested by the Commission out of which the expenses of the administration of the legislation and the benefits payable thereunder are to be met.
- c. The implementation of steps which are to be taken to promote general safety and the prevention of accidents whether in industry or on the highways or elsewhere and towards the rehabilitation of persons who have sustained injury by accident.
- d. The payment of benefits such as medical and hospital expenses, weekly compensation, lump sums for injury and disability and compensation for the dependants of those who die as a result of accidents.

The provisions of the legislation are applicable in some degree to aviation accidents. The important provisions of the legislation as regards these accidents and indeed any accident occurring within New Zealand resulting in personal injury or death are:

- a. Where any person suffers injury by accident in New Zealand or dies as a result of personal injury so suffered, or where any person suffers outside New Zealand personal injury by accident in respect of which he has cover under the Act or dies as a result of personal injury so suffered, no proceedings for damages arising directly or indirectly out of the injury or death shall be brought in any Court in New Zealand independently of the Act, whether by that person or any other person, and whether under any rule or law or any enactment.
- b. Without limiting the generality of (a) above the action for loss of services and the cause of action for loss of consortium are abolished.
- c. Nothing shall affect:
  - i. Any action which lies in accordance with Section 131 of the Act (see below); or
  - ii. Any action for damages by the injured person or his administrator or any person, for breach of a contract of insurance; or
  - iii. Any proceedings for damages arising out of personal injury by accident or death resulting therefrom, if the accident occurred before the first day of April 1974.

Section 131 is, from an aviation point of view, of considerable importance:

“(1) In any case where a person suffers personal injury by accident outside New Zealand, or dies as a result of personal injury so suffered, if the person has cover under this Act in respect of the injury, and if under the law of the country in which he suffers the injury, or under the law of any other country (except New Zealand) or pursuant to any international agreement or convention or protocol, or any amendments thereto, a claim for damages or compensation in respect of the injury or death lies on behalf of the person or the administrator or the widow or widower or a child or dependant of the person, the Commission may, in its discretion, do all or any of the things specified in subsection (3), of this Section.

(2) In any cases where a person suffers personal injury by accident either within or outside New Zealand, whilst he is a passenger on international carriage within the meaning of the Carriage by Air Act 1967, or dies as a result of personal injury so suffered of the things specified in sub-section (3) of this Section, if a claim for damages or compensation in respect of the injury or death lies on behalf of the person or the administrator or the widow or widower or a child or dependant of the person -

- a) Under the law of the country outside New Zealand having jurisdiction in respect of the accident; or
- b) Pursuant to any international agreement or convention or protocol, or any amendment thereto; or
- c) Pursuant to any agreement between carriers in respect of international carriage by air.

(3) The things which the commission may do in the circumstances specified in sub-sections (1) and (2) of this Section are:

- a. Deduct from the compensation that is payable under this Act to the injured or deceased person or the widow or widower or any child or dependant of that person any amount recovered by the enforcement of that claim or as compensation or otherwise in respect of the injury or death; and recover from any person to whom any compensation has been paid under this Act any amount that is in excess of the amount properly payable to that person having regard to the provision of this paragraph.
- b. Require, as a condition precedent to the grant of all or any of the compensation payable under this Act, that all reasonable steps be taken (whether by the injured person, or by the administrator or the widow or widower or any child or dependant of the deceased person, or by assignment of rights to the commission) to pursue the claims for damages or compensation or any other rights in respect of the injury or death or to enable the claim or rights to be pursued.
- c. Meet the whole or such part as it thinks fit of the costs and expenses incurred in pursuing that claim.”

Thus under the legislation where an aviation accident is governed by the terms of a protocol or convention there is nothing contained in the Act which will serve to relieve the airline operators of their responsibility to passengers or their dependants in respect of injury or death which arises as a consequence of an accident occurring on an “International” flight.

Regarding “Internal” carriage accidents, the New Zealand Carriage By Air Act 1967 provides that a carrier by air should be liable for damage sustained by reason of the death of a passenger or personal injury to a passenger (with a limit of NZ\$42,000 imposed by Section 8 of the Act). This no longer applies and the carrier is exempt where the passenger is entitled to claim compensation within the

terms of the Accident Compensation Act 1972. \*

This has application where an accident occurs whilst the aircraft is in or over the Territories of New Zealand as defined in the Acts Interpretation Act 1924. These broadly speaking comprise all territories forming part of the Dominion of New Zealand being all the islands and territories within the limits thereof excluding the Cook Islands, the Tokelau Islands and Niue Island. Thus it appears that some special consideration may be needed as regards flights between New Zealand and those islands specifically referred to in the 1924 Act.

Within the scope of the Accident Compensation Act there is no limit imposed as to residence or nationality and entitlement for benefit thus extends to every person - subject to those exceptions previously mentioned - who is physically within, and sustains an accident within the geographical limits. As an extension, there are detailed provisions under Section 61 bringing within the scope of the Act, airmen who may sustain personal injury beyond the Territorial Limits of New Zealand whilst engaged or employed by the New Zealand Government or by a Corporation or Company that is incorporated within New Zealand or by a person who is ordinarily resident in New Zealand.

\* Note however that the Carriage by Air Act 1967 does continue to apply in certain circumstances in which case the limitation of liability would be that of the Carriage by Air Act 1967. It seems that the November 1979 Antarctica Air New Zealand DC-10 loss is a case in point.

#### **AIRLINE SPECIAL CONTRACTS**

(This note added in April 1988)

Air New Zealand have voluntarily adopted a special contract for passenger liability which provides for liability up to NZ\$58,000 (exclusive of legal costs) in the event of passenger death, wounding or bodily injury for all contracts covered by the original or amended Warsaw Convention.

#### **MINIMUM INSURANCE REQUIREMENTS**

(This note added in August 2002)

The government of New Zealand has not set minimum insurance levels, but requires that insurance at an "adequate level" is carried. Airlines operating to/from New Zealand must show proof of insurance cover.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	11 Apr 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 37		
	Succeeded to	8 Mar 1962
	Entered into Force	3 Aug 1960
The Hague Protocol – 1955	Signed	
See Annex A – Note 37		
	Succeeded to	8 Mar 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	17 Jun 1988
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	15 Feb 1996
	Entered into Force	15 May 1996
- No. 2	Signed	
	Acceded to	15 Feb 1996
	Entered into Force	15 May 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	14 Jul 1964
	Entered into Force	12 Oct 1964
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	27 Dec 1962
	Entered into Force	27 Mar 1963
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	1 Feb 1967
	Ratified	3 May 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	24 May 1972
	Ratified	1 Sep 1972
	Entered into Force	1 Sep 1972

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 38		
	Succeeded to	15 Oct 1963
	Entered into Force	1 Oct 1960
The Hague Protocol - 1955	Signed	
	Adhered to	1 Jul 1969
	Entered into Force	29 Sep 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	16 Jul 1969
	Entered into Force	14 Oct 1969
Rome (Third Party) Convention – 1952 (Nigeria denounced the Rome Convention on 10 May 2002)	Signed	
	Adhered to	*
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	10 May 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Acceded to	14 Nov 1967
	Entered into Force	14 Nov 1967
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	3 Jul 1937
	Entered into Force	1 Oct 1937
The Hague Protocol - 1955	Signed	
	Adhered to	3 May 1963
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	11 Feb 1972
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	3 Sep 1979
	Ratified	4 Aug 1983
	Entered into Force	15 Feb 1996
- No. 2	Signed	3 Sep 1979
	Ratified	4 Aug 1983
	Entered into Force	15 Feb 1996
- No. 3	Signed	21 Oct 1977
	Ratified	4 May 1988
-No. 4	Signed	21 Oct 1977
	Ratified	4 May 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	15 Feb 1962
	Ratified	20 Jan 1967
	Entered into Force	20 Apr 1967
Rome (Third Party) Convention - 1952	Signed	10 Dec 1954
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	3 Feb 1967
	Ratified	1 Jul 1969
	Entered into Force	1 Jul 1969
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	4 Apr 1995
	Entered into Force	4 Apr 1995

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The Norwegian Aviation Act of 11 June 1993 regulates the situation regarding the Warsaw Convention.

Norway expects to ratify the Montreal Convention in 2002/2003.

Scandinavian Airlines System (SAS) and Braathens ASA are party to the IATA Inter-carrier Agreements.

There is no national regulation on the convention amounts. For practical purposes the Montreal protocol amounts in SDRs have been used.

The European Regulation on Air Carrier Liability (Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents) has been implemented in Norwegian national law subsequent to the EEA agreement (Agreement on an European Economic Area, signed in Porto on 2 May 1992).

### **INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

The Norwegian Aviation Act regulates the liability issues for domestic and non-convention carriage. The regulation is based on the Warsaw-Hague system, the four Montreal protocols and the Guadalajara convention.

### **GENERAL AVIATION**

There are no requirements for general aviation, except for third party liability.

### **THIRD PARTY LIABILITY**

The Norwegian Aviation Act requires all aircraft to have third party liability coverage. This covers aircraft on foreign and national registers alike. Documentation required is a copy of insurance showing an insurance of at least the minimum coverage required.

### **MINIMUM INSURANCE REQUIREMENTS**

Norway requires that all carriers licensed in Norway, and foreign air carriers serving Norway carry insurance in line with ECAC Resolution ECAC/25-1.

### **CLAIMS RELATED INFORMATION**

Claims are processed through courts by private law. In this relation, it is also important to note that the European Regulation gives a requirement for an up front payment of a given amount.

The claims are normally settled between the victim and the insurers out of court. But some cases are

brought before the courts in instances where an agreement cannot be made. According to Norwegian regulations and court practice, mental injury will also be compensated.

### **SOCIAL SECURITY AWARDS**

There is a scheme for compensation through social security awards. The government has the right of subrogation.

### **AIR TRAFFIC CONTROL**

Avinor A/S runs Air Traffic Control to and from the main Norwegian airports. This body is a state enterprise, and is also responsible for providing upper air space and en route navigation facilities. Avinor A/S is also the owner and operator of almost all airports with scheduled traffic in Norway.

Private airfields are not equipped with Air Traffic Control. Most smaller airports do not have Air Traffic Control either, but are served with AFIS (Aerodrome Flight Information Service).

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	6 Aug 1976
	Entered into Force	4 Nov 1976
The Hague Protocol - 1955	Signed	
	Adhered to	4 Aug 1987
	Entered into Force	2 Nov 1987
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Acceded to	15 Feb 1996
	Entered into Force	15 May 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	6 Aug 2003
	Entered into Force	4 Nov 2003
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	23 Jun 1972
	Not Ratified	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

1.3 Oman Air (PO Box 58, Seeb 111, Muscat, Sultanate of Oman) and Gulf Air Company (PO Box 138, Bahrain) are signatories to the IATA Inter-carrier Agreements.

1.5 All national carriers are governed by the Omani Civil Aviation Law and the Civil Aviation Regulations (CARs) as issued by the Authority of the Sultanate of Oman.

### **INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

All aircraft operated domestically in the Sultanate of Oman are subject to the same regulations as those outlined above.

### **GENERAL AVIATION**

Details of legislation governing the operation of general aviation aircraft including helicopters and microlights are shown below:

- a) General Aviation is covered by CAR 91 (General Operating and Flight Rules).
- b) Helicopters (commercial operations) are covered by CAR127.
- c) Microlights are governed by CAR103.
- d) Moored balloons and unmanned free balloons are covered by CAR101.
- e) Parachute jumping is governed by CAR105.

### **AIR TRAFFIC CONTROL**

The types of airfield in the Sultanate of Oman are: (a) International aerodrome; (2) Secondary/other international aerodrome. The airports in the Sultanate of Oman are owned and operated by the Directorate General of Civil Aviation and Meteorology, Government of the Sultanate of Oman.

The Civil Aviation Authority (DGCA&M) is the competent authority in the Sultanate of Oman having exclusive jurisdiction over civil aviation matters, and shall have the power to prescribe the rules and regulations necessary for the implementation of this law. It will also have exclusive jurisdiction as regards establishment, operation and management of all civil aerodromes, navigational aids, meteorological and air traffic services in the Sultanate of Oman.

### **MANDATORY INSURANCE REQUIREMENTS**

As per Civil Aviation Law, Article 13 – Conditions to Operations states that all aircraft operating into or over the territory of the Sultanate of Oman shall meet the following conditions:

- Be insured for the benefit of its crew, passengers and third parties on the surface in accordance with the applicable rules.
- The wording of the Civil Aviation Law shows intent that applicable rules are to be developed and implemented. At the present time this has not happened.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 39		
	Succeeded to	30 Dec 1969
	Entered into Force	14 Aug 1947
The Hague Protocol - 1955	Signed	8 Aug 1960
	Adhered to	16 Jan 1961
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Jul 1965
	Entered into Force	19 Oct 1965
Rome (Third Party) Convention - 1952	Signed	25 Feb 1957
	Ratified	6 Nov 1957
	Entered into Force	4 Feb 1958
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	12 Sep 1967
	Ratified	8 Apr 1968
	Entered into Force	8 Apr 1968
Space Liability Convention - 1972	Signed	6 Jul 1972
	Ratified	10 Apr 1973
	Entered into Force	10 Apr 1973

## PART II- NOTES ON AVIATION LIABILITY

### INTERNATIONAL CARRIAGE

Prior to the partition in 1947 of the Indian Sub-Continent into the two sovereign states of India and Pakistan the government of undivided India became a signatory to the Warsaw Convention with effect from 9 August 1934 and by the Carriage by Air Act, 1934 gave effect to the provisions of the Warsaw Convention as a part of the municipal law of then undivided India. This Act continued to have the force of law in Pakistan upon the creation of Pakistan in 1947.

The Government of Pakistan became a signatory to The Hague Protocol with effect from 1 August 1963. In order to consolidate the law relating to carriage by air, the Government of Pakistan enacted the Carriage by Air (International Convention) Act, 1966 with effect from 17 June 1966. The First Schedule to this Act contains verbatim the Warsaw Convention 1929 as amended at The Hague 1955 and incorporates it as a part of the municipal law of Pakistan. The Second Schedule contains certain supplementary legal provisions relating to the enforcement of the liability of the carrier in the event of the death of a passenger.

Pakistan is also a signatory to the Guadalajara Convention of 1961 with effect from 19 October 1965 and by the Carriage by Air (Supplementary Convention) Act, 1968 the provisions of that Convention were enacted as apart of the municipal law of Pakistan.

Pakistan is also a signatory to the Rome Convention of 1952 on Damage Caused by Foreign Aircraft to Third Parties on the Surface. By Section 4 of the Civil Aviation Ordinance 1960, the Federal Government is empowered by notification in the Official Gazette to make rules to give effect to the provisions *inter alia* of the Rome Convention 1952. However no such rules have been passed to give effect to this Convention in the municipal law of Pakistan.

The Government of Pakistan is also a signatory to the Tokyo Convention 1963 on Offences and Certain Other Acts Committed on Board Aircraft with effect from 10 December 1973; The Hague Convention (1970) on the Suppression of Unlawful Seizure of Aircraft ratified on 28 November 1973; and the Montreal Convention 1971 for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, ratified on 24 February 1972. No rules have been passed to give effect to these conventions in the municipal laws of Pakistan. It would be a matter of interpretation for the Pakistani Courts, in an appropriate case, as to how far the provisions of these conventions are binding on and applicable in Pakistan without such legislation.

However in 1975 the Government of Pakistan passed the Airports Security Force Act 1975 the purpose of which was to ensure the security of all aerodromes, airports, aircraft and civil aviation installations. Under this Act it is the duty of the officers and members of the Airports Security Force to take effective measures to safeguard civil aviation against acts of unlawful interference, and more specifically to take effective measure to prevent hijacking, sabotage and the placement of car bombs, letter bombs and dangerous articles, and to safeguard aircraft passengers, baggage, cargo and mail within the limits of airports.

Pakistan International Airlines is party to the IIA.

## INTERNAL CARRIAGE

A statutory notification dated 14 March 1962 was issued by the Government of the Islamic Republic of Pakistan in exercise of the powers conferred by Section 4 of the Carriage by Air Act, 1934. By this notification and subject to its adaptations and modifications, the rule of the Warsaw Convention contained in the First Schedule of that Act were made applicable to all Carriage by Air, not being "international carriage", as defined in the said Act.

Under these modified rules compensation for death, total, or partial disablement of a passenger; delays of all kinds; and destruction, loss or damage to registered luggage and cargo etc. is limited as follows:

(1) In the carriage of passengers the liability of the carrier in respect of injury (including injury resulting in the death to any passenger) is limited to the sum of Pak Rs39,500. In a case where damages are awarded in the form of periodical payments, the equivalent capital value of the said payments should not exceed Pak Rs39,500.

(2) In the carriage of registered luggage, of which the carrier takes charge, and of cargo, the liability of the carrier in respect of destruction, loss or damage is limited to the sum of Pak Rs.40 per lb.

(3) As regards objects of which the passenger takes charge himself, the liability of the carrier in respect of destruction, loss or damage is limited to Pak Rs1,700 per passenger.

(4) Liability for damage occasioned by delay in the carriage by air of passengers, registered luggage or cargo is limited to the extent of the amount of any such damage which may be proved to have been sustained by reason of such delay, or of an amount representing double the sum paid for the carriage, whichever amount may be smaller.

The limits and restrictions stated above apply in respect of carriage on domestic routes and in international carriage which is not "international carriage" as defined by the Warsaw Convention. The liability of the carrier is limited in terms of Pakistani rupees. A significant modification is the omission of Rule 28 relating to jurisdiction; claims arising from international carriage which is not "international carriage" as defined by the Warsaw Convention will be heard by a Court of Pakistan in accordance with its own rules relating to jurisdiction.

So far any litigation by passengers or claimants on their behalf in any court of law for personal injury or death has been settled out of Court to the satisfaction of the claimant or on the facts of a particular case (see PLD 1976 Kar 363; PLJ 1976 Kara ch 291 - a very modest award was made to the mother of the deceased). It was also held in this case that damages are to be assessed on the same principle as in an action under the Fatal Accidents Act 1858 and the measure of damages is the pecuniary loss suffered as a result of the deceased's death by each individual dependant. Damages other than pecuniary loss are not recoverable.

## GENERAL AVIATION

- a) Part X and XIV of CARs-94 covers General Aviation Operations, as defined by ICAO
- b) ANO 90.0021 covers operations by recreation vehicles.
- c) ANO 90.0010 has been prepared, which deals with all operations by microlights and is under the approval process.

d) ANO 91.0025 deals with operations by helicopters.

### **THIRD PARTY LIABILITY**

See section on International Carriage.

### **PRODUCTS LIABILITY**

Not applicable.

### **AIR TRAFFIC CONTROL**

There are three types of airfield in Pakistan: Civil, military and private.

At civil airfields the DG CAA is responsible for ATC.

At military airfields the Pakistan Air Force is responsible for ATC. Where airfields have joint civil/military use, the Pakistan Air Force usually provides ATC by mutual agreement.

At private airfields the airfield owner usually makes its own arrangements.

En route facilities are provided by the DG CAA for civil flights.

### **NOISE & POLLUTION**

There is no specific legislation regarding claims for noise damage but such claims could be made under the law of torts by aggrieved persons.

### **PAKISTAN CIVIL AVIATION AUTHORITY**

In 1982 the Government of Pakistan promulgated the Pakistan Civil Aviation Authority Ordinance. The purpose of the Ordinance was to establish a Civil Aviation Authority, a body corporate with power to sue and to be sued, to provide for safe, efficient, adequate, economical and properly co-ordinated civil air transport service in Pakistan, including air traffic control.

### **GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

As a result of the events of 11 September the cost of insurance was so high that most airlines were not able to afford it. Therefore, the Government of Pakistan provided Sovereign indemnity for US\$2bn which helped PIA to overcome this crisis. The said indemnity was withdrawn on 15 October 2002, and the PIA fleet is now once again insured in the international market.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	12 Nov 1996
	Entered into Force	10 Feb 1997
The Hague Protocol - 1955	Signed	
	Adhered to	12 Nov 1996
	Entered into Force	10 Feb 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	13 Sep 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	5 Jun 1974
	Entered into Force	5 Jun 1974

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

1.1 The 1929 Warsaw Convention and the 1955 Hague Protocol were ratified by Law No. 44, of 5 July 1996 (Official Gazette No. 23077, of 11 July 1996).

1.3 COPA Airlines and Aeroperlas are party to the IATA Inter-carrier Agreement.

1.5 National carriers are governed only by the regulations of the Republic of Panama and the duly ratified Multilateral Conventions.

### **INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

Section V, Articles 170 to 202 of the Decree-Law 19, of 8 August 1963 apply.

### **MINIMUM INSURANCE REQUIREMENTS**

Passenger liability and third party liability insurance cover must be carried in line with the weight of the aircraft, and to the satisfaction of the Civil Aviation Authorities.

### **GENERAL AVIATION**

All the provisions contained in Decree-Law 19, of 8 August 1963 apply except Chapter II, relating to Public Air Transport Services and Chapter III, which governs Air Transport Employment Services.

### **CLAIMS RELATED INFORMATION/SOCIAL SECURITY/PRODUCT LIABILITY/TAX REGIMES**

This information can be obtained from the Superintendencia General de Seguros (General Insurance Supervisory Board) at the Ministerio de Comercio e Industrias (Ministry of Trade and Industry). The fax number is +507 214 7482/7483.

### **AIR TRAFFIC CONTROL**

All aerodromes and airports on Panamanian territory are managed by the Department of Civil Aeronautics (an autonomous Panamanian government authority) except for the Contadora and Puerto Armuelles aerodromes, which are privately managed.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 40		
	Succeeded to	12 Dec 1975
	Entered into Force	16 Sep 1975
The Hague Protocol – 1955	Signed	
See Annex A – Note 40		
	Succeeded to	12 Dec 1975
	Entered into Force	16 Sep 1975
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	3 Dec 1975
	Entered into Force	2 Mar 1976
Rome (Third Party) Convention – 1952	Signed	
See Annex H – Note 2		
	Succeeded to	15 Dec 1975
	Entered into Force	16 Sep 1975
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Succeeded to	27 Oct 1980
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Succeeded to	27 Oct 1980
	Entered into Force	

PARAGUAY

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	28 Aug 1969
	Entered into Force	26 Nov 1969
The Hague Protocol - 1955	Signed	
	Adhered to	28 Aug 1969
	Entered into Force	26 Nov 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	2 Oct 1969
	Entered into Force	31 Dec 1969
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	26 May 1969
	Entered into Force	24 Aug 1969
Montreal Convention	Signed	17 Mar 2000
	Ratified	29 Mar 2001
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	5 Jul 1988
	Entered into Force	3 Oct 1988
The Hague Protocol - 1955	Signed	
	Adhered to	5 Jul 1988
	Entered into Force	3 Oct 1988
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	4 Jul 1997
	Entered into Force	2 Oct 1997
- No. 2	Signed	
	Acceded to	4 Jul 1997
	Entered into Force	2 Oct 1997
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	15 Jul 1988
	Entered into Force	12 Oct 1988
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	7 Sep 1999
	Ratified	11 Apr 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	30 Jun 1967
	Ratified	28 Feb 1979
	Entered into Force	28 Feb 1979
Space Liability Convention - 1972	Signed	10 Apr 1972
	Not Ratified	
	Entered into Force	

**PART II – NOTES ON AVIATION LIABILITY**

**MINIMUM INSURANCE REQUIREMENTS**

**Passenger Liability**

Cover of 16,600 DEG is required.

**Third Party Liability**

For aircraft up to MTOM 30,000kg cover of 30DEG/kg is required. For aircraft over 30,000kg, cover of 900,000 DEG plus 40DEG/kg is required.

**PHILIPPINES**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	9 Nov 1950
	Entered into Force	7 Feb 1951
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	30 Nov 1966
	Entered into Force	28 Feb 1967
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	5 Apr 1966
	Entered into Force	4 Jul 1966
Rome (Third Par ty) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	22 Aug 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Adhered to	15 Nov 1932
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	23 Apr 1956
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	25 Oct 1961
	Ratified	16 Dec 1964
	Entered into Force	16 Mar 1965
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	30 Jan 1968
	Entered into Force	30 Jan 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	25 Jan 1973
	Entered into Force	25 Jan 1973

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

International Carriage is governed by the Warsaw Convention of 12 October 1929 and by the Hague Protocol of 28 September 1955.

“LOT” Polish Airlines has signed the IATA Inter-carrier Agreement and the Implementation Agreement.

### **INTERNAL CARRIAGE**

Domestic carriage is governed by the Carriage Law of 15 November 1984 (passed on 1 July 1985) and Civil Code of 23 April 1964, carrier's liability is limited to the amount of the actual loss sustained.

### **THIRD PARTY LIABILITY**

Poland is not a party to the Rome Third Party Convention of 7 October 1952. The carrier's legal liability to third parties, as far as internal carriage is concerned, is governed by the Carriage Law of 15 November 1984 whereas international carriage is governed by the provisions of codes of the country where the claim, if any arises.

There are no Third Party limits set by Polish law. An aircraft operator's liability to third parties equals the real value of damages.

Third Party liability insurance cover is obligatory in Poland for aircraft on both national and foreign registers. Pilots should carry a TPL insurance certificate aboard the aircraft.

As regards foreign operators, in 2001 The Polish Civil Aviation Authorities has decided to introduce the limits of Third Party Liability Insurance, which also cover war – and terror – induced damage. The minimum limits depend on the maximum take-off weight (from USD 2 MIO upwards)

Since the effective date, the Authority will not grant entry permission and existing entry permissions are revoked, if the aircraft operator cannot furnish evidence to the Polish Civil Aviation Authorities for the existence of a third party liability insurance fulfilling the above conditions.

### **PRODUCTS LIABILITY**

Until 2000, there was no special legislation regarding products liability, which was subject to ordinary rules in the Civil Code (principle of fault).

The Act of March 2, 2000 on Protection of Certain Rights of consumers and on liability for damage caused by dangerous products, led to introducing the changes to the Civil Code.

The Act expands provisions of the Civil Code with respect to agreements concluded between entrepreneurs and consumers, and with respect to the application of standardised agreements. A principle has been introduced that provisions of agreements concluded with a consumer and not individually agreed are not binding in a situation when they violate the consumers' rights or duties, or they clearly infringe consumers' interests.

Another change to the Civil Code is the introduction of liability for damage caused by a dangerous

product.

Liability for damage caused by a dangerous product may be neither excluded nor restricted. Furthermore, the provisions on liability for damage caused by a dangerous product do not exclude general liability for damage, or damage resulting from failure to perform or improper performance of obligations, or liability under the warranty for defects and quality guarantee.

## **AIR TRAFFIC CONTROL**

In Poland flights are monitored and controlled by PATA - the Air Traffic Agency which is a part of "Porty Lotnicze" State Enterprise. PATA monitors all flights within its flight information region called FIR WARSZAWA. On the ground, PATA information region covers the whole of the Polish territory, however in the air it extends far out over the Baltic, up to the borders of information regions of the neighbouring countries.

PATA works on three different levels. Area control monitors all the air routes, the approach control is responsible for all traffic around Warsaw, Gdańsk and Kraków, while landings, take-offs and any traffic at the airport is supervised by the airport control.

Airport State Enterprise "Porty Lotnicze" has been insured against Legal Liability to Third Parties arising out of operations carried out on the premises of the International Airport "Warszawa-Okecie", including ramp and turn around, but excluding control tower, airfield and hangars.

## **NOISE & POLLUTION**

Aircraft operator's liability resulting from noise, pollution etc. is governed by the general rules in the Civil Code (principle of risk) and other local regulations. The general approach is to restrict the environmental protection rules.

Poland follows ICAO International Standards and Recommendations of Annex 16 in respect of Noise and Pollution. Simultaneously, a new Aviation Law to be introduced in the nearest future is to be in line with EU directives.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 41		
	Adhered to	20 Mar 1947
	Entered into Force	18 Jun 1947
The Hague Protocol - 1955	Signed	29 Sep 1955
	Ratified	16 Sep 1963
	Entered into Force	15 Dec 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	7 Apr 1982
	Entered into Force	15 Feb 1996
- No. 2	Signed	25 Sep 1975
	Ratified	7 Apr 1982
	Entered into Force	15 Feb 1996
- No. 3	Signed	25 Sep 1975
	Ratified	7 Apr 1982
-No. 4	Signed	25 Sep 1975
	Ratified	7 Apr 1982
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
See Annex N – Note 1		
	Ratified	28 Feb 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty – 1967	Signed	
	Acceded to	29 May 1996
	Entered into Force	29 May 1996
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## PART II – NOTES ON AVIATION LIABILITY

### 1. INTERNATIONAL CARRIAGE

International carriage is governed by the Warsaw Convention of 12 October 1929 and by the Hague Protocol of 28 September 1955.

The European Community Regulation (EC 2027/97) came into effect on 17 October 1998.

The terms of the Montreal Convention were enacted within the EC by Regulation 889/2002 and entered into force on 28 June 2004.

### 2. INTERNAL CARRIAGE

Decree 321/89 is in force since 1 January 1990 stating that the carrier is liable for any damage to passengers, baggage and cargo even though there may be no fault or neglect on his part.

The liability of the carrier has the following limits:

Passengers – The European Community Regulation (EC2027/97) in relation to liability in the event of accidents to passengers came into effect from 17 October 1998 being applicable to all Community air carriers.

Baggage and cargo – The limits of the Warsaw Convention/Hague Protocol (US\$20.00 per kilo of gross weight).

Regulation 785/2004 shall enter into force on 28 April 2005.

### 3. GENERAL AVIATION

#### **Microlights**

Decree 71/90 has been in force since 16 January 1990 and establishes rules for the use, licensing, registration, instruction and insurance of ultralights.

According to this decree a microlight (or ultralight) is an aircraft able to carry up to two persons including pilot and:

- (i) without engine and weighing less than 100 kilos,
- (ii) with engine and weighing less than 200 kilos.

The owner and the pilot of an ultralight are jointly liable for any damage caused to third parties even though there may be no fault or negligence from their part unless the third party is to blame for the accident.

The liability of the owner/pilot is limited to 74,819.68 Euros.

**4 THIRD PARTY**

In respect of Third Party Liability in the internal carriage the decree 321/89 states that the owner or operator of an aircraft even though there may be no fault or negligence on his part, is liable for damage caused to Third Parties on the ground by an aircraft when flying, taxiing or parked or by anything falling off or thrown out from the aircraft.

In addition, it is advised that all Portuguese and foreign registered aircraft using Portuguese airports/airfields or overflying Portuguese territory must carry TPLL insurance. For Portuguese registered aircraft the limits are those established by a Regulation (Portaria 287/96) dated 24 July 1996, as follows:

Aircraft up to 1,000kg MTOW	Euros 74,819.68
Aircraft over 1,000 kg MTOW but not over 5,000kg MTOW	Euros 74,819.68 plus Euros 99.76 per each kg over 1,000kg
Aircraft over 5,000 MTOW	Euros 748,196.85 plus Euros 49.88 per each kg over 5,000kg

For foreign-registered aircraft from outside the EU, compliance with the minimum levels set out in ECAC Resolution ECAC/25-1 must be demonstrated. For aircraft registered in other EU countries, the limit established by the internal law of the country is accepted.

**5. CLAIMS RELATED INFORMATION**

In recent years there has been a trend towards Portuguese Courts awarding damages for non-physical injuries.

**6. SOCIAL SECURITY SCHEME – EFFECT ON PASSENGER LIABILITY**

Under Portuguese legislation the Portuguese Social Security scheme has subrogation rights against insurers. All liability settlements made by insurance companies are abated by any payments made from social security funds.

**7. PRODUCTS LIABILITY**

The EC Directive 85/374/CEE of 25 July 1985 was enforced in Portuguese legislation by Decree 383/89 of 6 November 1989.

**8. AIR TRAFFIC CONTROL**

- 1- An air traffic company (NAV) is responsible for all air traffic services including control towers at Portuguese airports. This company will remain under State control.
- 2- An airport company (ANA) is responsible for airport management. In accordance with the Portuguese government programme, this company will be sold to private operators in the near future.

**9. TAX REGIME**

A stamp duty of 5% applies on all aviation insurance premiums.

**10. GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

With effect from 1 January 2004 the Portuguese State, following the policy adopted by the EC, has ceased all support to aviation operators in respect of war third party liability.

**11. MISCELLANEOUS MATTERS**

**WAR RISKS**

Portuguese legislation has no reference to war risks, terrorism, and the like.

**NOISE AND POLLUTION**

See comments under Products Liability above.

**ICAO Annex 16**

Portugal has not reported to ICAO any difference between its National regulations and practices and the International Standards and Recommendations of ICAO Annex 16 – Vol 1 First Edition.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	22 Dec 1986
	Entered into Force	22 Mar 1987
The Hague Protocol - 1955	Signed	
	Adhered to	22 Dec 1986
	Entered into Force	22 Mar 1987
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	28 Aug 1987
	Not Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	28 Aug 1987
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	11 Jan 1974
	Entered into Force	11 Jan 1974

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	8 July 1931
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	28 Sep 1955
	Adhered to	3 Dec 1958
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	21 Apr 1965
	Entered into Force	20 Jul 1965
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	18 Nov 1999
	Ratified	20 Mar 2001
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	9 Apr 1968
	Entered into Force	9 Apr 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	5 Mar 1980
	Entered into Force	5 Mar 1980

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

Warsaw Convention : Romania has approved this Convention through the Law no. 1213 published in Official Monitor no. 83/09.04.1931 and has present in the ratification instruments on 08.07.1931.

Hague Protocol : Romania became a party through ratification and has approved through Decree no. 353/05.08.1958 , published in Official Bulletin no. 33/08.1958 and presented ratification instruments on 01.08.1963.

Guadalajara Protocol : Romania become a party through agreement and approved through Decree no. 721/19.11.1964 , published in Official Bulletin no. 21/22.12.1964 and presented agreement instruments on 21.04.1965.

Montreal Convention : Romania became party through ratification and approved through Government ordinance no. 107/31.08.2000 published in Official Monitor no . 437/03.09.2000 and present the ratification instruments on 20.01.2001. The ordinance was adopted under law no 107/2000.

National carrier that is party to IATA is : TAROM Romanian Air Transport

National carriers are subject to the package of community Acquis law (in respect of access on market for air carriage, regulations regarding the licence for operators, the term of "open sky").

### **GENERAL AVIATION**

Order no. 437/16.07.1999 published in Official Monitor no.460/22.09.1999. This order approves application of European regulation JAR-OPS 1 – Commercial Air Carriage (air craft) and JAR – OPS- 3 - Commercial Air Carriage (Helicopters).

Order no. 477/2.04.2001 published in Official Monitor no. 310/11.06.2001. This order approves civil Romanian Aeronautical Regulation – Air Regulation, which establish general regulation for national airspace.

### **THIRD PARTY LIABILITY**

a) Law no. 136/29.12.1995 regarding insurance and reinsurance in Romania.

b) Government Decree no. 251/26.02.2004 was abrogated by Government Decree no 251/26.02.2004 related to the minimum limits for insured sums to cover certain losses arising out of aircraft operations within Romanian airspace. The act was published in the Official Gazette no. 202 of 8 March 2004. By this act the Government ordered Romanian or foreign operators of civil aircraft that use Romanian airspace for specific flights to general aviation operations to insure third party liability for losses caused to third parties on the ground within Romania. The Government raised the minimum sums to be insured that had previously applied.

c) Government Decree no. 939/27.09.2001 regarding warranty and standing payments of prospective damages which could be caused to third party, on ground, following a flight event result of TAROM aircraft, where is established the value of damages which could be caused to third party, limited to

700,000,000 USD – valid 30 days from 27.09.2001.

d) Our information is that was compiling a project of law in respect of air carrier liability (air carrier authorized to provide public passenger and goods carriage).

e) Law no 130/1997 approved Government Ordinance 29/22 August 1997 which relates to the aviation code. Air carrier third party liability (including baggage and goods carriage) is the main concern of this act.

f) Law no 355/ 10 July 2003 concerns third party liability for air carriers and civil aircraft operators in Romanian airspace.

### **MANDATORY INSURANCE REQUIREMENTS**

Romanian CAA Regulation – (Romanian Civil Aeronautical Regulation – regulation for air carrier (air work and general aviation) and Romanian CAA Regulation – Renting of aircraft) foresaw Romanian air carriers obligation to present authorized documents, insurance cover notes for passengers and third party legal liability in the process of authorization / extension / modification.

### **CLAIMS RELATED INFORMATION**

There were two major claims in 1995. One occurred when an A310 crashed in Balotesti near Otopeni airport. The other involved an AN24 which crashed shortly after take off from Verona on its way to Romania/Timisoara. In 2001 there was only 1 fatality on non-commercial flight.

### **PRODUCTS LIABILITY**

There is no specific Products Liability legislation in Romania, the general provisions of the civil code being applicable. A draft law is due to be discussed by Parliament in Autumn 2004.

### **AIR TRAFFIC CONTROL**

In Romania there is only one provider of air traffic services named ROMATSA SA., which is a public body approved through Government Decree no. 74/1991 and a affiliated on EUROCONTROL. The airports from Romania are under the authority of Transport Ministry. The airfields are under the authority of country council.

### **TAX REGIMES**

The tax regime is establish through law no. 136/29.12.1995. The amount is established through law no. 571 of 22 December 2003 (valid as from 1 January 2004) and Government Ordinance 92 of 24 December 2003.

### **GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

(Following events of 11 September 2001)

Government Decree no. 939/27.09.2001 regarding warranty and standing payments of prospective

damages which could be cause to third party, on ground, following a flight event with one of TAROM

aircraft, which establish the value of damages which could b e cause to third party, limited to 700,000,000 USD – valid 30 days from 27.09.2001.

**RUSSIAN FEDERATION**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 42	Signed	12 Oct 1929
	Ratified	20 Aug 1934
	Entered into Force	18 Nov 1934
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	25 Mar 1957
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	22 Sep 1983
	Entered into Force	20 Dec 1983
Rome (Third Party) Convention – 1952 See Annex H – Note 3	Signed	
	Adhered to	21 Apr 1982
	Entered into Force	20 Jul 1982
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	9 Oct 1973
	Entered into Force	9 Oct 1973

**PART II- NOTES ON AVIATION LIABILITY**

**AIR CODE  
OF THE RUSSIAN FEDERATION**

Adopted by the State Duma

19 February 1997

Approved by the Council of the Federation

5 March 1997

The present Air Code establishes the legal foundations for aviation activities and the use of the Russian Federation's airspace.

State regulation of aviation activities and the use of the Russian Federation's airspace shall be geared to meeting the air transport and aerial work needs of the citizens and the economy, ensuring the defence and security of the State and protecting State interests, air safety, aviation security and ecological safety.

**CHAPTER I. GENERAL**

**Article 1. Sovereignty over the airspace of the Russian Federation**

1. The Russian Federation shall have complete and exclusive sovereignty over the airspace of the Russian Federation.
2. The airspace of the Russian Federation shall mean the airspace over the territory of the Russian Federation, including the airspace above internal waters and the territorial sea.

**Article 2. Air legislation of the Russian Federation**

1. The air legislation of the Russian Federation shall consist of the present Air Code, federal laws, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, federal airspace use regulations, federal aviation regulations and other legal regulatory instruments of the Russian Federation adopted in accordance with them.
2. The federal airspace use regulations and federal aviation regulations are regulatory instruments governing relations in the fields of airspace use and aviation adopted in accordance with the procedure established by the Government of the Russian Federation.

**Article 3. International agreements of the Russian Federation**

If an international agreement of the Russian Federation establishes regulations other than those set out by the present Air Code, the regulations of the international agreement shall apply.

**Article 4. Liability for violations of the air legislation of the Russian Federation**

Persons guilty of violating the air legislation of the Russian Federation shall be liable for their acts under the legislation of the Russian Federation.

**Article 5. Relations governed by the air legislation of the Russian Federation**

The air legislation of the Russian Federation shall govern relations in the field of airspace use, relations arising in connection with aviation activities in the territory of the Russian Federation, relations arising as a result of aircraft of the Russian Federation being located outside the territory of the Russian Federation, unless otherwise stipulated by the laws of the country where the aircraft is situated or an international agreement of the Russian Federation, and relations arising in connection with operations by aircraft of foreign States in the airspace of the Russian Federation, unless otherwise stipulated by an international agreement of the Russian Federation.

**Article 6. The term "special authorities"**

For the purposes of the present Air Code, special authorities shall mean federal executive agencies and agencies entrusted with the authority and responsibility of a federal executive agency in the corresponding sphere of activity by a federal law, a decree of the President of the Russian Federation or a resolution of the Government of the Russian Federation.

**Article 7. Ownership of aviation property**

Civil and experimental aviation property (aircraft, aerodromes, airports and technical and other aids designed to support air operations) may be owned by the State, a municipality or legal persons in accordance with the legislation of the Russian Federation, while similar State aviation property and common air traffic management system facilities may only be federally owned, except for the aviation property of internal affairs agencies, which may be owned by administrative subdivisions of the Russian Federation. Civil aircraft may be owned by citizens of the Russian Federation.

**Article 8. Mandatory certification and licensing in civil aviation**

1. The following shall be subject to mandatory certification: legal persons developing or manufacturing aircraft or other aviation equipment; aviation enterprises and individual entrepreneurs carrying out and supporting air operations and aerial work; legal persons maintaining and repairing aviation equipment; aerodromes and airports; educational institutions training specialists at the appropriate levels in accordance with the aviation personnel duty rosters; aircraft, aircraft engines, propellers, airborne and ground-based aviation equipment and other facilities; and legal persons whose activities are directly related to ensuring flight safety or aviation security.

2. Aviation personnel shall be subject to mandatory licensing.

3. Mandatory certification and licensing shall be performed by special authorities responsible for organizing and carrying out mandatory certification and licensing. The mandatory certification and licensing requirements and the procedure for carrying them out, as established by the federal aviation regulations, shall be binding on all federal executive agencies, executive agencies of administrative subdivisions of the Russian Federation and legal persons and citizens.

4. A fee shall be charged for mandatory certification.

**Article 9. Licensing of aviation activities**

1. The following shall be subject to licensing:

(a) activities related to performing and supporting the air transport (domestic and international) of passengers, baggage, cargo and mail on a commercial basis;  
activities related to servicing air traffic and to servicing aircraft, passengers, baggage, cargo and mail at

aerodromes and airports;

aerial work to meet the needs of citizens and legal persons, including aerial work performed in the airspace of foreign States and activities in support of aerial work;

the training of specialists at the appropriate levels in accordance with the aviation personnel duty rosters;

(b) aviation activities of public organizations related to:

training specialists at the appropriate levels in accordance with the aviation personnel duty rosters for general air operations intended for sporting, educational, advertising and other similar purposes; monitoring the technical condition and operational safety of general aviation aircraft intended for sporting, educational, advertising and other similar purposes.

2. The licensing of civil aviation activities shall be the responsibility of a special authority for civil aviation in accordance with the procedure established by the federal aviation regulations.

3. The issue of the appropriate licences to citizens and to the legal persons indicated in Article 8 of the present Air Code shall be prohibited in the absence of certificates.

4. The issue of the appropriate licence to an aviation enterprise or individual entrepreneur may be conditional upon its/his being made responsible for carrying out socially significant air operations and/or aerial work in accordance with the legislation of the Russian Federation.

5. Noncommercial activities in the field of State, experimental and civil aviation, including general aviation, may be carried out without a licence.

6. A decision to issue or refuse to issue a licence may be appealed in court. 7. A fee shall be charged for the licensing of aviation activities.

#### **Article 10. Suspension or cancellation of a certificate and/or licence**

1. A certificate and/or licence may be suspended or restrictions placed on its validity by the agency which issued the document in accordance with the procedure established by the federal aviation regulations.

2. A certificate and/or licence may be cancelled by the agency which issued the document in accordance with the procedure established by the federal aviation regulations.

### **CHAPTER II. STATE REGULATION OF AIRSPACE USE**

#### **Article 11. Airspace use**

1. Airspace use shall mean an activity involving the movement in airspace of various physical objects (aircraft, rockets and other objects) as well as other activities (erection of tall structures, work during which electromagnetic or other types of radiation are produced, the ejection into the atmosphere of visibility-reducing substances, blasting, etc.) which may jeopardize air traffic safety.

2. Airspace users shall mean citizens and legal persons invested, in accordance with the established procedure, with the right to carry out activities involving airspace use.

#### **Article 12. State regulation of airspace use**

1. State regulation of airspace use shall mean the establishment by the State of general regulations

governing this type of activity and responsibility for complying with them.

2. State regulation of airspace use shall be effected by the following authorities:

- (a) a special authority for defence shall effect complete State regulation of airspace use;
- (b) the special authority for civil aviation shall effect State regulation of activities related to the use of that part of the airspace which, in accordance with the established procedure, is allotted to airways (domestic and international), local-service air routes, aerial work areas, and civil aerodromes and airports.

### **Article 13. State airspace use priorities**

1. All airspace users shall have equal rights to use airspace.

2. When two or more airspace users need to use airspace at the same time, the right to use it shall be granted to the users in accordance with State priorities in the following order:

- (a) the repulsion of an air attack and the prevention or suppression of violations of the State border of the Russian Federation or an armed invasion of the territory of the Russian Federation;
- (b) the provision of assistance in natural or man-made emergencies;
- (c) the launching, landing, search for or evacuation of spaceships and their crews;
- (d) the prevention and suppression of violations of the federal airspace use regulations;
- (e) air operations, including those which are in the interests of the State's defence capability and State security, or other airspace use activities carried out in accordance with decisions of the Government of the Russian Federation or procedures established by the Government of the Russian Federation;
- (f) air operations or other airspace use activities carried out in accordance with special agreements;
- (g) State aviation air operations involving sudden combat readiness checks or the redeployment of State aviation units and subunits;
- (h) the scheduled air transport of passengers and baggage;
- (i) State aviation air operations;
- (j) experimental aviation air operations;
- (k) the scheduled air transport of cargo and mail;
- (l) non-scheduled air operations and aerial work;
- (m) educational, sporting, demonstration and other activities;
- (n) air operations or other airspace use activities carried out to meet the needs of citizens.

### **Article 14. Airspace use management**

1. Airspace use management shall ensure safe, economical and regular air traffic and other airspace use activities. Airspace use management shall include:

- (a) establishing the airspace structure;
- (b) planning and coordinating airspace use in accordance with the State priorities established by Article 13 of the present Air Code;
- (c) providing an airspace use approval procedure;
- (d) air traffic management, consisting of : air traffic service (control);  
air traffic flow management;  
airspace management in support of air traffic service (control) and air traffic flow management;
- (e) monitoring compliance with the federal airspace use regulations.

2. Airspace use management shall be effected by common air traffic management system units and by airspace user agencies - air traffic service (flight control) agencies - in the zones and areas established for them in accordance with the procedure defined by the Government of the Russian Federation.

Regulations concerning the common air traffic management system shall be approved by the Government of the Russian Federation.

### **Article 15. Airspace structure**

The airspace structure shall include the air traffic service zones, areas and routes (airways, local service air routes, etc.), aerodrome and hub areas, special air operations zones and routes, prohibited areas, danger areas (proving and blasting areas, etc.), restricted flight areas and other airspace structure components established for the conduct of airspace activities. The airspace structure shall be approved in accordance with the procedure established by the Government of the Russian Federation.

**Article 16. Authorization of airspace use**

Airspace shall be used on the basis of an authorization from the appropriate common air traffic management system unit, except in the instances stipulated by Article 13, paragraph 2 (a)-(d), of the present Code, with obligatory notification thereof to the appropriate common air traffic management system unit.

**Article 17. Prohibition or restriction of airspace use**

The use of airspace or individual airspace areas may be prohibited or restricted in accordance with the procedure established by the Government of the Russian Federation.

**Article 18. Monitoring compliance with the federal airspace use regulations**

1. Compliance with the federal airspace use regulations shall be monitored by common air traffic management system units, the special authority for defence in respect of detecting trespassing aircraft, and airspace user agencies - air traffic service (flight control) units - in the zones and areas established for them.

2. The agencies indicated in paragraph 1 of the present Article and airspace users shall be obliged to take the measures stipulated by the legislation of the Russian Federation to prevent and/or suppress violations of the federal airspace use regulations.

**Article 19. Liability for violations of the federal airspace use regulations**

Violations of the federal airspace use regulations shall entail liability in accordance with the legislation of the Russian Federation.

**CHAPTER III. STATE REGULATION OF AVIATION ACTIVITIES**

**Article 20. Types of aviation**

Aviation shall be subdivided into civil, State and experimental aviation.

**Article 21. Civil aviation**

1. Aviation used to meet the needs of citizens and the economy shall be classed as civil aviation.
2. Civil aviation used for the air transport of passengers, baggage, cargo and mail and for aerial work, in return for payment, shall be classed as commercial civil aviation.
3. Civil aviation used on a gratis basis shall be classed as general aviation.

**Article 22. State aviation**

1. Aviation used for military, border, police, customs and other State services and for mobilization and defence purposes shall be classed as State aviation.
2. The use of State aviation for commercial purposes shall be effected in accordance with the procedure established by the Government of the Russian Federation.

**Article 23. Experimental aviation**

1. Aviation used for developmental, experimental and scientific research work and for testing aviation and other equipment shall be classed as experimental aviation.
2. The use of experimental aviation for commercial purposes shall be effected in accordance with the procedure established by the Government of the Russian Federation.

**Article 24. State regulation of civil aviation activities**

State regulation of civil aviation activities shall be effected by the special authority for civil aviation within the limits established by that authority and by its structural subunits and territorial agencies.

**Article 25. State regulation of State aviation activities**

1. State regulation of State aviation activities shall be effected by the special authority for defence.
2. The organization of State aviation activities and the day-to-day management of such activities shall be effected by appropriate special authorities having State aviation subunits.

**Article 26. State regulation of experimental aviation activities**

State regulation of experimental aviation activities shall be effected by a special authority for the defence industry.

**CHAPTER IV. STATE MONITORING OF CIVIL AVIATION ACTIVITIES**

**Article 27. Aim of State monitoring of civil aviation activities**

The aim of State monitoring of civil aviation activities shall be to ensure flight safety, aviation security and quality operations and services.

**Article 28. Performance of State monitoring of civil aviation activities**

State monitoring of civil aviation activities shall be carried out by the special authority for civil aviation. State monitoring shall be carried out to check compliance with the air legislation of the Russian Federation and the international agreements of the Russian Federation.

**Article 29. State civil aviation activity monitoring authorities**

1. The special authority for civil aviation shall establish inspection services to carry out State monitoring of civil aviation activities.
2. The structure and functions of the inspection services shall be established by the federal aviation regulations.

**Article 30. Rights and responsibility of inspectors**

The rights and responsibility of inspectors shall be defined by the Government of the Russian Federation.

**Article 31. Binding nature of the orders of inspectors and inspection services**

The orders of inspectors and inspection services issued as a result of their checks shall be binding on citizens and legal persons.

**CHAPTER V. AIRCRAFT**

**Article 32. Aircraft**

An aircraft shall mean a flying vehicle supported in the atmosphere by interaction with air other than air reflected from the surface of the ground or water.

**Article 33. State registration and inventorying of aircraft**

1. Aircraft intended for flight operations shall be subject to State registration in accordance with the following procedure:

civil aircraft shall be registered in the State Register of Civil Aircraft of the Russian Federation with State registration certificates being issued, or in the State register of civil aircraft of a foreign State provided that a continuing airworthiness agreement has been concluded between the State of the Operator and the State of Registry. Information on civil aircraft shall be included in the State Register of Civil Aircraft of the Russian Federation when they have certificates of airworthiness;

State aircraft shall be registered in accordance with the procedure established by the special authority for defence in coordination with special authorities having State aviation subunits.

2. The State Register of Civil Aircraft of the Russian Federation shall be kept by the special authority for civil aviation.

3. Experimental aircraft shall be subject to State inventory with the appropriate documents being issued by the special authority for the defence industry.

4. An aircraft registered or inventoried in the Russian Federation in accordance with the established procedure shall acquire Russian Federation nationality.

5. Information on a civil aircraft shall be excluded from the State Register of Civil Aircraft of the Russian Federation in the following instances:

the retirement or withdrawal from service of a civil aircraft;

the sale of a civil aircraft or the transfer on other legal bases of the right of ownership to a foreign State or a foreign citizen, stateless person or foreign legal person, provided that the civil aircraft is removed from the territory of the Russian Federation;

violation of the requirements with regard to State registration of civil aircraft.

6. When information on a civil aircraft is excluded from the State Register of Civil Aircraft of the Russian Federation, the State registration certificate for that aircraft shall lose its validity and shall be returned to the authority which issued the certificate.

7. The regulations for the State registration and inventorying of aircraft shall be established by the appropriate special authority.

8. When documents are submitted for the State registration of a civil aircraft, a fee shall be paid in the amount of the value of the services rendered in the course of State registration. The amount of the fee and the procedure for collecting it shall be established by the special authority for civil aviation in coordination with the special authority for finance.

9. The State registration of ownership rights and other property rights to an aircraft, the limitation, granting, transfer and cessation of such rights, and the establishment of a State registration procedure and the grounds for refusing State registration of rights to an aircraft or of transactions involving an aircraft shall be carried out in accordance with Article 131 of the Civil Code of the Russian Federation.

10. When a civil aircraft is mortgaged, information on the mortgage shall be included in the State Register of Civil Aircraft of the Russian Federation.

#### **Article 34. Aircraft markings**

1. When information on a civil aircraft is entered in the State Register of Civil Aircraft of the Russian Federation, the aircraft shall be assigned State and registration identification marks which shall be placed on the aircraft.

2. Inventory identification marks shall be placed on State and experimental aircraft.

3. In addition, medical service aircraft shall bear a depiction of a Red Cross or Red Crescent.

4. Apart from the State and registration identification marks, civil aircraft shall bear a depiction of the State flag of the Russian Federation and may bear a depiction of the flag of an administrative subdivision of the Russian Federation as well as trade marks (symbols, inscriptions, emblems and other marks registered in accordance with the procedure established by the legislation of the Russian Federation). The depiction of the State flag of the Russian Federation shall be positioned higher than the depiction of the flag of an administrative subdivision of the Russian Federation and be larger in size than the depiction of the flag of the administrative subdivision of the Russian Federation.

5. The procedure for applying markings to State and experimental aircraft shall be established by the special authority for defence and the special authority for the defence industry, respectively.

6. The State and registration identification marks of civil aircraft as well as the procedure for applying these marks and the procedure for applying trade marks to civil aircraft shall be established by the special authority for civil aviation.

#### **Article 35. Requirements in respect of the airworthiness of civil aircraft, aircraft engines and propellers and protection of the environment from the effects of aviation activities**

The requirements in respect of the airworthiness of civil aircraft, aircraft engines and propellers and protection of the environment from the effects of aviation activities (hereinafter: airworthiness and environmental protection requirements) shall be defined by the federal aviation regulations and be binding on federal executive agencies, the executive agencies of administrative subdivisions of the Russian Federation and legal persons and citizens involved in the development, testing, serial production, acceptance, operation and repair of civil aircraft, aircraft engines and propellers.

#### **Article 36. Operational clearance of civil aircraft and State aircraft**

1. Civil aircraft shall be cleared for operation when they have certificates of airworthiness issued on the basis of a type certificate and confirming that the aircraft meet the requirements in effect in the Russian Federation for airworthiness of civil aircraft and environmental protection.

2. The procedure for the operational clearance of civil aircraft, including ones being leased, shall be established by the federal aviation regulations.

3. The operational clearance of State aircraft shall be effected in accordance with the procedure established by the special authority for defence.

**Article 37. Certification of civil aircraft, aircraft engines and propellers**

1. The certification of new types of civil aircraft, aircraft engines and propellers shall be carried out in accordance with the federal aviation regulations, which establish the certification requirements and procedures. Certification shall conclude with the issuance of a type certificate if it is established during the certification process that the new types of civil aircraft, aircraft engines and propellers meet the airworthiness and environmental protection requirements and the design of the new types of civil aircraft, aircraft engines and propellers is deemed to be standard in quality.

2. A type certificate shall be issued by a special authority made responsible, in accordance with the established procedure, for organizing and carrying out the mandatory certification of civil aircraft, aircraft engines and propellers.

3. Each civil aircraft, aircraft engine and propeller shall undergo testing and inspection during the serial production process in accordance with the established procedure, at the end of which civil aircraft shall be issued with a certificate of airworthiness and aircraft engines or propellers shall be issued with a document equivalent to a certificate of airworthiness. The above-mentioned documents shall certify that the designs and performance of the civil aircraft, aircraft engine or propeller conform to their standard designs and that their fabrication meets the appropriate requirements.

4. Ensuring that the type design of a civil aircraft, aircraft engine or propeller meets the airworthiness and environmental protection requirements in effect in the Russian Federation at the development, testing and operational stages up to the time of its retirement shall be the responsibility of the civil aircraft developer, aircraft engine developer or propeller developer, respectively. Ensuring that each serially-produced civil aircraft, aircraft engine or propeller conforms to the certificated type shall be the responsibility of its manufacturer.

5. Compliance with the flight operation and maintenance regulations for civil aircraft stipulated by the operating documentation for a specific type of civil aircraft and ensuring its continuing airworthiness shall be the responsibility of the operator.

6. If an operator violates the regulations referred to in paragraph 5 of the present Article or a civil aircraft is in an unsafe condition, the special authority for civil aviation or the special authority for the defence industry shall have the right to apply restrictions on the operation of the aircraft concerned or to take it out of operation.

7. State monitoring of the airworthiness of civil aircraft, aircraft engines and propellers at the development, production and operational stages shall be effected by the special authority made responsible, in accordance with the established procedure, for organizing and carrying out the mandatory certification of civil aircraft, aircraft engines and propellers, the special authority for civil aviation and the special authority for the defence industry.

8. Operators shall be obliged to provide the special authority made responsible, in accordance with the established procedure, for organizing and carrying out the mandatory certification of civil aircraft, aircraft engines and propellers and the aviation equipment developer with information on the technical condition of the aviation equipment and its operational performance. The content of the information and the procedure for presenting it shall be established by the federal aviation regulations.

9. Civil aircraft, aircraft engines and propellers produced in a foreign State and entering the Russian Federation for operation shall undergo certification in accordance with the federal aviation regulations.

**Article 38. Aircraft radio call sign**

1. Each civil aircraft having radio communication equipment shall be assigned a radio call sign in accordance with the procedure established by the federal aviation regulations.

2. In State and experimental aviation, a pilot-in-command shall be assigned a changeable radio call sign. In instances, as established by the federal aviation regulations, where a State or experimental aircraft is operating on airways or local-service air routes with landings at civil aerodromes, such aircraft shall be assigned a flight number.

**Article 39. Restrictions on the right to use civil aircraft**

Restrictions on the right to use civil aircraft (enlistment for air operations for State needs, temporary confiscation of civil aircraft and other restrictions) shall be permitted in wartime and/or under martial law or in a state of emergency.

**CHAPTER VI. AERODROMES, AIRPORTS AND COMMON AIR TRAFFIC MANAGEMENT SYSTEM FACILITIES**

**Article 40. Aerodromes and airports**

1. An aerodrome shall mean an area on land or water, along with the buildings, structures and equipment situated thereon, which is intended for aircraft take-off, landing, taxiing and parking operations.

2. Aerodromes shall be subdivided into civil aerodromes, State aviation aerodromes and experimental aviation aerodromes.

3. An airport shall mean a set of structures which includes an aerodrome, air terminal and other structures intended for the arrival and departure of aircraft and the servicing of air operations and having the necessary equipment, aviation personnel and other employees for those purposes.

4. An international airport shall mean an airport which is open for the arrival and departure of aircraft carrying out international air operations and at which customs, border, medical, quarantine and other types of inspections are carried out.

5. The decision to open an aerodrome to international air operations or to open an international airport shall be taken by the Government of the Russian Federation.

6. The procedure for opening or closing an aerodrome or airport shall be established by the federal aviation regulations.

**Article 41. State registration of aerodromes and airports**

1. Civil aerodromes and airports shall be subject to State registration with information on them being entered in the State Register of Civil Aerodromes of the Russian Federation and the State Register of Airports of the Russian Federation, respectively, but only if they have compliance certificates. The special authority for civil aviation shall be responsible for maintaining these registers.

2. State aviation aerodromes shall be subject to State registration with information on them being entered in the State Register of State Aviation Aerodromes of the Russian Federation. The special authority for defence shall be responsible for maintaining this register.

3. Experimental aviation aerodromes shall be subject to State registration with information on them being entered in the State Register of Experimental Aviation Aerodromes of the Russian Federation. The special authority for the defence industry shall be responsible for maintaining this register.

4. Information on a civil aerodrome or airport shall be excluded from the appropriate State registers in the following instances:

if the requirements for State registration of a civil aerodrome or airport or for its safe operation have been violated; on the basis of a written request by the party which registered the civil aerodrome or airport.

5. If information on an aerodrome or airport is excluded from the appropriate State registers, the operation of the aerodrome or airport shall cease, and the State registration certificate of the aerodrome or airport shall lose its force and shall be returned to the authority which carried out the State registration of the aerodrome or airport.

6. A fee shall be payable when documents are submitted for the State registration of a civil aerodrome or airport. The amount of the fee and the procedure for collecting it shall be established by the special authority for civil aviation in coordination with the special authority for finance.

7. The State registration of ownership rights and other property rights to an aerodrome or airport, the limitation, granting, transfer and cessation of such rights, and the establishment of a State registration procedure and the grounds for refusing State registration of rights to an aerodrome or airport or of transactions involving them shall be carried out in accordance with Article 131 of the Civil Code of the Russian Federation.

#### **Article 42. Common air traffic management system facilities**

Common air traffic management system facilities shall mean the sets of buildings, structures, service lines and ground-based air traffic service, navigation, landing and communication facilities and systems intended to manage air traffic. The list of common air traffic management system facilities shall be defined by the federal aviation regulations.

#### **Article 43. Allocation of land or water area**

1. The allocation of a land area for an aerodrome, airport or common air traffic management system facility shall be carried out in accordance with the land-related legislation of the Russian Federation.

2. The allocation of a water area for an aerodrome shall be carried out in accordance with the water-related legislation of the Russian Federation.

#### **Article 44. Joint-base and joint-use aerodromes**

1. A joint-base aerodrome shall mean an aerodrome at which civil aircraft, State aircraft and/or experimental aviation aircraft are jointly based.

The list of joint-base aerodromes shall be approved by the Government of the Russian Federation.

2. A joint-use aerodrome shall mean a State aviation aerodrome at which take-off, landing, taxiing and parking operations of civil aircraft making scheduled flights and not having base rights at that aerodrome are performed. Decisions concerning the joint use of a State aviation aerodrome shall be

taken by the special authority in whose jurisdiction the aerodrome concerned is located.

3. Joint-base and joint-use aerodromes shall be operated in accordance with agreements.

4. Joint-base aerodromes for civil and State aircraft and joint-use aerodromes shall meet the requirements laid down for civil aerodromes.

**Article 45. Construction and reconstruction of aerodromes, airports and common air traffic management system facilities**

The construction and reconstruction of aerodromes, airports and common air traffic management system facilities shall be coordinated with the appropriate executive agencies of administrative subdivisions of the Russian Federation.

**Article 46. Construction in an aerodrome's environs**

The planning, construction and development of urban and rural settlements and the construction and reconstruction of industrial, agricultural or other facilities in an aerodrome's environs shall be carried out in compliance with the aircraft flight safety requirements while taking account of the possible adverse effects of aerodrome equipment and air operations on the health of citizens and the activities of legal persons and in coordination with the owner of the aerodrome.

**Article 47. Placement of various facilities in the vicinity of an aerodrome**

1. The placement in the vicinity of an aerodrome of buildings, structures, communication lines, power transmission lines and radio and other facilities which might threaten aircraft flight safety or create interference affecting the operation of the radio equipment installed at the aerodrome must be coordinated with the owner of the aerodrome and carried out in accordance with the air legislation of the Russian Federation.

2. The placement of communication and power transmission lines and various types of structures in the area covered by landing systems or near radar and radio navigation facilities intended to support air operations, and the placement of radio emission facilities shall be coordinated with the appropriate regional civil aviation administrations, common air traffic management system units and federal executive agencies, and with the special authority for civil aviation and the special authority for defence.

**Article 48. Certification of civil aerodromes and airports and common air traffic management system facilities**

1. Aerodromes and airports used for civil aviation shall be subject to mandatory certification. The procedure for certifying such aerodromes and airports and their equipment and the list of such equipment shall be defined by the federal aviation regulations.

2. The requirements for civil aerodromes and airports shall be established by the federal aviation regulations and shall be binding on all federal executive agencies, the executive agencies of administrative subdivisions of the Russian Federation and citizens and legal persons involved in the planning, construction, acceptance, operation and repair of such aerodromes and airports.

3. The radio, lighting and meteorological equipment installed at civil aerodromes, joint-base aerodromes for civil and State aircraft and joint-use aerodromes and the common air traffic management system facilities shall meet the operational requirements, as confirmed by the appropriate

operating certificate.

4. State monitoring of the compliance of civil aerodromes and airports with the relevant requirements shall be performed by the special authority made responsible, in accordance with the established procedure, for organizing and carrying out the mandatory certification of civil aerodromes and airports.

**Article 49. Operational clearance of aerodromes and airports**

1. Aerodromes and airports used for civil aviation shall be cleared for operation by the special authority for civil aviation on the basis of the appropriate certificates.

2. State aviation aerodromes and experimental aviation aerodromes shall be cleared for operation in accordance with the procedures established by the special authority for defence and the special authority for the defence industry, respectively.

3. Ensuring that an aerodrome complies with the established requirements during its period of operation shall be the responsibility of the organization which operates the aerodrome.

**Article 50. Servicing of aircraft at aerodromes and airports**

1. The servicing of aircraft at aerodromes and airports shall be carried out on a uniform basis, unless otherwise stipulated by the legislation of the Russian Federation.

2. Aerodromes and airports may be closed for aircraft arrivals and departures owing to technical or meteorological conditions which threaten flight safety or in accordance with decisions by the Government of the Russian Federation.

3. In wartime and/or under martial law or in a state of emergency, aerodromes and airports shall be used in accordance with the legislation of the Russian Federation.

**Article 51. Marking of buildings and structures**

1. To ensure flight safety, the owners of buildings and structures, communication lines, power transmission lines, radio equipment and other facilities shall be obliged to place markings and marking devices on those facilities at their own expense in accordance with the federal aviation regulations.

2. The placement in the vicinity of aerodromes of markings and devices similar to the markings and marking devices adopted to identify aerodromes shall be prohibited.

**CHAPTER VII. AVIATION PERSONNEL**

**Article 52. The term "aviation personnel"**

1. "Aviation personnel" shall denote persons having special training and a certificate and performing work related to ensuring flight safety or aviation security, as well as work related to managing, carrying out, supporting and servicing air transport, flight operations and aerial work, managing airspace use and managing and servicing air traffic.

The aviation personnel duty rosters shall be approved by the Government of the Russian Federation.

2. Aviation personnel shall include civil aviation personnel, State aviation personnel and experimental aviation personnel.

**Article 53. Work clearance of aviation personnel**

1. Civil aviation personnel shall be cleared for work when they hold a certificate. The requirements applying to civil aviation personnel shall be established by the federal aviation regulations.
2. State monitoring of the work of aviation personnel shall be carried out by the special authority for civil aviation, the special authority for defence or the special authority for the defence industry.

**Article 54. Training of specialists at appropriate levels in accordance with the civil aviation personnel duty roster**

The training of specialists at the appropriate levels in accordance with the civil aviation personnel duty roster shall be carried out at educational establishments having certificates and licences issued by the special authority for civil aviation.

**Article; 55. Recognition of certificates issued to aviation personnel by foreign States**

Certificates issued to aviation personnel by foreign States shall be recognized as valid in the Russian Federation provided that the certificates conform to international aviation standards recognized by the Russian Federation and the federal aviation regulations.

**CHAPTER VIII. AIRCRAFT CREW**

**Article 56. Aircraft crew**

1. An aircraft crew shall consist of the flight crew (pilot-in-command and other members of the flight personnel) and cabin crew (heavy cargo specialists and flight attendants). A civil aircraft flight shall not be permitted if the flight crew is smaller than the minimum number stipulated.
2. The number of crew on a specific type of aircraft shall be established in accordance with the operational requirements for the type of aircraft concerned.
3. During the testing of an experimental aircraft, the composition of its crew shall be determined by the developer of the aircraft concerned.
4. Only citizens of the Russian Federation may make up the flight crew of a civil aircraft of the Russian Federation, unless otherwise stipulated by federal law.

**Article 57. Pilot-in-command**

1. A pilot-in-command shall mean a person having a valid pilot's certificate, as well as the training and experience required to operate a specific type of aircraft independently.
2. The pilot-in-command shall supervise the work of the aircraft crew, be responsible for discipline and order on the aircraft and take the necessary measures to ensure the safety of the persons on board the aircraft and of the aircraft itself and the property on it.

**Article 58. Rights of the pilot-in-command**

1. The pilot-in-command shall have the right:

(a) to take the final decisions related to an aircraft's take-off, flight and landing operations, terminating a flight and returning to the aerodrome, or making a forced landing in the event of a clear threat to flight safety for the purpose of saving lives or preventing damage to the environment. Such decisions may involve a deviation from the flight plan, the instructions of the appropriate common air traffic management system unit or the flight mission, with mandatory notification being provided to the appropriate air traffic service (flight control) unit and, if possible, in accordance with the established rules of the air;

(b) to give orders to any person on board the aircraft and require that they be carried out in order to ensure flight safety. The pilot-in-command shall have the right to take all necessary measures, including coercive measures, with respect to persons whose actions create a direct threat to flight safety and who refuse to obey the orders of the pilot-in-command. When the aircraft arrives at the nearest aerodrome, the pilot-in-command shall have the right to remove such persons from the aircraft and, in the case of acts which appear to be criminal, to hand them over to law-enforcement agencies;

(c) to take decisions related to jettisoning fuel during flight or jettisoning baggage, cargo and mail where that is necessary to ensure a safe flight and landing. In the absence of the appropriate aviation security services, the pilot-in-command shall have the right to conduct a pre-flight inspection of the persons and items indicated in Article 85 of the present Code;

(d) to take other measures to ensure the safe completion of an aircraft flight.

2. In the event of a forced landing by an aircraft, the pilot-in-command shall supervise the actions of persons on board the aircraft until he hands over his authority to the representatives of aircraft search and rescue services.

#### **Article 59. Aircraft crew actions in the event of distress**

If an aircraft is or has been in distress, the pilot-in-command and other members of the aircraft crew shall be obliged to take all possible measures to safeguard the lives and health of the persons on board the aircraft and to ensure the safety of the aircraft and the property on it.

#### **Article 60. Assistance to an endangered aircraft and persons**

A pilot-in-command who has received a distress signal from another aircraft, ocean-going vessel or inland waterways craft, or who has detected a craft which is or has been in distress, an ecological disaster area or endangered persons shall be obliged to render assistance if this does not endanger the aircraft, passengers and crew in his charge, to note the distress location (area) on a chart and to inform the appropriate air traffic service (flight control) unit thereof.

### **CHAPTER IX. AVIATION ENTERPRISES**

#### **Article 61. Aviation enterprise and operator**

1. For the purposes of the present Air Code, an aviation enterprise shall mean a legal person which, irrespective of its organizational and legal form and type of ownership, has as the main goals of its activities to carry out the air transport of passengers, baggage, cargo and mail and/or to perform aerial work in return for payment.

2. The establishment in the territory of the Russian Federation of an aviation enterprise in which foreign capital has an interest shall be permitted provided that the foreign capital share does not exceed forty-nine per cent of the authorized capital of the aviation enterprise, its senior executive is a citizen of the Russian Federation and the number of foreign citizens in the executive body of the aviation enterprise does not exceed one third of the membership of the executive body.

3. An operator shall mean a citizen or legal person who/which has an aircraft which he/it owns or leases

or has on some other legal basis, uses the aircraft concerned for air operations and holds an operator's certificate.

The requirements applicable to an operator shall be defined by the federal aviation regulations.

4. A citizen or legal person using an aircraft for State and/or experimental aviation purposes shall not be obliged to obtain an operator's certificate or equivalent document.

**Article 62. Commercial civil aviation activities of Russian aviation enterprises and individual Russian entrepreneurs**

Russian aviation enterprises and individual Russian entrepreneurs shall have the right to engage in commercial civil aviation activities if they have licences obtained in accordance with Article 9 of the present Air Code.

**Article 63. Commercial civil aviation activities of foreign aviation enterprises, international operating agencies and individual foreign entrepreneurs**

1. Foreign aviation enterprises, international operating agencies and individual foreign entrepreneurs shall have the right to engage in commercial civil aviation activities in accordance with the procedure established by the legislation of the Russian Federation and the international agreements of the Russian Federation.

2. Foreign aviation enterprises, international operating agencies and individual foreign entrepreneurs shall obtain the appropriate licences for carrying out international air operations and/or performing aerial work within the territory of the Russian Federation.

Such licences shall be issued in accordance with Article 9 of the present Air Code.

3. In the case of a foreign aviation enterprise, an operator's certificate or equivalent document issued by the appropriate authority in a foreign State and conforming to international standards recognized by the Russian Federation and to the international agreements of the Russian Federation shall be recognized as valid.

4. Foreign aviation enterprises may open agencies in the territory of the Russian Federation in accordance with the legislation of the Russian Federation and/or the international agreements of the Russian Federation.

5. Foreign aviation enterprises, international operating agencies and individual foreign entrepreneurs shall not have the right:

to take passengers, baggage, cargo or mail on board aircraft in the territory of the Russian Federation for air transport to the territory of a foreign State or to transport them to the territory of the Russian Federation from the territory of a foreign State, unless otherwise stipulated by an international agreement of the Russian Federation or by single-use permits from the special authority for civil aviation issued in accordance with the procedure established by the Government of the Russian Federation;

to take passengers, baggage, cargo or mail on board aircraft in the territory of the Russian Federation for air transport within the territory of the Russian Federation without permits from the special authority for civil aviation issued in accordance with the procedure established by the Government of the

Russian Federation.

**Article 64. Civil navigation rates and charges and regulations for the sale of documents of**

1. Regulations for setting and applying rates and collecting charges in civil aviation and for selling tickets and issuing cargo manifests and other documents of carriage shall be established by the special authority for civil aviation.
2. Negotiated prices may be established for air operations performed in accordance with an aircraft charter contract. The special authority for civil aviation may establish minimum prices for such operations performed on specific airways to protect scheduled air operations performed on those airways.
3. The fees for the air transport of passengers, baggage, cargo and mail shall be established by the carriers.

**Article 65. Monitoring of the activities of aviation enterprises and individual entrepreneurs**

1. Monitoring of the activities of aviation enterprises and individual entrepreneurs, including foreign aviation enterprises, international operating agencies and individual foreign entrepreneurs, shall be carried out by the special authority for civil aviation. Monitoring shall be carried out to ensure compliance with the legislation of the Russian Federation, the international agreements of the Russian Federation and the requirements of the certificates and licences concerned.
2. If an aviation enterprise or individual entrepreneur does not comply with the requirements set out in paragraph 1 of the present Article, the requirements of the licence concerned are violated and/or activities are carried out without the appropriate licence where a licence is mandatory, the following enforcement measures may be applied:
  - (a) a warning may be issued;
  - (b) the permit, certificate or licence concerned may be revoked, or the validity of such documents suspended or restricted;
  - (c) a fine may be imposed in accordance with the procedure established by the legislation of the Russian Federation.

**CHAPTER X. AIR OPERATIONS**

**Article 66. Operational clearance of an aircraft**

1. An aircraft shall be cleared for operation if it has State and registration or inventory identification marks, has undergone the necessary preparation and has the appropriate documentation on board.
2. The procedure for clearing civil aircraft for operation shall be established by the federal aviation regulations.
3. The procedure for clearing State and experimental aircraft for operation shall be established by the special authority for defence and the special authority for the defence industry, respectively.

**Article 67. Airborne documentation**

- I. Every civil aircraft shall have the following documentation on board:
  - (a) aircraft documents:
    - a State registration certificate;

an operator's certificate (copy);  
a certificate of airworthiness;  
a flight log and medical log;  
a permit for an aircraft radio station if the aircraft is outfitted with radio equipment; a flight manual;

(b) the appropriate documents for each crew member;

(c) the documents stipulated by the special authority for civil aviation.

2. State or experimental aircraft shall carry the documents contained in lists drawn up by the special authority for defence and the special authority for the defence industry, respectively.

### **Article 68. Preparation of an aircraft and its crew for operation**

An aircraft flight shall be preceded by preparation of the aircraft and its crew. The regulations for preparing an aircraft and its crew for flight and for monitoring their preparedness shall be established by the appropriate special authority.

### **Article 69. Support for air operations**

Air traffic service and meteorological, radio, electrical, lighting, aviation engineering, aerodrome, search and rescue and other support for air operations shall be provided on a uniform basis in return for payment, unless otherwise stipulated by the legislation of the Russian Federation.

### **Article 70. Aircraft flight plan**

1. An aircraft flight shall be carried out in accordance with a flight plan presented to the appropriate common air traffic management system unit by an airspace user having a permit to use the airspace, with the exception of aircraft flights carried out for the purpose of repelling an air attack, averting or suppressing violations of the State border of the Russian Federation or an armed invasion of the territory of the Russian Federation, rendering assistance in natural or man-made emergencies, searching for and evacuating space vehicles and their crews, or averting and/or suppressing violations of the federal airspace use regulations, and aircraft flights carried out in special regions defined in accordance with the procedure established by the Government of the Russian Federation.

2. Deviations from an aircraft flight plan shall be permitted on the basis of a clearance from the appropriate air traffic service (flight control) unit, except in the instances stipulated by Article 58 of the present Air Code.

### **Article 71. Radio communication with an aircraft**

1. An aircraft having radio communication equipment and its corresponding air traffic service (flight control) unit shall be obliged to engage in mutual radio communication.

2. Radio communication intended to serve air traffic within the territory of the Russian Federation shall be carried out in the Russian language. For air operations on international airways within the territory of the Russian Federation, including ones in the vicinity of aerodromes that are open for international flights and in areas over the open sea in which the Russian Federation is responsible for air traffic management, radio communication may be carried out in the English and Russian languages. The

procedure for effecting radio communication shall be established by the federal aviation regulations.

**Article 72. Air operations over inhabited localities**

Air operations over inhabited localities shall be carried out at a height at which, in the event of an aircraft malfunction, a landing can be made beyond the inhabited localities or on take-off and landing areas specially provided for this purpose within the bounds of the inhabited localities. Deviations from this rule of the air shall be defined in accordance with the procedure established by the Government of the Russian Federation.

**Article 73. Aircraft demonstration flights**

Aircraft demonstration flights shall be carried out in accordance with the flight safety requirements established by the appropriate special authority. The procedure for managing and carrying out aircraft demonstration flights shall be established by the Government of the Russian Federation.

**Article 74. Air operations at supersonic speeds**

Air operations at supersonic speeds shall be permitted at a height which prevents sonic boom from having a dangerous impact on the environment. Regulations for carrying out air operations at supersonic speeds shall be established by the federal aviation regulations.

**Article 75. Use of still and motion picture photography and other methods of remote exploration of the earth from aircraft**

The use of still and motion picture photography and other methods of remote exploration of the earth from aircraft shall be permitted in accordance with the procedure established by the Government of the Russian Federation.

**Article 76. Leasing of communication channels**

1. In order to support air operations and other activities involving airspace use, citizens and legal persons having the right to provide communication services shall lease the necessary communication channels to the appropriate special authorities at their request on a contractual basis.

2. A special communications authority, the communications units of federal executive agencies and citizens and legal persons having the right to provide communication services shall ensure the immediate availability of communication channels to support air operations and other activities involving airspace use and shall take urgent measures to provide substitute communication channels or restore damaged channels.

**Article 77. Use of general-purpose communication facilities**

The procedure for using general-purpose communication facilities to support air operations shall be established by the special communications authority in coordination with the special authority for civil aviation, the special authority for defence or the special authority for the defence industry.

**Article 78. Radio support for air operations and radio communication with aircraft**

1. To provide radio support for air operations and radio communication with aircraft, the special authority for defence shall, in accordance with the established procedure, assign radio frequencies which must be interference immune.

2. Citizens and legal persons having facilities and devices which cause interference with equipment providing radio support for air operations and radio communication with aircraft shall be obliged, at the request of the special communications authority or its subunits, to eliminate such interference with their own resources and at their own expense, and to stop using such facilities and devices until the interference is eliminated.

## **CHAPTER XI. INTERNATIONAL AIR OPERATIONS**

### **Article 79. International air operations**

1. An international air operation shall mean an air operation in the airspace of more than one State.
2. International air operations in the airspace of the Russian Federation shall be carried out in accordance with the legislation of the Russian Federation, the generally accepted standards and principles of international law and the international agreements of the Russian Federation.
3. The international rules of the air, aeronautical information on international airways and international airports and aerodromes that are open for international air operations and other information necessary for the performance of international air services shall be published in the Aeronautical Information Publication of the Russian Federation.
4. International air operations shall be carried out on the basis of the international agreements of the Russian Federation or permits issued in accordance with the procedure established by the Government of the Russian Federation.
5. The identification marks of aircraft of foreign States shall be communicated by operators to the special authority for civil aviation prior to the start of international operations.
6. Operators using aircraft of foreign States for operations in the airspace of the Russian Federation shall be obliged to provide the special authority for civil aviation with information on insurance or other liability provisions for damage to third parties and aircraft. The terms of such provisions shall be established by the special authority for civil aviation.

### **Article 80. Take-off and landing operations by aircraft of the Russian Federation and aircraft of foreign States engaged in international operations**

The take-off and landing operations of aircraft of the Russian Federation and aircraft of foreign States engaged in international operations in the airspace of the Russian Federation shall be carried out at international airports and aerodromes that are open for international air operations, except in instances as established by the legislation of the Russian Federation.

### **Article 81. Recognition of aircraft documents carried on civil aircraft of foreign States in the territory of the Russian Federation**

1. Aircraft documents carried on civil aircraft of foreign States shall be recognized as valid in the territory of the Russian Federation if they meet international aviation standards recognized by the Russian Federation.
2. Civil aircraft of foreign States landing in the territory of the Russian Federation may be subjected to an inspection involving the examination of aircraft documents by authorized officials of the appropriate special authorities.

3. In cases where there is no documentation prescribed for international air operations on board a civil aircraft of a foreign State or there are grounds for considering the aircraft defective, the special authority for civil aviation may stop the departure of the aircraft.

**Article 82. Application of passport, customs and other regulations during international air operations**

The passport, customs and other regulations established in accordance with the legislation of the Russian Federation shall apply to aircraft and their crews and passengers arriving in the Russian Federation, departing from the Russian Federation or transiting with a touchdown in the territory of the Russian Federation, and to property, baggage, cargo and mail being brought into or taken out of the Russian Federation.

**CHAPTER XII. AVIATION SECURITY**

**Article 83. Aviation security**

1. Aviation security shall mean the protection of aviation from unlawful interference with aviation activities.

2. Aviation security shall be provided by the aviation security services of aerodromes or airports, the paramilitary guard units of aerodromes or airports, the aviation security services of operators (aviation enterprises) and the special authorities invested with this right by federal laws.

The aviation security services of aerodromes or airports and the aviation security services of operators (aviation enterprises) shall have special statutory tasks.

3. Unlawful interference with aviation activities shall mean illegal acts (negligence) which threaten safe air operations and result in human injury, material losses or the seizure or hijacking of an aircraft or create a threat that such consequences could occur.

**Article 84. Ensuring aviation security**

1. Parties handling the arrival, departure or servicing of an aircraft shall be obliged to take measures to ensure aviation security.

2. Aviation security shall be ensured by:

(a) preventing access by unauthorized individuals and vehicles to the air side of an airport or aerodrome;

(b) guarding parked aircraft to prevent unauthorized individuals from entering them;

(c) forestalling the illegal carriage on aircraft of weapons, ammunition, explosives, radioactive, toxic or highly inflammable substances or other dangerous items or substances, and implementing special precautionary measures when their carriage is permitted;

(d) pre-flight inspections;

(e) implementing countermeasures against acts of unlawful interference with aviation activities and other measures, including measures involving law enforcement agencies.

3. Aviation security services shall have the right to detain individuals who have breached the aviation

security requirements, as well as baggage, cargo and mail containing prohibited items and substances so that they can be turned over to law enforcement agencies, and in cases where the life or health of passengers, aircraft crew members or other citizens is threatened, to take measures in accordance with the legislation of the Russian Federation. Aviation security service personnel shall be permitted to carry and use service weapons while carrying out their official duties, in accordance with the procedure established by federal laws.

4. The aviation security requirements and the procedure for carrying them out shall be established by the federal aviation regulations.

#### **Article 85. Pre-flight inspection**

1. In order to ensure the safety of an aircraft's passengers and crew members, the aircraft and its stores, crew members, passengers and baggage, including the items accompanying the passengers, as well as cargo and mail, shall be subject to mandatory pre-flight inspection.

2. A pre-flight inspection of the passengers and baggage, including the items accompanying the passengers, shall be carried out at the airport or on the aircraft by authorized aviation security service personnel. The personnel of transport-sector internal affairs agencies may be called upon to participate in pre-flight inspections.

The conduct of a pre-flight inspection shall not exclude the possibility of an inspection as part of on-site investigation, criminal-procedure or other activities carried out by authorized personnel in accordance with the procedure established by the legislation of the Russian Federation.

For international air operations, the pre-flight inspection shall be carried out after the completion of border, customs, health, quarantine, immigration, veterinary, plant and other types of control.

3. If an aircraft passenger refuses to submit to pre-flight inspection, the passenger's air transport contract shall be considered cancelled.

4. The regulations governing pre-flight inspections shall be established by the federal aviation regulations.

### **CHAPTER XIII. SEARCH AND RESCUE**

#### **Article 86. Aircraft which are or have been in distress**

1. An aircraft shall be considered to be in distress if the aircraft or persons on board it are threatened by a hazard which cannot be eliminated by means of crew member actions, or if communication with it has been lost and its location is unknown.

2. An aircraft shall be considered to have been in distress if during taxiing, take-off, flight or landing or as a result of falling, it has suffered serious damage or been completely destroyed, or if it has made a forced landing outside an aerodrome.

3. An aircraft which is or has been in distress shall be subject to immediate search and rescue.

#### **Article 87. Distress signals**

1. For the timely provision of assistance to aircraft which are or have been in distress and to their passengers and crews, standardized international distress, urgency and danger signals (hereinafter: distress signals) shall be used.

2. A list of equipment subject to mandatory installation on aircraft for the transmission of distress signals shall be defined by the federal aviation regulations.

**Article 88. Search and rescue of aircraft which are or have been in distress and of their passengers and crews**

1. The search and rescue of aircraft which are or have been in distress and of their passengers and crews shall be organized and carried out by the appropriate special authorities in cooperation with the federal executive agencies made responsible, in accordance with the established procedure, for setting up and maintaining search and rescue services.

2. Aviation enterprises may be recruited to support and conduct search and rescue work. A list of such aviation enterprises shall be approved by the special authority for defence in coordination with the appropriate federal executive agencies.

3. Aviation enterprises recruited to do search and rescue work shall be obliged to maintain search and rescue personnel and facilities in constant readiness. The expenses incurred by aviation enterprises in maintaining the readiness of search and rescue personnel and facilities, conducting search and rescue work and participating in supporting such work shall be compensated through funds from the federal budget and non-budgetary sources.

4. Operations by aircraft not supported by search and rescue facilities shall be prohibited.

5. The procedure for recruiting aviation enterprises to conduct search and rescue work and for reimbursing expenses incurred in carrying out such work and providing search and rescue support for air operations shall be established by the Government of the Russian Federation.

**Article 89. Performance of search and rescue work**

1. The search and rescue of passengers and crews of aircraft which are or have been in distress shall be carried out free of charge.

2. The evacuation of a distressed aircraft from the distress site shall be carried out by the operator's personnel or by other personnel at the operator's expense.

3. Federal executive agencies, executive agencies of administrative subdivisions of the Russian Federation, local self-government agencies and aviation enterprises shall be obliged to participate in organizing the search for a distressed aircraft and to take urgent measures to rescue people, give them medical and other assistance and guard the aircraft and the documents and property on it until search and rescue personnel arrive.

4. Executive agencies of administrative subdivisions of the Russian Federation and local self-government agencies shall have the right to recruit legal persons to carry out search and rescue work provided that the expenses which they incur are reimbursed through funds from the federal budget or nonbudgetary sources.

5. The passengers and crews of aircraft of foreign States which are or have been in distress shall be provided with assistance on the same terms as the passengers and crews of Russian Federation aircraft which are or have been in distress.

**Article 90. Rescue work at or in the vicinity of an aerodrome**

Rescue work at or in the vicinity of an aerodrome shall be carried out by personnel of the aerodrome or airport owner.

**Article 91. Search and rescue of aircraft which are or have been in distress and of their passengers and crews on the open sea and in the territories of foreign States**

1. The search and rescue of aircraft which are or have been in distress and of their passengers and crews in open sea areas in which the Russian Federation is responsible for air traffic management shall be carried out by the special authorities in accordance with Article 88, paragraph 1, of the present Air Code.

2. The search and rescue of an aircraft which is or has been in distress and of its passengers and crew in the territory of a foreign State shall be carried out in accordance with the procedure established in the State concerned, the generally accepted standards and principles of international law and the international agreements of the Russian Federation.

**Article 92. Communications concerning aircraft which are or have been in distress**

1. Communications concerning aircraft which are or have been in distress shall be classed as top-priority communications. Legal persons, irrespective of their organizational and legal forms and types of ownership, and citizens having communication facilities shall be obliged to make such facilities available for the immediate transmission of a communication concerning an aircraft which is or has been in distress or to transmit such a communication. Citizens and legal persons having the right to provide communication services shall transmit such a communication immediately.

2. No charge shall be levied for transmitting the first communication concerning an aircraft which is or has been in distress. Long-distance telephone conversations related to assisting an aircraft which is or has been in distress and its passengers and its crew shall be paid for in accordance with the rate for general-purpose communication services; communications transmitted by telegraph shall be paid for at the rate established for the transmission of urgent communications. No charge shall be levied for long-distance telephone conversations for the purpose of transmitting information concerning an aircraft which is or has been in distress.

**Article 93. Notification concerning an aircraft in distress**

1. The pilot-in-command of an aircraft in distress, another crew member of the aircraft or any citizen who has learned of the aircraft in distress shall be obliged to provide immediate notification thereof to the nearest local self-government agency, organization or military unit, which shall in turn be obliged immediately to inform the appropriate aviation enterprise or the special authority for civil aviation, the special authority for defence or the special authority for the defence industry of what has happened.

2. Officials of an aviation enterprise who have learned of an aircraft in distress shall be obliged to inform the special authority for civil aviation thereof immediately.

**Article 94. Termination of a search for an aircraft in distress and its passengers and crew**

1. If all measures taken to search for an aircraft in distress and its passengers and crew have been fruitless, a decision to call off the search for the aircraft shall be taken by the special authority which carried out the State registration or State inventorying of the aircraft concerned.

2. The decision to call off the search for a distressed civil aircraft of a foreign State shall be taken by the special authority for civil aviation, and for a distressed State or experimental aircraft of a foreign State by the special authority for defence or the special authority for the defence industry, respectively.

3. A distressed aircraft the search for which has been officially called off shall be considered to be missing.

## CHAPTER XIV. ACCIDENT/INCIDENT INVESTIGATION

### Article 95. Accident/incident investigation objectives and procedure

1. An accident/incident involving a civil, State or experimental aircraft of the Russian Federation or an aircraft of a foreign State in the territory of the Russian Federation shall be subject to mandatory investigation.

2. The objectives of the accident/incident investigation shall be to establish the causes of the accident/incident and take measures to prevent them in the future.  
Establishing blame or liability shall not be an objective in investigating an accident/incident.

3. The investigation, classification and recording of accidents/incidents shall be carried out by the special authorities having such powers in civil, State or experimental aviation, respectively.  
The investigation, classification and recording of accidents/incidents shall be carried out in accordance with the procedure established by the Government of the Russian Federation.

### Article 96. Powers of an accident/incident investigation board

1. The accident/incident investigation shall be carried out by a board.

2. An accident/incident investigation board shall have the right to:

- (a) freely board a distressed aircraft in order to ascertain the circumstances of the accident/incident;
- (b) inspect the distressed aircraft and its components, property located on board the distressed aircraft or involved in the accident/incident from outside, irrespective of the ownership of such property, as well as equipment and facilities used in support of air operations;
- (c) recruit legal persons, irrespective of their organizational and legal forms and types of ownership, to carry out investigations and work related to the accident/incident investigation;
- (d) recruit employees of various organizations, irrespective of their organizational and legal forms and types of ownership, to solve problems requiring knowledge in the appropriate areas of science and technology;
- (e) interrogate eye-witnesses to an accident/incident or persons who are or could be connected to the accident or incident and obtain the required information from law enforcement agencies;
- (f) study all aspects of the development, testing, production, operation and repair of a distressed aircraft, the training of aviation personnel, air traffic management and the conduct and support of air operations; and request and obtain from the appropriate executive agencies, and from citizens and legal persons, documents and materials dealing with matters related to the accident/incident concerned;
- (g) investigate the psychological and physical state of the crew members of a distressed aircraft and of the appropriate aviation personnel.

3. The members of an accident/incident investigation board and persons recruited to investigate an accident/incident shall have the right, upon presentation of written travel authorizations, to be given top priority in obtaining tickets for travel on public transport to proceed to the site of an accident/incident or for transit for investigative purposes.

### Article 97. Safeguarding of evidentiary materials

1. Prior to the arrival of an accident/incident investigation board, the crew members of a distressed aircraft, other citizens, legal persons, executive agencies of administrative subdivisions of the Russian Federation and local self-government agencies shall take all necessary measures to safeguard the distressed aircraft, its components and wreckage, airborne and ground-based monitoring devices,

items located on board the aircraft or involved in the accident/incident from outside, and documentation pertaining to the development, testing, production, repair and operation of the aircraft and the flight support provided to it.

2. Persons guilty of deliberately concealing an accident/incident or information concerning it, or of distorting information, damaging or destroying airborne or ground-based monitoring devices or other evidentiary materials related to an accident or incident, shall be liable for their acts in accordance with the legislation of the Russian Federation.

**Article 98. Work at an accident/incident site**

1. Federal executive agencies, executive agencies of administrative subdivisions of the Russian Federation, local self-government agencies, legal persons, irrespective of their organizational and legal forms and types of ownership, and the commands of military units shall be obliged to cooperate in every possible way with an accident/incident investigation board, including placing the necessary personnel and resources at the board's disposal and taking measures to guard the accident/incident site and create safe working conditions at the accident/incident site.

2. Executive agencies of administrative subdivisions of the Russian Federation and local self-government agencies shall provide the members of an accident/incident investigation board and specialists recruited to investigate an accident/incident with all the conditions required to carry out their work at the accident/incident site; among others, they shall provide appropriate clothing, footwear, means of personal defence, vehicles, communication facilities, other necessary equipment, expendable materials, lodgings and food.

3. Work being done at an accident/incident site in order to investigate an accident/incident shall be placed on the same footing as work to eliminate emergency situations.

**Article 99. Financing of accident/incident investigation work**

1. Expenses in support of the work of an accident/incident investigation board shall be financed through funds from the federal budget, and those related to investigating an accident/incident involving a civil aircraft shall, in addition, be financed through centralized (in accordance with the procedure established by law) funds of civil aviation organizations, with subsequent reimbursement of those funds by the parties at fault in accordance with the procedure stipulated by the legislation of the Russian Federation.

2. The procedure for financing accident/incident investigation work shall be established by the special authority for finance.

**CHAPTER XV. AIR TRANSPORT**

**Article 100. Carrier**

A carrier shall mean an operator which has a licence to effect the air transport of passengers, baggage, cargo or mail on the basis of air services contracts.

**Article 101. Air transport**

1. Domestic air transport shall mean air transport where the point of departure, the point of destination and all landing points are located in the territory of the Russian Federation.

2. International air transport shall mean air transport where the point of departure and the point of

destination are located:  
in the territory of two States;  
in the territory of a single State if there is to be a landing point or points in the territory of another State.

**Article 102. Compliance with air transport regulations**

1. In carrying out air transport operations, carriers shall be obliged to comply with general regulations governing the air transport of passengers, baggage and cargo and the requirements for serving passengers, shippers and consignees established by the federal aviation regulations.
2. Carriers shall have the right to establish their own air transport regulations. Such regulations shall not contravene the general air transport regulations or result in a lower level of service to passengers, shippers and consignees.
3. The regulations governing the transport of mail by air shall be coordinated with the special authority for postal communications.

**Article 103. Passenger air transport contract Cargo air transport contract Mail air transport contract**

1. A passenger air transport contract shall bind the carrier to transport an aircraft passenger to the point of destination while providing him a seat on the aircraft making the flight indicated on the ticket and if the passenger is transporting baggage by air, to deliver the baggage to the point of destination also and turn it over to the passenger or a party authorized to receive the baggage. The passenger and baggage delivery time shall be defined by the air transport regulations established by the carrier. An aircraft passenger shall be obliged to pay for air transport, and if he has baggage in excess of the free baggage allowance established by the carrier, to pay for the carriage of that baggage as well.
2. A cargo air transport contract or mail air transport contract shall bind the carrier to deliver the cargo or mail entrusted to it by the shipper to the point of destination and to turn it over to a party authorized to receive the cargo or mail (consignee), and the shipper shall be obliged to pay for the air transport of the cargo or mail.

**Article 104. Aircraft charter contract**

An aircraft charter contract shall bind one party (the charter provider) to provide the other party (the charterer), in return for payment, with one or more aircraft, or part of an aircraft, for one or more flights for the air transport of passengers, baggage, cargo or mail. Air charter operations shall be regulated by the present Air Code.

**Article 105. Documents of carriage**

1. A passenger air transport contract, cargo air transport contract or mail air transport contract shall be evidenced by a ticket and baggage receipt or cargo or mail manifest, respectively.
2. The forms used for tickets, baggage receipts and cargo manifests shall be established by the special authority for civil aviation.  
The mail manifest form shall be established by the special authority for postal communications jointly with the special authority for civil aviation.

**Article 106. Services and privileges offered to aircraft passengers**

1. A carrier shall be obliged to organize service for aircraft passengers and provide them with accurate and up-to-date information on aircraft traffic and the services offered.

2. An aircraft passenger shall have the right to:

- (a) travel on preferential terms in accordance with the legislation of the Russian Federation and the air transport regulations established by the carrier;
- (b) free carriage of his baggage within the established allowance. The allowance for free baggage, including the items accompanying the passenger, shall be established on the basis of the aircraft type and may not be less than ten kilograms per passenger;
- (c) in the case of international air transport and in accordance with a preferential tariff, free carriage of one accompanying child no more than two years of age for whom a separate seat shall not be provided. Other children no more than two years of age and children from two to twelve years of age shall be carried in accordance with a preferential tariff and separate seats shall be provided for them;
- (d) free use of the services of lounges and mother-and-child rooms and free hotel accommodation if air transport is interrupted owing to the carrier's fault or there is a forced delay of an aircraft in departing and/or during flight.

3. The procedure for providing aircraft passengers with services and privileges shall be established by the federal aviation regulations.

**Article 107. Termination of a passenger air transport contract or cargo air transport contract at the carrier's initiative**

1. A carrier may unilaterally cancel a passenger air transport contract or cargo air transport contract in the following instances:

- (a) if a passenger, cargo owner or shipper violates passport, customs, health or other requirements established by the air transport legislation of the Russian Federation or, in the case of international air transport operations, by regulations laid down by the appropriate agencies of the State of departure, destination or transit;
- (b) if a passenger, cargo owner or shipper refuses to comply with the applicable requirements of the federal aviation regulations;
- (c) if an aircraft passenger's state of health calls for special air transport conditions or threatens the safety of the passenger himself or of other persons, as confirmed by medical documents, or creates disorder and unavoidable inconvenience to other persons;
- (d) if an aircraft passenger refuses to pay for the carriage of his baggage in excess of the free baggage allowance;
- (e) if an aircraft passenger refuses to pay for the carriage of an accompanying child, except in the cases stipulated by Article 106, paragraph 2 (c);
- (f) if an aircraft passenger violates the rules of conduct on board an aircraft, thereby creating a threat to the aircraft's safety or to the lives or health of other persons, or if an aircraft passenger fails to comply with orders from the pilot-in-command given in accordance with Article 58 of the present Air Code;
- (g) if the items accompanying a passenger or in his baggage or cargo contain prohibited articles and substances.

2. If a passenger air transport contract or cargo air transport contract is terminated at the carrier's initiative, the amount paid for air transport shall be returned to the passenger, cargo owner or shipper except in the case provided for by paragraph 1 (f) of the present Article. In the case provided for by paragraph 1 (f) of the present Article, the amount paid for air transport shall not be returned to the aircraft passenger.

**Article 108. Termination of a passenger air transport contract at the passenger's initiative**

An aircraft passenger shall have the right to cancel his flight by so notifying the carrier no later than twenty-four hours prior to the departure of the aircraft, unless the air transport regulations established by the carrier specify a preferential deadline, and be refunded the amount paid for air transport. If an aircraft passenger cancels his flight later than the prescribed deadline, the passenger shall have the

right to be refunded the amount paid for air transport minus a fee not to exceed twenty-five per cent of the amount paid for air transport.

**Article 109. Cargo delivery time**

A carrier shall be obliged to deliver a cargo accepted for air transport to the point of destination by the prescribed time. The cargo delivery time shall be defined by the federal aviation regulations or the air transport regulations established by the carrier, unless otherwise stipulated by the cargo air transport contract.

**Article 110. Amendment of a cargo air transport contract**

1. A shipper shall have the right, in accordance with the procedure stipulated by the federal aviation regulations or the air transport regulations established by the carrier, to get back a cargo handed over for air transport prior to its dispatch, to change the consignee in a cargo manifest prior to the cargo's delivery to the party authorized to receive it and to dispose of the cargo if it is not accepted by the consignee or cannot be delivered to the consignee.

2. If the air transport terms stipulated by a cargo air transport contract are amended, the carrier shall be obliged to inform the shipper or consignee thereof and ask them for instructions concerning such cargo.

**Article 111. Receipt of a cargo at the point of destination**

1. A carrier shall be obliged to inform a consignee of the arrival of a cargo within the time stipulated by the federal aviation regulations or the air transport regulations established by the carrier, unless otherwise stipulated by the cargo air transport contract.

2. The consignee shall be obliged to accept and remove a cargo. The consignee shall have the right to refuse to accept a damaged or spoiled cargo if it is established that the quality of the cargo has changed to such an extent that it cannot be fully and/or partially used for its intended purpose.

**Article 112. Non-receipt of cargo**

1. If a consignee does not claim an incoming cargo within the time stipulated by the federal aviation regulations, the air transport regulations established by the carrier or the cargo air transport contract, or refuses to accept it, the carrier shall be obliged to notify the shipper thereof and to store the cargo at the shipper's expense and risk.

2. A cargo that is not accepted within the time stipulated by the federal aviation regulations, the air transport regulations established by the carrier or the cargo air transport contract shall be considered unclaimed and shall be sold in accordance with the procedure laid down by the federal aviation regulations.

3. The storage of a cargo subject to customs inspection and its disposal shall be carried out in accordance with the procedure established by the customs legislation of the Russian Federation.

**Article 113. Air transport of dangerous cargoes**

The air transport of weapons, ammunition, explosives, toxic, highly inflammable, radioactive or other dangerous items and substances shall be effected in accordance with the legislation of the Russian Federation, the federal aviation regulations and the international agreements of the Russian Federation.

**CHAPTER XVI. AERIAL WORK**

**Article 114. Aerial work**

1. Aerial work shall mean work performed using aircraft for agricultural, construction, environmental protection, medical assistance and other purposes.
2. General aerial work regulations and regulations for specific types of aerial work shall be established by the federal aviation regulations.
3. The legislative and executive agencies of administrative subdivisions of the Russian Federation shall have the right to establish the terms for the performance of aerial work and the restrictions applying to such work based on the ecological characteristics of the territory concerned or the special conditions affecting vehicles and personnel in such territory. Aerial work customers shall be responsible for agreeing to the said terms and restrictions.

**Article 115. Aerial work contract**

1. An aerial work contract shall oblige a contractor (operator) to perform aerial work for a customer in accordance with the procedure, time frame, volume of work and terms stipulated by such contract. The customer shall be obliged to provide the volume of aerial work stipulated by the contract within the prescribed time frames and to pay for the aerial work.
2. An aerial work contract shall also stipulate:  
the procedure for using aerodromes, landing areas and their equipment and keeping them in operational condition;  
the provision of the housing and amenities required for the relaxation of the aircraft crew members;  
other aerial work conditions as required by the specific features of the work.
3. The rates for the performance of aerial work shall be established on the basis of the contract.

**CHAPTER XVII. LIABILITY OF CARRIER, OPERATOR AND SHIPPER**

**Article 116. General liability principles**

1. A carrier shall be liable to an aircraft passenger or cargo owner in accordance with the procedure established by the legislation of the Russian Federation, the international agreements of the Russian Federation and the passenger air transport contract, cargo air transport contract or mail air transport contract.
2. An operator shall be obliged to provide compensation for damage caused during an air operation unless it proves that the damage was the result of force majeure or was deliberately caused by the victim.
3. A carrier, passenger, shipper or consignee shall be liable, in accordance with the legislation of the Russian Federation, for the violation of customs, currency, health, quarantine or other regulations.

**Article 117. Carrier liability for damage to the life or health of an aircraft passenger**

1. The liability of a carrier for damage caused during air transport to the life or health of an aircraft passenger shall be determined in accordance with the regulations of Chapter 59 of the Civil Code of

the Russian Federation, unless a higher degree of carrier liability is stipulated by law or by the passenger air transport contract or the international agreements of the Russian Federation.

2. For the purposes of the present Article, passenger air transport shall include the period from the time when the aircraft passenger undergoes pre-flight inspection prior to boarding an aircraft until the time when the aircraft passenger leaves the aerodrome as observed by the carrier's authorized agents.

**Article 118. Carrier liability for loss, shortage or damage (deterioration) of baggage, cargo and items accompanying a passenger**

1. A carrier shall be liable for the loss, shortage or damage (deterioration) of baggage or cargo from the time it is accepted for air carriage until it is delivered to the consignee or handed over to another citizen or legal person in accordance with the prescribed regulations, unless it proves that it took all the necessary measures to prevent the damage or that it was impossible to take such measures.

2. A carrier shall be liable for the safety of items accompanying a passenger unless it proves that the loss, shortage or damage (deterioration) of such items was the result of circumstances which the carrier was unable to prevent or eliminate, or was deliberately caused by the passenger.

3. A carrier shall be liable for the loss, shortage or damage (deterioration) of baggage or cargo unless it proves that the loss, shortage or damage (deterioration) was not the result of deliberate actions (negligence) on the part of the carrier or did not occur during air carriage.

**Article 119. Extent of carrier liability for loss, shortage or damage (deterioration) of baggage, cargo and items accompanying a passenger**

1. A carrier shall be liable for the loss, shortage or damage (deterioration) of baggage, cargo and items accompanying a passenger to the following extent:

(a) for the loss, shortage or damage (deterioration) of baggage or cargo accepted for air carriage with a declaration of value: in the amount of the declared value. An additional fee shall be charged to the shipper or consignee for the air transport of baggage or cargo with a declared value, the amount of which fee shall be prescribed by the baggage air transport contract or cargo air transport contract;

(b) for the loss, shortage or damage (deterioration) of baggage or cargo accepted for air transport without a declaration of value: in the amount of its value, but not exceeding an amount equal to two minimum salaries, as established by federal law, per kilogram of baggage or cargo;

(c) for the loss, shortage or damage (deterioration) of items accompanying a passenger: in the amount of their value; or, if this cannot be established: in an amount not exceeding ten minimum salaries, as established by federal law.

2. The value of baggage, cargo and items accompanying a passenger shall be determined on the basis of the price shown on a sales receipt or stipulated by a contract or, in the absence of such a price, on the basis of the average price for similar goods in the location where the cargo was to be delivered on the day of a voluntary settlement if such was requested, or on the day on which a court decision is delivered if there was no request for a voluntary settlement.

3. In the case of international air transport, a carrier shall be liable for the loss, shortage or damage (deterioration) of baggage, cargo and items accompanying a passenger in accordance with the international agreements of the Russian Federation.

**Article 120. Carrier liability for delay in delivering a passenger, baggage or cargo**

For a delay in delivering a passenger, baggage or cargo to the point of destination, a carrier shall pay a fine in the amount of twenty-five per cent of the minimum salary, as established by federal law, for each hour of delay, but not more than fifty per cent of the fare (rate), unless it proves that the delay was due

to force majeure or to remedying an aircraft malfunction which threatened the lives or health of the aircraft's passengers or to other circumstances over which the carrier had no control.

**Article 121. Shipper liability**

A shipper shall be liable for damage caused by the carrier or a party to whom the carrier is liable as a result of inaccurate or incomplete information being given by the shipper.

**Article 122. Carrier liability for loss, damage (deterioration) or delay in delivering mail**

A carrier shall bear material liability to the postal authorities, in accordance with the legislation of the Russian Federation, for loss, damage (deterioration) or delay in delivering mail which is the fault of the carrier.

**Article 123. Agreements on increasing the limits of carrier liability**

A carrier shall have the right to conclude agreements with passengers, shippers or consignees on increasing the limits of its liability in relation to the limits established by the present Air Code or the international agreements of the Russian Federation.

**Article 124. Procedure for the submission of claims in the case of a violation of a passenger transport contract, cargo air transport contract or mail air transport contract**

1. A carrier shall be obliged to draw up a carrier's statement at the request of a passenger, shipper or consignee and on presentation of documents of carriage by one of them.

The carrier's statement shall attest to the circumstances which may serve as the basis for the property accountability of the carrier, passenger, shipper or consignee.

2. A carrier's statement shall be drawn up when baggage or cargo is delivered to attest to the following circumstances:

(a) a discrepancy between the actual description of a cargo, its weight or number of cargo units and the information contained in the document of carriage;

(b) damage (deterioration) of cargo;

(c) shortage or damage (deterioration) of baggage;

(d) the discovery of baggage or cargo without documents of carriage or of documents of carriage without baggage or cargo.

To attest to the above circumstances with respect to mail, the carrier and the postal authority shall draw up a carrier's statement.

3. Before a carrier is prosecuted for violating a cargo air transport contract or mail air transport contract, a claim shall be presented to the carrier.

4. In the case of a violation of a passenger air transport contract, cargo air transport contract or mail air transport contract, a statement or claim shall be presented to the carrier at the airport of the point of departure or the airport of the point of destination at the claimant's discretion.

5. The lack of a carrier's statement shall not deprive a passenger, shipper or consignee of the right to present a claim or bring action.

**Article 125. Parties entitled to present claims in the case of a violation of a passenger air transport contract, cargo air transport contract or mail air transport contract**

1. The following shall have the right to present a claim to a carrier if a passenger air transport contract is violated:

(a) in the case of the loss, shortage or damage (deterioration) of baggage or a delay in its delivery: the passenger or a party authorized by him, upon presentation of a baggage receipt or carrier's statement;

(b) in the case of the termination of a passenger air transport contract at the carrier's initiative: the passenger.

2. The following shall be entitled to present a claim to or bring action against a carrier:

(a) in the case of lost cargo: the consignee, upon presentation of the cargo manifest issued to the shipper by the carrier, with a note from the airport of the point of destination concerning the arrival (non-arrival) of the cargo, or if it is not possible to produce such a manifest, upon presentation of a document evidencing the payment of the cost of the cargo and a certificate from the carrier showing that the cargo was dispatched, with a note from the airport of the point of destination concerning the arrival (non arrival) of the cargo;

(b) in the case of shortage or damage (deterioration) of cargo: the consignee, upon presentation of the cargo manifest or carrier's statement;

(c) in the case of a delay in delivering cargo: the consignee, upon presentation of the cargo manifest;

(d) in the case of the loss, shortage or damage (deterioration) of mail or a delay in its delivery: the postal authority at the mail's point of destination;

(e) an insurer, upon presentation of the appropriate documents of carriage as well as documents which confirm the facts relating to the conclusion of an insurance contract and the payment of an insurance indemnity.

#### **Article 126. Deadline for submitting a claim to a carrier in domestic air transport**

1. A claim regarding domestic air transport may be submitted to the carrier within six months. The said deadline shall be calculated as follows:

(a) to compensate for a loss in the case of shortage or damage (deterioration) of cargo or mail or a delay in its delivery: from the day following the day on which the cargo was delivered; and for mail: from the date on which the carrier's statement is drawn up;

(b) to compensate for damage in the case of loss of the cargo: ten days after the delivery date has passed;

(c) to compensate for damage in the case of loss of mail: after the delivery date has passed;

(d) to compensate for damage in all other cases: from the day of the incident which serves as the basis for the claim.

2. A carrier shall rightfully consider a claim after the expiry of the prescribed deadline if it recognizes that the claim submission deadline was missed for a valid reason.

#### **Article 127. Deadline for submitting a claim to a carrier in international air transport**

1. In the case of damage (deterioration) of baggage or cargo during international air transport, the party entitled to receive it shall, on discovering the damage, provide the carrier with written notification no more than seven days after the day on which the baggage was received or fourteen days after the day on which the cargo was received. In the case of a delay in delivering baggage or cargo, a claim shall be submitted within twenty-one days of the day on which the baggage or cargo was turned over to a party entitled to receive it. The said notification shall serve as the basis for the preparation of the carrier's statement.

2. In the case of lost baggage, cargo or mail, a claim may be submitted to the carrier within eighteen months of the day on which the aircraft arrived at the airport of the point of destination, the day on which the aircraft should have arrived or the day on which air transport was terminated.

#### **Article 128. Start of the period of prescription**

1. A carrier shall be obliged to consider a claim and inform the shipper or consignee in writing of its

acceptance or rejection within thirty days of the date on which it was received.

2. The period of prescription shall begin on the day following the receipt by the shipper or consignee of a reply concerning the rejection or partial acceptance of a claim or, if such a reply is not received, forty-five days after the carrier received the claim, unless otherwise stipulated by a cargo air transport contract or a mail air transport contract.

**Article 129. Liability for damage during an aircraft collision**

1. In the case of an aircraft collision or if one aircraft damages another aircraft even without a collision, the property accountability of the owners of the aircraft shall be determined as follows:

(a) damage caused to one of the owners through the fault of the other shall be indemnified by the party at fault;

(b) if both (several) owners are at fault, the amount of compensation for the damage shall be determined in proportion to the degree of fault of each. Where it is not possible to establish the degree of fault, the liability shall be apportioned among the owners equally.

2. If the owners of the aircraft are not to blame for the damage, none of them shall have the right to demand compensation for damage from the other(s).

3. None of the owners whose aircraft were involved in a collision shall be assumed to be at fault unless proven otherwise in accordance with the established procedure.

4. Property accountability for damage to the life or health of an aircraft passenger or for damage caused to property of third parties that is located on board an aircraft shall be borne by the aircraft's owner in accordance with the present Air Code, with the owner having the right to submit a counterclaim (recourse) to the guilty party in accordance with paragraph 1 of the present Article.

**Article 130. Extent of liability for damage caused during air transport**

1. The owner of an aircraft shall be liable for damage to the life, health or property of an aircraft passenger during air transport to the extent stipulated by the civil legislation of the Russian Federation, unless otherwise provided by an international agreement of the Russian Federation.

2. The owner of an aircraft shall be liable for damage to the life, health or property of third parties during air transport to the extent stipulated by the civil legislation of the Russian Federation, unless otherwise provided by an international agreement of the Russian Federation.

**Article 131. Mandatory aircraft owner third-party liability insurance**

1. Aircraft owner third-party liability insurance for damage to the life, health or property of third parties during air operations shall be mandatory.

2. The minimum insured amount for air operations and aerial work in the airspace of the Russian Federation shall be fixed as an amount not less than two minimum salaries, as established by federal law when the insurance contract is concluded, for each kilogram of maximum aircraft take-off weight.

3. The minimum insured amount for international air operations and aerial work in the airspace of foreign States shall be fixed in accordance with the legislation of the foreign State concerned.

**Article 132. Mandatory life and health insurance for aircraft crew members**

1. Life and health insurance for aircraft crew members while carrying out their official duties shall be mandatory.

2. The insured amount for each aircraft crew member shall be fixed as an amount not less than one thousand minimum salaries, as established by federal law when the insurance contract is concluded.

**Article 133. Mandatory carrier liability insurance covering aircraft passengers**

1. A carrier shall be obliged to take out liability insurance for damage to the lives or health of aircraft passengers and for damage to baggage and items accompanying passengers.

2. The insured amount for each aircraft passenger stipulated by a passenger life and health insurance contract shall be fixed as an amount not less than one thousand minimum salaries, as established by federal law on the day on which the ticket is sold.

3. The insured amount stipulated by a baggage insurance contract shall be fixed as an amount not less than two minimum salaries, as established by federal law, for each kilogram of baggage. The insured amount stipulated by an insurance contract for items accompanying a passenger shall be fixed as an amount not less than ten minimum salaries, as established by federal law.

4. Carrier liability insurance covering aircraft passengers in international air operations, including liability for the loss, shortage or damage (deterioration) of baggage and items accompanying passengers, shall be mandatory. The insured amount shall not be less than the amount stipulated by international agreements of the Russian Federation or the legislation of the foreign State concerned.

**Article 134. Mandatory carrier liability insurance covering cargo owners or shippers**

A carrier shall be obliged to take out insurance covering liability to cargo owners or shippers for the loss, shortage or damage (deterioration) of cargo, the insured amount being not less than two minimum salaries, as established by federal law when the cargo manifest is issued, for each kilogram of cargo.

**Article 135. Mandatory operator liability insurance for aerial work**

An operator shall be obliged to take out liability insurance for damage which might be caused by aerial work which it carries out.

**CHAPTER XVIII. FINAL PROVISIONS**

**Article 136. Entry into force of the present Air Code**

1. The present Air Code shall enter into force as of 1 April 1997.

2. Paragraph 8 (as it applies to the Air Code of the USSR) of Resolution No. 4604-I of 3 March 1993 of the Supreme Soviet of the Russian Federation, "Questions related to the application of the legislation of the USSR in the territory of the Russian Federation" (Gazette of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation, 1993, No. 11, p. 393; Complete Legislation of the Russian Federation, 1994, No. 32, p. 3302), shall be considered no longer in force as of 1 April 1997.

The following shall no longer be applied in the territory of the Russian Federation as of 1 April 1997:

Decree No. 9275-X of 11 May 1983 of the Presidium of the Supreme Soviet of the USSR, "Approval of the Air Code of the USSR" (Gazette of the Supreme Soviet of the USSR, 1983, No. 20, p. 303);

Law No. 9202-X of 17 June 1983 of the USSR, "Approval of the Decree of the Presidium of the Supreme Soviet of the USSR, "Approval of the Air Code of the USSR"" (Gazette of the Supreme Soviet of the USSR, 1983, No. 25, p. 384);

Decree No. 7812-XI of 2 October 1987 of the Presidium of the Supreme Soviet of the USSR, "Amendment of the Air Code of the USSR" (Gazette of the Supreme Soviet of the USSR, 1987, No. 40, p. 652).

Other legal regulatory acts shall be brought into conformity with the present Air Code.

3. Until such time as the laws and other legal regulatory acts governing relations in the field of aviation in effect in the territory of the Russian Federation are brought into conformity with the present Air Code, the laws and other legal regulatory acts of the Russian Federation, as well as the legislative acts of the USSR in effect in the territory of the Russian Federation in accordance with the procedure stipulated by the legislation of the Russian Federation, shall apply to the extent that they are not at variance with the present Air Code.

Regulatory acts of the President of the Russian Federation and the Government of the Russian Federation which were issued before the entry into force of the present Air Code and resolutions of the Government of the USSR which are being applied in the territory of the Russian Federation pertaining to matters which, in accordance with the present Air Code, may only be regulated by federal laws shall remain in effect until such time as the corresponding laws enter into force.

**Article 137. Procedure for applying the provisions of the present Air Code**

1. The provisions of the present Air Code shall apply to civil legal relations which come into being after its entry into force.

For civil legal relations which came into being before entry into force of the present Air Code, the provisions of the present Air Code shall apply to those rights and obligations which arise after its entry into force.

2. The claim submission deadlines prescribed by Articles 126, 127 and 128 of the present Air Code shall apply to claims whose submission deadlines stipulated by previous legislation have not expired when the present Air Code enters into force.

B. Yeltsin  
President,  
Russian Federation  
[Stamp: President of the Russian Federation, Office 3]  
Moscow, The Kremlin 19 March 1997 No. 60-F3

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 43		
	Succeeded to	16 Dec 1964
	Entered into Force	1 Jul 1962
The Hague Protocol - 1955	Signed	
	Adhered to	27 Dec 1990
	Entered into Force	27 Mar 1991
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	11 Jun 1971
	Entered into Force	9 Sep 1971
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	17 May 1971
	Entered into Force	15 Aug 1971
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	3 Mar 1935
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

SAINT VINCENT & THE GRENADINES

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Succeeded to	3 Dec 2001
	Entered into Force	27 Oct 1979
The Hague Protocol - 1955	Signed	
	Adhered to	3 Dec 2001
	Entered into Force	3 Mar 2002
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	29 Mar 2004
	Entered into Force	28 May 2004
Outer Space Treaty - 1967	Signed	
	Succeeded to	13 May 1999
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	13 May 1999
	Entered into Force	13 May 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 44		
	Succeeded to	20 Jan 1964
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	16 Oct 1972
	Entered into Force	14 Jan 1973
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

There is no national legislation which implements the Warsaw Convention, other than the agreements the national airline entered into with their respective insurance underwriters.

At present, there are three forms of insurance coverage:-

- a) Insurance cover for government officials on overseas government business.
- b) Airlines provide insurance cover for passengers through their own agreements with insurance companies.
- c) Private personal insurance.

### **NATIONAL LEGISLATION**

#### **Samoa Civil Aviation Act 1998 and Samoa Civil Aviation Rules and Regulations**

The Samoa Civil Aviation Act 1998 has implemented international instruments such as Conventions and Protocols which are noted below.

- a) Protocol relating to an Amendment to the Convention on International Civil Aviation 1980 (Article 83 bis). Entered into force for Samoa on 9 July 1998, being the date of deposit.
- b) Protocol relating to an Amendment to the Convention on International Civil Aviation 1983 (Article 3 bis). Will come into effect for Samoa on the date of its entry into force.
- c) Convention on Offences and Certain other Acts Committed on Board Aircraft, done at Tokyo 1963. Samoa has acceded to this Convention and it became effective for Samoa on 7 October 1998.
- d) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971, signed at Montreal on 24 February 1988. Samoa has acceded to this Protocol, after the Instrument of Accession was forwarded to the Department of State for deposit on July 8, 1998.
- e) Convention on the Marking of Plastic Explosive for the Purpose of Detection, Montreal 1991. Effective for Samoa on 7th September 1998.
- f) The Montreal Convention, 1971  
The Hague Convention for the suppression of Unlawful Seizure of Aircraft, 1970.  
Samoa has deposited an Instrument of Accession to both these Conventions.

Protocols 50 (a) of the Chicago Convention 1944 to extend Council membership from 33 to 38. Samoa has conveyed its instrument to ratify this Protocol.

There is no special Warsaw 22 (1) passenger liability agreements entered into by the National Carrier.

Polynesian Airlines is a party to the IATA Inter-carrier Agreement,

Polynesian Airlines is not governed by any regional legislation.

### **INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

At present there is no national or regional legislation governing non-convention carriage.

### **LEGISLATION GOVERNING OPERATION OF GENERAL AVIATION AIRCRAFT INCLUDING HELICOPTERS AND MICROLIGHTS**

- Civil Aviation Act 1998
- Civil Aviation Rules and Regulations 1998
- ICAO Standards and Recommended Practices (SARPs).

### **THIRD PARTY LIABILITY**

Polynesian Airlines' Insurance Coverage extends to Third Party Liability. The Insurance Coverage applies only to aircraft on the national register and not for foreign registered aircraft.

### **MANDATORY INSURANCE REQUIREMENTS**

There is no State-imposed mandatory insurance requirement which exists in Samoa.

The national carrier Polynesian Airlines does comply with relevant Mandatory Insurance requirements imposed by relevant authorities in other States into which it operates - particularly in respect of coverage for hull and engine, passenger liability, passenger and third party, war risk and war liability surcharges.

### **CLAIMS RELATED INFORMATION**

There is no national requirement in Samoa related to claims handling. There is no Statutes of Repose which exist in Samoa that apply to this area. There have been no known non-physical injury claims which have been made or settled.

### **SOCIAL SECURITY AWARDS**

Accident Compensation is available for flight crew and cabin crew who are Samoan Citizens

flying into Samoa from an international origin but not for the passengers, unless the passenger is a returning resident who was away on official Government business.

Flights operating within Samoa and as a result of an incident or accident, both the crew and passengers can be compensated for incapacitation due to injury or fatalities.

Third parties can also be compensated as bystanders who are inadvertently affected by the accident. There are no rights of subrogation against third parties as the State Scheme through the Accident Compensation Board's policies and coverage is independent to coverage provided by the national carrier.

### **AIR TRAFFIC CONTROL**

All airports and aerodromes are owned by the Government of Samoa and are administered by the Samoa Airport Authority.

Airways Corporation of New Zealand provides upper airspace and enroute navigation control for over-flights above FL 245. Samoa has a total of three International airports and one Domestic airport.

### **TAX REGIMES**

No, the National tax regime does not apply to aviation insurance.

### **GOVERNMENT SUPPORT FOR AVIATION INSURANCE**

There has been no State assistance to date provided by the Government of Samoa to aviation insured parties as a result of the 11th September 2001 atrocities.

There is the possibility that the Government of Samoa may in future provide assistance.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	21 Apr 1967
	Ratified	29 Oct 1968
	Entered into Force	29 Oct 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **SAO TOME AND PRINCIPE**

**Date Part 1 Entry Reviewed: September 2004**

### **PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Sao Tome and Principe appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	27 Jan 1969
	Entered into Force	27 Apr 1969
The Hague Protocol - 1955	Signed	
	Adhered to	27 Jan 1969
	Entered into Force	27 Apr 1969
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	18 May 1973
	Entered into Force	16 Aug 1973
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	15 Oct 2003
	Entered into Force	14 Dec 2003
Outer Space Treaty - 1967	Signed	
	Acceded to	17 Dec 1976
	Entered into Force	17 Dec 1976
Space Liability Convention - 1972	Signed	
	Acceded to	17 Dec 1976
	Entered into Force	17 Dec 1976

## PART II- NOTES ON AVIATION LIABILITY

### INTERNAL CARRIAGE

In April 1981 the Civil Aviation Presidency advised the Union that tickets issued by Saudi Arabian Airlines for domestic carriage contain the following conditions:

- Carrier is not liable for damage to passenger or unchecked baggage unless such damage is caused by the negligence of the carrier.
- Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, government regulations, orders or requirements or from failure of passenger to comply with the same.
- In the transportation of passengers, the liability of the carrier for each passenger shall be limited to the sum of SR24,000.
- In the transportation of checked baggage, the liability of the carrier shall be limited to the sum of SR900 per passenger unless a higher valuation is declared in advance and additional charges are paid pursuant to the carrier's tariffs or regulations.
- In the transportation of unchecked baggage or other property which the passenger takes charge of himself, the liability of the carrier shall be limited to the sum of SR1,485 per passenger.
- In no case shall the carrier's liability exceed the actual loss suffered by the passenger.
- All claims are subject to proof of amount of loss.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	19 Jun 1964
	Entered into Force	17 Sep 1964
The Hague Protocol - 1955	Signed	
	Adhered to	19 Jun 1964
	Entered into Force	17 Sep 1964
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	18 Aug 1976
	Not Ratified	
	Entered into Force	
- No. 2	Signed	18 Aug 1976
	Not Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	18 Aug 1976
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	14 Apr 1972
	Ratified	26 Mar 1975
	Entered into Force	26 Mar 1975

## **PART II- NOTES ON AVIATION LIABILITY**

(General Secretary's Note to November 1991 update: The Senegal Civil Aviation Directorate advised the following information in April 1981. It has not proved possible to confirm the information since that date.)

### **INTERNAL CARRIAGE**

The Senegal Civil Aviation Directorate advised that the provisions of the Warsaw Convention have been extended to cover Internal Carriage.

### **THIRD PARTY LIABILITY**

The Senegal Civil Aviation Code devotes certain provisions to this matter.

#### **Article 55**

The operator of an aircraft is ipso jure answerable for harm caused to third parties on the ground by any aircraft manoeuvre or by an person or object falling from it.

Such liability can be set aside or attenuated only by proof of fault or default on the part of the party suffering.

#### **Article 56**

It is forbidden, without special permission, to throw from any aircraft in the course of any manoeuvre, except in case of force majeure, any goods or objects except for regulation test. In the case of jettison due to force majeure, regulation jettison or specially authorised jettison which causes harm or loss to persons or property on the ground, the liability is to be determined according to the provisions of the preceding Article 55.

Articles 55 and 58 govern harm or loss in cases of hire and matters of territorial jurisdiction.

#### **Article 57**

In the case of hire of an aircraft its owner and operators are jointly and severally liable to third parties for the harm or loss suffered.

Where, however, the hire has been entered in the Register the owner will be liable only if the third party can show fault or default on the owner's part.

#### **Article 58**

Proceedings on grounds of alleged liability may be brought at the plaintiffs option either before the Court having jurisdiction for the place where the harm or loss was caused or before such Court as has jurisdiction in the place of domicile of the plaintiff.

**SERBIA & MONTENEGRO**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 54	Signed	
	Succeeded to	18 Jul 2001
	Entered into Force	27 Apr 1992
The Hague Protocol - 1955	Signed	
	Succeeded to	18 Jul 2001
	Entered into Force	27 Apr 1992
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 7	Signed	
	Succeeded to	18 Jul 2001
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 7	Signed	
	Succeeded to	18 Jul 2001
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4 See Annex F – Note 6	Signed	
	Succeeded to	18 Jul 2001
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	20 Oct 1975
	Entered into Force	20 Oct 1975

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	24 Jun 1980
	Entered into Force	22 Sep 1980
The Hague Protocol - 1955	Signed	
	Adhered to	24 Jun 1980
	Entered into Force	22 Sep 1980
Guatemala City Protocol - 1971	Signed	
	Acceded to	30 Jun 1980
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	19 Jun 1980
	Entered into Force	17 Sep 1980
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	15 Sep 1980
	Entered into Force	14 Dec 1980
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	5 Jan 1978
	Entered into Force	5 Jan 1978
Space Liability Convention - 1972	Signed	
	Acceded to	5 Jan 1978
	Entered into Force	5 Jan 1978

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 45		
	Succeeded to	2 Apr 1968
	Entered into Force	27 Apr 1961
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	13 Jul 1967
	Entered into Force	13 Jul 1967
Space Liability Convention - 1972	Signed	14 Jul 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	4 Sep 1971
	Entered into Force	3 Dec 1971
The Hague Protocol - 1955	Signed	
	Adhered to	6 Nov 1967
	Entered into Force	4 Feb 1968
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	10 Sep 1976
	Entered into Force	10 Sep 1976
Space Liability Convention - 1972	Signed	19 Jul 1972
	Ratified	19 Aug 1975
	Entered into Force	19 Aug 1975

## **PART II- NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

The Warsaw Convention as amended by the Hague Protocol and Montreal Additional Protocol No. 4 is implemented via the Carriage By Air Act.

National legislation regarding the convention framework is the Carriage By Air (Currency Equivalent) Order.

Singapore Airlines is party to the Montreal Agreement of 1966. Singapore Airlines is also party to the IATA Inter-carrier Agreement and the Agreement on Measures to Implement the IATA Inter-carrier Agreement. Its subsidiary, Silk Air is not a party to these agreements.

### **INTERNAL CARRIAGE**

There is no national legislation. The Common Law of Tort applies.

### **THIRD PARTY LIABILITY**

No national legislation - the Common Law applies.

### **PRODUCTS LIABILITY**

There seems to be no specific Products Liability legislation but the Air Navigation (Amendment No. 2) Order 1981 incorporates into the Air Navigation Order 1973 provision for the Director of Civil Aviation to issue certificates of approval to persons engaged in the design, manufacture or distribution of aircraft components or materials.

### **NOISE & POLLUTION**

There is no legislation on noise or other forms of pollution relevant to air operators except with regard to noise at airports. It is not clear whether ICAO Annex 16 will be implemented in Singapore.

### **CLAIMS RELATED INFORMATION**

Nationality, age and financial dependency on the passenger all have a bearing on the level of awards and settlements. There are no special requirements with regard to claims handling such as condolence money. SIA and Silk Air voluntarily made advance payments to the next-of-kin of deceased passengers of the SQ6 accident of 29 October 2000 and MI 185 accident of 19 December 1997. Advance payments were also made to survivors of the SQ6 accident.

The CAA of Singapore have advised that it is not uncommon for passengers to make claims for non-physical injuries, but they are not in position to advise whether there is any general trend in this direction in Singapore.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A –Note 46		
	Succeeded to	24 Mar 1995
	Entered into Force	1 Jan 1993
The Hague Protocol - 1955	Signed	
	Succeeded to	24 Mar 1995
	Entered into Force	1 Jan 1993
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
See Annex G – Note 10		
	Adhered to	11 Jul 1994
	Entered into Force	1 Jan 1993
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	11 Oct 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Succeeded to	1 Jan 1993
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART II – NOTE S ON AVIATION LIABILITY**

**INTERNATIONAL CARRIAGE**

The Slovak Republic has ratified the Convention for the Unification of Certain Rules relating to International Carriage by Air, Warsaw 12 October 1929, and the Protocol to Amend the Warsaw Convention of 1929, The Hague 28 September 1955.

**DOMESTIC CARRIAGE**

The Civil Code of the Slovak Republic covers domestic flights.

**MANDATORY INSURANCE REQUIREMENTS**

**Third Party Liability**

For all civil aircraft using the airspace of the Slovak Republic a third party liability insurance is required in the following minimum amounts:

<b>MTOM</b>	<b>Cover Required</b>
up to 2,000kg	1,000,000 USD
2,001kg – 5,700kg	2,000,000 USD
5,700kg – 20,000kg	10,000,000 USD
20,001kg – 100,000kg	20,000,000 USD
100,001kg – 200,000kg	40,000,000 USD
above 200,000kg	50,000,000 USD

The government of the Slovak Republic is in the process of enacting legislation which will require carriers to have minimum insurance levels in line with ECAC Resolution ECAC/25-1.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929 See Annex A – Note 47	Signed	
	Succeeded to	7 Aug 1998
	Entered into Force	25 Jun 1991
The Hague Protocol - 1955	Signed	
	Succeeded to	7 Aug 1998
	Entered into Force	25 Jun 1991
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 8	Signed	
	Succeeded to	7 Aug 1998
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 8	Signed	
	Succeeded to	7 Aug 1998
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4 See Annex F – Note 7	Signed	
	Succeeded to	7 Aug 1998
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 11	Signed	
	Succeeded to	19 Aug 1998
	Entered into Force	17 Nov 1991
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	27 Mar 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Succeeded to	27 May 1999
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **MINIMUM INSURANCE REQUIREMENTS**

The Civil Aviation Office of the Ministry of Transport in the Republic of Slovenia advised in October 2001 that the provisions of ECAC Resolution ECAC/ 25-1 would be enacted as soon as possible.

#### **1. GENERAL OVERVIEW OF AVIATION LAW IN SLOVENIA**

The legal system of the Republic of Slovenia has been facing a two-fold legislation transformation phase:

- on the one hand, there has been going on the process of the modernization of regulations of the former Socialist Federative Republic of Yugoslavia. Considering the fact that numerous regulations had been applied on the territory of the entire federal State, in the Republic of Slovenia, after gaining the independence and the recognition of the new state, in accordance with the Constitutional Act for the Implementation of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette RS, No. 1/91-I; hereinafter: Constitutional Act), those regulations which were in force at the time of gaining independence, insofar as they did not contradict its legal system, may be applied further on
- at the same time, on the other hand, a process of the unification, harmonization and coordination of regulations of the Republic of Slovenia with the legal system of the European Union has been taking place. This process requires numerous changes to be carried out introducing a global view on aviation as an economic activity and, simultaneously, applying the unification of safety, technical and technological regulations.

Following the independence and establishment of the Republic of Slovenia, on 25 June 1991, the regulation of the area of aviation were wholly inherited from the former state. Speaking in terms of administration as well, the Republic of Slovenia was dependent on the former state. Thus, one of the first steps for the new authorities to take was to build the foundations of aviation administration authority. In this regard, what was indispensable for the State bodies of the new authorities was the assumption of powers which have been conferred to the federal authorities in the past. The Civil Aviation Authority of Republic of Slovenia was established by the Constitutional Act, which was called at the time of its establishment the Republican Air Navigation Administration. Today, it operates as a body within the framework of the Ministry of Transport and Communication.

Numerous regulations of the Socialist Federative Republic of Yugoslavia are still applied in the Republic of Slovenia. In the former state, legislative authority was divided between the federation and the federal units - republics. The division of the power to regulate individual fields of law was determined by the federal constitution. Transport law, or transport law regulations, was a typical field of law falling under federal power.

It is probably due to the fact that these regulations had not set any problems for the new authorities concerning ideological perspectives, that the legal regulation of this area has been delayed, and that such regulations have been left out for the last group of acts to be amended. However, there are some regulations in the area of aviation which were indispensable for establishing sovereignty, such as: the regulations which govern the state ownership of aircrafts, the proceedings of issuing flight permits, working hours of public airports, fees for the use of devices and services of flight control, etc.

In the Republic of Slovenia, a viation law is divided in two major groups:

1. Public law.
2. Private law.

The first group in particular embodies administrative and penal issues, whereas the second group refers to property questions in relation of aviation issues.

The Republic of Slovenia is a member to the following international organizations in the area of aviation:

- International Civil Aviation Organization - ICAO (becoming a member on 12 June 1992)
- European Civil Aviation Conference (from 12 July 1992 on)
- Candidate for a member to the Joint Aviation Authorities
- European Air Navigation Safety Organization - EUROCONTROL (1 October 1995)

## **2. LEGAL REGULATIONS IN THE AREA OF AVIATION IN THE REPUBLIC OF SLOVENIA**

### **2.1 DOMESTIC REGULATIONS**

Currently, the area of aviation law is regulated by three statutes and a number of executive regulations. Following the list of regulations provided below, there is only one statute adopted by the National Assembly of the Republic of Slovenia (adopted during this year), the two remaining statutes were, however, inherited from the former state. The greatest number of executive regulations detail the relations set in the Air Navigation Act. What is determined in a proposal of the new statute in this area is which existing executive regulations are to cease to apply and which are to be *mutatis mutandis* applied until the adoption of new executive regulations.

It is clear, at first sight, that the matter at issue concerns an area of legal regulation which still needs a great deal of legislative activities and activities of other bodies which adopt executive regulations to be performed before this matter could be finally settled.

For the present, in the Republic of Slovenia there are the following regulations (bylaws are described in Part III.) in the area of aviation (updated as on March 14, 2000 ):

- I. Obligations and Property Rights in Aviation Act (ZOSRL), Official -Gazette RS, No. 12/2000.
- II. Air Navigation Act (ZZraP), Official Gazette SFRY, No. 45/1986 with Amendments.
- III. Exploitation of Public Airports Act (ZIJL), Official Gazette FPRY, No. 24/1961 with Amendments.

### **2.2 INTERNATIONAL CONVENTIONS**

The principle of the supremacy of international law over domestic law has been established in the Republic of Slovenia. It is provided in Article 8 of the Constitution of the Republic of Slovenia, Official Gazette RS/I No 33/1991. 42/1997 that ratified and promulgated international treaties are to be applied directly and that statutes and other legal regulations must comply with generally valid principles of international law and must be in accord with international treaties which bind Slovenia. The aforementioned article of the Constitution (Article 8) puts international treaties in a hierarchical position above statutes that can only amend international law, provided that they are not inconsistent with it. The regulation is in conformity with Article 27 of the 1969 Vienna Convention on Contract Law, which provides that, in the case of its non-implementation of international treaties, an individual member

cannot refer to its internal legal system. The system that places international treaties between the constitution, which is superior to them, and the statutes, is in theory usually called a "theory of coordination".

Regarding the preparation of new regulations which are codified in international treaties, there is always raised a question, concerning the mentioned constitutional provision, whether to imply domestic regulations, or not. Is it not a better solution, on the other hand, to ratify and promulgate international treaties in order to be applied directly? However, for the time being, the legislature is prone to adopting domestic regulations in areas in which there is a special field of law wholly regulated by international regulations. The reason for such determination can be found in a greater amiability of domestic regulations to the subjects addressed by such regulations, a greater transparency of them, and ... Furthermore, a compelling reason for such determination is the ambition to convert the language of conventions into the familiar terminology of the Slovenian legal system.

In this regard, we should bear in mind that the language of conventions is many times rather remote from usual legal terminology used in the state that ratifies the convention.

The international regulations from the area of aviation which are applied in the Republic of Slovenia (updated as on March 14, 2000) are the following:

- I. Founding Act of the European Civil Aviation Conference (ECAC).
- II Order on the Ratification of the Convention on the Establishment of the International Civil Aviation Organization.
- III. Order on the Ratification of the Protocol on the Original Text, in three languages, of the Convention on International Civil Aviation (Chicago, 1944).
- IV. Decree on the Ratification of the Protocol on the Authentic Text of the Convention on International Civil Aviation (Chicago, 1944) in Four Languages.
- V. Act on the Convention on the Unification of Certain Rules Relating to International Air Transportation.
- VI. Order on the Ratification of Supplementary Protocols Nos. 1 and 2 and Montreal Protocol No. 4 on the Amendment to the Convention for the Unification of Certain Rules Relating to International Air Transport, Signed in Warsaw Dated 12 October 1929.
- VII. Act on the Ratification of the International Convention EUROCONTROL on Cooperation for the Safety of Air Navigation.
- VIII. Additional Protocol to the International Convention EUROCONTROL on Cooperation for the Safety of Air Navigation.
- IX. Act on the Ratification of the Convention on Crimes and Certain Other Acts Committed on Aircrafts.
- X. Act on the Ratification of the Convention on the International Recognition of Rights on Aircrafts (MKMPPL).
- XI. Act on the Ratification of the Convention on the Suppression of Illegal Acts Against the Safety of Civil Aircrafts.
- XII. Act on the Ratification of the Convention on the Suppression of the Illegal Hijacking of Aircrafts.
- XIII. Decree on the Ratification of the Agreement on Transit Within International Air Traffic Decree on the Ratification of the International Treaty on a Procedure for Determining Tariffs Concerning Regular Air Traffic within Europe.
- XIV. Act on the Ratification of the Multilateral Agreement on Fees Concerning Airlines (MSPZP).
- XV. Resolution of the Extended Commission EUROCONTROL, No. 36 Relating to the Amendments to the Conditions of Using the System of Fees Concerning Airlines and to the Payment Conditions Which Have Been Applied Since 1 January 1977.
- XVI. Resolution of the Extended Commission EUROCONTROL, No. 35 relating to the determination of interest for delay for fees concerning airlines which have been applied since 1 January

1997.

XVII. Resolution of the Extended Commission EUROCONTROL, No. 34 on the determination of fees for a unit of service and over-Atlantic tariffs which have been applied since 1 January 1997.

XVIII. Resolution of the Extended Commission EUROCONTROL, No. 33 on the determination of fees for a unit of service and over-Atlantic tariffs which have been applied since 1 January 1996.

XIX. Resolution of the Extended Commission EUROCONTROL, No. 32 relating to the determination of interest for delay for fees concerning airlines which have been applied since 1 January 1996.

XX. Resolution of the Extended Commission EUROCONTROL, No. 31 on the determination of fees for a unit of service and over-Atlantic tariffs which have been applied since 1 January 1996.

### 3. LEGISLATIVE ACTIVITIES

#### 3.1 IN GENERAL

With regard to aviation law, for the present, the Republic of Slovenia has not followed the example of regulating law of the sea, concerning which all relations referring to the sea, that is not only public-law part but also private-law part, procedure and execution, are regulated in one passage in the code. Notwithstanding the fact that domestic experts have warned of the advantages of determination of the whole issue of aviation in one regulation, that is in a code of aviation (the reasons in favour of the code are for example affordability for the users, clearness) there has been preserved the dualism in regulating aviation law.

#### 3.2 NEWLY ADOPTED REGULATIONS

The National Assembly at the beginning of the year adopted the Obligation and Property Rights in Aviation Act. The Act came into force on February 26, 2000. The adoption of this Act entails the beginning of a fundamental re-enactment of regulations that govern the area of aviation. The mentioned Act is not a basis for a great number of executive regulations (as, for example, the Air Navigation Act). The regulation is adjusted to all international conventions concerning this area.

The Obligation and Property Rights in Aviation Act is grounded on a former federal regulation that is on the Obligation and Basic Substantive Relations Act. In the sense of a global perspective, the new regulation in this area does not entail discontinuation concerning the regulation of the private-law part of aviation law. The old regulation was pretty good. It had been prepared by top experts in this area and served the drafters of the new statute as a framework.

The greatest difference between these two statutes is in the definition of ownership relations, which in the old statute conformed to the social-political arrangement, from which the regulation had originated. The former Socialist Federative Republic of Yugoslavia had introduced a *sui generis* type of ownership, i.e. so-called social property, which was based on the right to dispose of property, not on the classical regime of the ownership rights. Business companies (firms), engaged in transport of passengers thus were not the owners of the aircrafts, but only had the right to dispose of these aircrafts. That system is best compared with the institution of public property. Social property was a constitutional category, which was abolished by the 1991 Constitution of the Republic of Slovenia. Thereafter the Republic of Slovenia introduced the classical legal concept of ownership. As far as the transitional period is concerned, the area of ownership therefore represents the most important change. It contributed to the fact that, in terms of comparative law, the regulation became part of classical regulations of continental law that govern the private-law part of aviation law.

The new regulation was modernized and changed also as far as language is concerned. Numerous new legal terms have been introduced to replace the old and less appropriate legal terms. The legislation of the former Socialist Federative Republic of Yugoslavia had frequently and in every

possible manner tended to be different than other countries' legislations, and had striven to find original solutions. This led to a number of illogical solutions in the area of language, which were, however, remedied by the new Obligation and Property Relations in Aviation Act.

In view of system concerns, the new statute is quite simpler than the old statute. It regulates the following areas: obligation and property relations, execution procedure, claim security, and conflicts of laws in the area of aviation. The statute is divided in six major parts, which are the following: general provisions, obligation relations, property relations, execution and securities concerning aircrafts, conflicts of laws and final provisions. With regard to the content, the most important part is the obligation part of the statute, which governs the transport of passengers, luggage and cargo, contracts on special aviation services, lease of an aircraft, liability for damages caused by the aircraft on the ground, aviation insurance and claims barred by the statute of limitations. The act will be discussed more in depth in Part II.

### **3.3 REGULATION IN LEGISLATIVE PROCEDURE**

As regards the public part of aviation law we are focused on the *de lege ferenda* regulation, namely on the draft of the Aviation Act which is about to be adopted. As mentioned earlier, this field is still regulated by a former Yugoslav legislation - the Civil Aviation Act.

The new legislation will thoroughly regulate air traffic, air transport and aviation in the Republic of Slovenia. It has been drafted on the basis of the model for drawing up an aviation act provided by the ICAO (International Civil Aviation Organisation) for its member states. Like a number of other economic activities, aviation too is becoming considerably determined by the processes of globalisation. The proposed regulation will be of considerable help in the integration of Slovene aviation into international trends. The proposed solutions also represent a legal framework for the equal treatment of commercial companies in the provision of civil air transport.

The current legislation imposes strict standards in the field of aviation. It also regulates numerous technical and operational issues, which should be administered by way of by-laws. Such a statutory act is too rigid to accommodate the rapid and ongoing changes occurring in both the technical and operational facets of aviation. Although the new legislation is less strict in this respect, we are of the opinion that it could be more general as regards certain issues.

The new act will entail changes in the operation of individual companies and services which are carried out as commercial activities:

- airport companies; and
- navigation services.

The proposed model for the regulation of navigation companies will disburden the state budget, whilst all those who fulfil the prescribed requirements shall be able to tender for the provision of airport services. The new act shall also safeguard public interest and ensure competition in relation to the provision of such services. These regulations are to be implemented gradually, suitable solutions must therefore be found for the transition period.

The Civil Aviation Authority Of the Republic Slovenia will primarily carry out administrative and professional tasks, in particular it shall conduct administrative procedures for the issue of the licences, authorisations, permits and certificates required for crew and other professional personnel, aircraft as well as other service providers in the field of civil aviation.

At present, Civil Aviation Authority of the Republic of Slovenia and Transport Inspectorate are two separate bodies under the auspices of the Ministry of Transport and Communications. The draft law envisages the transfer of the aviation inspectorate to the Civil Aviation Authority.

There are numerous reasons behind such a transposition of responsibilities, including the demand for improved association between control functions; the possibility of ensuring the more rapid and efficient detection of irregularities and a prompter response to such; unification of measures; improved possibilities in following developments being made in aviation control; the simpler provision of training to flight inspectors and other professional Civil Aviation Authority personnel; improved access to documents and data, as well as more rapid communication between all those involved in and responsible for regulation. The legislator is aware of the fact that safety-technical requirements of the EU call for a well organised control function involving a constant checking of compliance with the prescribed requirements for air carriers as well as others participating in the aviation sector.

The Aviation Act draft is based on the following principles and objectives:

### **SOVEREIGNTY OF THE REPUBLIC OF SLOVENIA OVER ITS AIRSPACE**

The International Civil Aviation Convention of 7 December 1944 (Chicago Convention) determines the sovereignty of contracting states as a fundamental principle. Sovereignty proceeds from the constitutional definition that the Republic of Slovenia is the sovereign state of the citizens living on its territory. Sovereignty over airspace is reflected in a restrictive authority as well as the right to organise navigation services (including air traffic control - ATC) and inspection.

### **COMPLIANCE WITH THE GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AND INTERNATIONAL AGREEMENTS**

In accordance with Article 8 of the Slovene Constitution, Slovene laws and legal regulations must comply with generally accepted principles of international law as well as international agreements that bind Slovenia. The draft law constitutes a basis for the regulation of certain pertinent issues in connection with the ICAO, EUROCONTROL, ECAC and JAA rules.

#### *Air Transport Safety*

Safety has a special place in air traffic. Although a number of criteria, such as the cost-effectiveness of procedures, the protection of state interests and other criteria dictate possibly different solutions, the proposed draft provisions prioritise safety.

#### *Free Use of Airspace for All Users*

In compliance with the Chicago Convention, the draft foresees the free use of Slovene airspace to all those who use it in accordance with international agreements, statutes, by-laws and other regulations.

#### *The Principle of Legality*

The draft is written in compliance with the constitutional provision which prescribes that the rights and obligations of citizens are determined only by law.

#### *Compliance with ICAO Aircraft Standards and Recommendations. EUROCONTROL Standards and Directives, ECAC Directives, JAA Joint Aviation Regulations, Harmonisation with EU Norms as well as the Possibility of the Immediate Introduction of Technical and Technological Safety Regulations in Force within Other European Countries*

The proposed solutions consider the directives of the international organisations listed above. The draft regulates all those issues which are recommended by international organisations in modern aviation legislation. Those countries which do not comply with the stated regulations will be excluded from the development of aviation; Slovenia therefore has no other option but to comply with them.

#### *Liberalisation Trends in Air Traffic*

A decreased role of national air carriers and bilateral agreements is a modern trend in aviation. The areas which were formerly and traditionally regulated by way of bilateral agreements are now left to the

commercial freedom of air carriers.

*Environmental Protection*

Aviation is a considerable polluter of the environment, particularly in terms of noise pollution. The draft follows modern ICAO and ECAC standards which introduce a gradual prohibition of aircraft which produce noise in excess of a certain limit.

*Transparency and Clarity*

The provisions follow the ICAO model which serve as a guideline for clear provisions and complex regulation of this sector.

The Aviation Act draft regulates the following fields: general provisions, aircraft, crew and other professional personnel, public air transport and other air traffic activities, airports and runways, air traffic navigation services, security and relief, aircraft search and rescue, aircraft accidents and incidents, other provisions governing air traffic, performance of airport and air traffic navigation and control services as well as public, and commercial infrastructure, control, penal provisions, transitory provisions and final provisions.

**4. SLOVENE AVIATION LEGISLATION AND THE EUROPEAN UNION**

The Republic of Slovenia is undergoing preparations for accession to the European Union. The Accession Agreement, signed in Luxembourg on 10 June 1996, was adopted by the Slovene National Assembly on 15 July 1997 (Official Gazette of the Republic of Slovenia, No. 44/97), and came into force on February 1, 1999. Accession will have numerous consequences in the domain of law and legislation. As a future member of the European Union Slovenia must adopt the *acquis communautaire* (regulations, orders and other legal documentation) of the Union; such shall be done by way of the unification, harmonisation and coordination of its legislation with that of the EU. While unification is supported by EU agreements and regulations, harmonisation is guided by directives. As mentioned before, ratified international law prevails over legislation of the Republic of Slovenia, save for its Constitution. Upon accession, Article 8 of the Slovene Constitution will probably have to be amended and the superiority of the international law acknowledged.

The Accession Agreement allows for a transition period which shall last not more than six years. During this period, Slovenia must also adopt a number of measures in the field of aviation legislation. In the realm of transport regulation, Article 83 obliges parties to the agreement to develop and promote co-operation which will, among other things, allow Slovenia to improve transportation through the application of administrative, technical and technological measures. This provision is based on Articles 74-84 of the *Treaty of Rome*, which, together with the *Treaty of Maastricht* and the *Treaty of Amsterdam*, promotes the implementation of measures to advance traffic safety.

In adopting the *acquis communautaire*, the EU associate members can refer to the White Paper on the *Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union (1995)*. The White Paper is not a formal legal source, it has no legal effect and is not a formal part of accession negotiations. It is, however, an aid to changing a legal regime which will have to be brought into line with the existing legal order of the Union. The White Paper consists of two parts, the first one being a political analysis of the purpose, context, type and manner of harmonisation, and the second containing a presentation of EU legislation governing the internal market which is itself divided into 23 sectors, one of which is transport.

The White Paper ranks measures according to priority. First degree measures in the field of air

transport include bringing Slovene legislation into line with EU regulations and directives on the issue of licences, technical conditions and administrative procedures in civil aviation, accident investigation, computer booking systems operation codes, noise abatement and landing corridors assignment.

Paragraph 4 of Article 55 of the Accession Agreement stipulates that the parties to the agreement shall regulate air transport by way of a special agreement that will cover co-ordinated development, gradual air transport liberalisation and mutual market approach. During this transition period, Slovenia is gradually bringing its legislation into accordance with that of EU member states. The accession of associated countries shall also be gradual. The situation as regards the aviation sector in these prospective member states, as well as their capabilities to adjust, differ. The gradual approach being taken by Slovenia is probably the best solution for this country as well as the others. After all, air transport liberalisation within the EU itself was implemented gradually in three stages on the basis of three packages of regulations. Due to this, Slovenia's own draft Aviation Act does not introduce liberalisation; such liberalisation shall be the subject of a special agreement between Slovenia and the EU. At this stage unilateral liberalisation would be merely one-sided: EU carriers would be granted an equal position on the Slovene market, whilst Slovene carriers would not be granted an equal position on the European market.

The wording of the draft Aviation Act allows the adoption of a number of by-laws which will facilitate the implementation of EU legislation in such areas as: noise abatement and the gradual elimination of aircraft which fail to comply with the prescribed standards (Directives 80/51, 83/206, 89/629 and 92/14), nondiscriminatory slot assignment — this is not a pressing problem

at the moment (Regulation 95/93), accident investigation and civil aviation incidents (Directive 94/95/EC), as well as crew licensing. The provisions of Regulation 3922/91 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation will be included in the new legislation in the sense that envisaged solution for the enforcement of Joint Aviation Requirements is as follows: technical standards will be enforced directly in compliance with the regulations issued by the competent minister.

As regards consumer protection in civil air transport, the White Paper details Directive 90/314/EEC on agency-organised travel, holidays and excursions, as well as Directive 93/13/EEC on unfair terms and conditions contained in contracts with consumers. The draft Aviation Act fails to consider these two directives because they do not refer directly to aviation, therefore the provisions of the two aforementioned Directives should be considered in the adoption of the Code of Obligation and the Consumers Protection Act.

## **SLOVENIAN PRIVATE AVIATION LAW**

### **1. INTRODUCTION**

The Slovenian Parliament has passed the *Bill on Obligations and Property Rights in Aviation* (hereinafter referred to as OPRA) on 26 January 2000. The Act represents the private part of new Slovenian legislation in the field of aviation law. The Act is representing the body of rules governing private aviation law in Slovenia.

Because of the very nature of aviation the aviation law has from its beginning had an international character. Therefore the legislator had to turn to international sources of law i. e. international conventions binding Republic of Slovenia. In forming OPRA the legislator's attention towards international documents has been two-pronged. On one hand the Act has taken into account international instruments already binding Slovenia and on the other hand the legislator had to take into consideration also international documents to which Slovenia would like to accede in the future or which although not binding Slovenia, provide some standard solutions in regulating private aviation law.

Slovenia is a member of the following international conventions (it should be noted that Slovenia's membership to most international conventions is a result of succession from Yugoslavia) regulating private aviation law:

- Convention for the Unification of Certain Rules relating to the International Carriage by Air, Warsaw (1929), hereinafter cited as the Warsaw Convention.
- Convention on the International Recognition of Rights in Aircraft, Geneva (1948), hereinafter cited as Geneva Convention 1948.
- Protocol to Amend the Convention for the Unification of Certain Rules Relating to the International Carriage by Air, The Hague (1955), hereinafter cited as The Hague Protocol.
- Convention Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, Guadalajara (1961), hereinafter cited as Guadalajara Convention.
- Additional Protocols No. 1, 2 and 4 to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12th October 1929, Montreal (1975), hereinafter cited as Montreal Protocol 1,2, and 4 1975.

The legislator has taken into account the principles and rules out of conventions binding Slovenia. However, it is worth mentioning that even in the event some principle of international law binding Slovenia has been omitted in domestic legislation, the international law should prevail by the virtue of art. 8 of the Constitution of the Republic of Slovenia. In respect of Montreal Protocol No. 4 it should be mentioned, that despite it is still not in force, the legislator has used its solutions in drafting the Act.

As mentioned in Part I, in pursuing its aspirations to join the EU Slovenia has signed The Accession Agreement on July 10th 1996 in Luxembourg. The Agreement has been ratified by Slovenian Parliament in 1997 (Official gazette of the Republic of Slovenia No. 13/97). Art. 3 of the Agreement contains a provision obliging Republic of Slovenia to harmonise its legislation with *acquis communautaire* within a six-year period. Although the Agreement requires of Slovenia mainly to harmonise its public aviation legislation, the legislator has taken into account also following regulations:

- Council Regulation (EEC) No 295/91 of 4 February 1991 establishing Common Rules for a Denied-boarding Compensation System in Scheduled Air Transport.
- Council regulation (EEC) No 2407/92 of 23 July 1992 on Licensing of air Carriers.
- Council Regulation (EC) No 2027/97 of 9 October 1997 on Air Carrier Liability in the event of Accidents.

Further to the abovementioned documents the legislator has taken into consideration also some other international instruments not binding Slovenia:

- Convention on Damage Caused by Foreign Aircraft to Third parties on the Surface, Rome (1952), hereinafter cited as Rome Convention.
- Protocol to Amend the Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface, signed at Rome on 7 October 1952, Montreal (1978), hereinafter cited as Montreal Protocol 1978.
- United Nations Convention on International Multimodal Transport of Goods, Geneva (1980), hereinafter cited as Geneva Convention 1980.

As private aviation law is organically interconnected with some principles of public aviation law we have

to bear in mind that all the definitions provided by international public law binding Slovenia are in force also for the private international law.

## 2. GENERAL PROVISIONS

In general provisions OPRA defines its scope, definitions of terms used and general principles of the act.

The scope of OPRA is to regulate obligations, property rights, execution and attachment and conflict of laws in aviation (art. 1).

As a general principle OPRA contains rules that are part of *ius dispositivum*, the parties are free to form their mutual relations with a contract and are not bound by the rules of OPRA (art. 2). To this rule there are exceptions, where the parties are obliged by OPRA to follow its rules. These exceptions are listed specifically and are set out in accordance with Warsaw convention: 1.) Many provision relieving or limiting the carrier of his liability as determined by the Act shall be null and void; 2.) Any provision limiting the rights of the passengers or the shipper/charterer shall be null and void; and 3.) Any provision shifting the burden of proof away from the carrier or setting lower liability limits shall be null and void (art. 3).

*Definitions (art. 3):*

- *Carrier* is defined as a person performing carriage of passengers, baggage or cargo by virtue of a contract of transportation.
- *Contracting carrier* is 'a person who has concluded a contract of transportation with a passenger, shipper or consignor. (Guadalajara Convention)
- *Actual carrier* is a person who performs the whole or part of the carriage by air and is not the contracting carrier or a successive carrier. (Guadalajara Convention)
- *Successive (direct) carrier* is a person performing part of the contract of carriage, concluded by the first carrier with the consent of the passenger or shipper/charterer. In case of successive carriage the carriage is performed by more carriers carrying out one contract of carriage, covering one "undivided carriage" within the meaning of Warsaw Convention and The Hague Protocol.
- *Agent* is a person carrying out the carriage on behalf of the carrier or in his name.
- *Charterer, Shipper* is person concluding the contract of carriage with the contracting carrier. The term encompasses any person concluding the contract of carriage by air. Implicitly this person can be a charterer in the contract of hire of an aircraft, the shipper in the contract of carriage of cargo, the passenger if the passenger concludes the contract with the carrier directly or any other person.
- *Consignor* is a person in whose name or on whose behalf a contract of carriage of cargo has been concluded with the carrier.
- *Consignee* is a person entitled to take delivery of the cargo at the agreed place.
- *Passenger* is a person entitled to the transportation by air by the virtue of the contract of carriage by air.
- *Beneficiary* is a person holding a claim against the carrier.

- *International carriage* is defined as carriage by air, where the place of departure and the place of destination are situated on the territory of two different countries or if both places are situated in the same country if there is an agreed stopping place on the territory of another country. (Warsaw Convention)
- *Special Drawing Rights*. The Act introduces Special drawing Rights as a monetary unit within the meaning of the act. SDR means Special Drawing Rights as defined by the International Monetary Fund. (MAP Nos. 1 & 2.) The exchange rate for SDR is published by the Bank of Slovenia.
- *An Aircraft*. The definition of an aircraft is following the definition of the Annex 7 to the Chicago convention and is defined as any machine that can derive support in the atmosphere from the reaction of the air, other than the reactions of the air against the earth's surface.

### 3. OBLIGATIONS IN AVIATION

The OPRA is following a civil law distinction between obligation rights and property rights; i.e. rights *in personam* and rights *in rem*. Obligations arise out of relations between at least two persons where one, the creditor, has a right to claim a payment or service from another (debtor). The debtor has the obligation to fulfil the claim. As opposed to rights *in rem*, the obligation right of the creditor may be exercised only against a definite person, either determined by a contract or by law. Therefore obligations may be classified as arising out of the contract or out of the law.

In this part OPRA regulates relations between parties arising out of a contract and rights and obligations arising as a consequence of the damage caused on the surface. OPRA regulates the contract of carriage by air, contract of aerial work, charter contract, contract of aviation insurance and the liability for the damage caused on the surface.

#### 3.1 CONTRACT OF CARRIAGE

##### 3.1.1 Carriage of passengers and baggage

###### 3.1.1.1 Carriage of passengers

The OPRA defines and regulates two main forms of contracts of carriage of passengers by air. The contract between a passenger and the carrier and the contract between the charterer and the carrier. (Within the context of contract of carriage of passengers we shall refer to any person concluding a contract with the contracting carrier, other than the passenger as a "charterer". The term shall include tour operators and/or travel agencies in case they charter aircraft themselves.) The carrier has the obligation to transport the passenger from the agreed place of departure to the agreed place of destination in accordance with the timetable or in the time agreed. In return, the passenger has the obligation to pay the carrier the fare for the transportation (art. 6, para. 2).

In the charter agreement the carrier has the obligation to transport one or more passengers designated by the charterer. The subject matter of charter agreement may be the transportation of one or more passengers for one or more journeys with the whole or just part of capacity of the aircraft. The OPRA requires written form of charter agreement (art. 7). It should be noted that in this section OPRA defines the relations between parties in respect of the carriage of passengers, contractual relations in respect of aircraft are defined in the section dealing with the charter contract.

*Passenger Ticket*. Upon the conclusion of the contract of carriage the carrier has to issue a passenger ticket. The ticket can be for one passenger or for a group of passengers. Passenger ticket is a proof of a concluded contract of carriage, it does not in itself constitute the contract of carriage. The ticket

should, as a rule, bear the name of the passenger and is not without carrier's previous consent transferable to another passenger. However, the carrier cannot deny the right of a passenger to transfer the ticket to another person without justified reason. The passenger ticket must contain place of departure and destination and the time of departure and arrival as defined by the timetable or contract (art. 8).

Furthermore, by the virtue of Warsaw Convention/the Hague Protocol, the ticket must also contain a notice that Warsaw Convention may be applicable and that it limits the liability of the carrier for death or personal injury and in respect of loss of or damage to the baggage (Warsaw Convention). Although it is mandatory for the carrier to issue the ticket, OPRA does not contain provision what would be the effect of carrier's non-compliance. If that would be the case, Warsaw Convention/the Hague Protocol would be directly applicable; the contract of carriage would be valid, but the carrier would not enjoy the benefit of liability limits. OPRA does not require the carrier to list agreed intermediate stopping places on the ticket as is the case in art. 3, para. 1 b) of The Warsaw convention/The Hague Protocol.

*Cancellation of contract by passenger.* The passenger has the right to cancel the contract before the carriage commences. The passenger can exercise this right at latest 24 hours before the departure in the domestic air transport or at latest 48 hours on international flights. In such cases the carrier may retain at most 10 % of the fare (art. 10).

A passenger also has the right to cancel the contract due to the *force majeure*; in case of a serious illness or death of the passenger or of his family member or another person accompanying the passenger or if the carriage would be harmful to the health of the passenger, he has the right to cancel the contract with a notification to the carrier. The carrier has to receive the notification before the departure of the aircraft and has the right to retain 5% of the fare. If such an obstacle arises during the duration of the journey, the passenger has the right to claim part of the fare proportional to the part of the journey not yet performed (art. 10).

If the carriage does not commence within two hours on domestic flights or within four hours on international flights from the scheduled or agreed departure time, the passenger has the right to request the carrier to organise the transportation with another aircraft or with some other means. Alternatively, the passenger has the right to cancel the contract and receive full fare in return. For the duration of the delay, the carrier has to provide the passenger with refreshments and accommodation at his expenses. The carrier does not have to carry the burden of these expenses if the delay has been caused by an act of competent administrative authorities or for reasons on the side of the passenger (art. 11).

If an interruption of three hours on domestic flights or six hours on international flights occurs during the journey, the passenger has the right to request from the carrier to perform the transportation to the place of destination with some other appropriate means of transport or to return him to the place of departure, in this event the passenger may claim return of the part of the fare, proportional to the part of the journey performed. In these cases the carrier is liable for the delay as prescribed by OPRA. Alternatively, the passenger may cancel the contract in the place where the interruption of the journey occurs and claim return of the part of the fare for the part of the journey not performed. The carrier has to provide the passenger with refreshments and accommodation for the time of his waiting to continue the journey (art. 12).

*Denied boarding.* OPRA is regulating the compensation for the denied boarding in accordance with the Council Regulation (EEC) No. 295/91; In case a passenger in possession of a valid ticket, with a confirmed reservation and who has presented himself within the required time limit is denied access on an overbooked scheduled flight, he has the right to either reimbursement of the cost of the ticket for the part of the journey not performed or rerouting to his destination at earliest opportunity or rerouting at a later date at the passenger's convenience. Irrespective of the passenger's choice which right he shall

exercise, the carrier shall compensate the passenger in minimal amount of SDR 120 for flights of up to 3500 km or of SDR 240 for flights of more than 3500 km.

The compensation shall be paid in cash or, in agreement with the passenger, in some other form. The carrier is not liable for the payment of the compensation in case the passenger has obtained the ticket free or for a lower price, not available to the public (art. 13, para. 1, 2 and 3). If the carrier offers rerouting to the final destination and the time of arrival does not exceed the scheduled time of arrival by two hours in case of flights of up to 3500 km and four hours in cases of flights of more than 3500 km, respectively, the compensation may be reduced by half (art. 13, para. 5) (Council Regulation No. 29, art. 4). Although the Regulation refers to the money thus owed by the carrier as the "compensation," it can not *strictu sensu* be regarded as compensation. The carrier is in any way liable to the passenger for the whole amount of actual damage caused by the delay. In our opinion it would be better if we would speak about contractual penalty for the non execution of the contract from the side of the carrier.

Besides the compensation, the carrier shall reimburse the passenger the costs of making a telephone call or making another form of communication to the place of destination and with costs of meals and refreshments in a reasonable relation with waiting time. In case of a necessary overnight stay the carrier shall also reimburse the passenger costs of the hotel (art. 13, para. 4). (Council Regulation No. 29, art. 6, parr. 1.)

In case a town, city or region of final destination is served by several airports and the carrier offers to the passenger to transport him to an airport other than the destination airport, the cost of travelling between airports or to another destination agreed with the passenger shall fall on the carrier (art. 13, para.7). If the passenger agrees to travel in a class lower than that for which the ticket had been purchased, he is entitled to reimbursement of the difference in price (art. 13, para. 8).

In the event of a denied boarding on a flight contracted by some other person as passenger (i.e. charterer, tour operator), the carrier is liable for the compensation from art. 13 to the charterer/tour operator (art. 13, para. 6).

The carrier has to lay down rules which it will follow in case of an overbooked flight and publish them in conditions of carriage. He has to make these rules available to the public at the carrier's agencies, other agencies, check-in counters and other points of sale. In setting these rules the carrier must take into account the possibility of passengers who were not denied access on an overbooked flight to exchange their places in return for a compensation.

Furthermore in laying down these rules the carrier has to give the priority in boarding the flight to passengers who have a justified reason to have this priority e.g. unaccompanied children and handicapped persons (art. 14).

*Carriage by air performed by another carrier than the contracting carrier.* Unless otherwise agreed the charterer has to perform obligations arising out of the contract of carriage in relation to the carrier. In this event, the passenger may claim compensation for cancellation, interruption, delay, non performance or denied boarding from the charterer. The charterer has to provide the passenger with services of the carrier (art. 15).

If the contract of carriage does not stipulate otherwise, the contracting carrier may entrust the actual carriage to an actual carrier. In this case the conditions of carriage provided by actual carrier must be the same or similar as those that would have been provided by contracting carrier. Mutual relationship between the contracting and the actual carrier are, agreed by a contract. Unless otherwise contractually agreed, OPRA provisions relating to carriage shall apply in relations between the actual and the contracting carrier. In time charter agreement, the contractual carrier may assign the actual carriage to

actual carrier only upon express consent of the charterer (art. 16).

In the event of time charter agreement the carrier may substitute one type of aircraft by another only with express consent of the charterer. If however the carrier substitutes one type of aircraft for another in absence of such express consent, he is liable to the charterer for any damage arising out of such substitution (art. 17). The carrier has the duty to carry out orders of the charterer within the scope of the charter agreement. The charterer may not order a journey that would endanger the aircraft, the crew or passengers or a journey that cannot practically be concluded before the expiration of the charter agreement (art. 18). The carrier may dispose with unoccupied seats of the chartered aircraft only upon written consent of the charterer. In such event the fare reduces proportionally. If the carrier disposes of unoccupied seats without the express agreement of the charterer, he is liable to the charterer for the damage thus caused (art. 19).

### **3.1.1.2 Liability of the carrier**

In the respect of carrier's liability for the damage caused to passengers, Slovenia is bound by The Warsaw Convention. Art. 17 of Warsaw Convention prescribes liability on basis of actual fault with reversed burden of proof of the carrier for the damages sustained in the event of death or bodily injury of passengers, if the accident took place during the transportation. However, in formulating carrier's liability OPRA implemented liability limits, principles of liability and reasons for exonerating the carrier from the Council Regulation (EC) No 2027/97.26

The carrier is liable for damage sustained in the event of the death, deterioration of health or injury of the passenger if the accident which caused the damage took place during the carriage by air. For up to the limit of a sum equivalent to SDR 100,000 the liability of the carrier shall be absolute. He can exonerate himself of his liability only by proving that the passenger suffering the damage has caused or contributed to the damage. If the passenger has only contributed to the damage, the liability of the carrier shall be reduced proportionally according to the contribution of the passenger. In case the damage exceeds the sum equivalent to SDR 100,000 the carrier can exclude his liability by proving that he or his agents had exercised due diligence in performing the carriage. The carrier is liable for his agents. In the event of a time charter agreement, both the charterer and the carrier are liable jointly and severally. Actual and contracting carrier are also liable jointly and severally (art. 20).

The carrier shall insure his passengers for personal accident with sums insured set no lower than the sum from the Art. 20c, i. e. an equivalent of SDR 100,000 per passenger seat (art. 21). This insurance requirement contained in the provision of art. 21 is in contradiction with art. 12 of The Compulsory Insurance in the Traffic Act, which requires any entity performing public transportation for reward to insure any passenger seat for the sum insured of SIT 1,147,000. The provision requiring the insurance of OPRA should be construed in accordance with the principle that *lex posterior derogat legi prior*, and therefore the latter rule should apply. As a matter of interest it should be noted that the requirement for insurance of passengers in Regulation (EEC) No 2407/92 is for the insurance of the liability of the carrier whereas OPRA requires personal accident insurance.

The carrier has an obligation to make an advance payment at no later date than in fifteen days after the identity of the natural person entitled to compensation has been established. In the event of the death of a passenger minimum sum of the advance payment should not be lower than to the equivalent if SDR 15,000. The advance payment does not constitute the admission of liability of the carrier; In case it is subsequently proved that the carrier is not liable for the injury, the advance payment should be returned to the carrier (art. 22).

Provisions set in Art. 20, 21 and 22 of OPRA have to be incorporated in to conditions of carriage and the carrier shall make them available to passengers at his agencies, other travel agencies, points of sale or check in counters (art 23).

The carrier is liable for the damage caused by the delay or interruption in carriage. His liability is limited with the sum of double fare. The carrier can exonerate himself if he can prove that he or his agents have exercised all due diligence in performing the carriage. The carrier does not have the benefit of a limited liability if it is proved that the damage has been caused intentionally or with a gross negligence. However, the carrier has the benefit of limited liability if the damage has been caused by his agent's gross negligence or intent and if the carrier can prove that his agent has been acting beyond the scope of his authority. These rules apply also for agents of the carrier (art. 24). The claim against the carrier for the damage caused by the delay or interruption of the journey should be addressed to the carrier in the form of reclamation within 15 days from the agreed or scheduled start of the journey or from the day when the journey has been interrupted. The time limit is preclusive; after its expiration the right of the claimant extinguishes.

This time limitation does not apply in cases of damage caused intentionally or with gross negligence (art. 25). Total amount of damages can not exceed the amount set in art. 24 of OPRA (i.e. double fare), except in case of damage caused intentionally or with gross negligence (art. 26).

In accordance with Guadalajara Convention the actual carrier cannot be liable with higher limits as those prescribed for contracting carrier unless he specifically agrees to it. The actual carrier is not bound by any agreement increasing liability of the carrier concluded between the charterer and the contractual carrier (art. 27).

### 3.1.1.3 Carriage of baggage

As customary, OPRA distinguishes between hand baggage and checked baggage. This section is, in general, modelled after The Warsaw Convention/The Hague Protocol, with liability limits set in accordance with Additional Montreal Protocol No.4.

*Hand baggage.* The passenger has the right to take on board of the aircraft hand baggage at no additional payment. The passenger cannot take as hand baggage items which would because of its size or other properties present a danger to the aircraft or other passengers. The carrier shall determine in conditions of carriage the maximum size and weight of hand baggage allowed per passenger (art. 28). The carrier is liable for the loss or destruction of hand baggage if the passenger proves that the loss has occurred due to the fault of the carrier or his agent. In the event of the loss of hand baggage during an accident involving the aircraft the burden of proof lies with the carrier; he has to prove that he and his agents have acted with the due diligence to prevent the loss (art. 29). The carrier is liable up to the sum equivalent of 332 SDR per passenger. The carrier does not enjoy the benefit of the limited liability in the event that the damage to the hand baggage occurred out of the gross negligence or intent of the carrier or his agents (art. 30).

*Declared value baggage.* The passenger may hand to the carrier items of value higher than the sum from the art. 30. In this event the carrier will give the passenger a written confirmation and the passenger may pay extras. The liability of the carrier is thus limited to the declared value (art. 31).

*Checked baggage.* In accordance with The Warsaw Convention/The Hague Protocol OPRA requires that the baggage check shall be issued by the carrier for the transportation of the baggage. Certain items cannot be included as baggage; goods which can be transported only on

certain conditions, goods that may impose a danger for the aircraft, passengers or other baggage. The carrier has to determine in its conditions of carriage the maximum weight and dimensions of checked baggage (art. 32). In case of damage to the baggage or other objects of which the carrier has taken charge the passenger has to file a complaint in writing within seven days of receiving the baggage. If the damage occurs as a consequence of the delay in the delivery of baggage to the place of destination the passenger has to file the written complaint within 21 days from the day the baggage

eventually reaches the place of destination. If circumstances prevent the passenger to file the complaint within above-mentioned time limit, the passenger can file the complaint in seven days after the cessation of such circumstances. The carrier cannot benefit from time limits set in this article, if the damage has been caused with the intent or gross negligence of the carrier or of his agents (art. 33).

The carrier has a right of lien over checked baggage and valuable items he has taken charge of as a security for his claims arising in connection with the contract of carriage (art. 34).

### 3.1.2 Carriage of cargo

The contract of carriage of cargo by air is a contract between the carrier and the person ordering the transportation (the shipper). The carrier shall perform the transport of cargo by air and the shipper is under obligation to pay for the freight (art. 36). The contract of carriage of cargo by air can be for the transport of one unit of cargo or more, for one journey or more, for the capacity of whole aircraft or just part of its capacity (art. 37). The quantity of cargo can be determined by number of units, weight, volume and/or dimensions (art. 39).

In case of a contract of carriage of cargo with the whole aircraft in certain period of time, i. e. time charter agreement, written form of contract is required (art. 38). The shipper has the right to substitute the agreed cargo for another cargo provided that thus changed conditions of carriage do not prejudice the position of the carrier, or that the change in cargo would not cause delay or that the change in cargo would not endanger the aircraft. In the event of the substitution of the cargo the consignor has to provide the carrier upon his request with some form of security for possible debts arising out of the substitution of the cargo (art. 40).

The shipper can authorise another person to hand the cargo over to the carrier in his name only if he is authorised to do so in the contract of carriage. The extent of the liability of the carrier towards the person other than the shipper, authorised to hand over the cargo, can not be broader than his liability towards the shipper (art. 41). The shipper is liable to meet obligations arising out of the contract of carriage even in the event he authorises a consignor to hand over the cargo to the carrier, unless otherwise provided by the contract (art. 42). Unless otherwise agreed the shipper has to provide the consignor only with the services of the carrier (art. 43). The consignor is liable for the obligations arising from the contract of carriage in respect of cargo handed over to the carrier by the consignor (art. 44).

*Air Waybill.* In the regulation of Air Waybill, the document relating to the carriage of cargo, the legislator has followed closely concepts brought by Additional Montreal Protocol No. 4. Although Montreal protocol is not yet in force it provides the air traffic with a possibility of automation in cargo handling. In accordance with the Art. III of the Protocol OPRA requires the consignor to hand over the air waybill to the carrier. The air waybill may, with the consent of the consignor, be substituted by any other means preserving the record of the carriage to be performed. In the event such other means are used, the carrier issues a receipt to the consignor upon request. The receipt contains information to identify the cargo and permits access to the record of carriage preserved by other means. If it is not possible to use such other means preserving the record of carriage at places of transit or destination, the carrier is not entitled to refuse to accept the cargo for carriage (art. 46).

In case the cargo consists of more than one unit of cargo, the carrier has the right to require separate air waybills for each unit. If the air waybill is substituted for other means preserving the record of the carriage, the consignor has the right to require separate receipts for each unit from the carrier (art. 47).

The air waybill is made in three copies. The first copy is marked "for the carrier" and is signed by the consignor. The second copy is marked "for the consignee" and is signed by both the consignor and the carrier and is handed to the consignee upon delivery of the cargo, the third copy is marked "for the consignor" is signed by the carrier and is handed to the consignor by the carrier when the cargo is accepted by the carrier.

The carrier has to sign the air waybill before the cargo is taken onboard of the aircraft. The signature of the carrier and of the consignor may be printed or stamped (art. 48).

An air waybill has to contain: 1.) The place of departure and of destination; 2.) If the place of departure and of destination are within the territory of Republic of Slovenia and there are one or more stopping places within the territory of another state these must be indicated in the air waybill; 3.) The weight of the cargo. Apart from these necessary elements constituting an air waybill, the act allows also other information to be listed in it; e.g. place and date of the execution, name and the address of the consignee, the nature and the quantity of the cargo etc. (art. 49). An air waybill may be a negotiable document since neither OPRA nor Warsaw Convention/The Hague Protocol/Montreal Protocol No. 4 do not require the name and the address of the consignee to be in the air waybill.

Non-compliance with the provisions of OPRA in respect of an air waybill do not affect the existence or validity of the contract of carriage (art. 50). The air waybill serves only as a proof of the concluded contract of carriage and does not in itself constitute the contract. The consignor and persons acting on his behalf are responsible for the truthfulness of information and statements entered into air waybill. Likewise he is responsible for the correctness of the information provided by him to be entered into the receipt for the cargo. The consignor is liable for the damage incurred by irregularity, incompleteness or incorrectness of information provided by him suffered by carrier or third parties. The carrier is liable for the damage, incurred by irregularity, incompleteness or incorrectness of information inserted by him into the receipt or in the record, suffered by the consignor or third parties (art. 51).

The handing over of the air waybill to the consignor constitutes *prima facie* evidence of the conclusion of the contract of carriage and of the acceptance of the cargo for the carriage. Other information contained in the air waybill in respect of the weight, dimensions, and packing of the cargo are *prima facie* evidence of the facts stated. If the information relating to the volume, weight or condition is checked by the carrier and it is stated in the air waybill to have been checked this information is presumed to be true (art. 52). The written confirmation of the carrier transforms a rebuttable presumption of the correctness of the information contained in the air waybill into an irrebuttable presumption. Since OPRA presupposes a presumption of correctness of the information contained in the air waybill the carrier has the right to write remarks on the appearance of the cargo and the packaging. If the carrier does not do so, it is presumed that the cargo and the packaging have no visible defects (art. 53)

The consignor has to furnish the carrier with all the information and documents necessary for Customs and Police authorities and other administrative formalities. Failing to do so the consignor is liable to the carrier. The carrier does not have the duty to verify the correctness and completeness of the information and documents thus provided by the consignor (art. 54).

The consignor is liable for the damage sustained by persons, aircraft or other goods because of properties of the cargo in carriage, if the carrier did not and could have not known of these properties (art. 55).

*The performance of the carriage.* The carrier has to perform the carriage on the agreed air route. If the route has not been agreed the carrier has to perform the carriage by the customary route. The carrier may perform the carriage by an alternative route for reasons of security of aerial navigation or for other justifiable reasons (art. 56).

The carrier has to perform the carriage within agreed time. If no time has been agreed the carrier has to perform the carriage in the time usual for the distance, type of the aircraft and other circumstances which affect the carriage (art. 57). If not otherwise agreed time limit starts at midnight of the day the cargo has been taken over by the carrier. The time limit is prolonged for the time the carrier is not able to perform the carriage due to reasons outside his sphere of influence. It is presumed that the time of the carriage is stopped when the consignee receives the notice of the arrival of the cargo at the place of destination or when the carrier tries to hand over the cargo to the consignee (art. 58). If the carrier is unable to execute the contract of carriage within agreed terms and conditions and he does not know how long the obstacle shall take place, he has to demand instructions from the person who has the right to dispose of the cargo (usually the consignor). If the carrier is not in position to receive instructions or is unable to execute instructions he has to dispose of the cargo in such a manner not to harm the interests of the beneficiary (art. 59).

*Rights to dispose of the cargo.* The consignor who has met all his obligations under the contract of carriage has the right to dispose of the cargo in following ways: 1.) The consignor has the right to withdraw the cargo at the airport of departure or destination; 2.) The consignor has the right to stop the cargo during the carriage at any intermediary point; 3.) The consignor has the right to order the cargo to be delivered at the final destination to any other person than person indicated in documents of carriage as consignee; 4.) The consignor has the right to order the cargo to be returned to the place of departure. The consignor has to communicate the request to dispose of the cargo to the contracting carrier or to his agents if so agreed.

The consignor must exercise his rights of disposition of the cargo in such a way not to prejudice the carrier or other consignors and must recompense any expenses incurred to them by exercising his rights. To exercise his right of disposition the consignor must produce to the contracting carrier the third copy of the air waybill or cargo receipt. The carrier has the right to demand that the right of disposition be entered in writing into air waybill (art. 60). The parties may agree to limit or exclude the right to dispose of the cargo. Such an agreement has to be included into the air waybill or receipt of the cargo (art. 61). If the carrier obeys consignor's instructions to exercise his right to dispose of cargo without requiring the production of the air waybill or receipt, he is liable for the damage caused by exercising the right of disposition to any lawful holder of the third copy of air waybill or receipt of cargo. This provision does not affect carrier's right of recourse against the consignor (art. 62). If the right to dispose of the cargo cannot be exercised or if by exercising it damage would be caused to the carrier or other consignors, the carrier must notify the consignor forthwith (art. 63).

The consignor may decline to execute consignor's request to dispose of the cargo in following instances: 1.) If it is not possible to execute the demand; 2.) If damage to any other person who also has the right to dispose of the cargo will occur; 3.) If the carrier would suffer damage or if costs of exercising the right of disposition would be higher than the value of the cargo; 4.) If such disposition would be contrary to custom or other regulations (art. 64).

The carrier is liable if he does not carry out consignors instructions to dispose of the cargo. His liability is limited with his liability limit in the event the cargo would have been lost (art. 66).

The right to dispose of the cargo is extinguished when the cargo arrives to the place of destination and the consignee requires the delivery of the cargo. The consignee has the right to require delivery of the cargo if he has met all his obligations arising out of the contract of carriage and if not otherwise agreed. If the consignee cannot be found or if he does not accept the cargo, consignor again obtains the right to dispose the cargo. If the carrier has lost cargo or if the cargo has not reached its designated place of destination within seven days from the time agreed, the consignee is entitled to enforce his rights arising from the contract of carriage against the carrier (art. 67).

*Handing over of the cargo.* The carrier has to hand over the cargo to the consignee at the agreed place

of destination. If not otherwise agreed the delivery takes place at the airport at the place of destination. The carrier has to hand over the cargo to the consignee from the air waybill. In the absence of an air waybill the carrier has to hand the cargo over to the person designated in the contract of carriage.

If the consignor has designated some other person to be entitled to receive the cargo by exercising his right to dispose of cargo, the carrier has to hand over the cargo to that other person. If not otherwise agreed, the carrier has to notify the consignee forthwith on the arrival of cargo to the place of destination (art. 68).

*Loss or damage to the cargo.* The carrier is liable for the loss or damage to the cargo with a limit of SDR 17 per kg of cargo. The liability limit may be determined by the declaration of agreed value. In this event the value of cargo is presumed to be in the amount of declared value (art. 80). The value of cargo in the event of loss or damage is determined by the market price of goods of which the cargo consist at the place of destination (art. 79). The liability for postal packages is determined by rules regulating relations between carriers and postal authorities (art. 81). The carrier does not enjoy the benefit of limited liability in case the damage to the cargo has been caused intentionally or with gross negligence by him or his agents. He may claim liability limit if the damage has been caused by his agents acting outside the scope of their authority (art.

82). The carrier is also liable for the damage resulting as a consequence of loss, damage of the cargo or of delay in delivering it (art. 83).

*The freight.* The freight is determined by a contract of carriage of cargo (art. 86). If the consignor requests that the carriage continues further from the place of destination determined by the contract, the freight increases proportionally to the increase in distance (art. 87). The Freight should be paid only for the cargo given at the disposal of the consignee at the place of destination. The carrier has also right to the freight if cargo has not reached the place of destination and given at the disposal of consignee, if this has happened due to actions of the shipper, consignor, person who has the right to dispose of cargo or persons acting on their behalf or because of inherent vice of the cargo. If the carriage has been performed only for the part of the way, the carrier has the right to a proportional payment (art. 88). If cargo agreed by the contract is substituted for other cargo for which the freight would have been higher, the carrier is entitled to the freight for the cargo actually carried. If less than agreed cargo has been handed over to the carrier for carriage, he nevertheless has the right to full freight (art. 89)

The consignee has the obligation to pay for all due amounts listed in the air waybill or in other means preserving the record of the carriage, unless otherwise agreed (art. 90). In the event of carriage in absence of air waybill the consignee has to pay the freight and other carrier's claims arising from the contract of carriage (art. 91). If the consignee does not meet his obligations from the contract of carriage, the carrier has the right to retain the cargo and sell it if the consignee does not pay his debts within 15 days (art. 93).

The carrier who has handed over the cargo to the consignee and did not exercise his rights from the art. 93, does not have the right to claim the payment from the consignor or the shipper. If the carrier did exercise those rights but has been paid just a part of his claim, he has a claim for the rest of the debt against the shipper and/or the consignor (art. 94). The carrier has a lien on the cargo in respect of his claims arising out of contract of carriage (art. 95).

### **3.1.3 Carriage involving more than one carrier**

#### **3.1.3.1 Successive carriage**

A contract of successive carriage is a contract of carriage of passengers, baggage or cargo where the first carrier undertakes to perform the carriage in cooperation with other carriers (successive carriers)

with the consent of passenger or shipper/charterer (art. 96). Internal relations between carriers in successive carriage are determined by a contract. If not otherwise agreed OPRA is to be used to determine their relations (art. 97). OPRA implicitly recognises successive carriage as an undivided carriage within the meaning of the Warsaw convention.

*Liability of successive carriers.* First carrier and the carrier who has actually performed the part of the carriage when the accident occurred are jointly and severally liable for the damage arising out of death, impairment of health or injury to passenger and for the damage caused by the delay. The first passenger may contractually exonerate himself from the liability for the damage occurring during the part of successive carriage not performed by him (art. 98). In respect of loss, damage to baggage or cargo the carrier performing the part of the journey when the accident occurred and the final carrier are liable jointly and severally. If it is not possible to determine on which part of the journey the damage or loss occurred all carriers are liable jointly and severally (art. 99).

### **3.1.3.2 Multimodal carriage of cargo**

The regulation of the multimodal carriage has been formulated in accordance with United Nations Convention on International Multimodal Transport of Goods (1980), although the convention is not yet in force. Multimodal transport means the carriage of cargo by at least two different modes of transport.

OPRA defines contract of multimodal carriage as a contract whereby the operator of multimodal carriage shall perform the carriage with different means of carriage and the shipper shall pay the freight for the whole journey to the multimodal operator. Part of the multimodal carriage has to be carried out with an aircraft for OPRA to be applicable.

Multimodal transport operator is liable for loss resulting from loss or damage to the cargo and for delay in delivery, unless he proves that he has acted with due diligence, of a professional. His liability is limited by provisions of art. 80, which limit the liability of the carrier in respect of cargo (art. 100).

### **3.1.4 Reception and dispatch of passengers, baggage and cargo**

The contract of carriage includes activities in respect of reception and dispatch of passengers, baggage and cargo. These activities include: dispatch of passengers from the airport building to the aircraft and transfer of passengers from one aircraft to another, transport of baggage or cargo from/to the airport building or warehouse to/from the aircraft, transfer of cargo or baggage from one aircraft to another on the airport apron (art. 101).

*The carrier may engage other persons to perform activities in respect of reception and dispatch of passengers, baggage and cargo (art. 102). The contractor has to take all measures in his power to protect the carrier from claims which may arise from persons who may dispose of cargo or baggage (art. 103). The carrier is liable to the contractor if he has sustained damage while handling dangerous cargo and the carrier has not properly instructed him (art. 104).*

The contractor is liable to the carrier for the damage caused while receiving or dispatching passengers, baggage or cargo. The extent of his liability is determined by the liability of the carrier arising from the contract of carriage. The contractor is liable directly to the passenger or to the person who has the right to dispose of cargo if the damage has been caused intentionally or out of gross negligence (art. 105). Provisions limiting the liability of the contractor are binding and he cannot contractually further limit his liability. Such a contract is null and void (art. 106).

### 3.1.5 Reclamations

Beneficiary may file his claims arising out of contract of carriage in written form, addressed to the carrier - reclamation (art. 107).

## 3.2 CONTRACT OF AERIAL SERVICES

The contract of aerial work is a contract whereby the contractor undertakes to perform some kind of service with the aircraft for the principal and the principal shall pay for the service rendered. Carriage of persons, baggage or cargo is specifically excluded from the contract of aerial work. As aerial work is mainly considered crops spraying, fire fighting, leaflet dropping, aerial photography etc (art. 109).

This is a special form of the contract of work i.e. *locatio conductio operis*. In certain instances contract of aerial work is very close to the contract of hire or charter of aircraft. To differentiate one contract from another one has to look to the *causa* of the contract; the purpose of the contract of aerial work is some work to be done or achieved by using the aircraft whereas the purpose of the contract of aircraft charter is to give the charterer the right of commercial use of the aircraft. The contract of aerial work approaches closely to the charter contract also in the form required; both kinds of contracts require written form (art. 110).

The contractor has to fulfill the instructions of the principal within the scope agreed by the contract and the capabilities of the aircraft. He is under no obligation to do anything that would endanger the aircraft, persons on board the aircraft or third parties (art. 112). The contractor is also liable for acts of his agents for the damages caused to the principal (art. 113). Liability of the contractor in respect of damage caused to the principal or persons acting on his behalf or to the cargo of the principal is governed by rules regulating the liability of the carrier in respect of carriage of passengers, baggage or cargo by air (art. 114).

## 3.3 CONTRACT OF AIRCRAFT CHARTER (LEASE)

The contract of charter (aircraft lease) is a contract whereby the owner of the aircraft (lessor) gives his aircraft at the disposal of the charterer (lessee) for commercial use and the charterer agrees to pay the owner for the use of the aircraft. The act requires written form for the charter agreement (art. 117). In this chapter of OPRA only mutual relation between the charterer and the owner are regulated. Rights and obligations in relation to passengers or other parties involved are discussed under the chapter of carriage by air. Although the OPRA does not list different forms of charter agreement it is implicit that all forms of charter are possible; time charter, voyage charter, with or without crew i. e. wet/dry lease etc.

The owner has to furnish the charterer with an aircraft suitable for the agreed use. Lease of a "bare" aircraft is called "dry lease". In case the contract stipulates that the owner will provide the charterer an aircraft with the crew ("wet lease"), the crew has to follow instruction of the charterer (art. 118). The owner is liable for the damage resulting from the defect of the aircraft causing the aircraft to be inoperative for its intended use if the defect existed at the time the aircraft has been handed from the owner to the charterer (art. 121).

The charterer has to bear the costs of regular use of the aircraft during the charter agreement. He has to maintain the aircraft and has to return the aircraft to its owner after the expiration of the contract. The charterer is not liable for wear and tear (art. 120). If not agreed otherwise, the charterer has to pay to the owner in advance on a monthly basis.

If he fails to do so the owner has the right to cancel the contract and to claim for eventual damages. In such event the contract shall not be deemed cancelled if the charterer compensates the owner before he receives the notice of cancellation. The charterer is under no duty to pay in case he can not use the aircraft due to actions of the owner or due to a latent defect of the aircraft, existing at the time of handing over of the aircraft (art. 123).

The contract of charter is extinguished if the aircraft is destroyed or if it becomes impossible to exploit the aircraft for its intended use due to an unforeseeable and unpreventable event (art. 125).

If the charterer is late in returning the aircraft to the owner he has to pay the owner damages in double amount of agreed sum for the time of his delay. If the charterer is at fault for the delay he is also liable for the damage incurred to the owner by the delay (art. 127).

Reward for search and rescue performed by an aircraft during the charter agreement belongs to the charterer (art 128). The charterer can conclude a contract of subcharter only upon written consent of the owner (art. 129).

### **3.4 LIABILITY FOR THE DAMAGE CAUSED ON THE SURFACE**

Although Republic of Slovenia is not a party to the Rome Convention, the rules governing the liability of an aircraft operator for the damage caused on the surface are following closely aforesaid convention.

Following the Art. 1 of Rome Convention OPRA embodies the principle of strict liability: The owner or the charterer and their agents are liable for the damage caused on the surface caused directly by an aircraft in flight or by any person or object falling or have being dropped therefrom. These persons are also liable for the damage caused by mere passage of the aircraft through the airspace if air traffic regulations have not been conformed with. The owner is liable also for acts of his agents. An aircraft is considered to be in flight from the moment when the power of its engines is being applied for the take off and until the landing run ends (art. 130).

The contracting and actual carrier are liable jointly and severally as are the owner of the aircraft and the principal in the contract of aerial work (art. 131).

The owner can exonerate of his liability only if he proves that: 1.) The damage was caused by the person suffering the damage or by his agent; and 2.) The aircraft by which the damage was caused had at the time been used illegally by another person and the owner has done everything within his power to prevent such illegal use (art. 133). In case the damage was only contributed by the person suffering damage the compensation is reduced proportionally with the contribution of the victim (art. 134). The responsible person cannot exonerate himself of his liability, because the damage has been caused by his agents acting outside the scope of their authority (art. 136). In case the operator cannot prove that he has done everything to prevent illegal use of the aircraft he is jointly and severally liable with the person using the aircraft at the time of the incident (art. 135).

In the event the damage has been caused by the collision of two or more aircraft all persons which would liable under OPRA are liable jointly and severally (art. 137).

As the strict liability presents a heavy burden for the operator his liability is limited according to the maximum take off weight of the aircraft. The liability limits are as prescribed by Montreal Protocol (1978): 1. 300,000 SDR for aircraft weighting 2,000kg or less; 2. 300,000 SDR plus 175 SDR per kg

over 2,000 kg for aircraft weighting more than 2,000 kg but not exceeding 6,000 kg; 3. 1,000,000 SDR plus 62.5 SDR per kg over 6,000 but not exceeding 30,000 kg; 4. 2,500,000 SDR plus 65 SDR per kg over 30,000 kg for aircraft weighting more than 30,000 kg. The liability in respect of loss of life, health impairment or other injury is limited to SDR 125,000 per victim. The weight of an aircraft means the maximum weight of the aircraft authorized by the certificate of airworthiness for take-off (art. 138). In the event the damage has been caused by more than one person liable, the aggregate amount of damages cannot exceed liability limits set by art. 138 (art. 140)

The liability is unlimited in case: 1. It is proved that the damage was caused intentionally or with gross negligence. The operator may limit his liability if he proves that the damage has been caused intentionally or with gross negligence by his agent acting outside of the scope of his authority; 2. The person using the aircraft illegally cannot enjoy the benefit of limited liability (art. 139).

If total amount of damage exceeds liability limits set in art. 138, one half of the total sum shall be used for the compensation of damage for the loss of life, impairment of health or personal injury and other half shall be used to compensate for the property damages. If, however, one half of total sum shall not be sufficient to cover all claims for loss of life, impairment of health and personal injury the sum appropriated for the compensation of property damages shall be used for personal damage (art. 141).

The operator of the aircraft shall be insured to cover liability in case of the damage caused on the surface, with a limit set no lower than liability limits as prescribed by OPRA. This provision also conforms with the provision of art. 7 of the Council Regulation (EEC) No 2407/92, prescribing not only mandatory insurance of liability in respect of passengers, but also in respect of third parties, i.e. on the surface. As is the case with compulsory insurance of passengers, this provision derogates provisions of Compulsory Insurance in Traffic Act.

Provision limiting the liability of the aircraft operator are also used for aircraft owned by the Republic of Slovenia and foreign aircraft on the principle of reciprocity, including foreign state aircraft (art. 143 and 144).

### **3.5 CONTRACT OF AVIATION INSURANCE**

Theoretically, there is no formal definition of the term aviation insurance. Margo broadly defines it as insurance "embracing the insurance of risks associated with (a) the manufacture, ownership, operation and maintenance of aircraft, and (b) the operation of aviation facilities on the surface." Before we take a look on the regulation of the contract of aviation insurance from OPRA we must first clarify which other acts might also apply in case of aviation insurance:

The Obligations Act: As opposed from general principles of contract law contained in the Obligations act most of the provisions regulating the insurance contract are mandatory and therefore binding for the parties. However, the Obligations Act contains two provisions important when defining and construing the contract of insurance in aviation.

Art. 899 excludes the application of rules of the Obligations Act in case of marine insurance and in case of *other insurance where rules of marine insurance are to be used*. As we shall see aviation insurance leans strongly on principles and practices of marine insurance. Art. 900 of the Obligations Act contains a provision protecting the Assured by allowing parties to the insurance contract to depart from the Obligations Act only if the Obligations Act explicitly allows them to do so or if such departure is in undoubted interest of the assured.

The Insurance Act In respect of this analysis the Insurance act is important for the classification of aviation insurance. In defining different classes of insurance business in art. 2, the Insurance Act

follows closely First Non-life Insurance Directive 73/239/EEC.

The Act on Compulsory Insurance in the Traffic: In the field of aviation insurance this Act is regulating compulsory insurance for the damage caused on the surface and compulsory passenger accident insurance. As these matters are dealt with in chapters describing the carriage of passengers by air and the liability for the damage on the surface, we would like to point out here just that the legislator will have to adjust compulsory insurance in aviation with OPRA *de lege ferenda*.

The Maritime and Inland Water Navigation Act: as in some other fields of private aviation law OPRA leans strongly on rules of Maritime law in regulation aviation insurance.

Taking into consideration above mentioned regulations we may come to the following conclusion in defining and classifying aviation insurance in Slovenian legal system: Aviation insurance is the insurance of risk connected with aviation activities as prescribed by the Insurance Act and OPRA. It is a form of non-marine insurance *sui generis* for which rules of following regulations apply in order of priority: 1.) OPRA, 2.) Code on Maritime and Inland Water Navigation Act insofar as applicable, 3.) The Obligations Act. In cases where it is doubtful whether some insurance is an aviation insurance governed by above-mentioned rules the main criteria to determine the question is the will of the parties, provided that this would not put the assured in an inferior position.

As opposed to other types of non-marine insurance regulated by The Obligations Act, OPRA allows larger contractual freedom to the parties in case of aviation insurance. OPRA defines the scope of use of its provisions by listing the matter insured and by the scope of validity of its rules. Provisions of the act are used for contracts of insurance of 1.) the aircraft, its equipment and cargo; 2.) Fares and freight, expected profits, liens, and other rights connected with the use of the aircraft and 3.) Liability arising in connection with the use of the aircraft (art. 145). Furthermore, provisions of the act are also used for the reinsurance of the above-mentioned risks and for the insurance of other risks if insured under terms and conditions customary for the aviation insurance (art. 147). Here the legislator wanted to include also other types of aviation insurance, i.e. insurance of risks connected with the aviation. If provisions of OPRA or those of Obligations Act shall apply depends upon the intent of the parties.

Only the person who has an insurable interest can be the insured. The insured has a claim from the insurance only if he has the interest at the time the loss occurs or if he acquires it later (art.146). This is the only binding provision regarding the insurance of OPRA.

The insured matter, i.e. aircraft, should be identified in the contract. If it is not possible to identify the matter insured from the contract and if it has been exposed to the risk, the insurer is not liable (art. 149). If not otherwise agreed an aircraft is insured for the "insured value" i.e. the market value at the conclusion of the contract (art. 151). However, parties may agree on the value of the aircraft for the purpose of insurance. In the case of "agreed value" policy the insured will be indemnified with the sum agreed (art. 150).

OPRA precludes the possibility of the insured to abandon the aircraft and claim a constructive total loss as is the case in marine insurance (art. 152).

If the insurance is for a journey (voyage policy) the coverage starts from the moment when the aircraft starts moving at the place of departure and ends when the aircraft stops immediately after landing at the place of destination. Both places should be agreed in the contract (art. 153).

Losses directly or indirectly resulting from defects or incapability of an aircraft for its safe operation are excluded from the coverage of the insured has been aware if such defects or if he should have been aware if he would have exercised due diligence. Such losses might be covered only if the insurer knew of such defects (art 154).

Losses resulting from an accident occurring outside agreed geographical limits of the insurance coverage are excluded as well. Such losses are covered only if deviation of the aircraft from geographical limits occurred due to Act of God, error in navigation or if deviation occurred during a rescue operation or if it was a minor deviation which did not have any effect on the damage (art. 155).

In the contract covering the insurance for a certain period of time (time policy), the insurance is automatically extended for the time needed for repairs of the damage covered by the insurance, which have been started during the duration of insurance. In such event, the insurer has the right for the premium for the time of prolongation of the insurance cover (art. 156).

In the event of a partial loss the insurer has to pay costs of repairing the aircraft. The diminution in value of aircraft because of repairs is not covered (art. 157).

If the aircraft is missing it is presumed that total loss occurred on the day of the last known report of the aircraft (art. 158).

The liability insurance covers claims by third parties (including passengers) and costs of examining the validity of the claim. In compulsory liability insurance, parties suffering damage may file an action directly against the insurer (*actio directa*). Costs of defending the claim are included in the liability insurance within the agreed limit (art. 159).

### **3.6 TIME LIMITATIONS (ART. 162)**

OPRA prescribes time allowed during which an action can be brought. Claims arising out of contract of carriage may be enforced in two years. Claims arising out of the contract of aerial work, charter contract and tort claims from the art. 130 (damage caused on surface) may be enforced within one year. Claims arising out of a contract of insurance may be enforced within five years. Same time limitations apply for claims arising out of right of recourse.

- These time periods start expiring:
  - carriage of passengers: in case of death, health impairment or personal injury or delay, from the day the aircraft arrives or should have arrived at the place of destination; in case of death occurring as a consequence of an accident sustained during the flight, but taking place during the disembarkment, from the day of the death, an action should be brought within three years of that day
  - carriage of hand baggage: from the day the aircraft arrives or should have arrived at the place of destination
  - checked baggage and cargo: in the event of loss or damage from the day when the baggage or cargo has been handed over or should have been handed over at the place of destination; in the event of delay from the day the cargo or baggage has been handed over; for other claims when the claim should be fulfilled
  - reception and dispatch of passengers, baggage and cargo: same as with the carriage of passengers, baggage and cargo
  - aerial work: from the time the claim is due
  - liability for the damage on the surface: from the day the person suffering injury has discovered

the damage and the liable person, at latest after three years after the accident

- recourse: from the day the right of recourse has been established by an judicial or administrative act
- insurance: for liability claims from the day the insured receives the claim; for other claims first day after the expiration of the year in which the claim occurred.

#### **4. RIGHTS ON AIRCRAFT**

This chapter of the act is dealing with rights on aircraft, specifically with the right of property (ownership), hypothec and lien. As opposed to obligations rights these are rights *in rem*, i. e. the property right has effect *erga omnes*, it imposes an obligation on persons generally. Slovenia is a party to the Geneva Convention (1948) since 19th February 1997 and provisions of OPRA are formed in accordance with provisions of the convention.

The act defines the term “an aircraft” for the purposes of this chapter as: An aircraft within the meaning of this chapter include the airframe, engines, propellers, radio apparatus and all other parts intended for use in the aircraft whether installed therein or temporarily separated therefrom (art. 163). This provision departs from the usual civil law concept that only elements permanently attached to the main thing form the part of the main thing. The ratio of this exception in aviation law is to form a higher level of security for the creditor. The aircraft is explicitly defined as movable property (art. 164).

The right of the ownership and hypothec have to be entered in the register of aircraft. The register is kept by Slovenian civil aviation authorities and is regulated by The Aviation Act, part of public aviation law (art. 167). The register serves for the purpose of the record within the meaning of Art. II of the Geneva Convention.

A person may acquire the right of ownership of the aircraft with purchase thereof and with the recording of the purchase in the register. The property right becomes effective towards third parties with the time of its recording in the register (art. 168). A person acquires his right of ownership or privilege with a written contract and the entry of the right into the register. With the entry the right becomes effective towards third parties. The existence of a privilege is not conditioned by the recording in the register (art. 169). Written form is not required if the right is obtained by inheritance or public auction or if an insurer becomes the owner through his right of subrogation (art. 170).

##### **4.1 RIGHT OF OWNERSHIP**

Person with a domicile in Republic of Slovenia may own aircraft registered in Slovenia. Foreign person may own aircraft registered in Slovenia only if so prescribed by the law (art. 171). The ownership of an aircraft includes also accessories of the aircraft, regardless if they are temporarily separated from the aircraft. If the ownership of the aircraft is transferred to another person, this includes also accessories, unless otherwise agreed (art. 173). In case of aircraft under construction, parts or components not yet built into the aircraft legally form part of aircraft (art. 172).

The transfer of the right of ownership from one person to another has to be recorded in the registry and has effect therefrom. Lease of an aircraft of six months or more has to be recorded in the register as well. If the lessor sells the aircraft the contract of lease does not cease if the lease is recorded in the register (art. 174). Lessor/charterer, whose right is recorded in the register has a right of pre-emption (art. 175).

##### **4.2 HYPOTHEQUE**

OPRA prescribes two forms of the right of a creditor to collect the money owned by the debtor. 1.) Hypothèque creates a right for the creditor to collect money owned by the debtor by selling the debtor's aircraft. The selling of the aircraft has to be ordered by a court decision. 2.) A hypothèque can also create the right for the creditor to settle his claim by using the aircraft.

In this event the hypothèque has to be contractually agreed. As hypothèque has an *erga omnes* effect it follows the aircraft in whoever's hands it comes (art. 177). The right of the creditor to collect money by selling debtor's aircraft is equivalent to the hypothèque on immovable property whereas the right of the creditor to use the aircraft and thus collect money owned by the debtor essentially introduces an element of common law's mortgage into the system of Slovenian private aviation law. Rights attaching to hypothèque include a aircraft and its accessories, aircraft under construction, legal and contractual interest for the period of three years, up to and during the enforcement proceeding, sums to be paid by insurance, costs of the registration of hypothèque and costs connected with civil and enforcement proceedings (art. 178, 179 and 185). There can be a hypothèque on a hypothèque (art. 182). The same claim may be secured by a single hypothèque on more than one aircraft (art. 188).

A hypothèque is extinguished by deletion from the register of aircraft and when the aircraft is sold in enforcement or bankruptcy proceedings (art. 186). However, the hypothèque does not extinguish in the event the aircraft is deleted from the register, if the deletion is due to permanent disuse of aircraft or if the aircraft is missing or if it has been put out of air traffic for other reasons (art. 187).

#### **4.3 LIEN**

Lien is a right of the creditor to secure debtor's payment for following claims: 1.) Court expenses incurred in the common interest of all creditors in proceeding for enforcement or security to preserve the aircraft or to procure its sale; 2.) Reward for search and rescue; 3.) Extraordinary expenses necessary to preserve the aircraft and; 4.) Costs to be paid to the airport operator for its services and for the use of airport infrastructure as prescribed by the Aviation Act (art. 190). Claims secured by the lien have priority over other claims (art. 192). Within claims secured by the privilege the priority of claims is as listed in the art. 190. If claims within the same order of priority cannot be fully satisfied the sum of money available is distributed proportionally.

Claims arising out of rights secured by the privilege shall be satisfied in the inverse order of the dates of incidents in connection with which they have arisen (art. 194).

The priority of claims in connection with rights in aircraft is thus as following: 1.) court expenses incurred in the common interest of all creditors in proceedings for enforcement or security to preserve the aircraft or to procure its sale; 2.) reward for search and rescue; 3.) extraordinary expenses necessary to preserve the aircraft; 4.) claims secured by hypothèque; 5.) claims secured by a possessory lien as prescribed by the Obligations Act.

Privilege need not to be recorded in the register but in such case ceases to exist after three months from the time of its attachment.

As with the hypothèque the privilege attaches to the aircraft, its accessories, the freight and payment for special services owed by the passenger, charterer, shipper or principal in the contract of aerial work, the insurance proceeds belonging to the owner of the aircraft and the interest for last three years before the enforcement proceeding and for the period of such proceeding (art. 191).

The privilege extinguishes: 1. When obligation secured by the privilege ceases to exist; 2. After three months from the day of the attachment of the privilege; 3. When the aircraft is sold in enforcement or bankruptcy proceeding; and 4. When the aircraft is voluntarily sold, provided

that the transfer of the ownership is recorded in the register of aircraft and published in customary manner and if the creditor does not file an action within sixty days after the publication of the recording in the register but before the expiration of three months from the day of attachment of the privilege (art. 195).

## 5. EXECUTION AND ATTACHMENT OF AIRCRAFT

OPRA contains a general clause that rules of marine law governing attachment and execution in ships are to be used for aircraft, unless otherwise provided by the OPRA (art. 201). Court decision recognising a claim in aircraft may be executed if the aircraft is on the territory of Republic of Slovenia. The court may allow execution and attachment also in an aircraft outside the territory of Republic of Slovenia if the aircraft is recorded in Slovenian Registry (art. 202).

*Jurisdiction.* The request for attachment of the aircraft and execution has to be filed with the court where the aircraft is registered. For the proceeding of the execution of the claim the jurisdiction lies with the court where aircraft is located. In the proceeding for the execution of a claim on a foreign aircraft or on an aircraft which is not recorded in the register the court where the aircraft is located at the time of the file of request (art. 203). In respect of execution or attachment of cargo the jurisdiction lays with the court competent to decide on the execution and attachment of the aircraft (art. 204).

*Exceptions.* Military and state aircraft may not be subject to execution or attachment. Neither may be a subject of attachment or execution foreign aircraft overflying the territory of Slovenia in compliance with regulations or if it lands due to *force majeure* or due to reasons of flight safety or if it has landed following instructions of competent authority. Such a foreign aircraft may be subject to execution or attachment if the claim thus secured arose during the time of aircraft's overflying of the Slovenian territory (art. 205).

An aircraft may not be subject to attachment and execution if it is essential for owner's economic activity. To this exception there are two important sub exceptions: 1. An aircraft may not be exempt from attachment and execution if the claim is for the payment of the debt incurred by the purchase of the aircraft or 2. If the claim is for payment of the debt for the damage caused on the surface resulting in death, health impairment or bodily injury, and the damage has been caused while the aircraft has been economically used, or if the claim is for the payment of the reward for search and rescue, or if the claim is for the payment of the debt from the contract of carriage, subject to execution, or if the claim is for the payment of the debt from maintenance, repair or equipping the aircraft, which is the subject of execution (art. 206).

## 6. CONFLICT OF LAWS

The main principle of the regulation of the conflict of laws in OPRA is the principle of the autonomy of the contracting parties to the contract — choice of law. OPRA explicitly prohibits the use of *renvoi* (art. 207); If the application of the law of another country is prescribed by OPRA, conflict rules of foreign state are not applied.

In contracts of carriage by air parties may exclude the use of rules of the Act if they agree to do so in a written contract. They have to use OPRA for obligations rights in following explicitly

enumerated exceptions: 1. if both parties to the contract have domicile in Republic of Slovenia and if both, the place of departure and the place of destination, are within the territory of Republic of Slovenia; 2. If some binding rules, which cannot be deleted by the contract, contained in the act would be avoided by the application of foreign law. This exception applies only in case that both, place of departure or place of destination are within the Republic of Slovenia. Furthermore, foreign law may not be used if this would put the passenger in a less favourable position. Any contract provision contrary to

these exceptions shall be null and void (art. 209). If it is not clear on the use of which law parties have agreed to use or if they have not agreed on any specific law, the proper law of contract is used; i. e. law with which the relation in question is most closely connected. If substance of the contract does not point somewhere else, the law of the domicile of the carrier is used. For ancillary rights and obligations law where actions based on them have been performed is used (art. 210). For the aviation insurance contracts the law of the insurance company's legal seat is used, unless parties have otherwise agreed. Nevertheless, provisions of Slovenian law are used for contracts of aviation insurance if all parties who have some form of interest are either citizens of Slovenia or are domiciled in Slovenia or if the matter insured is exposed only to risks on the territory of Slovenia (art. 211).

In respect of rights in aircraft, the law of the country where the aircraft is registered is used (art. 213). For tort claims the law where the damage has been caused is used (art. 214).

If OPRA does not indicate which law is to be used for certain relations general rule regulating conflict of law is to be applied. OPRA also contains a special provision expressly prohibiting the use of foreign law if this would be contrary to *ordre public* or if foreign law would have been used to avoid the law of Republic of Slovenia — *in fraudem legis agere* (art. 216).

## SOLOMON ISLANDS

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 48		
	Succeeded to	9 Sep 1981
	Entered into Force	7 Jul 1978
The Hague Protocol - 1955	Signed	
	Succeeded to	9 Sep 1981
	Entered into Force	7 Jul 1978
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
See Annex G – Note 12		
	Adhered to	15 Mar 1967
	Entered into Force	13 Jun 1967
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**PART I - PARTICIPATION IN INTERNATIONAL AGREEMENTS, ETC.**

Somalia appears not to be party to any of the following international agreements:

- Warsaw Convention - 1929
- The Hague Protocol - 1955
- Guatemala City Protocol - 1971
- Montreal Additional Protocols Nos. 1,2,3 and 4 - 1975
- Guadalajara Convention - 1961
- Rome (Third Party) Convention - 1952
- Outer Space Treaty - 1967
- Space Liability Convention – 1972
- Montreal Convention - 1999

**SOUTH AFRICA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	22 Dec 1954
	Entered into Force	22 Mar 1955
The Hague Protocol - 1955	Signed	
	Adhered to	18 Sep 1967
	Entered into Force	17 Dec 1967
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	4 Jan 1974
	Entered into Force	4 Apr 1974
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	1 Mar 1967
	Ratified	30 Sep 1968
	Entered into Force	30 Sep 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Not Ratified	
	Entered into Force	

## PART II - NOTES ON AVIATION LIABILITY

## 1. INTERNATIONAL CARRIAGE

In terms of the International Air Services Act 60 of 1993, an International Air Services Council had been established to regulate and control International Air Services to and from South Africa. In the ordinary course an air service simply means a service operated by means of an aircraft for reward. There are certain exceptions to this broad principle. The concept of international air services is defined as meaning *"An air service which passes through the air space over the territory of the Republic and at least one other country: provided that an air service which passes through the air space over the territory of another country without operating an air service in the territory of that other country, and the route of journey of which started and ended within the territory of the Republic, shall not be an international air service"*. The act stipulates that no person shall use or attempt to use an aircraft to operate an international air service except under and in accordance with terms and conditions of an international air service licence issued by the Council referred to. In addition, it is necessary to obtain an operating certificate before the service may commence. There are also extensive regulations promulgated in terms of the Act which deals *inter alia* with the processing of applications for an International Air Service licence and procedures to be followed.

International carriage is governed by the Carriage by Air Act No. 17 of 1946 which applies the Warsaw Convention to the Republic of South Africa. Section 3(1) of the Act provides that the provisions of the Warsaw Convention shall, insofar as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons and subject to the provisions of this Act, have the force of law in the Republic in relation to any carriage by air to which the Convention applies irrespective of the nationality of the aircraft performing the carriage. Thus, International carriage depends not on the registration of nationality of the aircraft but on the contractual intention of the parties. This means that the character of the carriage once determined remains constant and the application of the Warsaw Rules is not made dependant upon involuntary or unforeseen events such as a forced landing or an abandonment of a journey before the destination is reached. Nor is it necessary that the stop should actually be made in a place agreed upon in a foreign territory for the Warsaw Rules to be applicable. Section 3(4) of the Act provides that only one action may be brought in the Republic to enforce liability under the Warsaw Rules against the carrier for the death of any one passenger and every such action by whomsoever brought will be for the benefit of all such persons entitled to sue for damages. Liability of the carrier is limited in terms of Article 22 of the Convention and as follows:

- a) in respect of injury (fatal or otherwise) to passengers - 250 000.00 Francs;
- b) in respect of registered baggage and cargo - 250.00 Francs per kilogram unless a special declaration of value had been declared;
- c) in respect of articles taken by the passengers themselves - 5,000.00 Francs per passenger.

The Minister of Transport acting in collaboration with the Minister of Finance has the authority to convert the sums in Francs mentioned in Article 22 to the equivalent of a Rand value and has exercised this authority on a number of occasions in the past. The values have escalated over a period of time and presently are as follows:

250000.00 Francs	R100500.00
5000.00 Francs	R2010.00
250.00 Francs	R100.50

**CAB 18900**

South African Airways is party to the Civil Aeronautics Board 18900 Agreement known as the Montreal Agreement and the provisions of this agreement have been incorporated into South African Airways' General Conditions of Carriage for passengers and baggage. This provides for increased liability of US\$ 58 000.00 exclusive of legal costs and US\$ 75 000.00 inclusive of legal costs (applicable only to journeys to or from or with an agreed stopping place in the USA).

**Airline Special Contract**

The national carrier, South African Airways, declared on 25 February 1981 that the extended Montreal Agreement limits for passenger liability are applicable to passengers travelling on an international flight other than one to, from or having an agreed stopping place in the USA.

**Montreal Convention**

Insofar as the introduction of the Montreal Convention is concerned, there is at this point no indication as to when it may be likely for South Africa to ratify this convention. The Minister of Transport will undoubtedly rely heavily on the input and advice of the industry before pursuing the matter further and it is also thought that guidance will be taken from the approach adopted by countries elsewhere.

**2. DOMESTIC CARRIAGE**

The Carriage by Air Act No. 17 of 1946 makes provision for the application of the Warsaw Convention limits to domestic carriage.

In terms of the Act the Minister of Transport may apply the limitations of liability as defined in the Warsaw Convention, to domestic carriage. To date he has not exercised such discretion.

Domestic carriage of passengers or goods is therefore governed by the Common Law of South Africa as modified by any particular contract of carriage. For purposes of enabling a carrier to conduct an air service within the boundaries of the Republic of South Africa, i.e. domestic carriage, a carrier is obliged to obtain the necessary authority in terms of the Air Services Licensing Act No. 115 of 1990. An air service envisages carriage for reward. Such service may not be operated unless the carrier is in possession of a licence and operating permit issued in terms of this legislation. It is specifically stated in Section 12 that:

*“Subject to the provisions of this Act no person shall operate or attempt to operate an air service unless it is or is to be operated under and in accordance with the terms and subject to the conditions of an air service licence issued to that person in terms of this Act or deemed to have been so issued.”*

In the event of carriage being performed contrary to the provisions of the Act, the operator may be subjected to criminal sanction by a court. Furthermore, pilots who contravene the provisions of the Act also run the risk of having their individual licences suspended or revoked by the Air Services Licensing Council.

**4. THIRD PARTY LIABILITY**

South Africa is neither a signatory nor a party to the Rome Convention of 1952 and liability to third parties will be governed by the Common Law and legislation. Section 11(1) of the Aviation Act No. 74 of 1962 provides that no action for trespass or nuisance lies by reason only of the flight of aircraft over any property at a reasonable height so long as the provisions of the Act, the Chicago Convention and

the transit agreement are duly complied with.

Section 11(2) deals with what is commonly known as “*surface damage*” and provides that where material damage is caused by an aircraft in flight, taking off or landing or by any person in such aircraft or by any particle falling from any such aircraft onto any person or property on land or water, damages may be recovered from the owners of the aircraft without proof of negligence or intention. The term “*owner*” in this context means the person in whose name the aircraft had been registered with the Department of Transport and in the event of an aircraft being leased on a *bona fide* basis exceeding 14 days, the strict liability referred to shall apply to the lessee as opposed to the registered owner.

## **5. MANDATORY INSURANCE REQUIREMENTS**

### **Domestic Carriage**

In terms of the Air Service Licencing Act No. 115 of 1990 - domestic carriage - every licenced air carrier shall insure and at all times keep himself insured in such sums or to such extent as may be prescribed in relation to the class of air service provided by such air carrier against claims of a nature or class likewise so prescribed which may arise out of the use of aircraft by such air carrier under the authority conveyed by his licence. The insurance requirements for domestic air services are prescribed in the Domestic Air Services Regulations of 1991 and may be summarised as follows:

- a) passenger liability - R 1 000 000.00 per seat irrespective of the category of aircraft for the total number of seats authorised by the certificate of airworthiness applicable to the aircraft concerned;
- b) third party liability - the minimum sum insured is dependent upon the weight of the aircraft and is applicable on a sliding scale. In relation to a microlight aeroplane the minimum insured amount is R 500 000.00 per aircraft and in relation to an aircraft with a maximum certificated mass exceeding 20 000 kilograms the amount is R 50 000 000.00 per aircraft.

### **International Carriage**

Insofar as international air services are concerned, the International Air Services Regulations of 1994 prescribe in a similar vein the minimum amounts required and in respect of passenger legal liability the amount is R 1 000 000.00 per seat irrespective of the category of aircraft for the total number of seats authorised by the certificate of airworthiness (similar to the domestic regulation). In respect of third party liability the amount is determined on a sliding scale and in relation to an aircraft with a maximum certificated mass of 2 700 kilograms or less the insured amount required is R 2 500 000.00 and in relation to an aircraft with a maximum certificated mass exceeding 20 000 kilograms the amount is R 50 000 000.00.

## **6. CLAIMS RELATED INFORMATION**

There have been no judgements dealing with personal injury in South Africa where the Warsaw Convention limits in relation to the liability of the carrier have been applied, nor have there been judgements regarding an air carrier's liability for domestic carriage. The reason for the paucity of reported cases can be attributed to the fact that the claims which are instituted become settled out of court.

The South African courts acknowledge claims in respect of emotional and psychogenic shock, for example, the trauma suffered by a person who witnessed the death of a close relative. The awards for

this type of injury will depend on individual circumstances.

What follows is a general guideline relating to the level of awards or settlements for compensation for general damages for personal injuries. It must be borne in mind that each award depends on the personal circumstances of the claimants, for example, age, health, occupation, etc. The after effects of the injury can also vary from minor to severe.

- a) Amputation of an arm above the elbow - R 80 000.00 to R 100 000.00;
- b) Fractures of the parietal area of the skull (nb in the absence of brain damage) R25 000.00;
- c) Fractures of the cervical vertebrae - R 30 000.00 in the absence of paraplegia and R 250 000.00 with paraplegia;
- d) Fractures of the lumbar vertebrae - R 30 000.00 with no paraplegia;
- e) Fractures of the pelvis - R 30 000.00 to R 40 000.00;
- f) Loss of one eye - R 60 000.00 to R 80 000.00;
- g) Loss of both eyes - R 150 000.00;

## **8. PRODUCTS LIABILITY**

There is no legislation covering the question of products liability in South Africa and claims in this regard will be dealt with under common law. This in turn means that damages, quantum, liability and other related aspects will have to be established in accordance with the legal principles of the South African common law. The general attitude adopted in South Africa is that liability of a manufacturer falls within the ambit of two broad categories, namely:

- a) contractual liability; and
- b) liability in delict.

The underlying basis of a contractual liability (unless the parties have otherwise agreed) is the existence of an implied warranty in every sale against latent defects which defects render the product wholly or partially unfit for the purpose for which it was sold. Such a warranty is contractual only and follows a contractual privity between the parties.

A delictual liability in South African law follows the principle by and large adopted in the English decision Donoghue v Stevenson. It has been laid down from time to time that a duty of care is owed by a manufacturer to a customer of his products. In general terms it can be accepted that the basic requirement of liability on the part of the manufacturer is negligence and this in relation to the design, production, packing, presentation or marketing of any product. A product liability claim may be brought not only by the customer who purchased a particular article but also by the “*foreseeable plaintiff*” who may have had no contractual nexus with the manufacturer. If thus by way of example, a defective design in an aircraft causes an injury to a passenger carried in the aircraft and all the elements of a delict are established, there appears to be no reason why such passenger would not be able to enforce a liability claim direct against the manufacturer despite the absence of a contract. To do so successfully he will have to establish liability in accordance with the law of delict. It does not mean that a passenger is precluded from claiming direct against the carrier against whom the passenger may be able to establish either a delictual or contractual liability. There appears to be a greater awareness of product liability claims than may have been the position some years ago.

## **10. MISCELLANEOUS MATTERS**

### **Noise and Pollution**

In principle there is no obstacle to a claimant claiming damages from the operator of an aircraft if he can establish that the noise such as, for example, the sonic boom emanating from the aircraft has caused damage and the pilot ought to have realised that by operating the aircraft in the manner in which he did could or might cause damage such as for example to property on the ground (animals, etc.).

Although there is no decision in a civil claim for damages directly on this point, there had been a clear indication in a criminal matter R v Louw 1948 1 SA 105 4 as to how the courts may view such a claim. On a charge under the Air Navigation Regulations prevailing at the time, of flying an aircraft at such a low altitude that it was likely to endanger a person, animal or property, it was held that an aircraft may create danger without making physical contact. The accused was convicted for being in breach of the regulations and on a proper analysis of the judgment it appears that the conduct of the accused may also have formed the basis of a civil claim. Even at high altitude the noise created by aircraft may cause damage on the surface for which liability may be enforced in an action based on negligence. It is a moot point whether Section 11 of the Aviation Act of 1962 will be of application in respect of noise or pollution related damage. This issue had not yet been decided in a South African court.

### **Summary of South African Aviation Legislation**

#### **1. The Aviation Act No. 74 of 1962**

The Act consolidates the laws relating to aviation enabling effect to be given to certain international conventions, namely, "*The Chicago Convention of 1944*" and "*The Transit Agreement of 1944*". The Act came into operation on 21 July 1962. It applies to all aircraft whilst in or over any part of the Republic of South Africa or its territorial waters and to all South African aircraft and personnel wheresoever they may be.

#### **2. The Carriage by Air Act No. 17 of 1946**

This Act was passed primarily to give effect to the international convention known as "*The Warsaw Convention*" signed at Warsaw in October 1929. The Act was brought into operation in March 1955. The Warsaw Convention had been amended by the Hague Protocol of 1967. The 1961 Guadalajara Convention which applies the Warsaw Convention to international carriage performed by a carrier other than a contracting carrier, has been adopted by South Africa under Government Notice G4276 of 10 May 1974.

#### **3. The International Air Services Act No. 60 of 1993**

The Act provides for the establishment of an International Air Services Council and for the regulation and control of international air services and the provisions of the Act commenced on 15 April 1994.

#### **4. The Air Services Licensing Act No. 115 of 1990**

This Act had been placed on the statute book to provide for the establishment of an Air Service Licensing Council - for the licensing and control of domestic air services and for matters connected therewith. The Act commenced on 1 July 1990.

#### **5. The Civil Aviation Offences No. 10 of 1972**

The Act gives effect to the convention on Offences and certain other acts committed on board aircraft; the convention for the suppression of unlawful seizure of aircraft; and the convention for the suppression of unlawful acts against the safety of civil aviation and to provide for additional measures directed at the more effective control of the safety of aircraft, airports and the like. The act had been interpreted and applied by our courts on more than one occasion.

**6. The Airports Company Act No. 44 of 1993**

This Act has been promulgated to provide for the establishment of a public company and the transfer of the State's share in the company; to regulate certain activities at company airports and to provide for matters connected therewith.

**7. The Air Traffic and Navigation Services Company Act No. 45 of 1993**

The Act commenced on 9 April 1993 and has been placed on the statute book to provide for the transfer of certain assets and functions of the State to a public company to be established and for matters connected therewith.

**8. Convention on the International Recognition of Rights in Aircraft Act No. 59 of 1993**

This Act which commenced on 1 January 1998 provides for the application in the Republic of South Africa of the convention on international recognition of rights in aircraft, to make special provisions for the hypothecation of aircraft and shares in aircraft and to provide for matters connected therewith.

**Space Affairs Act No. 84 of 1993**

The Act commenced on 6 September 1993 and is aimed to provide for the establishment of a Council to manage and control certain space affairs in the Republic of South Africa; to determine its objects and functions; to prescribe the manner in which it is to be managed and controlled and to provide for matters connected therewith.

**10. South African Civil Aviation Authority Act No 40 of 1998**

The object of the act is described as "To provide for the establishment of a South African Civil Aviation Authority; for the transfer of certain functions of the State to the Authority and for matters connected therewith." The CAA, which is now well in place, established in terms of the Act, has certain objects, which were previously dealt with by the Department of Transport. In essence these objects are to control and regulate Civil Aviation in South Africa and to oversee the functioning and development of the Civil Aviation Industry and in particular to control, regulate and promote civil aviation safety and security. The CAA has by and large replaced the old DCA and operates as an independent juristic person.

**11. Regulations**

1 Pursuant to certain of the Acts referred to, a number of regulations have been passed to allow for the practical implementation of the objects as set out in the legislation. These include the Regulations for the Conveyance in Aircraft of Dangerous Goods of 1994, the International Air Services Regulations of 1994, the Domestic Air Services Regulations of 1991, the Civil Aviation Safety Regulations of 1981, the Company Airport Regulations of 1994 and the Mortgaging of Aircraft Regulations of 1997.

11.2 As an adjunct to the Aviation Act No. 74 of 1962 a number of regulations have been promulgated dealing with very specific issues such as air navigation, rules of the air,

investigation of aircraft accidents and airport regulations. Whilst some of these regulations are still in force, a new set of civil aviation regulations have been published in terms of Section 22 of the Aviation Act of 1962 - the intention being that the new civil aviation regulations will ultimately replace the current regulations. The new civil aviation regulations are being phased in over a period of time - some of them already came into force on 1 January 1998. The balance will, according to the Director General - Transport, commence at a later date specified by the Minister of Transport.

- 11.3 The Regulations comprising four volumes deal with, *inter alia*, registration of aircraft, noise certification, investigation of aviation accidents and incidents, personnel licensing, medical certification, rules of the air and general operating rules, emergency medical service operations, aerodromes and heliports, aviation training organisations, aircraft maintenance organisations, air traffic services and the general administration of the regulations.

## **12. Miscellaneous Matters**

Over the last couple of years South Africa has seen a phenomenal growth in aviation activity with particular reference to the inflow of new business to the country. More and more foreign operators are doing business in South Africa at an ever increasing volume and consequently a great demand is made on the aviation infrastructure to be able to cope with the demand for service. Certain airports such as "Johannesburg International Airport" and "Cape Town International Airport" have undergone rapid expansion to cope with increasing traffic both in terms of passengers as well as cargo. With the advent of the "opening up" of the skies over Southern Africa competition is rife amongst local participants to service the domestic market which previously was essentially the domain of South African Airways.

From a legal perspective, one of the problems that had faced our courts over the years had been the lack of local precedents to assist with the solving of problems. Often courts were referred to foreign judgements which at best were merely persuasive as opposed to binding. With the passage of time, the available precedent bank had increased in size and today one can have recourse to a number of reported judgments to assist in understanding how our courts view a particular kind of problem. A few random examples illustrate the kind of subject matter that had been adjudicated upon:

- 12.1 Bafana v Comair 1990 (1) SA 368 - this matter dealt with the interpretation of Section 2(1) of the Warsaw Convention and focused on the concept of successive carriage and prescription.
- 12.2 Pan-American Airways v S A Fire & Accident Insurance Company Limited 1965 (3) SA 150 - this judgment focused on the interpretation of certain aspects of the Warsaw Convention and addressed, *inter alia*, the question as to whether or not a person other than the consignee or consignor would be entitled to sue a carrier for damage in respect of goods.
- 12.3 S v Jeffers 1975 (4) SA 657 - this judgment pursuant to a criminal hearing deals with the interpretation of the Civil Aviation Offences Act No. 10 of 1972. The court held that in respect of a charge pertaining to the causing of damage to an aircraft in flight, that it was not necessary to establish *mens rea* or intention on the part of the perpetrator.
- 12.4 Caledonian Airways Limited v Transpet t/a South African Airways 1997 (1) SA 466 - here the court was called upon to interpret certain sections of the International Air Services Act No. 60 of 1993 relating to the rules and grounds pertaining to the granting of a licence or permit by the Council.
- 12.5 Sasverbijbeleggings v Van Rhynsdorp Town Council 1979 (2) SA 771 - in this matter the court had to deliberate over the liability of an aerodrome after damage was caused to an aircraft landing on an unserviceable runway. The court also considered the issue of an apportionment

of blame.

- 12.6 Van Jaarsveld NO v Municipality of Tzaneen (unreported judgment) - in consequence of an accident involving an aircraft and cattle on a public aerodrome, the court was called upon to determine the issue of liability.
- 12.7 Welkom Municipality v J P Masureik & Others 1997 (3) SA 363 - an aircraft, during take off, left the runway and sustained damage after careering through the adjacent area next to the runway. The court was called upon to determine the liability of the aerodrome operator.
- 12.8 Bayer South Africa (Pty) Limited v H H Frost 1991 (4) SA 559 (A) - the court dealt with the issue of liability pursuant to chemical drift in consequence of crop spraying.

A number of insurance related problems in an aviation context have received the attention of South African courts and reference in this regard is to be had to:

- 9 Nel v Santam 1981 (2) SA 230 (T) - in consequence of material damage caused to an insured aircraft the insured lodged a claim with the insurer who rejected the claim based on breaches of the policy. The court interpreted the meaning of “ *illegal purposes*” and “ *change of risk*” in an insurance context.
- 10 Mutual and Federal Insurance Company v Municipality of Oudtsboom 1985 (1) SA 419 (A) - an accident at a public aerodrome involving an aircraft on approach to the airfield gave rise to a claim under the aerodrome liability cover and the court dealt with, *inter alia*, concepts such as “ *good faith*”.
- 11 Bates & Lloyd (Pty) Ltd Aviation v Aviation Ins Co Ltd 1985 (3) SA 916 (A) - after a fatal accident involving a light aircraft a claim was lodged with an insurer who rejected the claim based on, *inter alia*, the fact that the pilot flew in weather conditions not authorised by the policy. The court interpreted the policy with reference to certain air navigation regulations.
- 12 Aviation Insurance Company v Burton Construction 1976 (4) SA 769 (AD) - a flight in adverse weather conditions resulted in damage to an insured aircraft and the court was called upon to interpret a warranty embodied in the policy dealing with compliance with air navigation regulations pertaining to inclement weather.

Arbitration is at times put into practice to resolve legal problems but the tendency seems to be to move away from this kind of dispute resolution by virtue of what is perceived to be the high cost involved. Moreover an award made pursuant to an arbitration is not of such a nature as to create legal precedent. The possibility of an aviation court has been raised and mooted but nothing concrete is in place. By virtue of the ever increasing volume of aviation related business it is inevitable that incidents and accidents occur - often resulting in insurance related claims. The majority of these matters, although they may become litigious, are settled between parties. The disputes vary in nature and the amounts or quantum involved cover a wide spectrum. Aviation law had over a relatively short period developed into a vibrant and expanding field of expertise.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	31 Mar 1930
	Entered into Force	13 Feb 1933
The Hague Protocol - 1955	Signed	
	Adhered to	6 Dec 1965
	Entered into Force	6 Mar 1966
Guatemala City Protocol - 1971	Signed	10 May 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	30 Sep 1981
	Ratified	8 Jan 1985
	Entered into Force	15 Feb 1996
- No. 2	Signed	30 Sep 1981
	Ratified	8 Jan 1985
	Entered into Force	15 Feb 1996
- No. 3	Signed	19 Nov 1987
	Ratified	20 Jul 1989
-No. 4	Signed	30 Sep 1981
	Ratified	8 Jan 1985
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Ratified	1 Mar 1957
	Entered into Force	4 Feb 1958
Montreal Convention	Signed	14 Jan 2000
See Annex N – Note 13	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	
	Acceded to	27 Nov 1968
	Entered into Force	27 Nov 1968
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	2 Jan 1980
	Entered into Force	2 Jan 1980

**PART II - NOTES ON AVIATION LIABILITY**

**1. INTERNATIONAL CARRIAGE**

**1.3** The following national carriers are party to the IATA Inter-carrier Agreements:

Air Europa Lineas Aereas, SA  
Air Nostrum L.A.M.S.A.  
Iberia  
Lineas Aereas de España  
Spanair, SA  
Binter Canarias  
Air Plus Comet (Associate but no member)

**2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

The air traffic in Spain is governed by the Air Navigation Act (L.N.A.) 48/1960 of 21 July which deals through 159 Articles comprising 19 Chapters all aspects relating to this field.

Royal Decree of 19 January 2001 – 3712/01 deals in relation with domestic carriage with Legal Liability arising from damages caused to persons and/or properties on the surface by the Aircraft action, either in flight or on the ground, or by anything falling therefrom as well as Passenger Legal Liability.

**5. GENERAL AVIATION MANDATORY INSURANCE REQUIREMENTS**

The following information was provided by the Spanish DGAC in October 2001.

The Spanish air carriers liability system for air transport is governed by the Law 48/1960 of 21 July on Air Navigation, by the ensuing regulations established by Royal Decree 37/2001 on 19 January, and by the corresponding applicable International Treaties or Agreements.

**a) Compensation to Passengers**

Council Regulation 2027/97 is applicable to Spanish air carriers with an operating licence as well as to the non-EU air carriers who have expressed their agreement to apply the provisions under Article 3 and 5 of this Regulation. Council Regulation 2027/97 is now amended by Council Regulation 889/102.

The Warsaw Convention of 1929 and subsequent amendments shall be applicable to foreign non-EU air carriers from countries signatory to this Convention without prejudice to the corresponding Convention which may apply when the Montreal Convention of 1999 (ratified by Spain on 14 January 2000) shall come into force. This came into force on 28 June 2004.

Royal Decree 37/2001 establishing the compensations listed below shall be applicable to all other air carriers:

- In case of death – 100,000 SDR
- In case of permanent disablement – up to 58,000 SDR
- In case of partial disablement – up to 29,000 SDR

**b) Compensation with respect to Luggage and Cargo**

The Warsaw Convention and its subsequent amendments shall apply to any air carrier from countries signatory to this Convention.

Royal Decree 37/2001 establishing the compensations listed below shall apply to all other air carriers:

- In case of loss or breakdown of cargo – up to 17 SDR per KG
- In case of loss or breakdown of luggage – up to 500 SDR per unit
- In case of delay in the delivery of cargo or registered luggage – up to an amount equivalent to the transport price.

**c) Compensation with respect to Third Party Liability on the Ground**

The Rome Convention of 1952 shall apply to air carriers from countries signatory to the Convention.

Royal Decree 37/2001 is applicable to all other air carriers, with the compensation listed below which will be limited in the following amounts:

<b>MTOW</b>	<b>SDR</b>
- Below 500kg	220,000 SDR
Between 500kg – 1,000kg	660,000 SDR
Between 1,000kg and 6,000kg	660,000 SDR plus 520 SDR per kg in excess of 1,000kg
Between 6,000kg and 20,000kg	3,260,000 SDR plus 330 SDR per kg in excess of 6,000kg
Between 20,000kg and 50,000kg	7,880,000 SDR plus 190 SDR per kg in excess of 20,000 kg
Over 50,000kg	13,580,000 SDR plus 130 SDR per kg in excess of 50,000 kg

Compensation for death or bodily injury shall conform to the amounts that Royal Decree 37/2001 established in respect of passengers, with a 20% increase.

As to this last aspect concerning third party liability on the ground, it is important to point out that the Spanish system, established in Law 48/60 of 21 July on Air Navigation, is similar to the system of the Rome Convention which sets maximum liability limits, not minimum as the ECAC Resolution. The resulting amounts in the Spanish system are slightly lower than the minimum amounts established by ECAC, and moreover, they are **maximum** limits.

**6. CLAIMS RELATED INFORMATION**

Settlements for compensation for material damages and/or bodily injuries caused in an air traffic accident are based on the insurance policy conditions that cover legal requirements, either national or international, whichever the case.

In Spain, the L.N.A. 48/1960 of 21 July on Air Traffic deals with the investigation of accidents. To develop it the Decree 959/1974 on investigations and reports relating to civil aviation accidents of 28 March was published. Here the (Comision de Investigacion de Accidentes de Aviacion Civil) was created.

Royal Decree 1886/96 was the national application of Directive 94/56/EEC of 21 November and it regulates accident investigation in Civil Aviation in order to improve air safety and

prevent accidents or incidents in the future through technical investigation.

Further, the R.D. 389/1998 of 13 March 1998 amended partially the R.D. 1886/96 to contemplate the wholly independence in functions, in relation to any aeronautics authorities or others when it could have a conflict of interests, of the Body (Comision de Investigacion de Accidentes de Aviacion (Civil) which carries out the investigations on the aviation accidents.

Technical investigations refer to accidents or incidents in the territory of Spain or abroad, in some circumstances described in the Decree, when aircraft registered in Spain are involved.

## **7. SOCIAL SECURITY AWARDS**

As far as we are aware there is no scheme for National Social Security to support incapacity by injury specifically caused by an air accident.

Social Security in Spain has got a scheme to pension to workers that pay their contributions to this Body for permanent or temporary incapacity to work irrespective of the reason that has caused them. There is no right of subrogation against third parties from such payments made by the Social Security because only the injured person or their legal inheritors have such a right to claim.

This stipulation does not imply the medical expenses which costs can be reimbursed from the third party responsible or the ir Third Party Liability insurer, when such exists.

## **8. PRODUCTS LIABILITY**

On 8 July 1994, Act 22/1994 on legal liability for damages caused by consequence of defective products, entered into force. This modified the precedent Law 26/1984 prepared basically to protect consumers and users' rights, in order to adapt Spanish Law to the European Directive 85/374, of 25 July 1985.

This Law establishes a system of strict liability, although not absolute, allowing the manufacturer to be exonerated from his responsibility if he can demonstrate, amongst other things, that the product had not been put into circulation; or that the defect did not exist when the product was put into circulation; or that the product had not been manufactured to be sold; or that the technical and scientific knowledge existing when the product was put into circulation did not allow an appreciation of the existence of such a defect, etc.

Liability provided under this Law as aggregate legal liability of a manufacturer for death and bodily injuries caused by identical products showing the same defect would have as a limit the amount of Euros 63,106,271.

Manufacturers liability can be reduced, or even avoided, if the damage caused had been by consequence of a defect in the product as well as due to the negligence of the injured party or of persons under his responsibility.

The action to compensate for loss or damage under this Law will be time barred after three years from the date in which the injured suffered the damage. The action for who has indemnified to the victim against third parties responsible will prescribe after one year from the date of the payment of the compensation.

The onus of proof lies on the party who attempts to obtain compensation for damages

caused, and he will have to demonstrate the defect, the damage and the casualty relationship.

## **9. AIR TRAFFIC CONTROL**

The DIRECCION GENERAL DE AVIACION CIVIL (D.G.A.C.) is the authority responsible for civil aviation and the use of public and private aerodromes and heliports in Spain.

Management and operation of the public airports and the civil zones of the military air bases opened to civil traffic is entrusted to the public entity AENA. Commercial flights are authorised to operate in public airports and in private ones when duly authorised by the D.G.A.C.

The aerodromes and air bases available for entry and departure of both international and national civil air traffic are provided with ATS services.

Aerodromes and heliports available for private or emergency uses ATS, in general, are not available.

On 18 September 1998, Royal Decree 1981/1998 was approved. This established the Aerodrome Flight Information Services (AFIS) and modified the Air Traffic Regulation approved by Royal Decree 73/1992 of 31 January.

## **10. TAX REGIME**

6% in respect of Insurance Premium Tax. This tax does not apply for international airline traffic.

0.3% in respect of DGS.

## **11. GOVERNMENT SUPPORT FOR AVIATION INSURANCE AFTER 11/9/2001**

Reinsurance cover provided by the CCS (Consortio de Compensación de Seguros) in excess of market limits up to pre-existing policy limits from 25 September 2001 until 31 October 2002.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 49		
	Succeeded to	2 May 1951
	Entered into Force	4 Feb 1948
The Hague Protocol - 1955	Signed	
	Adhered to	21 Feb 1997
	Entered into Force	22 May 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	31 Mar 1959
	Entered into Force	29 Jun 1959
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	10 Mar 1967
	Ratified	18 Nov 1986
	Entered into Force	18 Nov 1986
Space Liability Convention - 1972	Signed	
	Acceded to	3 May 1973
	Entered into Force	3 May 1973

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	11 Feb 1975
	Entered into Force	12 May 1975
The Hague Protocol - 1955	Signed	
	Adhered to	11 Feb 1975
	Entered into Force	12 May 1975
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
	Adhered to	30 June 2003
	Entered into Force	30 Sep 2003
The Hague Protocol – 1955	Signed	
	Succeeded to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Succeeded to	
	Entered into Force	
- No. 2	Signed	
	Succeeded to	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Succeeded to	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
	Succeeded to	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	27 Mar 2003
	Entered into Force	24 Jun 2003
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	20 Jul 1971
	Entered into Force	18 Oct 1971
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	12 Jul 1971
	Entered into Force	10 Oct 1971
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	3 Jul 1937
	Entered into Force	1 Oct 1937
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	3 May 1963
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	9 Sep 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	12 Dec 1977
	Ratified	28 Jun 1978
	Entered into Force	15 Feb 1996
- No. 2	Signed	12 Dec 1977
	Ratified	28 Jun 1978
	Entered into Force	15 Feb 1996
- No. 3	Signed	12 Dec 1977
See Annex E – Note 4		
	Ratified	
-No. 4	Signed	12 Dec 1977
	Ratified	4 May 1988
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	20 Jan 1967
	Entered into Force	20 Apr 1967
Rome (Third Party) Convention - 1952	Signed	11 Aug 1954
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	27 Aug 1999
See Annex N – Note 1		
	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	11 Oct 1967
	Entered into Force	11 Oct 1967
Space Liability Convention – 1972	Signed	
	Acceded to	15 Jun 1976
	Entered into Force	15 Jun 1976

**PART II - NOTES ON AVIATION LIABILITY****1. INTERNATIONAL CARRIAGE**

In respect of carriage covered by the Warsaw system the Swedish legislation enacts the Warsaw Convention and the Hague Protocol.

Sweden has also passed legislation enacting the Montreal Protocols Nos 1-4.

**a. Carriage Governed by the Warsaw System (except Swedish Carriers)**

Sweden passed legislation which came into effect 27 April 1978 providing the following SDR equivalents to the Poincaré Franc in the Warsaw System:

Poincaré Franc	SDRs
250	17
5,000	332
125,000	8,300
250,000	16,600

**Regional Legislation**

National carriers which are Community air carriers are governed by the Council Regulation No. 2027/97 of 9 October 1997, which has been in effect since 17 October 1998 and removes the limitation of liability as written in the Warsaw Convention.

**2. DOMESTIC CARRIAGE**

The domestic limit of liability has been set by Swedish legislation to match the situation created by enacting the Montreal Protocol No. 3. As a result per 1 April 1989 the SDR limits noted under b. above apply. Furthermore, the limits will apply to domestic carriage even if tickets have not been delivered.

**5. MANDATORY INSURANCE REQUIREMENTS****a – aircraft registered in Sweden or in another EU/ECAC Member State**

Insurance at least up to the levels provided for in ECAC Resolution ECAC/25-1 are required in respect of both passenger and third party liability.

**b – aircraft operating solely domestically**

The levels given in the resolution apply to all Swedish carrier even though some smaller carriers solely operating in northern Sweden have not fully reached the level for passenger liability as yet. All Swedish carriers have insurance cover at least in line with EC Regulation 2027/97, as well as the Montreal Convention.

**c – aircraft registered in third countries**

The ECAC/25-1 levels for third party liability are applicable to all carriers that fly into Sweden. Insurance cover for passenger liability is required for 100,000 SDR per passenger.

**6. CLAIMS RELATED INFORMATION**

**Social Security - Effect on Awards**

Sweden has a highly developed system of general social insurance, which provides compensation for all kinds of economic loss due to disease, accident or death. The benefits cover the greater part of the economic loss due to an injury - on an average basis 70-80%. These benefits are deducted from tort damages and there is no recourse from the social security system against a tortfeasor. Even certain non-economic damages are covered. As a result the level of compensation to be paid by an air carrier for a passenger injury can be expected to be substantially lower than the Western European average as far as persons covered by the Swedish social security system is concerned.

**8. PRODUCTS LIABILITY**

A new Act on product liability, the Product Liability Act, based on the EC-Directive on Product Liability, came into force on 1 January 1993.

The Act introduces strict liability for personal injury and damage to "consumer" property caused by a defective product.

"Defective" products are movables which do not provide the safety which a person is entitled to expect.

Agricultural products and game are not excluded.

The primary defendant is the producer of the product. Producer is given a wide definition similar to that in the Directive. In addition liability attaches to importers, "own-branders" and to some extent suppliers.

There is no development risk defence.

There is a franchise of SEK 3,5 00 on recovery of property damage. No ceiling on liability exists as eg in German law.

The period of limitation is three years from the date the plaintiff knew or should have known that he had a claim. Under all circumstances claims are extinguished ten years after the damaging product was put into circulation by the defendant.

**9. AIR TRAFFIC CONTROL AND AIRPORTS**

Airports in Sweden may be owned by the state, regional communities or by private companies. They may be public or non-public.

The authorised operator of an airport is responsible for establishing Air Traffic Control according to the regulations issued by the Swedish Civil Aviation Administration (CAA). At all airports with Traffic Control (Tower and/or Approach Control) such control is provided by the CAA as per agreement with the operator of the airport.

At airports with Aerodrome Flight Information Service (AFIS) such service is provided by either CAA personnel or by individual AFIS operators employed by the airport.

AFIS operators are certificated by the CAA.

Upper air space and route navigation facilities (ACC) in the Swedish Flight Information Region (FIR) are provided by the CAA.

In general the CAA does not effect insurance to cover its liabilities, but where AFIS provides services liabilities may be insured.

## **10. MISCELLANEOUS MATTERS**

### **Noise and Pollution**

The entry under Third Party Liability above also applies to Noise and Pollution.

SWITZERLAND

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	12 Oct 1929
	Ratified	9 May 1934
	Entered into Force	7 Aug 1934
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	19 Oct 1962
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	9 Dec 1987
	Ratified	9 Dec 1987
	Entered into Force	15 Feb 1996
- No. 2	Signed	9 Dec 1987
	Ratified	9 Dec 1987
	Entered into Force	15 Feb 1996
- No. 3	Signed	25 Sep 1975
	Ratified	9 Dec 1987
-No. 4	Signed	25 Sep 1975
	Ratified	9 Dec 1987
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	1 Feb 1964
	Entered into Force	1 May 1964
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	18 Dec 1969
	Entered into Force	18 Dec 1969
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	22 Jan 1974
	Entered into Force	22 Jan 1974

**PART II – NOTES ON AVIATION LIABILITY**

**1. International Carriage**

1 International Conventions and Agreements (See Part I)

Air Law

- Federal Aviation Act of 21 December 1948
- Air Transport Regulations of 3 October 1952
- Aviation Ordinance of 14. November 1973

Other Relevant Legislation

- Swiss Civil Code of 10 December 1907
- Code of Obligations of 30 March 1911 (Contract and Tort Law)
- Code of Insurance Contracts of 2 April 1908
- Code of Illness and Accident Insurance of 13 June 1911
- Private International Law Code of 18 December 1987
- (Civil Servants) Liability Act of 14 March 1958

2 Switzerland has incorporated the rules of the Warsaw system into national law; the principle is embodied in Article 75 AA, while the details are to be found in ATR (see attached list of abbreviations) and AO.

Thus, the scope of application is extensive, and these rules apply to carriage performed by aircraft under contract for reward as:

- international carriage governed by the Warsaw Convention
- international carriage not governed by the Warsaw Convention
- internal carriage between points in Switzerland

Passenger damages include death, bodily injury or other impairment and damage resulting from delay. Under WH, death or bodily injury must result from an accident - a sudden, unintentional, unusual external influence.

3 Member airlines of the SWISS, Swiss International Air Lines Ltd. are parties to the IATA IIA/MIA Agreements.

Following the entry into force of MP4 damage to cargo is limited to SDR 17/kg.

Rules of Procedure

Apart from the fora provided in Art. 28.1 WH, claims against foreign scheduled carriers operating to and from Switzerland can be brought at the legal domicile which the foreign carrier is obliged to register with the Federal Office for Civil Aviation (Art. 104.3 AO and Art. 12.1 ATR).

The time limit of two years set in Art. 28.1 WC is a preclusion period, which can only be met by legal action (Froidevauz-v-SABENA, ASDA Bulletin 1958/3).

Insurance

Insurance of commercial air carriers' liability is compulsory.

Rights of Recourse in respect of the private insurance of persons, Art. 96 CIC excludes the rights of recourse of the insurer. The insurance sum paid to a person who has suffered damage or loss by the death or bodily injury of a passenger cannot be deducted from his compensation claim (BGE 53.11.499).

Under Art. 41 and 42 CAI, the position is different, when social insurance is involved: the social insurance acquires the benefit of subrogation rights against the liable party's insurer. These benefits have to be deducted from any award granted to the claimant.

Private International Law

In the private international law, contractual cessions are subject to the law governing the claim, but statutory subrogation's are governed by the law which determines the legal relationship (i.e. the insurance contract) under which payment is due (BGE 85.11.267/88.11.430).

Awards and Settlements

At the time of publication no relevant awards or settlements have been published over the past ten years.

CAB18900 IATA Agreement

Members of SWISS, Swiss International Air Lines Ltd. are parties to CAB 18900.

- 4 In the decision of *Jacquet-v-Club Neuchatelois*, the Supreme Federal Court ruled in 1977 (BGE 83.11.231) that the carrier's liability is of a contractual nature, and that the carrier agents in the context of Art. 20 W C are not only employees, but all persons whose services the carrier uses to meet its obligations.

In the case of death of a passenger, claimants include any dependants of the victim, (not necessarily confined to their heirs or next of kin).

Limits for private transport with remuneration are fixed in national currency in Art. 9 ATR as follows:

72,500.00	Per passenger
50	Per kg checked baggage or cargo
1,450.00	Per passenger for cabin baggage

For commercial transport the limits are CHF 500'000.00 for any one passenger according to Art. 106 AA.

- 1.5 Same rules apply also for national carriers, if any.

**2. Internal and Other Non-Convention Carriage**

See International Carriage (same rules apply)

**3. General Aviation**

According to Article 2b AA the operation of ultralight and microlight aircraft is prohibited in Switzerland.

**4. Third Party Liability**

Principles

According to Art. 64 AA the aircraft operator is strictly liable for death, injury or damage caused on the ground by an aircraft in flight (including objects falling therefrom), except when liability is governed by a contract (Art. 69 AA)

The wording does not expressly limit the damage to death, bodily injury or property damage, and it is doubtful whether courts would agree with such a narrow interpretation. Liability for damage caused by aircraft not in flight are as a rule governed by CO rules on tort liability: "Who wilfully or negligently causes injury or damage to another in an unlawful manner shall be liable for compensation."

The action may be brought in the domicile of the defendant or at the place where the damage was caused (Art. 67 AA). The action must be brought within one year, in exceptional cases within three years after the occurrence (Art. 68 AA).

Insurance

The operator is required by Art. 70 AA to take out insurance to cover his liability, up to limits fixed in Art. 125 AO (e.g. CHF 75m for aircraft with a take-off weight of 200,000 kg or more).

The insurance contract must include damages caused by crew members (Art. 70.2 AA) and damages resulting from noise (Art. 127.3 AO)

According to the General Conditions of the Swiss Pool for Aviation Insurance the indemnity is restricted to bodily injury and property damage; if the insurer is compelled by law to pay for economic loss, he has a right of recourse against the policyholder.

**5. Mandatory Insurance Requirements**

According to Art. 125 AA the liability limit for the third party liability must to be between CHF 3'000'000.00 and CHF 75'000'000.00 in respect of the MTOW.

The passenger liability for commercial flights has to be CHF 500'000.00 for any one passenger according to Art. 106 AA.

**6. Claims Related Information**

Office of aircraft accident investigations

None for the time being.

**7. Social Security Awards**

All employees working in Switzerland receive obligatory insurance protection. This includes the following coverages:

- Benefits arising from an accident or illness which occurs whilst the employee is engaged in work or professional related activities.
- Benefits arising from certain accidents (incl. aircraft accidents) generally.

**8. Product Liability**

There are no specific regulations under Swiss law relating to product liability in aviation; therefore the general rules on contractual or tort liability apply. Insurance is not compulsory.

With regard to international cases there is a special rule on product liability in Art. 135 PILC: the claimant is entitled to choose either the law of the State in which the defendant is domiciled or the law of the State in which the product was purchased. If a foreign law is applied, a Swiss court cannot go beyond the limits under Swiss law.

The contractual relationship may be based on a sales contract (Art. 184-215 CO) or a contract of manufacture (Art. 363-379 CO). The prescription period is one year after delivery.

The liability of the seller for the deficiency itself is strict; for indirect consequential damages the burden of proof lies with the seller (Art. 97 and 197 CO).

The manufacturer's liability is strict with regard to the material used; with regard to other deficiencies, negligence must be proved.

Tort liability applies in the absence of privity of contract (e.g. with regard to the manufacturer of a part of an aircraft in relation to the aircraft's ultimate buyer). This liability is based on negligence, which has to be proved by the claimant (Art. 41 CO).

The prescription period is one year after the claimant obtained knowledge of the damage and of the identity of the liable party, up to a maximum of ten years after the act or omission which caused the damage (Art. 60.1 CO).

**9. Air Traffic Control**

Airports' Liability (including noise and pollution)

With regard to liability, non-public and public aerodromes must be regarded separately although insurance is not compulsory in either case. However, most airport operators buy liability insurance.

The liability of non-public aerodromes (airfields) is governed entirely by private law, based on contract (Art. 97ss. CO) or in tort (Art. 41ss. CO), negligence to be proven by the claimant.

The liability of the operator of a public airport is in general governed by the same rules; however, if the airport is operated by a public authority, such as a community or canton,

## SWITZERLAND (CONT'D)

individual cantonal law may apply.

The airport of Basel-Mulhouse is situated on French territory, and according to Article 1 of the French-Swiss Convention of 4 July 1949, French law is applicable. This applies equally to liability.

See also table at end of entry for further information on the ownership etc. of Swiss airports.

### ATC Liability

Liability for damages caused by air traffic controllers lies in tort (Art. 41 CO).

There are no obligatory liability insurance requirements in respect of air traffic control. The Swiss Air Navigation Services Ltd., Skyguide, does however buy liability insurance. Skyguide is also responsible for upper airspace and en route navigation facilities.

The following table contains a summary of the types of airfield in Switzerland, their ownership and bodies responsible. It also shows where responsibility for local air traffic service lies.

Type	Owner	Responsibility	Local Air Traffic Service
National Airports	Government (Canton)	Swiss Confederation, department of traffic (Government)	Skyguide (Ltd. Company with government participation)
Regional Aerodromes	Government/Private (Canton, municipality or Ltd company)	Federal Office for Civil Aviation (Government)	Skyguide or airport (private)
Airfields	Government/Private (community or private company)	Private	None (AFIS)
Water Aerodromes	Government/Private (community or private company)	Private	None (AFIS)
Mountain Airfields	Government/Private (community or private company)	Private	None (AFIS)
Winter Landing Sites and Heliports	Government/Private (community or private company)	Private	None (AFIS)

**10. Tax Regimes**

According to Art. 21 ff, law of tax deliveries, the federal tax stamp duty is 5 %. This applies for all liability coverages and in respect of Hull insurance only for aircraft with less than MTOW 5'700 kg.

**11. Miscellaneous Matters**

War Risks

Currently Passenger, Third Party and Combined Liability policies exclude accidents resulting from war or civil commotion.

Personal Accident Policies also exclude war and civil commotion but such exclusions do not extend to those situations where the insured person suffers while on board the aircraft or during the deprivation of liberty following an act of air piracy. Coverage in these circumstances continues until the person returns to their place of residence or original destination.

In the event of war involving Switzerland, one of its neighbouring countries, between one of more of the so-called five great powers or between one of the five great powers and a European nation, coverage for passengers under Personal Accident Policies does not extend beyond 48 hours following the outbreak of hostilities.

Hull policies specifically exclude loss or damage resulting as a consequence of war, strike, riot, civil commotion, terrorism, violent action or sabotage, seizure, hijacking or requisition. The exclusion can be written back by special agreement.

**ABBREVIATIONS**

<b>AA</b>	Aviation Act
<b>ASDA</b>	Swiss Association for Air and Space Law
<b>AO</b>	Aviation Ordinance
<b>ATR</b>	Air Transport Regulation
<b>BGE</b>	Judgements of the (Supreme) Federal Court
<b>CAB 18900</b>	Montreal Interim Agreement of 1966
<b>CC</b>	Civil Code
<b>CIAI</b>	Code of Illness and Accident Insurance
<b>CIC</b>	Code of Insurance Contracts
<b>CO</b>	Code of Obligations
<b>LA</b>	(Civil Servants') Liability Act
<b>PILC</b>	Private International Law Code
<b>WC</b>	Warsaw Convention of 1929
<b>WH</b>	WC as amended by the Hague Protocol of 1955
<b>WHG</b>	WH as amended by the Guatemala Protocol of 1971

**SYRIAN ARAB REPUBLIC**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929	Signed	
See Annex A – Note 50		
	Succeeded to	3 Jun 1964
	Entered into Force	2 Mar 1959
The Hague Protocol – 1955	Signed	
See Annex A – Note 50		
	Succeeded to	3 Jun 1964
	Entered into Force	1 Aug 1063
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	18 Jul 2002
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Acceded to	19 Nov 1968
	Entered into Force	19 Nov 1968
Space Liability Convention - 1972	Signed	
	Acceded to	6 Feb 1980
	Entered into Force	6 Feb 1980

**PART II- NOTES ON AVIATION LIABILITY**

**MINIMUM INSURANCE REQUIREMENTS**

The provisions of ECAC Resolution ECAC/25-1 apply in respect of both passenger and third party liability.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	3 Feb 1994
	Entered into Force	4 May 1994
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	7 Apr 1965
	Entered into Force	6 Jul 1965
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	11 Feb 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	31 May 1972
	Not Ratified	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	
	Entered into Force	
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	7 Oct 1952
	Not Ratified	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	9 Sep 1968
	Entered into Force	9 Sep 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

Although Thailand is not a party to the Warsaw Convention of 1929, in 2002 the Thai Cabinet already approved the Draft Carriage by Air Act, which is almost identical with the Montreal Convention of 1999. Hence, it is expected that after the Thai Parliament enacted the Draft, Thailand will accede to the Montreal Convention of 1999.

### **INTERNAL AND OTHER NON-CONVENTION CARRIAGE**

Under the Thai legal system, carriage by air is governed by the Civil and Commercial Code, Book III Title VIII - Carriage. In summary, such provisions employ the regime of unlimited strict liability:

#### **TITLE VIII**

##### **CARRIAGE**

Section 608. A carrier, within the meaning of this Title, is a person who in the usual course of his business undertakes to transport goods or passengers for remuneration.

Section 609. The carriage of goods or passengers by the Royal State Railways Department of Siam or of postal articles by the Post and Telegraph Department are governed by the Laws and Regulations concerning such Department.

The carriage of goods by sea is governed by the Laws and Regulations relating thereto.

#### **CHAPTER I**

##### **CARRIAGE OF GOODS**

Section 610. The person making an agreement with a carrier for the transportation of goods is called the sender or consignor.

The person to whom the goods are forwarded is called the consignee.

The remuneration to be paid for the transportation of the goods is called the freight.

Section 611. The accessories of the freight comprise any customary expenses duly incurred by the carrier in course of transportation.

Section 612. If required by the carrier, the sender must supply him with a way-bill. The way-bill must show the following particulars

(1) The nature of the goods sent, their weight or bulk and the nature, number and marking of the packages.

(2) The place of destination.

(3) The name or trade-name and address of the consignee.

(4) The place where and the time when the way-bill is made out. The way-bill must be signed by the sender.

Section 613. If required by the sender, the carrier must supply him with a consignment note.

The consignment note must show the following particulars:

(1) Those mentioned in Section 612, subsections 1, 2 and 3.

(2) The name or trade-name of the sender.

(3) The amount of freight.

(4) The place where and the time when the consignment note is made out. The consignment note must be signed by the carrier.

Section 614. Even though a consignment note has been made out to a named person, it can be transferred by endorsement, unless the endorsement is forbidden in the consignment note.

Section 615. If a consignment note has been made, delivery can be obtained only on its surrender or on proper security being given by the consignee.

Section 616. The carrier is liable for any loss, damage or delay in delivery of the goods entrusted to him, unless he proves that the loss, damage or delay is caused by force majeure or by the nature of the goods, or by the fault of the sender or consignee.

Section 617. The carrier is liable for loss, damage or delay caused by the fault of the other carriers or persons to whom he entrusted the goods.

Section 618. If the goods were transported by several carriers, they are jointly liable for loss, damage or delay.

Section 619. If the goods are of a dangerous nature or are likely to cause injury to persons or property, the sender must declare their nature before making the contract of carriage, failing which he shall be liable for any injury caused by them.

Section 620. The carrier is not liable for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels and other valuables, unless he is given notice of the value or nature of such goods when they are delivered to him.

If their value is declared, the liability of the carrier is limited to such declared value. Section

621. Compensation in case of delay in delivery cannot exceed the amount which could be awarded in case of total loss of the goods.

Section 622. The carrier must notify the consignee as soon as the goods arrive.

Section 623. The liability of the carrier ceases when the consignee has, without reservation, accepted the goods and paid the freight and accessories.

But this does not apply in case of loss or damage not discoverable from the external condition of the

goods, provided notice of loss or damage has been given to the carrier within eight days after delivery of the goods.

These provisions do not apply in case of bad faith or gross negligence imputable to the carrier.

Section 624. No action on account of loss, damage or delay can be entered against the carrier later than one year after delivery, or one year after the date when delivery ought to have been made, except in case of bad faith.

Section 625. A provision in a receipt, consignment note or other such document delivered by the carrier to the sender excluding or limiting the liability of the carrier is void, unless the sender expressly agreed to such exclusion or limitation of liability.

Section 626. As long as the goods are in the carrier's hands, the sender or, if a consignment note has been made, the holder thereof can require the carrier to stop the transportation, to return the goods, or to make any other disposition of them.

In such case, the carrier is entitled to the freight in proportion to the transportation already performed and to all other expenses occasioned by the stoppage, return or other disposition of the goods.

Section 627. After the goods have arrived at the place of destination and the consignee has demanded delivery, the consignee acquires the rights of the sender arising from the contract of carriage.

Section 628. If goods are lost by force majeure the carrier is not entitled to the freight. Whatever has been received on that account must be returned.

Section 629. If the carrier delivers the goods before payment of the freight and accessories, he remains liable to preceding carriers for such part of the freight and accessories as may still be due to them.

Section 630. The carrier is entitled to retain the goods necessary to secure payment of freight and accessories.

Section 631. If the consignee cannot be found, or if he refuses to take delivery, the carrier must immediately notify the sender thereof and obtain his directions.

If circumstances render this impracticable, or if the sender fails to send in his directions at the proper time or sends directions which cannot be carried out, the carrier has power to deposit the goods in a Deposit Office.

If the goods are perishable and delay involves risks, or if the value of the goods appears likely not to cover the freight and accessories, he may have the goods sold by public auction.

The carrier must, unless it is impracticable, notify the sender or consignee of such deposit or sale without delay; failure to do so renders him liable to pay damages.

Section 632. The carrier shall deduct from the net proceeds of the public auction the freight and accessories and must forthwith deliver the surplus to the person entitled to it.

Section 633. If the goods were transported by several carriers, the last of them can exercise the rights described in Sections 630, 631, 632 for the amounts due to them all for freight and accessories.

## CHAPTER II CARRIAGE OF PASSENGERS

Section 634. The carrier of passengers is liable to a passenger for personal injuries and for the damages immediately resulting from a delay suffered by reason of the transportation, unless the injury or delay is caused by force majeure or by the fault of such passenger.

Section 635. Luggage entrusted to the carrier in time must be delivered on the arrival of the passenger.

Section 636. If the passenger does not take delivery of the luggage within one month after its arrival, the carrier can sell it by public auction.

If the luggage is of a perishable nature, the carrier can sell it by public auction twenty four hours after its arrival.

The provisions of Section 632 apply mutatis mutandis.

Section 637. The rights and liabilities of the carrier for the luggage which has been entrusted to him are governed by Chapter I, even though the carrier did not make a separate charge for it.

Section 638. No liability is incurred by the carrier for luggage which has not been entrusted to him, unless such luggage be lost or damaged by the fault of the carrier or of his employees.

Section 639. A provision in a ticket, receipt or such other document delivered by

the carrier to the passenger excluding or limiting the liability of the carrier is void, unless the passenger expressly agreed to such exclusion or limitation of liability.

## THIRD PARTY LIABILITY

### TITLE V

### WRONGFUL ACTS

#### CHAPTER I LIABILITY FOR WRONGFUL ACTS

Section 420. A person who, wilfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.

Section 421. The exercise of a right which can only have the purpose of causing injury to another person is unlawful.

Section 422. If damage results from an infringement of a statutory provision intended for the protection of others, the person who so infringes is presumed to be in the fault.

Section 423. A person who, contrary to the truth, asserts or circulates as a fact that which is injurious to the reputation or the credit of another or his earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom, even if he does not know of its untruth, provided he ought to know it.

A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a rightful interest in

it.

Section 424. The Court, when giving judgment as to the liability for wrongful act and the amount of compensation, shall not be bound by the provisions of the criminal law concerning liability to punishment or by the conviction or non-conviction of the wrongdoer for a criminal offence.

Section 425. An employer is jointly liable with his employee for the consequences of a wrongful act committed by such employee in the course of his employment.

Section 426. The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee.

Section 427. The two foregoing sections apply mutatis mutandis to principal and agent.

Section 428. An employer is not liable for damage done by the contractor to a third person in the course of the work, unless the employer was at fault in regard to the work ordered or to his instructions or to the selection of the contractor.

Section 429. A person, even though incapacitated, on account of minority or unsoundness of mind is liable for the consequences of his wrongful act. The parents of such person are, or his guardian is, jointly liable with him, unless they or he can prove that proper care in performing their or his duty of supervision has been exercised.

Section 430. A teacher, employer or other person who undertakes the supervision of an incapacitated person either permanently or temporarily, is jointly liable with such person for any wrongful act committed by the latter whilst under his supervision, provided that it can be proved that he has not exercised proper care.

Section 431. In the cases falling under the two foregoing sections the provisions of Section 426 apply mutatis mutandis.

Section 432. If several persons by a joint wrongful act cause damage to another person, they are jointly bound to make compensation for the damage. The same applies if, among several joint doers of an act, the one who caused the damage cannot be ascertained. Persons who instigate or assist in a wrongful act are deemed to be joint actors.

As between themselves the persons jointly bound to make compensation are liable in equal shares unless, under the circumstances, the Court otherwise decides.

Section 433. If damage is caused by an animal, the owner, or the person who undertakes to keep the animal on behalf of the owner, is bound to compensate the injured party for any damage arising therefrom, unless he can prove that he has exercised proper care in keeping it according to its species and nature or other circumstances, or that the damage would have been occasioned notwithstanding the exercise of such care.

The person responsible under the foregoing paragraph may exercise a right of recourse against the person who has wrongfully excited or provoked the animal or against the owner of another animal which has caused the excitement or provocation.

Section 434. If damage is caused by reason of the defective construction or insufficient maintenance of a building or other structure, the possessor of such building or structure is bound to make compensation; but if the possessor has used proper care to prevent the happening of the damage, the owner is bound to make compensation.

The provisions of the foregoing paragraph apply correspondingly to defects in the planting or propping up of trees or bamboos.

If in the cases of the foregoing two paragraphs there is also some other person who is responsible for the cause of the damage, the possessor or owner may exercise a right of recourse against such person.

Section 435. A person who is threatened with an injury from a building or other structure belonging to another is entitled to require the latter to take necessary measures for averting the danger.

Section 436. An occupier of a building is responsible for the damage arising from things which fall from it or are thrown into an improper place.

Section 437. A person is responsible for injury caused by any conveyance propelled by mechanism which is in his possession or control, unless he proves that the injury results from force majeure or fault of the injured person.

The same applies to the person who has in his possession things dangerous by nature or destination or on account of their mechanical action.

## CHAPTER II COMPENSATION FOR WRONGFUL ACTS

Section 438. The Court shall determine the manner and the extent of compensation according to the circumstances and the gravity of the wrongful act.

Compensation may include restitution of the property of which the injured person has been wrongfully deprived or its value as well as damages to be granted for any injury caused.

Section 439. A person who is bound to return a thing of which he has deprived another by a wrongful act is also responsible for the accidental destruction of the thing, or for accidental impossibility of returning it arising from any other cause, or for its accidental deterioration, unless the destruction or the impossibility of returning it or the deterioration would have happened even if the wrongful act had not been committed.

Section 440. If on account of the taking of a thing its value, or, on account of damage to a thing, its diminution in value is to be made good, the injured party may demand interest on the amount to be made good from the time which serves as the basis for the estimate of the value.

Section 441. If a person bound to make compensation for any damage on account of the taking or damaging of a movable compensates the person in whose possession the thing was at the time of the taking or damage, he is discharged by so doing even if a third party was owner of the thing, or had some other right in the thing, unless the right of the third party is known to him or remains unknown in consequence of gross negligence.

Section 442. If any fault of the injured party has contributed in causing the injury, the provisions of Section 223 apply mutatis mutandis.

Section 443. In the case of causing death, compensation shall include funeral and other necessary expenses.

If death did not ensue immediately, compensation shall include in particular expenses for medical treatment and damages for the loss of earning on account of disability to work. If on account of the death any person has been deprived of his legal support, he is entitled to compensation therefor.

Section 444. In the case of an injury to the body or health, the injured person is entitled to receive reimbursement of his expenses and damages for total or partial disability to work, for the present as well as for the future.

If at the time of giving judgment it is impossible to ascertain the actual consequences of the injury, the Court may reserve in the judgment the right to revise such judgment for a period not exceeding two years.

Section 445. In the case of causing death, or of causing injury to the body or health of another, or in the case of deprivation of liberty, if the injured person was bound by law to perform service in favour of a third person in his household or industry, the person bound to make compensation shall compensate the third person for the loss of such service.

Section 446. In the case of injury to the body or health of another, or in the case of deprivation of liberty, the injured person may also claim compensation for the damage which is not a pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or an action on it has been commenced.

A like claim belongs to a woman against whom an immoral crime is committed.

Section 447. Against a person who has injured the reputation of another, the Court may, on the application of the injured person, order proper measures to be taken for the rehabilitation of the latter's reputation, instead of, or together with, compensation for damages.

Section 448. The claim for damages arising from a wrongful act is barred by prescription after one year from the day when the wrongful act and the person bound to make compensation became known to the injured person, or ten years from the day when the wrongful act was committed.

However if the damages are claimed on account of an act punishable under the criminal law for which a longer prescription is provided such longer prescription shall apply.

### **CHAPTER III**

#### **JUSTIFIABLE ACTS**

Section 449. A person who, acting in lawful defence or under a lawful command, has caused injury to any other person is not liable to make compensation.

The injured person can claim compensation from the person against whom the lawful defence was directed, or from the person who wrongfully gave the command, as the case may be.

Section 450. If a person damages or destroys a thing in order to avert an immediate common danger, he is not liable to make compensation, provided the damage done is not out of proportion to the danger.

If a person damages or destroys a thing in order to avert an immediate individual danger, he shall make restitution therefore.

If a person damages or destroys a thing in order to protect the rights of himself or of a third person against immediate danger threatened by the thing itself, such person is not liable to make compensation, provided the damage done is not out of proportion to the danger. If the danger was caused by such person's fault he is liable to make compensation.

#### **MANDATORY INSURANCE**

During the process of obtaining flight permission, mandatory insurance is required for any aircraft engaged in air services to/from Thailand. A clear amount of insurance is to be set for appropriateness and convenience in practice. The renewal of the insurance policy at least one month before expiry date is required so that the applicant strictly follows the requirement in terms of insurance and in order to be sure that the insurance contract is still effective. The current amounts are as follows:

	Amount of insurance against personal injury, death or property of third party	Amount of insurance against personal injury, death or property of passengers
Non scheduled fixed wing flight	Not less than 20m baht for each occurrence	Not less than 1 million baht for each person
Non scheduled helicopter flight	Not less than 50m baht for each occurrence	Not less than 1 million baht for each person
Scheduled fixed wing flight	Not less than 50m baht for each occurrence	Not less than 1 million baht for each person

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	2 Jul 1980
	Entered into Force	30 Sep 1980
The Hague Protocol - 1955	Signed	
	Adhered to	2 Jul 1980
	Entered into Force	30 Sep 1980
Guatemala City Protocol - 1971	Signed	19 Jul 1985
	Ratified	24 Apr 1987
Montreal Additional Protocols – 1975 – No. 1	Signed	21 Aug 1985
	Ratified	5 May 1987
	Entered into Force	15 Feb 1996
- No. 2	Signed	21 Aug 1985
	Ratified	5 May 1987
	Entered into Force	15 Feb 1996
- No. 3	Signed	21 Aug 1985
	Ratified	5 May 1987
-No. 4	Signed	21 Aug 1985
	Ratified	5 May 1987
	Entered into Force	14 Jun 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	27 Jun 1980
	Entered into Force	25 Sep 1980
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	2 Jul 1980
	Entered into Force	30 Sep 1980
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	26 Jun 1969
	Entered into Force	26 Jun 1969
Space Liability Convention - 1972	Signed	10 Apr 1972
	Ratified	26 Apr 1976
	Entered into Force	26 Apr 1976

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 52		
	Succeeded to	21 Feb 1977
	Entered into Force	4 Jun 1970
The Hague Protocol - 1955	Signed	
	Adhered to	21 Feb 1977
	Entered into Force	22 May 1977
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Acceded to	20 Nov 2003
	Entered into Force	19 Jan 2004
Outer Space Treaty – 1967	Signed	
	Succeeded to	22 Jun 1971
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

TRINIDAD AND TOBAGO

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 53		
	Succeeded to	10 May 1983
	Entered into Force	31 Aug 1962
The Hague Protocol - 1955	Signed	
	Succeeded to	10 May 1983
	Entered into Force	8 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	24 Jul 1967
	Not Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	8 Feb 1980
	Entered into Force	8 Feb 1980

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	15 Nov 1963
	Entered into Force	13 Feb 1964
The Hague Protocol - 1955	Signed	
	Adhered to	15 Nov 1963
	Entered into Force	13 Feb 1964
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	9 Nov 1984
	Ratified	28 May 1985
	Entered into Force	15 Feb 1996
- No. 2	Signed	9 Nov 1984
	Ratified	28 May 1985
	Entered into Force	15 Feb 1996
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	6 May 1970
	Entered into Force	4 Aug 1970
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	16 Sep 1963
	Entered into Force	15 Dec 1963
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	28 Mar 1968
	Entered into Force	28 Mar 1968
Space Liability Convention - 1972	Signed	6 Apr 1972
	Ratified	30 May 1973
	Entered into Force	30 May 1973

**PART II- NOTES ON AVIATION LIABILITY**

Airline Voluntary Contracts

The Tunisian Market's 1983 Market Report advised that as from 1 April 1982 Tunis Air voluntarily raised the liability limits towards its passengers to SDR 80,000

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	25 Mar 1978
	Entered into Force	23 Jun 1978
The Hague Protocol - 1955	Signed	
	Adhered to	25 Mar 1978
	Entered into Force	23 Jun 1978
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	27 Mar 1968
	Entered into Force	27 Mar 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## PART II- NOTES ON AVIATION LIABILITY

(Secretary General's Note to August 2002 update : This Part was prepared at a time when there was a Turkish IUAL member. With the exception of the section on mandatory insurance requirements, which was updated in August 2002, it has not been reviewed since 1984 and the information may therefore be out of date.)

### INTERNATIONAL CARRIAGE

Turkey became party to the Warsaw Convention/The Hague Protocol in 1978, since when the limits of compensation specified for Warsaw/Hague have applied to International Carriage. Previously the Turkish Commercial Code and the Turkish Code of Obligations (see below) had governed both International and Internal Carriage.

### INTERNAL CARRIAGE

There exists no special Turkish legislation regarding air carrier's liability for Internal Carriage; the Turkish Courts will, therefore, in such cases apply the provisions of the Turkish Commercial Code and of the Turkish Code of Obligations. It may be noted that these two "Codes" are based on the corresponding Swiss Codes and that the Turkish Courts and Lawyers often invoke the opinions of Swiss Courts and legal commentators.

The air carrier's liability under Turkish law is mainly governed by Article 806 of the Commercial Code and Articles 45 and 47 of the Code of Obligations, which articles run as follows:

#### Article 806 of the Commercial Code

"The carrier's duty is to transport passengers to the destination of the ir journey, in health and safety.

The carrier is liable for accidents to passengers. If the passengers should die in the event of an accident, those persons who suffer the loss of a provider will be entitled to claim for compensation from the carrier. If, however, the carrier can prove that the accident was not the fault of himself or of his staff, then he is relieved of the burden of both liabilities."

#### Article 45 and 47 of the Code of Obligations

##### Article 45

"Where the death has caused the loss to dependants of their support, the damages resulting therefrom must also be paid".

##### Article 47

"Where a person has been killed, or has sustained bodily injuries, the Court may, taking into consideration the particular circumstances, award adequate general damages to the injured party or to the family of the deceased." Two groups of persons are consequently entitled to damages:

- The dependants for loss of maintenance (so called material compensation).
- The family for moral compensation.

The terms "dependant" and "family" are not necessarily the same as "heirs" [of von Thur,

Schweizerisches Obligationrecht (1942) p./37I]:

By way of exception, under Article 45 II, those persons are entitled to lodge a claim who have, in the event of death, suffered the loss of their provider. In Art 47 the right to compensation is generated to dependants of the deceased. The number of dependants is not according to legal specifications but in accordance with actual living conditions. The provider is the one who regularly provides a living or whose duty it will be to do so, even if in the future. If the person being provided for has an inherited claim to maintenance and those needs can be covered from the estate of the provider, then loss of provider does not apply. A claim in the event of loss of the provider will not apply if the persons previously provided for cease to be in need of maintenance upon the death of the provider, e.g when they inherit from the deceased and can defray the costs of their maintenance from the income from the inherited estate."

Claims arising out of an air crash or similar accident are considered to be based on tort. According to the Turkish Civil Procedure Law an action of this kind may be instituted either before the Court where the dependant is resident or before the Court which has jurisdiction over the place where the accident occurred.

#### General Level of Awards

The liability of a "wrongdoer" is, under Turkish law, unlimited. The amount of damages varies, of course, considerably from case to case. The highest awards in the seven years were as shown below:

Year	Awards (T. Lira)	A/c Name	Type of Accident
1974	1,100,000	VAN	Total Loss
1975	1,300,000	Bursa	Total Loss
1976	1,600,000	Antalya	Total Loss
1977	-	-	-
1978	-	-	-
1979	5,100,000	Trabzon	Total Loss
1980	4,000,000	Diyarbakir	Hijack

#### Additional Note

Social Security insurance is payable in respect of death or injury arising in the course of travelling while working with a right of the National Insurance Organisation to make a subrogated claim against the airline.

#### MANDATORY INSURANCE REQUIREMENTS

The minimum insurance levels set out in ECAC Resolution ECAC/25-1 apply both the Turkish-registered carriers and other air carriers which serve Turkey.

#### THIRD PARTY LIABILITY

Third Party Liability is also governed by the Commercial Code and Code of Obligations and is without limit of liability.

**PRODUCTS LIABILITY**

There is no specific legislation concerning aviation products. The normal products régime is based on liability without fault (strict liability ) and is subject to the Code of Obligations existing in Turkey.

**NOISE & POLLUTION**

There is no special law which imposes liability on aircraft operators. Liability can only be based on the common law of nuisance under the law of obligations.

Turkey has not yet advised ICAO whether its national regulations and practices will accord with ICAO Annex 16 -Vol 1 (Aircraft Noise) 1st Edition.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	21 Dec 1994
	Entered into Force	20 Mar 1995
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	24 Jul 1963
	Entered into Force	22 Oct 1963
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	24 Apr 1968
	Entered into Force	24 Apr 1968
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	14 Aug 1959
	Entered into Force	12 Nov 1959
The Hague Protocol - 1955	Signed	15 Jan 1960
	Adhered to	23 Jun 1960
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	18 Sep 1961
	Ratified	17 Oct 1983
	Entered into Force	14 Jan 1984
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	31 Oct 1967
	Entered into Force	31 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	28 Sep 1973
	Entered into Force	16 Oct 1973

**PART II – NOTES ON AVIATION LIABILITY****MANDATORY INSURANCE REQUIREMENTS****Domestic Flights**

Air carriers, both certified in the Ukraine and all others, are obliged to comply with regulatory obligatory aviation passenger and third party liability insurance documents. With regard to passenger liability, the minimum amount to be insured is US\$20,000 per passenger seat. The total seats insured per aircraft should be as set by special attachment to the Operator's Certificate.

With regard to third party liability, the minimum amount to be insured is governed by Decree no 1535 "On Order of Rules Approval Relating to Obligatory Aviation Insurance in Civil Aviation" which increased minima with effect from 30 January 2003, as set out below:

<b>MTOW</b>	<b>Minimum Sum Insured (UAH)</b>
Up to 500	100,000
From 501 to 1,000	200,000
From 1,001 to 2,000	500,000
From 2,001 to 6,000	1,000,000
From 6,001 to 25,000	5,000,000
From 25,001 to 50,000	25,000,000
From 50,001 to 100,000	50,000,000
From 100,001 to 500,000	100,000,000
Over 500,001	150,000,000

**International Flights**

Sums insured should be not less than limits and conditions set by International Agreements or the National Law of the country to which the flight is operated.

UNITED ARAB EMIRATES

Date Part 1 Entry Reviewed: September 2004

PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	4 Apr 1986
	Entered into Force	3 Jul 1986
The Hague Protocol - 1955	Signed	
	Adhered to	18 Oct 1993
	Entered into Force	16 Jan 1994
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	20 Mar 2000
	Entered into Force	18 Jun 2000
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	12 Feb 1990
	Entered into Force	13 May 1990
Montreal Convention	Signed	
	Acceded to	7 Jul 2000
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

**UNITED KINGDOM**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention – 1929 See Annex A – Note 54	Signed	12 Oct 1929
	Ratified	14 Feb 1933
	Entered into Force	15 May 1933
The Hague Protocol - 1955	Signed	23 Mar 1956
	Ratified	3 Mar 1967
	Entered into Force	1 Jun 1967
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1 See Annex C – Note 10	Signed	25 Sep 1975
	Ratified	5 Jul 1984
	Entered into Force	15 Feb 1996
- No. 2 See Annex D – Note 10	Signed	25 Sep 1975
	Ratified	5 Jul 1984
	Entered into Force	15 Feb 1996
- No. 3 See Annex E – Note 1	Signed	25 Sep 1975
	Ratified	5 Jul 1984
-No. 4 See Annex F – Note 9	Signed	25 Sep 1975
	Ratified	5 Jul 1984
	Entered into Force	14 Jun 1998
Guadalajara Convention – 1961 See Annex G – Note 14	Signed	18 Sep 1961
	Ratified	4 Sep 1962
	Entered into Force	1 May 1964
Rome (Third Party) Convention - 1952	Signed	23 Apr 1953
	Not Ratified	
	Entered into Force	
Montreal Convention See Annex N – Note 1	Signed	28 May 1999
	Ratified	29 Apr 2004
	Entered into Force	28 Jun 2004
Outer Space Treaty – 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention – 1972	Signed	29 Mar 1972
	Ratified	9 Oct 1973
	Entered into Force	9 Oct 1973

## PART II – NOTES ON AVIATION LIABILITY

**CARRIAGE BY 'COMMUNITY AIR CARRIERS' (EC REGULATION 2027/97) as amended by EC889/02****INTERNATIONAL & DOMESTIC CARRIAGE**

By SI2002/263 Carriage by Air Acts (Implementation of the Montreal Convention) Order 2002, the Carriage by Air Act 1961 was amended to the effect that Section 1(1), which gives force of law to the Warsaw Convention and its amendments, "does not apply in relation to Community air carriers to the extent that the provisions of the Council Regulation<sup>1</sup> have the force of law in the United Kingdom." (Carriage by Air Act 1961 s.1(2)).

**The Council Regulation**

As of 17 October 1998, by virtue of European Council Regulation No. 2027/97 concerning air carrier liability, no 'Community Air Carrier', or CAC, (i.e. those with operating licences granted by a Member State of the EU) may avail itself of any limit of liability in respect of passenger death or bodily injury claims be it statutory, contractual or defined by convention. Liability is strict for those claims up to but not exceeding 100,000 SDR (subject only to a defence of contributory negligence). For claims above that sum the defendant may only avail himself of an Article 20 (Warsaw) defence. This applies to both international and domestic carriage.

In addition, the United Kingdom implemented the Air Carrier Liability Order 1998 which introduced criminal sanctions against those Community Air Carriers who fail to include details of the Regulation in their Conditions of Carriage. It was also deemed to be a criminal offence for Non – Community Air Carriers to omit to clearly inform passengers that the Regulation provisions do not apply to them. The Order has been much criticised, in particular by IATA. Thankfully the Order has been revoked effective from 28<sup>th</sup> June 2004, and accordingly any claims where the circumstances giving rise to the claim are after this date will no longer be affected.

The Regulation and the Order had been the subject of High Court proceedings, at the instigation of IATA in *R. v Secretary of State for the Environment, Transport and the Regions ex parte IATA*. The IATA challenge flowed from concerns that the Regulation constituted an undesirable interference with the Warsaw Convention and with the Order's imposition of criminal sanctions. The Court concluded that the Regulation was in conflict with the Convention, but made no specific finding as to the Order. In as much as the Regulation was in such conflict, the Court concluded that it was to be regarded as valid, but "in suspense" until such time as EC Member States could rectify the relevant incompatibilities in accordance with their general treaty obligations.

On 13<sup>th</sup> May 2002 the EC passed Regulation 889/02, the object of which was to amend 2027/97. The intention was to bring the EC Regulations into line with the provisions of the Montreal Convention. This came into force at the same time as the Montreal Convention, namely 28<sup>th</sup> June 2004. The Air Carrier Liability Order 2004 imposes penalties for a CAC which fails to make available the tariff required by Article 3a of the Regulation, or fails to comply with the requirements imposed on it by paragraphs 1 and 2 of Article 6 unless it can demonstrate that such occurred without its consent or connivance and it used all due diligence to prevent the failure.

The significant change to EC2027/97 is the addition of an Annex to the Regulation by Article 10 of Regulation 889/02. This Annex sets out the wording of a notice that is to be given by carriers to passengers. The notice wording is said to be a summary of "*the liability rules applied By Community air*

<sup>1</sup> The Council Regulation referred to is EC2027/97 as amended by EC889/02

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carriers as required by Community legislation and the Montreal Convention". The wording of the passage describing the carrier's strict liability up to 100,000 SDR's and the residual defence available in excess of that amount is quite extraordinary:-

*"For damages up to 100,000 SDR's (approximate amount in local currency) **the air carrier cannot contest claims for compensation.** Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault."*

On that basis passengers might be forgiven for assuming that any claim made up to 100,000 SDR's cannot be contested by the carrier. However Article 6 of 2027/97, as amended, provides that the notice *"cannot be used as a basis for a claim for compensation, nor to interpret the provisions of [the] Regulation or the Montreal Convention"*. There is thus a substantial internal contradiction in the amended Regulation, which will doubtless be the cause of much debate with claimants' representatives in the future. Government sources have thus far exhibited no inclination to amend or clarify this appalling drafting.

Where a matter falls outside the provisions of the Council Regulation, the Warsaw Convention system continues to apply in the same fashion as it does to 'non-community air carriers.'

## **CARRIAGE BY 'NON – COMMUNITY AIR CARRIERS'**

### **INTERNATIONAL CARRIAGE GOVERNED BY THE WARSAW CONVENTION SYSTEM**

1. The International Agreements relating to liability for passenger baggage and cargo in Part 1 have been brought into force in the laws of the United Kingdom and certain of its overseas territories as follows:
  - (a). The unamended Warsaw Convention, by virtue of the Carriage by Air Acts (Application of Provisions) Order 1967 as amended and the Carriage by Air Acts (Application of Provisions) (Overseas Territories) Order 1967 as amended, both effective from 1 June 1967.
  - (b). The Warsaw Convention as amended at the Hague, September 1955, by virtue of the Carriage by Air Act 1961 as amended by the Carriage by Air and Road Act 1979, and the Carriage by Air (Overseas Territories) Order 1967, both effective from 1 June 1967.
  - (c). The Guadalajara Convention, by virtue of the Carriage by Air (Supplementary Provisions) Act 1962 and the Carriage by Air (Overseas Territories) Order 1967, respectively.
  - (d). Montreal Protocols 1 and 2 by virtue of the Carriage by Air Acts (Application of Provisions) (Fourth Amendment) Order 1998 and the Carriage by Air and Road Act 1979 (Commencement) Order 1997, respectively.
  - (e). Montreal Protocol 4 by virtue of The Carriage by Air Acts (Application of Provisions) (Fifth Amendment) Order 1999.
  - (f). The Montreal Convention by virtue of The Carriage by Air Acts (Implementation of the Montreal Convention 1999) Order 2002, effective from 28<sup>th</sup> June 2004.

Montreal Protocol 3 and the Guatemala Protocol have yet to be incorporated into English law.

2. By virtue of the Carriage by Air and Road Act 1979:
  - a. The word "damage" in Article 26(2) of the Hague Protocol is to be interpreted under English law to include "partial loss".
3. The United Kingdom has also certified by the Carriage by Air (Parties to Convention) Orders and supplementary Orders (for the purpose of claims in the United Kingdom) those countries who are

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deemed to be High Contracting Parties to the Warsaw Convention and that Convention as amended by the Hague.

### INTERNAL AND OTHER "NON – CONVENTION" CARRIAGE

For carriage which is not governed by the Warsaw Convention system (i.e. principally domestic and international "Non-Convention" carriage performed for reward or gratuitously by an air transport undertaking) the United Kingdom has applied by virtue of the Carriage by Air Act (Application of Provisions) Order 1967 as amended, a regime of liability similar to the Montreal Protocol 4 and the Guadalajara Convention with some important amendments, including a substantial increase in the limit of liability and the deletion of any requirements for the issue of passenger tickets, baggage checks and Air waybills. The application of the 1967 order to non-convention carriage outside the UK was illustrated in the Court of Appeal [*Holmes v. Bangladesh Biman Feb 1988*]. By means of amending Orders there was substituted for:

<i>Convention Francs 250,000</i>	-	<i>100,000 Special Drawing Rights</i>
<i>Convention Francs 2,500</i>	-	<i>17 Special Drawing Rights</i>
<i>Convention Francs 5,000</i>	-	<i>322 Special Drawing Rights</i>

By virtue of the Carriage by Air (Application of Provisions) (Overseas Territories) Orders, the same limits are applied to certain United Kingdom overseas territories.

**NB. However, as regards "Community Air Carriers", readers are reminded of the potential for criminal sanctions included in the Air Carrier Liability Order 2004 and the removal of limits of liability in respect of passenger death or bodily injury claims.**

### LIABILITY LIMITS – INTERNATIONAL AND INTERNAL CARRIAGE

In respect of claims in the United Kingdom under the Warsaw Convention as amended at the Hague or domestic or international carriage in which the liability limit is based upon Convention Francs, the United Kingdom has certified the Sterling equivalents thereof from time to time by virtue of the Carriage by Air (Sterling Equivalents) Orders. The Orders provide for future revision of the Sterling Equivalents if there is a change in the value of the Special Drawing Rights (SDR) by the International Monetary Fund.

Holders of the British Air Transport Licenses have been required by the Civil Aviation Authority since 1 April 1981 to have a special contractual limit of liability under the Warsaw Convention and the Hague Protocol of 100,000 SDR, (approximately GBP 87,217 in May 2002) for passenger death, wounding and other bodily injury. For practical purposes, these requirements are now superseded by EC Regulation 2027/97 and the Air Carrier Liability Order 1998 which govern British carriers.

Under the provisions of the Unfair Contract Terms Act 1977, effective from 1 February 1978, no person by contract can exclude liability for death or injury resulting from negligence unless permitted by Statute or International Convention (i.e. Warsaw Convention and Hague Protocol). This is now supplemented by the Unfair Contract Terms in Consumer Contracts Regulations 1999, which has direct effect in the United Kingdom.

The various regimes and limits of liability recognised in the UK at the present are shown in the table on the page opposite. These relate to "Non Community Air Carriers".

### IATA INTERCARRIER AGREEMENTS (IIA AND MIA)

In addition to their position of effectively unlimited liability in respect of passenger death or bodily injury claims by reference to their status as Community Air Carriers, British operators party to these IATA

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Agreements may have also voluntarily adopted that position. Operators party to one or both of the Agreements include British Airways.

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AIR CARRIERS' LIABILITY – CLAIMS IN THE UNITED KINGDOM

SUBJECT	LEGAL REGIME	SOURCE	APPLICABLE LIMIT	STERLING EQUIVALENT ACCORDING TO 1999 ORDER (*)
1. Death, injury or delay to passengers.	(a) Unamended Warsaw.	1967 Order Art 5 Sched. 2.	125,000 Convention Francs	£7,038.97 (*)
<b>(NB please see note at foot of table)</b>	(b) Warsaw as amended at the Hague 1955.	Carriage by Air Act 1961.	250,000 Convention Francs	£14,077.95 (*)
	(c) Warsaw as amended at the Hague 1955 and by Montreal Protocol No.4	Carriage by Air Act 1961.	16,600 SDRs	Varies daily – published in Financial Times and Lloyd's List (was approx. £13,447.90 in August 2004)
	(d) Montreal Convention	Carriage by Air Act 1961	Unlimited. Strict up to 100,000 SDRs. Proof of carrier's negligence required above this sum Delay limited to 4,150 SDRs	Varies daily (was approx £81,012 in August 2004)  (approx £3362.15 in August 2004)
	(e) Domestic and International non-convention carriage	1967 Order Art 3 Sched. 1	100,000 SDRs exclusive of costs.	
(Excluding Delay)	(f) Unamended or amended Warsaw Contracts to, from or via USA	Carrier's Special Contract (CAB 18900)	Nominally US\$75,000 (incl. of legal costs) or US\$58,000 (plus legal costs) BUT effectively, (e) applies.	
	(g) Unamended or amended Warsaw Contracts – all UK Air Carriers operating under CAA International Air Transport Licence.	Carrier's Special Contract, CAA Licence Standard Condition.	100,000 SDRs exclusive of costs.	
2. Loss, damage or delay to	Unamended or amended Warsaw.	Carriage by Air Act 1961 and 1967 Order as	250 Convention Francs per kilo – or the declared	£14.08 (*)

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registered baggage or cargo.		amended.	value.	
3. Loss, damage or delay to objects of which passengers take charge.	Unamended or amended Warsaw.	1961 Act and 1967 Order.	5,000 Convention Francs per passenger	£281.56 (*)
4. Loss or damage to checked and unchecked baggage	Montreal Convention	1961 Act	1,000 SDRs per passenger	Varies daily (approx. £810 in August 2004)
5. Loss or damage to cargo	Montreal Convention	1961 Act	17SDRs per kilo	Varies daily (approx. £13.77 in August 2004)
6. Registered Baggage	Non-Convention	1967 Order as amended.	17 SDR per kilo	
7. Objects of which passenger takes charge.	Non-Convention	1967 Order as amended.	332 SDR per passenger.	Varies daily (approx. £269 in August 2004)

- NB. (i) As of 18 October 1998 liability under the amended or unamended Warsaw Convention is as per the Montreal Convention (Strict up to 100,000 SDRs, unlimited on proof of fault on the part of the Carrier) for Community Air Carriers as a result of European Council Regulation (EC) No. 2027/97.**
- (ii) See below for the effects of Regulation EC261/2004 on Denied Boarding, Cancellation and Delay**

**THIRD PARTY LIABILITY**

The United Kingdom is not a party to the Rome Convention 1952 but Section 76(2) of the Civil Aviation Act 1982 places a strict liability on the registered owner of an aircraft for material loss or damage "caused to any person or property on the land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing". The liability is subject only to a defence of contributory negligence, but rights of recovery against any other responsible persons are expressly preserved for the benefit of the registered owner. By Section 76(3), the liability under Section 76(2) passes from the owner to any person to whom the aircraft has been "demised, let or hired out for any period exceeding 14 days ... and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner".

There are no statutory limitations of liability on the owner (or the hirer) of an aircraft.

See also EC785/2004 below for the proposed mandatory minimum insurance requirements in respect of third party liability.

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**MANDATORY INSURANCE REQUIREMENTS - CURRENT**

European Council Regulation 2027/97, which as noted above came into effect on 18 October 1998, imports new minimum insurance requirements for operators holding operating licences granted by Member States. After industry consultation, the Civil Aviation Authority proposed minimum levels of liability cover, referable to the type of licence held and the category of airport at which operations are conducted:-

**Type A Operating Licence and Air Transport Licence holders**

Category of Airport (by largest aircraft normally using it)	Minimum Cover (Passenger and Third Party combined, any one accident, £ million)
Wide bodied	200
Wide bodied (cargo only)	150
Narrow bodied jet and turbo props	60

**Type B Operating Licence holders**

Aircraft Type	Minimum Passenger & Third Party Cover	
<b>Category 1:</b> Single engined non turbine aircraft and all non turbine helicopters	£3 million	
<b>Category 2:</b> Twin engined aircraft and all other single engined aircraft with 10 seats or fewer	£5 million	
<b>Category 3</b> Turbine Helicopters	Single engined	£7 million
	Multi engined	£15 million
<b>Category 4:</b> Aircraft with 11-19 seats (except as in Category 5)	£15 million	
<b>Category 5:</b> Jet aircraft and aircraft used for scheduled passenger services into major airports	£30 million	

The CAA proposes regular review of these requirements. Enforcement will be by way of revocation of an operator's Licence, should the CAA not be in receipt of appropriate confirmation of cover (via the operator's broker). In practice, most operators purchase cover well in excess of these minimum requirements.

In addition non-UK airlines operating flights to and from the UK require operating permits, issued by the Department of Transport, Local Government and the Regions. From October 2001 that Department was given responsibility for ensuring that such operators have **minimum** levels of insurance cover as follows:-

Passenger Liability

250,000 SDR's

Third Party Liability

1,500,000 to 90,000,000 SDR's depending upon aircraft size

There remain no mandatory insurance requirements for private operators, but see below.

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**MANDATORY INSURANCE REQUIREMENTS – EC785/2004**

EC785/2004, which lays down mandatory insurance requirements for air carriers **and aircraft operators**, will come into force on 1<sup>st</sup> May 2005. It will be noted that the minimum insurance levels for baggage and cargo would preclude any form of deductible or self insured retention in relation to those items.

The Regulation will require all air carriers and aircraft operators flying within, into, out of or over an EC member state to have the following minimum insurance cover:

- Passengers                    SDR 250,000 per passenger (or a lower figure of not less than SDR100,000 in respect of non-commercial operations by aircraft with a maximum take off weight of less than 2,700 kgs);
- Baggage                      SDR1,000 per passenger
- Cargo                         SDR17 per kilogram

Third Party Liability is calculated by weight of the aircraft as per the following table

Category	Maximum Take off Weight (kg)	Minimum Insurance (million SDRs)
1	<500	0.75
2	<1 000	1.5
3	<2 700	3
4	<6 000	7
5	<12 000	18
6	<25 000	80
7	<50 000	150
8	<200 000	300
9	<500 000	500
10	≥ 500 000	700

Only the third party liability provisions apply in respect of overflights by non-EC carriers. EC member states will be obliged to ensure compliance, including by way of the imposition of sanctions.

**FACTORS AFFECTING LEVELS OF AWARDS OF DAMAGES IN THE UK**

**LEVELS OF AWARD**

In respect of passenger claims in the United Kingdom, whether fatal or otherwise, which fall within the scope of the above mentioned Acts or Orders, Insurers seek to effect settlements within the appropriate limit whenever it is possible to do so. However, given the increase in the number of cases to which limits will not apply, the general law as to damages is now of prime importance.

In non-aviation cases during the last few years, it has been commonplace to observe the quantum of damages awarded by the courts for serious injury approaching and exceeding £1,000,000. In 1991 an accident causing very severe brain damage resulted in an award of £1.6m and in that same year, £920,000 was awarded for the death of a father and successful surgeon.

With regard to damages for future pecuniary loss in personal injury cases, a recent case law has held that, when calculating the assumed rate of return on investment of damages, a figure of 2.5% should be used by the courts, rather than 4-5% as was previously the custom. This is likely to substantially increase the quantum of damages awarded in personal injury cases in the future.

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In addition, the Social Security (Recovery of Benefits) Act 1997 has increased the liability of insurers to the State for benefits paid to accident victims.

Recently the Law Commission Report on Damages for Pain and Suffering recommended increases in awards to be made by the Courts, which it was at first feared would have dramatic implications. The impact has not been as great as first assumed but has tended to increase awards in cases where those awards have exceeded £50,000 in respect of pain, suffering and loss of amenity in personal injury cases.

In March 2000, the Court of Appeal heard a series of test cases to determine issues raised by the Law Commission Report. In the most serious cases, the Court held that damages should rise by about one-third. There should be diminishing increases below this to a lower threshold of £10,000, below which there would be no change.

In aviation cases, settlements can and do exceed the standard levels e.g. in special cases a 'mid – Atlantic' multiplier has been used. The upward trend may be modified by the use of Structured Settlements – now approved by the Inland Revenue.

Claims in respect of death are limited under the Fatal Accident Act, the Law Reform (Miscellaneous Provisions) Act and the Administration of Justice Act. These include actual financial loss of dependency; loss of services of deceased spouse, a fixed sum of £10,000 for bereavement to wife or husband for loss of spouse or to a parent for loss of a child (under 18 years of age), pain and suffering of the deceased, if any, and funeral expenses.

## **PUNITIVE DAMAGES**

Punitive damages (also called exemplary, aggravated and vindictive damages) are recoverable only (in accordance with the House of Lords decision in *Rooks v. Barnard* [1964] A.C. 1129 and the Court of Appeal in *A.B. v. South West Water Services Limited* [1993] Q.B. 507, CA.) for "oppressive, arbitrary or unconstitutional actions by servants of the Government or where the conduct of the defendant has been calculated by him to make a profit which will exceed the compensation payable to the plaintiff (e.g. libel publications) or where authorised by statute". In *A.B. v. South West Water Services Limited* further restrictions were placed on exemplary damages making them permissible only where the cause of action is one which existed prior to *Rooks v. Barnard*.

There is no reported case of exemplary damages having been awarded in personal injury claims in civil actions. Exemplary damages cannot be awarded in death cases by reason of Section 1(2)(a) of the Law Reform (Miscellaneous Provisions) Act 1934. Exemplary damages cannot be recovered in race and sex discrimination cases.

The Law Commission is currently still considering law reform relating to punitive and other non-compensatory damages and it is anticipated that legislation will be recommended to establish a uniform regime. Moreover this proposed uniformity may well result in liberalisation of the applicability of these types of damages. Readers of this Handbook should therefore double check with their legal advisers as to the state of development of the law in this area.

## **INTEREST ON AWARDS**

In the United Kingdom Courts interest is awarded on damages for personal injury (including death) under the Supreme Court Act 1981 as amended. The rate of interest is at the discretion of the Court but it is to be a realistic rate. Interest on special damages e.g. medical, funeral expenses is one half of the appropriate rate. No interest is allowed for loss of earnings or earning capacity.

Under the Civil Procedure Rules 1998 it is open to the Defendant to make what is termed a "Part 36" offer. This is the offer of an amount, which is considered sufficient to satisfy the claim. The rules governing the form of these offers are quite specific; they must either include interest or give certain

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details as to interest, otherwise they are deemed to include interest 'until the last day on which [the offer] could have been accepted without permission' (usually 21 days after service).

If the Claimant does not accept the money paid into Court and the Court awards damages equal to or less than the amount in Court, the Claimant will usually be ordered to pay all reasonable legal costs from the latest date for acceptance.

Similarly, since the CPR 1998 came into force, it is now open to the Claimant to propose a sum at which he is prepared to settle (a Claimant's Part 36 offer). Should the Defendant not accept this and the Claimant is subsequently awarded an amount equal to or greater than the Claimant's offer, then the court has the power to order the payment of interest at up to 10% above the base rate for all or some of the period after the Defendant could have accepted, and may order costs on an indemnity basis with interest on costs at 10% above base rate.

## **BAGGAGE CLAIMS**

Claims for baggage are usually settled within or up to the Warsaw limits, although there have been some settlements above the limits with the object of avoiding litigation, mainly where the number of pieces of checked baggage and weight have not been recorded, but such settlements are always without admission of liability.

## **PRODUCT LIABILITY**

With effect from 1 March 1998, the United Kingdom implemented the EEC Directive on Product liability (summarised in IUAL No. 97, Third Quarter 1985, Pages 22/4). The old rules of the common law required the plaintiff to prove that damage was caused by manufacturer's negligence. In the new statutory system introduced by the Consumer Protection Act 1987 the plaintiff has only to prove that damage was caused by a defect on the product. Damages are recoverable from any person who may be classified as 'producer' of the product i.e. not only the manufacturer of the finalised product, but also the producer of raw material, or a component part, or anyone who acts as a producer, or an importer, or (if the producer cannot be identified) any supplier: all jointly and severally liable.

The UK has not exercised any of the three options open to EEC Members:

- (i) Agricultural products and game are not 'products' for the purposes of the Act unless they have undergone an industrial process.
- (ii) There is no limit on the liability of producers.
- (iii) The 'state of the art' defence is retained (in addition to five other defences in the Directive) – but the UK has not adopted the precise text of the Directive for this defence and this is being challenged by the EEC Commission.

Those who are entitled to claim in accordance with the Act cannot be deprived of their rights by contractual means, but the liabilities arising out of the Act are in addition to and are not in substitution for other rights, e.g. rights arising out of the Sale of Goods legislation, or the Carriage by Air Acts are unaffected. The general effect of modern UK legislation is to limit or neutralise contractual methods of avoiding liability for negligence which causes injury or death.

## **WAR RISKS**

Prior to September 11<sup>th</sup> 2001 it was customary for the exclusions as defined in AVN. 48B [except for Section (b)] to be written back under liability policies in respect of both passenger and third party liability. As is well known the position has now been substantially modified in respect of third party liability, with the market only being able to offer limited coverage. Government support has been afforded to provide cover where a commercial market cannot participate. The position is likely to develop further in the short and medium term and readers should check the current position with their professional advisors.

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There is also provision for a right of compensation from the United Kingdom Government in respect of personal injuries or death caused by violent (including terrorist) criminal offences under the Criminal Injuries Compensation Scheme. There are two separate agencies dealing with this matter, one for Northern Ireland and the other for the remainder of the United Kingdom.

## **AIR TRAFFIC CONTROL**

### **Legislation**

The control of aircraft within or over the UK is governed by the Air Navigation Order 2000.

The Order provides that no aircraft shall fly in or over the UK unless registered in:

- (a) Some part of the Commonwealth
- (b) A Contracting State
- (c) Another country which has agreement with HM Government for flights over the UK.

Part VIII of the Order deals with 'Movement of Aircraft'; Part IX deals with 'Air Traffic Control'. Amongst other matters these deal with:

- # Rules of the Air
- # Provisions of air traffic services – only to those with approval from the Authority
- # Licensing of air traffic controllers etc...
- # Flight information service manuals
- # Power to prohibit or restrict flying
- # Licensing of Air Traffic Controllers

Licensing of aerodromes, aeronautical radio stations and aviation fuel at aerodromes are dealt with by Part X of the Order.

### **Responsibilities**

In the United Kingdom the responsible concern for ATC is the National Air Traffic Service (NATS), who in turn are responsible to the Civil Aviation Authority for civil aircraft and the ministry of Defence as regards to military aircraft movements.

NATS is responsible for all (Civil) over flying and en route of aircraft flying both within the UK airway system or outside the airways. They are also responsible for the North East Atlantic Ocean and for flights to and from the North Sea oil and gas fields.

Although NATS provides the services for approach and ground movement control, services at the largest UK airports the medium and smaller airports can be controlled by an independent owner and/or operator. In many instances this is subcontracted to BAA, CAA or a specialist company.

The defendant will be either the appropriate Government department or agency (independent contractors), by reason of it having assumed the responsibility of operating the ATC service, either on account of a defect in the design of operating systems such as approach procedures or as employer of the particular controller who was at fault.

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It is necessary to define the scope of the controller's duty of care. This is to take reasonable care to give all such instructions and advice as may be necessary to promote the safety of the aircraft within his/her area of responsibility. This duty is owed to all aircraft which may be within the relevant control zone. This fact implies a limitation on what may reasonably be expected of the controller, as many aircraft may be within the zone, a controller cannot give his/her full attention to any one particular aircraft. He must share his time as best suits the needs of the movement.

It should be remembered that the aircraft commander has primary responsibility for the safety of his/her aircraft. A wrong decision by the pilot may well be the immediate cause of an accident and may constitute actionable negligence. However, the pilot's decision will be based upon the facts available to him, including information supplied (or which should have been supplied) by the ATC controller.

In many situations the safety of the aircraft depends upon the proper discharge of their duties by both controller and pilot, and much litigation arising out of aircraft accidents focuses on the extent to which responsibility should be allocated to one or the other. Accordingly the pilot and controller should be regarded as having concurrent duties, and liability will turn upon the particular facts in every case.

### **INSURANCE (Airport Owners and/or Operators)**

In the United Kingdom the airport owners and/or operators would be expected to insure their liability for any losses arising from their activities. The subcontractors at these airports would normally be required by the airport owners or authority to also insure their liability exposure.

### **NOISE AND POLLUTION**

The United Kingdom Statutory Provisions are to the effect that no action for trespass or nuisance is allowed against the owner of an aircraft merely be reason of normal flight over property or for noise and vibration by aircraft taking off or landing at Government and Licensed Aerodromes. The provision has its critics and night flying restrictions have been imposed by the United Kingdom Government on the use of certain airports.

The Aeroplane Noise Regulations 1999 lay down detailed requirements for the noise level of aircraft, foreign or UK, operating into and out of UK airfields. The Secretary of State has wide powers to take measures to protect the public and the environment from noise and pollution.

The noise levels are in respect of aircraft with turbojet or turboprop engines or propeller and vary according to the weight of the aircraft. Aircraft are required to have and to carry noise certificates. The Regulations create criminal offences for any failure to comply with their provisions.

### **Annex 16 – Aircraft Noise**

The United Kingdom has confirmed that no differences will exist between its National Regulations and Practices and the International Standards and Recommendations of Volume 1 of Annex 16 to the Chicago Convention.

### **MISCELLANEOUS MATTERS**

For carriage of mail and postal packets by an air carrier in behalf of the British Postal Administration, Section 29 of the Post Office Act 1969 provides that no proceedings shall lie against the person engaged in or about the carriage of mail, and no officer, servant, agent or sub-contractor of such person shall be subject to any civil liability at the suit of the British Postal Administrations where a claim is brought in England. It would appear that liability is governed by the Carriage by Air Acts (Application of Provisions) Order 1967 with a limitation of liability of 17 SDR per kilo.

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## HOVERCRAFT

The Hovercraft (Civil Liability) Order 1986, Section 1. 1305, made under the Hovercraft Act 1968, applies, with modifications. The Hague Protocol provisions to carriage of passengers and baggage. In respect of cargo it applies, with modification, the Carriage by Goods by Sea Act 1971.

Third Party Liability is similar, with modification, to the provisions of the Merchant Shipping Act 1979.

## TRAVEL ORGANISERS' LIABILITY

In 1990, an EC Directive was adopted as part of the preparations for the completion of the internal market on the subject of Package Travel, Package Holidays and Package Tours. This was implemented into UK law by the Package Travel, Package Holidays and Package Tours Regulations 1991 S.I 3288 of 1992, and these contain provisions as to the liability to a consumer of the organiser of package travel, holidays and tours. The crucial provision of the Regulations for present purposes is Regulation 15. The package organiser is potentially liable to the consumer for the proper performance of the obligations under the contract, whoever performs such obligations. In the unreported case of *Horan v JMC Holidays* in 2001, a traveller to Canada was awarded damages for a failure to provide travel to a 'reasonable standard.' Judge Edwards used this judgement to criticise spacing between seats in economy class.

In practice an indemnity can and will be effectively sought by the package organiser if an air carrier's liability is engaged.

## DENIED BOARDING COMPENSATION – THE CURRENT POSITION

EC Regulation 295/1 came into force, by direct effect, in all EC States on 8 April 1991. In brief, this legislation creates a compulsory scheme applicable to **all** *scheduled* flights departing from an airport within the EC, regardless of destination (there is a proposal currently before the Council to extend this to *non-scheduled* flights, but this has yet to take effect). If the flight is overbooked, the carrier first has to ask for volunteers and, if there are insufficient of these he may then deny boarding in accordance with the company rules which (like its Conditions of Carriage) must be available for inspection by the public. All passengers who, regardless of their volition are denied boarding, are entitled to immediate monetary compensation and either reimbursement of the cost of their ticket or re-routing.

The monetary compensation depends upon the distance to the final destination with approximately £106 being paid for flights of less than 3,500 miles and £213 for flights over that distance. Where the passenger is a volunteer, he has no further rights against the carrier, whereas other non-consensual passengers do not suffer any restriction on their rights.

## EC261/2004 – DENIED BOARDING, CANCELLATION AND DELAY

On 26<sup>th</sup> January 2004 the EC Council adopted Regulation 261/2004, which comes into effect on 17<sup>th</sup> February 2005, subject to a current challenge by IATA as to its validity, given its incompatibility with the Montreal Convention. On 14<sup>th</sup> July 2004 the Administrative Court granted IATA's request for a reference on this issue to the European Court of Justice.

Should it come into force the Regulation will apply to:

- (i) Passengers departing from an airport in an EC member state
- (ii) Passengers departing from an airport in a third country to an airport situated in an EC member state where the operating air carrier is a Community Air Carrier

The Regulation provides for a combination of remedies, namely:

**Date Entry Reviewed: August 2004**

- (i) Compensation (see below)
- (ii) Reimbursement/re-routing
- (iii) Care

The different levels of compensation are:

- (i) €250 for flights of 1,500 kms or less;
- (ii) €400 for intra-EC flights of more than 1,500 kms and other flights between 1,500 and 3,500 kms
- (iii) €600 for all other flights

Provided that compensation may be reduced by 50% when passengers are offered re-routing to their final destination.

In the case of delay there is no exception to the requirement that a remedy be provided, even when the delay is caused by circumstances beyond the carrier's control.

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	4 Jul 1979
	Entered into Force	2 Oct 1979
The Hague Protocol - 1955	Signed	
	Adhered to	
	Entered into Force	
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	8 Nov 1978
	Entered into Force	6 Feb 1979
Montreal Convention	Signed	9 Jun 1999
	Not Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	31 Aug 1970
	Entered into Force	31 Aug 1970
Space Liability Convention - 1972	Signed	
	Acceded to	7 Jan 1977
	Entered into Force	7 Jan 1977

**UNITED STATES OF AMERICA**

**Date Part 1 Entry Reviewed: September 2004**

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	31 Jul 1934
	Entered into Force	29 Oct 1934
The Hague Protocol - 1955	Signed	28 Jun 1956
	Ratified	15 Sep 2003
	Entered into Force	14 Dec 2003
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	25 Sep 1975
	Not Ratified	
-No. 4	Signed	25 Sep 1975
	Ratified	4 Dec 1998
	Entered into Force	4 Mar 1999
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
See Annex N – Note 7	Ratified	5 Sep 2003
	Entered into Force	4 Nov 2003
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	10 Oct 1967
	Entered into Force	10 Oct 1967
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	9 Oct 1973
	Entered into Force	9 Oct 1973

**PART II - NOTES ON AVIATION LIABILITY****1. INTERNATIONAL CARRIAGE****1.1 Warsaw Convention/Intercarrier Accord**

Since its foundation in 1929, the Warsaw Convention ("Convention") has controlled the liability of carriers in suits arising from international flights. Under the Convention, an air carrier is presumed liable for accidents involving passengers on international flights, but, in return, the carrier's liability is capped. Initially, the Convention limited a carrier's liability to roughly \$8,300 (U.S.). This limit was doubled in 1955 by the Hague Protocol, and then was increased again in 1966 by the Montreal Agreement, which set a compensation limit of \$75,000 (U.S.) per person for all flights to or from the United States. Because the United States did not sign the Guatemala City protocol of 1971, which further raised the liability limit to approximately \$136,000 (U.S.), the Montreal liability limit of \$75,000 (U.S.) has remained in force since 1966.

Under the Convention, the liability limit is applicable unless a plaintiff proves wilful misconduct by the air carrier. Recent high-profile accident cases litigated in the United States have demonstrated a willingness by courts to find the wilful misconduct exception satisfied where an airline or its employees committed an act or omission that they either knew or should have known would cause an accident, or recklessly disregarded whether the act or omission would cause an accident. See, e.g., *In re Air Crash Near Cali, Columbia* on December 20, 1995, No. 96-MD-1125, 1997 U.S. Dist. LEXIS 14247 (S.D. Fla. Sept. 11, 1997) (granting summary judgment on liability, and finding wilful misconduct); *In re Air Disaster at Lockerbie, Scotland*, 37 F.3d 804 (2d Cir. 1994), cert. denied, 513 U.S. 1126 (1995) (affirming jury's finding of wilful misconduct); *In re Korean Air Lines Disaster of Sept. 1, 1983*, 932 F.2d 1475 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991) (same).

In 1994, the International Air Transport Association ("IATA") began its pursuit of an agreement among its member airlines to raise the Warsaw Convention liability limits. By 1995, the IATA had executed several agreements, including The Intercarrier Agreement on Passenger Liability ("IIA") (otherwise known as the "Umbrella Accord") signed in Kuala Lumpur on October 21, 1995, and The Measures to Implement the IATA Intercarrier Agreement ("MIA"), which opened for signature in May of 1996. The IIA raises the carrier liability limit to approximately \$146,000 (U.S.). The MIA is the implementing force for the IIA, promulgating the specific action necessary to waive the limits provided in the IIA.

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Under the Convention, the liability limit is applicable unless a plaintiff proves willful misconduct by the air carrier. High-profile accident cases litigated in the United States have demonstrated a willingness by courts to find the willful misconduct exception satisfied where an airline or its employees committed an act or omission that they either knew or should have known would cause an accident, or recklessly disregarded whether the act or omission would cause an accident. See, e.g., *In re Air Crash Near Cali, Columbia* on December 20, 1995, No. 96-MD-1125, 1997 U.S. Dist. LEXIS 14247 (S.D. Fla. Sept. 11, 1997) (granting summary judgment on liability, and finding willful misconduct); *In re Air Disaster at Lockerbie, Scotland*, 37 F.3d 804 (2d Cir. 1994), cert. denied, 513 U.S. 1126 (1995) (affirming jury's finding of willful misconduct); *In re Korean Air Lines Disaster of Sept. 1, 1983*, 932 F.2d 1475 (D.C. Cir.), cert. denied, 502 U.S. 994 (1991) (same).

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## **1.2 The Montreal Convention**

The Warsaw Convention is in the process of being replaced as additional adherents deposit ratifications of the 1999 Montreal Convention. To date, eighty-three (83) nations have done so. When the United States did so as the thirtieth nation on 05 September 2003, the Convention had the requisite number so as to become binding on those signatories and it actually entered into force on 04 November 2003 for those ratifying states.

The Montreal Convention differs considerably from prior amendments to Warsaw in that it expressly prevails over the Warsaw system including subsequent revisions such as the Hague Protocol, Guatemala Protocol, and Montreal Protocols 1-4. Those treaties will no longer have any effect on international carriage governed by the new convention. The revisions engendered by the Montreal Convention on the Warsaw system are dramatic.

## **APPLICATION**

The Convention will apply to:

- Carriage between two (2) contracting parties; or
- When there is carriage within one (1) contracting party with an agreed stopping place in another state whether or not it is a party.
- Even though a country is not a party, its airline may be subject to the Convention

## **PASSENGER LIABILITY**

- The Montreal Convention preserves some of the language of the Warsaw Convention
- "The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (Art. 17.1)

## **TWO-TIERED LIABILITY ARTICLE 21.1**

- Article 21.1 – strict carrier liability up to 100,000 Special Drawing Rights (SDRs)
- For damages arising under paragraph 1 of Article 17 not exceeding SDR 100,000 for each

passenger, the carrier shall not be able to exclude or limit its liability.

- Pursuant to Article 21.2, the carrier can be liable for unlimited damages unless the carrier can prove:
  - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
  - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

#### **EXONERATION – ARTICLE 20**

- Passenger's contributory negligence can wholly or partially exonerate the carrier.

#### **PASSENGER DELAY – ARTICLE 19**

- The carrier is liable for damage occasioned by delay in the carriage of passengers, baggage or cargo.
- Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves:
  - That it took "all measures" that could reasonably be required to avoid the damage, or
  - That it was impossible for it to take such measures.
- Article 22.1 establishes a new limit of 4,150 SDRs for passenger delay.
  - Approximately \$5,600 USD

#### **JURISDICTION**

- The Four Traditional jurisdictions under Warsaw were:
  - Country where the airline is domiciled.
  - Country where airline has principle place of business.
  - Country where airline has a place of business through which the contract was made.
  - Country of final destination.
- In addition to the four jurisdictions available under Warsaw, Montreal provides that suit may also be brought:
  - In the country in which at the time of the accident, the passenger has his or her principal and permanent residence.
- That place also must be a place to or from which:
  - The carrier operates services for the carriage of passengers by air, either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement, and
  - In which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

#### **ADVANCE PAYMENTS – ARTICLE 28**

- In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons.

- Advance payments under Montreal shall not be considered a recognition of liability.
- Payments may be offset against amounts subsequently paid as damages by the carrier.

## DAMAGES/LIMITATIONS PERIOD

- Article 29 states that punitive, exemplary or any other non-compensatory damages shall not be recoverable.
- Article 35 maintains the two-year period of limitations for a legal action.

## 2 Modernization of the Rome Convention

A recent attempt by ICAO to modernize the Rome Convention was unsuccessful as the document was not presented to the general body during this past session and it appears it will not be amended and resubmitted for consideration at the next general session.

The proposal would have provided a liability regime for ground deaths, injuries and property damage similar to that for passengers as in the Montreal Convention.

## TWO-TIERED SYSTEM

- GENERAL LIABILITY SYSTEM in which the aircraft operator would be liable for ground damages (including death, bodily injury and property damage) without exclusion up to SDR 100,000 per claimant.
  - Above SDR 100,000: operator would not be liable if it proved:
    - a) the damage was not due to its negligence;
    - b) solely due to the negligence of a 3<sup>rd</sup> party.
- "ACTS OF UNLAWFUL INTERFERENCE" (TERRORIST ACTS OR HIJACKING)
  - Establishes a liability schedule based upon a six-tier, aircraft weight ratio.
  - The operator cannot exculpate itself because it was not negligent or because the accident was due solely to the negligence of a third party.

## ADDITIONAL REQUIREMENTS

- ADVANCE PAYMENTS, if required by national law (i.e., the EU Initiative), would make the airlines responsible for advance payments similar to those required by the Montreal Convention.
- NUCLEAR DAMAGE is compensable unless "the operator of a nuclear installation is liable for such damages."
- ENVIRONMENTAL DAMAGES are also contemplated.
- MENTAL INJURIES are not specifically excluded.

## 2. INTERNAL AND OTHER NON-CONVENTION CARRIAGE

### 2.1 General

Warsaw convention principles and limitations do not apply to domestic United States passengers, passengers' baggage and shipped cargo. A passenger is a "domestic United States passenger" if the passenger's ticket shows an origin and destination in the United States, and if the passenger's planned routing does not include any stops outside of the United States. The duty of care owed to a domestic passenger by an airline depends on whether the airline is acting as a common or contract carrier. As a general rule, airlines are operating as common carriers when they offer to carry passengers for hire at a uniform tariff price to the extent of available capacity on the aircraft.

The United States does not have a federal aviation statute governing the liability of carriers. Under the judge-made common law of the United States, common carriers have the legal duty to exercise the "highest degree of care" to avoid injuring a passenger. The "highest degree of care" standard requires an airline and its employees to exercise the highest degree of human care and foresight consistent with the practical operation and conduct of the airline in order to safeguard the airline's passengers from injury. See, e.g., *Krys v. Lufthansa German Airlines*, 119 F.3d 1515, 1527 (11th Cir. 1997), cert. denied, 118 S. Ct. 1042 (1998). Contract carriers, in contrast, are required to exercise an "ordinary degree of care" to avoid injuring passengers.

Common carriers are not held to the "highest degree of care" standard in every conceivable situation where a passenger might suffer injury as a result of the negligence of an airline or its employees. As a general rule, this elevated standard only applies from the time a passenger departs a safe place within the airline terminal to board an aircraft until the passenger reaches a safe place within the terminal at the conclusion of flight. Courts in the United States generally have held that the airline only owes the passenger the duty of ordinary care within the airline terminal.

With respect to liability for damage or destruction to passengers' baggage and shipped cargo, an airline can limit its liability through tariffs by imposing reasonable procedural requirements and timetables for bringing claims. For example, an airline in its tariff may set a dollar limit (typically on a per-bag or per-pound basis) on its liability for the loss or destruction of passenger baggage or shipped cargo. In contrast, airlines are prohibited under United States common law from placing dollar limits on the amount of their liability for passenger injury or death. Airlines also are permitted through tariffs to impose time limitations within which the passenger must give the airline written notice of a baggage or cargo claim, or file suit, provided the time period is not so short as to be unreasonable.

### 2.2 Choice of Law

Individual states within the United States often have statutes governing liability, defining standards of conduct, imposing statutes of repose, and limiting the economic and non-economic damages that may be recovered for injuries arising out of an accident. These statutes, together with the applicable judge-made common law, normally are the sources of the law of liability and damages that may apply in a given case. A threshold issue before courts in the United States, therefore, is to determine which state or jurisdiction's law of liability and damages to apply.

Traditionally, courts in the United States looked to the law of the place of the aviation accident as the source of law governing a defendant's liability to a claimant, including the amount and types of damages that could be recovered. However, most states now have abandoned this rule and instead have adopted the "most significant relationship or interest" approach of the Restatement (Second) of Conflicts of Laws, or some similar test. Under this approach to choice of law, it is possible

for courts to conclude that law from different jurisdictions (including foreign law) may apply to liability and damages issues, and to apply law from different jurisdictions to different parties in the same lawsuit.

In determining which state or jurisdiction has the “most significant relationship or interest” in the liability and damages issues, four primary factors typically are considered by United States courts: (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties involved in the litigation is centered. See, e.g., *David B. Lilly Co. v. Fisher*, 18 F.3d 1112, 1118 (3d Cir. 1994). In its application of these four factors, courts will weigh each of the factors according to their relative importance with respect to the particular liability or damages issue involved.

It is impossible to state a general or universal rule governing how much weight will be given to one or more of these four factors in a particular case. The weight that a court will attribute to each of these factors will vary from issue to issue and according to the fact patterns of the particular case. However, in analysing these factors in aviation cases, courts typically will place importance on the location of the crash, the residence(s) of the defendants, the residence(s) of the plaintiffs, the nature and purpose of the accident flight, the location(s) where any negligence occurred, the location(s) where the product(s) involved were designed and manufactured, and any other unique factors of significance to the particular accident.

### **2.3 Federal Tort Claims Act (“FTCA”)**

While there is no federal aviation liability statute in the United States, a federal statute called the Federal Tort Claims Act (“FTCA”) does provide a procedure under which the United States may be sued for its own negligence. In the aviation context, most of the claims brought against the United States arise out of alleged negligence of Federal Aviation Administration air traffic controllers. Examples of aviation cases in which FTCA claims against the federal government are common include mid-air and runway collisions, negligent handling of aircraft emergencies, and accidents arising from inadequate weather briefings, radar vectoring into adverse weather or terrain, inoperative navigation facilities, and incorrect aeronautical charts.

The FTCA provides that the United States is liable “for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.” 28 U.S.C. § 1346. However, the FTCA specifically prohibits recovery against the United States for many types of claims, including those: (a) arising in a foreign country; (b) arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war; (c) brought by persons killed or injured while engaged in an activity incident to that person's military service; and (d) arising from the consequences of negligent or wrongful conduct by government employees performing a “discretionary function.” 28 U.S.C. § 2680. In determining whether a government employee's negligence took place while performing a discretionary function, the courts distinguish between policy-making activities (which are discretionary functions for which claims may not be brought under the FTCA), and operational decision-making activities (which, if done in a negligent manner, such as by air traffic controllers, expose the government to liability under the FTCA).

Before the United States can be sued under the provisions of the FTCA, an administrative claim must be presented in a timely fashion to the appropriate Federal agency. 28 U.S.C. §§ 2401, 2675.

#### **2.3 (A) Multiparty, Multiforum Trial and Jurisdiction Act of 2002 (MMTJA)**

In November 2002, the MMTJA was signed into law. It applies to accidents occurring on or after 31 January 2003. The purpose of that act is to create a new basis of original jurisdiction for the Federal District Courts under the following requirements:

1. Minimal diversity between adverse parties. [Unlike general diversity jurisdiction under 28USC 1332, the MTJA only requires minimal diversity (one party on each side of the litigation).
2. Only applicable to cases arising from a single accident where at least 75 people perished.
3. Three conditions must be satisfied:
  - (i) Defendant resides in a State and a substantial part of the accident took place in another State.
  - (ii) Any two defendants reside in different States (multiple residences by defendants in the same State will not defeat this requirement).
  - (iii) Substantial parts of the incident took place in different States.
4. A Federal Court shall abstain from hearing any action where a substantial majority of all plaintiffs are citizens of a single State that being the same State where the primary defendants are also citizens and the claims asserted will be governed primarily by the laws of the State. The act provides for removal provisions. Cases removed to Federal Court can be removed to a Federal MDL Transfer Court. Lastly, the MDL transfer court may then adjudicate the case through final determination of liability but may require the remand to State Court for damage determination.

In the event the Court decides to remand to a State Court for damages, the parties are afforded the opportunity to appeal the liability determination to the applicable Federal Court prior to the remand occurring.

Overall, the MMTJA can be seen as a valuable tool ensuring that the Federal Courts retain a role in mass accident litigation. Working in conjunction with general MDL provisions, the new act aids consolidation of cases arising out of an accident for the purposes of pre-trial proceedings. While individual damage trials may still be possible, the act will cut down costs associated with defending multiple actions in multiple State Courts for deaths arising out of a single accident.

## 2.4 Jurisdiction Over Foreign Defendants

Foreign airlines and aircraft and component manufacturers may be sued in United States federal and state courts as a result of an air crash. A threshold issue that must be addressed by a United States court is whether it may exercise jurisdiction over the foreign airline or manufacturer. As a general rule, in order for a defendant to be subject to the jurisdiction of a United States court, the defendant must have minimum contacts with the forum in which the court sits. In deciding whether sufficient minimum contacts exist for the court to exercise jurisdiction, the court will conduct an inquiry into whether the defendant has engaged in "systematic and continuous" activity with the forum. Where the case arises from the defendant's specific contacts with the forum, the minimum contacts requirement will be satisfied if the defendant "purposely availed" itself of the benefits and protection of the forum's law. See, e.g., *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

An additional complication arises under circumstances where the foreign airline or manufacturer is owned by a foreign state or agencies and instrumentalities of a foreign state. Any litigation brought in the United States against a defendant owned by a foreign state is subject to a

federal law known as the Foreign Sovereign Immunities Act ("FSIA"), codified at 28 U.S.C. ' 1602 et. seq. The FSIA limits the circumstances under which state and federal courts may have subject matter jurisdiction over actions brought against a foreign state or its agencies and instrumentalities. Under the FSIA, a foreign state is defined as both a political subdivision of a foreign state or an agency or instrumentality of a foreign state. An "agency or instrumentality" of a foreign state includes an entity which is an organ of a foreign state or a political subdivision thereof, or an entity a majority of whose shares or other ownership interests is owned by a foreign state or its political subdivision. 28 U.S.C. ' 1603.

In general, the FSIA provides that a foreign state is immune from the jurisdiction of the federal and state courts in the United States except under certain limited exceptions. These exceptions include the following: (a) when the foreign state has waived its immunity either explicitly or by implication; and (b) when the legal action is based upon a commercial activity carried on in the United States by the foreign state, or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere, or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that causes a direct effect in the United States. 28 U.S.C. ' 1605. Congress added an exception for international terrorism in 1996.

Entities that are qualified as foreign states that are sued in state courts in the United States have the right under the FSIA to remove their suit from state to federal court, and to have the case tried by the federal court without a jury. 28 U.S.C. ' 1441(d).

### **3. GENERAL AVIATION**

#### **3.1 General Aviation Revitalization Act of 1994**

On August 17, 1994, President William J. Clinton signed into law the General Aviation Revitalization Act of 1994 ("GARA"). 49 U.S.C. ' 40101 note (1994). Congress passed this 18-year statute of repose to curb excessive product liability costs and to spur the resurgence of the general aviation industry. Under GARA, "[n]o civil action . . . arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft [or the component]" if the accident occurs more than eighteen (18) years after the date of delivery of the aircraft, or after the replacement of an old part with a new part. GARA supersedes state law to the extent state law would permit the barred action, and applies to aircraft with seating capacities of fewer than twenty seats.

GARA's 18-year repose period is not applicable in four explicit situations. GARA does not apply in cases where the injured person was a passenger for the purpose of receiving treatment for a medical or other emergency, or where the injured person was not aboard the aircraft at the time of the accident. GARA also does not apply in an action brought under written warranty. Finally, GARA is not applicable in cases of manufacturer fraud. Specifically, GARA's "knowing misrepresentation" exception bars GARA's application when a claimant proves that the manufacturer knowingly misrepresented, withheld, or concealed from the Federal Aviation Administration required information that is material and relevant to the performance, maintenance, or operation of the aircraft or its components, and where it is shown that the misrepresentation was causally related to the harm incurred.

GARA appears to have achieved the effect intended by the United States Congress. Since the inception of the act, the aviation manufacturing community has made a concerted effort to defend only those cases where there would be merit under the statute. This course of conduct has resulted in sixty-one favourable rulings to date (both Federal and State) from twenty separate U.S. jurisdictions. Initial reports by manufacturers have been positive, some reporting a 50% reduction in the number of lawsuits from those filed during the five-year period preceding GARA's passage in 1994.

Indeed, the fact that roughly 85% of the American general aviation fleet is more than 18 years old (as of 1996), the reduction in the number of filed claims is not surprising. GARA also appears to have revitalized the manufacturing industry. For example, The Cessna Aircraft Company, which recently renewed production of single-engine general aviation aircraft in a new state-of-the-art manufacturing facility, delivered 618 piston and turbine-driven aircraft in 1997, and currently has a backlog of orders valuing approximately \$2.8 billion for 1998. See Edward H. Phillips, *Cessna Reports Record Sales Deliveries, Av. Wk. & Space Tech.*, Feb. 16, 1998, at 49. Other manufacturers are thriving as well. For example, the General Aviation Manufacturing Association ("GAMA") announced that 1997 was a record year, with industry billings at \$4.7 billion, up from \$3.1 billion in 1996. GAMA also noted that the sales in the piston-driven market jumped 64.2%. *General Aviation Billings Hit Record in 1997, Av. Daily*, Feb. 13, 1998, at 260.

One side effect of GARA has been an increase in suits against Fixed Base Operators (FBO's) for maintenance issues. Plaintiffs have, over the last several years attempted to attack and erode one of the tests utilized under GARA by claiming changes to the manual fall within the eighteen (18) year time frame.

Lastly, in recent years, plaintiffs have tried to avoid the GARA bar by invoking the statutory exception for the knowing misrepresentation or concealment of "required information" from the FAA that is causally related to the accident. They have had mixed success doing so. On the pro-plaintiff side are *Butler v. Bell Helicopter Textron, Inc.*, 109 Cal. App. 4th 1073, 135 Cal. Rptr. 2d 762 (2003), and *Robinson v. Hartzell Propellers, Inc.*, — F. Supp. 2d —, 2004 WL 1626 175 (E.D. Pa. July 21, 2004), *appeal pending*, No. 04-3379 (3d Cir.) In *Butler*, the court agreed with plaintiffs that Bell could be required to report to the FAA accidents involving a military model that was a sibling to accident helicopter despite the fact that military helicopters are not certificated by the FAA and flown in a harder manner than is typical of civilian aircraft. The case is now back in the trial court for determination, among other things, on whether the Bell was excused from reporting the military incidents on the ground of aircraft misuse. The trial court in *Robinson* denied Hartzell's motion for summary judgment finding, among other things, that plaintiffs had a triable claim on whether Hartzell had misled the FAA during the certification of the propeller model on the need for an operating limitation on its use. The court reached this conclusion even though the FAA in intervening years had imposed an operating limit on the operating limit on the propeller. This decision is troubling because it treats an alleged "misrepresentation" during type certification as a sort of original sin that can never be corrected by subsequent remedial measures by the manufacturer and the FAA.

On the other side, appeals are pending in several cases where trial courts quite rejected plaintiffs' attempts to invoke the misrepresentation section on the basis of vague and conclusory evidence. In *La Haye v. Galvin Flying Service, Inc.*, No. C01-0982L (W.D. Wash., May 2, 2003), *appeal pending*, 04-35136 (9th Cir.), the court trial rejected the contention on the ground that there was no evidence that the manufacturer had subjectively found that there was a defect. In *Hinkle v. Riley Aviation Inc.*, No. 9603161-NP (Mich. Cir. Ct., Branch County, Aug. 11, 1999), *appeal pending*, No. 247099 (Mich. Ct. App.) (scheduled for argument Oct. 19, 2004), the trial court, contrary to *Robinson*, refused to find a triable claim of fraud in the original type certification of the aircraft when the accident aircraft had been substantially modified by later owners. The courts in *Don Carlos v. Cutter Aviation Deer Valley, Inc.*, No. CV 2000-01857 2 (Ariz. Super. Ct., Maricopa County, May 29, 2003), *appeal pending* No. 1 CA-CV 03-0647 (Ariz. Ct. App., Div. 1) (scheduled for argument on Sept. 22, 2004), and *Costello v. Cessna Aircraft Corp.*, Civil Action No. 01-2684 (W.D. La., June 1, 2004), *appeal pending*, No. 04-30655 (5th Cir.), found the conclusory opinions of plaintiff's retained experts insufficient. Finally, in *Willett v. Cessna Aircraft Co.*, No. 00 L:807 2 (Ill. Cir. Ct., Cook County, Dec. 21, 2001), *notice of appeal filed* (Ill. App. Ct.), the court quite correctly refused to wade through a 500-page deposition in another case to determine if plaintiff had a triable claim.

### 3.2 "Ultralight" Regulations

The Federal Aviation Administration ("FAA") has promulgated rules governing the operation of ultralight vehicles in the United States. The FAA publishes these rules in Part 103 of the Federal Aviation Regulations ("FAR"). An "ultralight vehicle" is defined as a vehicle that is used by a single occupant for sport or recreation purposes only, or a vehicle that does not have any U.S. or foreign airworthiness certificate. Additionally, the ultralight must weigh less than 155 pounds if unpowered or, if powered, must weigh less than 254 pounds and carry less than 5 gallons of fuel. Powered ultralights also must be capable of no more than 55 knots and possess a power-off stall speed of no more than 24 knots.

Vehicles meeting the "ultralight" definition need not meet the airworthiness certification standards specified for aircraft, and need not have certificates of airworthiness. 14 C.F.R. ' 103.7. Nevertheless, ultralights must abide by the operating rules promulgated in Part 103. Ultralights must not conduct "hazardous" operations and must operate only during daylight hours. 14 C.F.R. " 103.9, 103.11. Ultralights also must give way to aircraft and must not operate in congested areas. 14 C.F.R. " 103.13, 103.15. Additionally, the FAA requires that ultralights be operated only in visual meteorological conditions, and further requires ultralights to meet specified visibility and distance from cloud requirements, as shown in a table in Part 103. 14 C.F.R. ' 103.23. Operators of ultralights are not required to have airman certificates. 14 C.F.R. ' 103.7.

#### 4. THIRD PARTY LIABILITY

A few states have statutes that impose strict liability on aircraft owners and lessees for injuries or property damage caused to non-passengers by flight operations. See Del. Code Ann. tit. 2, ' 305; Haw. Rev. Stat. ' 263-5 (presuming liability for non-commercial operations; imposing absolute liability for commercial operations); Minn. Stat. ' 360.012; N.J. Stat. Ann. ' 6:2-7; S.C. Code Ann. ' 55-3-60; Vt. Stat. Ann. tit. 5, ' 479. The Restatement (Second) of Torts, which has been influential in the development of law in the United States on other issues, adopts a similar view, imposing liability on the aircraft operator (and owner, if the owner has permitted the operation) for injuries caused "even though [the operator or owner] has exercised the utmost care." Restatement (Second) of Torts ' 520A. This approach reflects the ultrahazardous nature of aviation that was perceived in the early days of flight. Unlike passengers, those injured on the ground were thought to have had no opportunity to avoid the risk. See *id.* cmts. c, d.

The modern trend, however, is away from strict liability. See, e.g., *Crosby v. Cox Aircraft Co.*, 746 P.2d 1198, 1200 (Wash. 1987). Most states now require those injured on the ground to establish a failure to exercise reasonable care before an owner, lessee, or operator will be found liable. *Id.*

#### 5. MANDATORY INSURANCE REQUIREMENTS

Mandatory insurance requirements are determined by the federal government's Department of Transportation and published at 14 C.F.R. Part 205. U.S. and foreign direct air carriers (including commuter air carriers) must maintain the following minimum coverage, which may be maintained through a self-insurance plan: (a) for bodily injury to or death of third parties (i.e., non-passengers) and for damage to property, coverage of \$300,000 per person per occurrence and a total of \$20,000,000 per aircraft per occurrence (\$2,000,000 for aircraft with not more than 60 seats or 18,000 pounds maximum payload capacity); and (b) for bodily injury to or death of passengers, coverage of \$300,000 for any one passenger and a total per aircraft per occurrence of \$300,000 multiplied by 75 percent of the number of passenger seats installed in the aircraft.

Alternatively, the air carrier may carry single-limit coverage in an amount sufficient to meet the combined minimum requirements stated above. Lower minimum coverage requirements

apply to air taxi operators.

## 1. TRIA

After the tragic events of 11 September 2001 and the ensuing chaos in the aviation insurance market, aviation underwriters lost any appetite they may have ever had for insuring against terrorist-related risks.

When the insurance market invoked the seven (7) day cancellation notice post 11 September 2001, the airlines faced the possibility of a complete shutdown of operations. In the U.S., the government stepped in and established the Terrorism Risk Insurance Act (TRIA) which provides that, after absorption of a primary risk by insurers (\$50M), the USA would step-up as a reinsurer of claims in excess of that primary risk. The primary insurers, after qualifying as a TRIA insurer subsequent to TRIA Section 102 (6) and Treasury's implementing regulations (31 C.F.R. § 50.11(f)) is permitted to handle the claims arising from the incident and, subsequently, filing its own claim for reimbursement to the government (subject to certain "good faith" obligations and documentary support).

To date, the United States is the only governmental entity to provide such support to the aviation and aviation insurance markets.

## 6. CLAIMS

### 6.1 General Level of Awards

Verdict and settlement figures continue to rise throughout the United States. This trend is not limited to aviation related cases alone; with significant awards being returned in tobacco, asbestos, and medical malpractice cases.

In general, awards in the United States have increased between 25% and 30% since 1998. The number of recent aviation cases illustrate how this trend has manifested itself. While these levels of verdict range increases are not predictable for all fifty states, a number of recent aviation cases illustrate how this trend has manifested itself in the jurisdictions cited.

In August 2001, a Pensacola, Florida jury awarded \$80 million in compensatory damages and \$400 million in punitive damages to three plaintiffs injured in the 1989 crash of a Cessna 185. The claim against Cessna focused on the pilot seat rails which were alleged to have slipped, causing the loss of control of the aircraft while on final approach. The case settled for a confidential sum during the pendency of a motion for a new trial,

Next, a number of cases stemming from the June 1999 loss involving an American Airlines MD Super 80 which ran off the runway after landing in a severe thunderstorm in Little Rock, Arkansas, were tried resulting in the following verdicts;

A 20-year-old music student who was burned in the accident received an award of \$11 million.

A Warsaw passenger who suffered a relatively minor knee injury claimed significant post traumatic stress disorder. The jury believed the plaintiff's expert testimony concerning post traumatic stress disorder and awarded \$6.5 million.

Recently, the Eighth Circuit Court of Appeals conditionally reversed the trial court presenting the plaintiff with the option of accepting a reduced award of \$1.5 million or proceeding to a

new trial.

A 62-year-old man who suffered head, neck and shoulder injuries, together with post traumatic stress disorder, depression and low self esteem was awarded £ 6.2 million. This case is presently on appeal.

In two other cases tried to verdict as a result of the aforementioned American Airlines loss, Little Rock, Arkansas juries returned awards of \$5.7 and \$3.5 million respectively. These cases involved relatively minor physical injuries and claims of significant psychological injuries. Appeals are pending in both of these cases.

This trend of larger verdicts has not been confined to passenger liability cases against only airlines. Just recently a Federal jury in Pittsburgh, Pennsylvania awarded a verdict assessing 75% against the manufacturer — Parker Hannifin and 25% against Boeing for claims asserted by USAIR and its insurers with respect to the settlements paid on behalf of USAIR to passengers for USAIR Flight 427. Total damages had been stipulated at \$309,000,000.

The California Lawyer reports that two cases before the California Supreme Court could significantly change the way punitive damage awards are handled in at least California. California cases should clarify how state courts “treat punitive damage awards...when grossly disproportionate to the harm suffered by the plaintiff, depriving defendants of their constitutional rights of due process.” “State Farm Mutual Auto Insurance Company v. Campbell, 538US408 (2013). The Campbell court suggested that a four to one ratio of punitive to compensatory damages would be adequate in most cases whereas a ratio greater than nine to one was likely to be unconstitutional. Governor Schwarzenegger proposes to overturn 75% of all punitive damage awards in California and those funds would be used for the public benefit. This form of taxation, similar to Georgia’s law of 75% is not highly policed by the State’s judiciary. Some states, such as Alaska and North Carolina, limit the recovery of the punitive award to approximately three times compensatory damages.

The median award of the ten largest cases, 1997 to 2003, shows that the earlier awards in 1997 were \$53,000,000 as the average. This contrasts to 2002 and 2003, which had \$388,100,000 and \$351,000,000 respectively.<sup>1</sup>

Disproportionate awards such as *Garcia v. Avjet* and *Witham v. Avjet*, before the same court, Los Angeles Superior Court, California awarded verdicts of \$850,000 to the Estate of two brothers killed in the accident. These brothers were in their mid twenties, emancipated with no dependants. Within the same trial, the parents of a 22-year-old female with no dependants received an award of \$4,500,000 each.

## 6.2 State Statutes of Repose

Many states have statutes of repose that potentially affect litigation against aircraft and component manufacturers. A statute of repose bars any claim beyond a certain period, usually measured in terms of years since purchase or first use, or in terms of the useful life of the product. State statutes of repose supplement the federal scheme, potentially offering greater protection to manufacturers than available under GARA alone.

As discussed in Section 3.1 above, GARA bars civil tort actions arising from general aviation aircraft accidents that occur more than eighteen years after the date of the product’s delivery. See General Aviation Revitalization Act of 1994, 49 U.S.C. § 40101 note (1994). GARA explicitly pre-empts any state law that would permit the tort action to which the federal law applies. Most states’ statutes of repose pre-date GARA’s passage.

Generally, state statutes of repose apply to all product liability actions, extending well beyond GARA's express applicability to general aviation accidents. Only the North Dakota statute is specific to the general aviation manufacturing industry. See N. D. Cent. Code ' 28-01.4-04 (1997). Typically, state statutes of repose are based on the useful safe life of the product, or on a specified time period, usually between five and fifteen years.

Many of the state statutes contain specific exceptions. For example, the Colorado statute does not apply to injuries arising from hidden defects, prolonged exposure to hazardous material, or intentional misrepresentation or fraudulent concealment of a material fact concerning the product. See Colo. Rev. Stat. ' 13-80-107 (1987). In Colorado, the statute of repose also may be overridden by an express warranty that extends beyond the time bar.

In a number of states, the constitutional validity of statutes of repose has been challenged. Many of these challenges have been based on state and federal constitutional guarantees of due process, equal protection and, most frequently and successfully, access to the courts. See, e.g., Carr v. Beech Aircraft Corp., 758 F. Supp. 1330 (D. Ariz. 1991) (holding that Arizona's statute of repose did not violate the guarantees of due process or equal protection); Hazine v. Montgomery Elevator Co., 861 P.2d 625 (Ariz. 1993) (holding that Arizona's statute of repose violated the state constitution's provision guaranteeing a plaintiff's right to recovery).

In Illinois, the law containing the statute of repose recently has been voided, although this decision was not based on the validity of the time bar itself. See 735 Ill. Comp. Stat. 5/13-213 (West 1992). In Best v. Taylor Machine Works, 689 N.E.2d 1057, 1063 (Ill. 1997), the Supreme Court of Illinois found that several provisions of the law (not including the statute of repose) violated the Illinois Constitution and held the statute void in its entirety due to the non-severability of the unconstitutional provisions.

The state statutes of repose that remain in effect as of June, 1998 are summarized in the table attached as Appendix "B."

### **6.3 Death On The High Seas Act ("DOHSA")**

Under the Death on the High Seas Act (ADOHSA), when a death occurs on the high seas (beyond a marine league from the shore of any state), the decedent's personal representative may maintain a cause of action in the district courts of the United States for the exclusive benefit of the decedent's wife, husband, parent, child or dependant relative. 46 U.S.C. App. ' 761. Thus, DOHSA authorizes a cause of action only for these specified surviving relatives of the decedent. DOHSA also limits the recovery of damages to only those that are pecuniary. 46 U.S.C. App. ' 762.

In *Zicherman v. Korean Air Lines Co.*, 516 U.S. 217 (1996), the Supreme Court held that when an airplane crash occurs on the high seas, DOHSA (rather than state law) supplies the underlying substantive law and that a claimant may not recover for loss of society due to DOHSA's bar on the recovery of non-pecuniary (or non-monetary) damages. In *Dooley v. Korean Air Lines Co.*, No. 97-704 (U.S. June 8, 1998), the Supreme Court held that DOHSA provides the exclusive recovery for deaths on the high seas, and that surviving relatives cannot recover for a decedent's pre-death pain and suffering under general maritime law. The effect of *Dooley* is to resolve the split among the United States Courts of Appeals as to whether a claimant can recover via a general maritime survival action for deaths occurring on the high seas.

The resolution of the scope of damages issue by the Supreme Court in *Dooley* may not permanently resolve this highly-contested damage issues arising with DOHSA's application. The United States Congress currently is considering legislation governing the types of damages available in cases arising from aviation accidents on the high seas. As of June of 1998, two bills addressing the proper measure of damages in cases governed by DOHSA are making their way through Congress. In the United States House of Representatives, H.R. 2005 was reported favourably by the House Committee on Transportation and Infrastructure and passed the House on July 28, 1997. The bill was then sent to the Senate, where it was referred to the Senate Committee on Commerce and later, the Senate Subcommittee on Surface Transportation.

H.R. 2005 seeks to amend Title 49 of the U.S. Code by providing that DOHSA does not apply to aviation incidents. Thus, DOHSA's generally recognized prohibition on non-pecuniary damages -- including pre-death pain and suffering -- no longer would apply in aviation cases. The change in the controlling law would apply to all pending cases in which the trial court has not yet rendered a final decision. The House Committee on Transportation and Infrastructure stated that the retroactive nature of H.R. 2005 was politically important in light of the TWA 800 accident and other disasters. According to the Committee on Transportation and Infrastructure, H.R. 2005 helps to ensure that families of airline accident victims receive fair treatment under the law.

The United States Senate also is considering a bill, S. 943, that would allow the recovery of non-pecuniary damages in cases involving death on the high seas. Although S.943, like H.R. 2005, would allow the recovery of a broad range of non-economic damages, S.943 achieves this objective in a different way.

Under S. 943, aviation accidents still would be covered by DOHSA. However, a claimant expressly would not be precluded from recovering damages otherwise available under common law or under any state law. The Senate bill has not yet passed, and remains under consideration. As of June of 1998, both S. 943 and H.R. 2005 are with the Senate Subcommittee on Surface Transportation. Although hearings were held on April 21, 1998, a consolidated form of these bills has not yet reached the United States Senate for passage.

In March of 2000, Congress passed a bill amending DOHSA. The amendment is retroactive to July 16, 1996, the day before TWA Flight 800 crashed off the shore of Long Island. The amendments rendered DORSEt applicable in the event death resulted from a commercial aviation accident occurring on the high seas beyond twelve nautical miles from the shore of any state or the District of Columbia or the territories or dependencies of the United States.

The amendments also provide for the recovery of nonpecuniary damages for wrongful death of a decedent but expressly exclude the recovery of punitive damages.

"Nonpecuniary damages" are defined to mean **damages** for loss of care, comfort, and companionship.

#### 4. DVT Claims

Deep vein thrombosis continues to have successful rulings. *Witty v. Delta Air Lines, Inc.* 366 F.3d 380 (5<sup>th</sup> Cir.2004) and *Blanchett v. Continental Air Lines*, U.S. Court of Appeals for the Fifth Circuits, M03-40545, filed July 21, 2004 and decided in August 2004.

In both cases, the rulings were positive for the airlines, preempting the warnings necessary by the airlines relative to DVT. In *Witty*, the court went further to state that the configuration of the aircraft seating is also Federally preempted.

Meanwhile, in California, where more DVT cases are pending than in any other state, the legal community is awaiting the decision of the Ninth Circuit Court of Appeals in Rodriguez v. Ansett Australia Ltd., et al. That case involves an appeal from a decision of the US District Court for the Central District of California granting summary judgment in favor of Air New Zealand on the ground that plaintiff's DVT was not caused by an Article 17 "accident," i. e., an unexpected or unusual happening or event external to the passenger.

Also of significant interest are approximately 24 DVT cases pending in the US District Court for the Northern District of California before Judge Vaughn Walker. In June 2004, the Judicial Panel on Multidistrict Litigation granted plaintiffs' request to consolidate all federal DVT litigation (arising from international or domestic travel) before Judge Walker for consolidated pre-trial proceedings. Thus, cases beyond those that were originally pending in the Northern District may also be transferred there.

Judge Walker had denied motions to dismiss filed by several airline defendants on the ground that the issue of whether a failure to give DVT warnings constitutes an accident "is particularly fact-intensive" and thus, cannot be determined on a motion to dismiss. However, the Court recently requested supplemental briefing in connection with defendants' motions for reconsideration in light of the Blansett decision.

It will no doubt be interesting to see how the Ninth Circuit and the Northern District of California react to the decisions of the Fifth Circuit in Blansett (international travel) and Witty (domestic travel).

## 7. SOCIAL SECURITY AWARDS

There is no scheme for the government to support those incapacitated by an aviation-related injury, other than various federal and state programs that provide assistance to indigent persons generally.

## 8. PRODUCT LIABILITY

### 8.1 Product Liability Theories

Product liability claims may be brought under negligence, strict liability, or breach of warranty theories. Under a negligence theory, a plaintiff must show that the product manufacturer or seller failed to exercise reasonable care in designing, manufacturing or selling the product, and that the plaintiff sustained damage as a result. Thus, the focus under a negligence theory is on the defendant's conduct and whether that conduct was a legal cause of the plaintiff's damages.

In contrast, under a strict liability theory the focus is on the product and whether it was defective and unreasonably dangerous. Restatement (Second) of Torts ' 402A. A defendant may be liable under this theory despite having exercised all possible care in designing and producing the product. The rationale behind the imposition of liability without fault is to encourage manufacturers and sellers to increase the safety of their products, while imposing the costs of any injuries on the parties who are best able to insure against, absorb, or pass-on the costs. *Id.* cmt. c; see also *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 866 (1986).

The strict liability doctrine is set forth in Section 402A of the Restatement (Second) of Torts, which has been adopted by the overwhelming majority of states. A Restatement (Third) of Torts: Product Liability was published by the American Law Institute in May of 1998, but has not yet been widely adopted by the states. The most controversial change in the new Restatement is the requirement that a plaintiff must prove that a reasonable alternative design was feasible in order to prevail on a defective design claim. Restatement (Third) of Torts: Product Liability ' 2( b).

Warranty claims are governed by Article 2 of the Uniform Commercial Code (U.C.C.), which has been adopted by every state except Louisiana. Warranty claims may arise from an express warranty issued by the product seller or from warranties implied by law. The most commonly-invoked implied warranties are the warranty of merchantability, which warrants that the product is fit for the ordinary purposes for which such products are used, and the warranty of fitness, which warrants that the product is reasonably fit for a particular purpose if the seller had reason to know of both the particular purpose and the buyer's reliance upon the seller in selecting the product for that purpose. U.C.C. " 2-314, 2-315. Implied warranties may be disclaimed or modified, as long as the disclaimer or modification is conspicuous and not unconscionable. Id. " 2-302, 2-316.

## 8.2 Government Contractor Defence

A military contractor will not be held liable for product design flaws that cause damage if the contractor is able to prove that the design was approved by the government. *Boyle v. United Technologies Corp.*, 487 U.S. 500, 512-13 (1988). This defence is derivative of the government's immunity for discretionary functions, such as the procurement of military equipment. Because the government is immune from suit, the United States Supreme Court has determined that it would make little sense to hold the contractor liable for injuries caused by a design approved by the government.

To establish the defence, the contractor must show that: (1) the federal government approved reasonably precise specifications; (2) the product was built in accordance with those specifications; and (3) the contractor warned the government about any dangers in the use of the product that were known to the contractor but not to the government. Id. at 512. Most recently courts have been reluctant to permit a contractor to assert the defense unless the contractor can prove the government approved the specific design feature in question as part of a meaningful review process. See, e.g., *Snell v. Bell Helicopter Textron*, 107 F.3d 744 (9th Cir. 1997); *Oliver v. Oshkosh Truck Corp.*, 96 F.3d 992 (7th Cir. 1996), cert. denied, 117 S. Ct. 1246 (1997).

The case of *Densherger v. United Technologies* was recently decided by the Second Circuit Court of Appeals. The court affirmed the District Court jury verdict of \$219 million for the death of four U.S. Army officers and injuries to the pilot and one passenger of the Blackhawk helicopter. The helicopter crashed due to an unacceptable "asymmetrical right lateral center of gravity". This suspected lateral CG imbalance is thought to have resulted at least in part from the presence of unequal fuel loads in the right and left external support system kit, a removable system of horizontal supports affixed to the side of the helicopter from which two 230 gallon auxiliary external fuel tanks were suspended. The helicopter and "ESSS" kit were manufactured by United Technologies. The jury found UTC liable in negligence for failing to warn the Army that the helicopter could become uncontrollable during foreseeable flight conditions. The jury rejected all other grounds of liability including those based on failure to warn under the strict liability and implied warranty theories.

The appellate court affirmed the jury findings indicating that LJTC did in fact have a duty to warn the Army of the possibility of the asymmetrical center of gravity condition which could result from the use of the ESSS kit.

UTC appealed, claiming that the Army knew of the relevant dangers and therefore UTC could not be liable for failure to warn. The appellate court rejected this argument and affirmed the jury verdict.

It is likely that UTC will appeal to the United States Supreme Court claiming that the Second Circuit Court of Appeals decision is in direct conflict with *Boyle v. UTC*, a case decided by the Supreme Court, which established the Government Contractor Defense.

**9. AIR TRAFFIC CONTROL**

The United States Department of Transportation's Federal Aviation Administration ("FAA") provides air traffic control and related services to aircraft flying in United States airspace. The airspace up to 60,000 feet is controlled by Air Route Traffic Control Centers ("ARTCCs"), which, in turn, delegate portions of their airspace to Air Traffic Control Towers ("ATCTs") with Approach Control functions (e.g., TRACONS, RAPCONS).

Airports in the United States are both publicly and privately owned. Some airports are owned and operated by inter-county or inter-state governmental compacts (e.g., the Metropolitan Washington Airports Authority, which is made up of Virginia, Maryland, and the District of Columbia).

Airports may have control towers or may be non-towered airports. The FAA decides on the basis of such things as traffic density, location, and airport complexity whether to provide a control tower. Where the FAA does not choose to place a control tower, the airport owners may provide their own control tower, known as a non-federal control tower. Air traffic control procedures are governed by the Air Traffic Control Handbook (Order 7110.65). Judge-made common law (from litigated cases) supplements the Air Traffic Control Handbook provisions.

The United States is liable (with specified conditions and limitations) under the provisions of the Federal Tort Claims Act ("FTCA") for the negligent acts or omissions of federally-employed air traffic controllers. The air traffic controllers, themselves, are immune from personal liability for acts or omissions within the scope of their employment. The laws are different with respect to non-federal control towers and their personnel. Air traffic controllers, like pilots, are licensed by the FAA.

## Appendix A

PROGRESS OF CARRIERS SIGNATORY TO IATA INTERCARRIER AGREEMENT (IIA) ON PASSENGER LIABILITY ( <i>As of April 1, 1998</i> ) <sup>1</sup>			
NO.	NAME OF CARRIER	SIGNED MIA	LIABILITY WAIVED
1.	Aer Lingus plc	No	No
2.	Aerolineas Argentinas S.A.	No	No
3.	Aeromexpress	No	No
4.	Aerovias de Mexico, S.A. de C.V. (Aeromexico)	No	No
5.	Air Afrique	Yes	No
6.	Air Aruba	No	No
7.	Air Baltic Corporation SIA	Yes	No
8.	Air Canada <sup>2</sup>	Yes	Yes
9.	Air Excel Commuter	No	No
10.	Air France <sup>2</sup>	Yes	Yes
11.	Air Mauritius	No	No
12.	Air New Zealand	Yes	No
13.	Air Pacific Limited	Yes	No
14.	Air UK Group Limited	No	No
15.	Air Vanuatu	No	No
16.	Alaska Airlines	Yes	Yes
17.	Alitalia	No	No
18.	All Nippon Airways Co., Ltd. <sup>3</sup>	No	Yes
19.	Allegheny Airlines, Inc.	Yes	No
20.	America West Airlines, Inc.	Yes	No
21.	American Airlines <sup>2</sup>	Yes	Yes
22.	America Trans Air, Inc. <sup>2</sup>	Yes	Yes
23.	Asiana <sup>4</sup>	No	Yes
24.	Augsburg Airways GmbH	No	No
25.	Austrian Airlines <sup>3</sup>	Yes	Yes
26.	Avianca <sup>2</sup>	Yes	Yes
27.	Azerbaijan Hava Yollary	No	No
28.	Braathens S.A.F.E.	No	No
29.	British Airways p.i.c. <sup>2</sup>	Yes	Yes
30.	British Midland <sup>3</sup>	No	Yes
31.	British Regional Airlines <sup>3</sup>	No	Yes
32.	Canadian Airlines International <sup>2</sup>	Yes	Yes
33.	Cathay Pacific Airways, Ltd. <sup>2</sup>	Yes	Yes
34.	Central Mountain Air Ltd.	Yes	No
35.	Cimber Air A/S	No	No
36.	Compagnie Air France Europe	Yes	No

37.	Continental Airlines Inc. <sup>2</sup>	Yes	Yes
38.	Continental Express	Yes	No
39.	Continental Micronesia <sup>2</sup>	Yes	Yes
40.	Croatia Airlines	No	No
41.	Crossair	Yes	No
42.	CSA - Czech Airlines	Yes	No
43.	Delta Airlines, Inc. <sup>2</sup>	Yes	Yes
44.	Deutsche BA Luftfahrtgesellschaft mbH	Yes	No
45.	Deutsche Lufthansa AG <sup>2</sup>	Yes	Yes
46.	Egyptair	No	No
47.	Emirates	No	No
48.	Eurowings Luftverkehrs AG	No	No
49.	Finnair OY <sup>5</sup>	Yes	Yes
50.	Garuda Indonesia	No	No
51.	GB Airways	Yes	Yes
52.	Hawaiian Airlines <sup>2</sup>	Yes	Yes
53.	Heli Air AG	Yes	No
54.	Icelandair <sup>5</sup>	No	Yes
55.	Japan Air Charter (JAZ) <sup>2</sup>	No	Yes
56.	Japan Air System <sup>2</sup>	No	Yes
57.	Japan Airlines Co. Ltd. <sup>2</sup>	No	Yes
58.	Japan Asia Airways <sup>2</sup>	No	Yes
59.	Jet Airways (India) Pvt. Ltd.	No	No
60.	Kenya Airways	Yes	No
61.	Kiwi International Air Lines	Yes	No
62.	KLM City Hopper B.V. <sup>5</sup>	No	Yes
63.	KLM Royal Dutch Airlines <sup>5</sup>	Yes	Yes
64.	Korean Air Lines Co., Ltd. <sup>2</sup>	Yes	Yes
65.	LAPSA Lineas Aereas Paraguayas	No	No
66.	Lauda Air Luftfahrt AG	Yes	Yes
67.	Luxair	Yes	No
68.	Maersk Air A/S	Yes	Yes
69.	Maersk Air Ltd.	Yes	No
70.	Malaysia Airlines <sup>2</sup>	Yes	Yes
71.	Malev Hungarian Airlines Public Ltd.	No	No
72.	Manx Airlines <sup>3</sup>	No	Yes
73.	Martinair Holland N.V. <sup>5</sup>	No	Yes
74.	Midwest Express Airlines, Inc.	Yes	No
75.	Northwest Airlines, Inc. <sup>2</sup>	Yes	Yes
76.	Pakistan International Airlines (PIA)	No	No

77.	Piedmont Airlines, Inc.	Yes	No
78.	Polskie Linie Lotnicze - Polish Airlines	No	No
79.	PSA Airlines, Inc.	Yes	No
80.	Qantas Airways Ltd.	Yes	Yes
81.	Reeve Aleutian Airways, Inc.	Yes	No
82.	Regional Airlines	No	No
83.	Royal Air Maroc	Yes	Yes
84.	SABENA	Yes	No
85.	Saudi Arabian Airlines Corp.	No	No
86.	Scandinavian Airlines System (SAS) <sup>2, 5</sup>	Yes	Yes
87.	Singapore Airlines Ltd.	Yes	Yes
88.	South African Airways	No	No
89.	Swissair <sup>2, 5</sup> - Belair - Crossair	Yes	Yes
90.	TACA	No	No
91.	TAP Air Portugal	Yes	No
92.	TAT European Airlines	Yes	No
93.	Tower Air <sup>3</sup>	No	Yes
94.	Trans World Airlines Inc. (TWA) <sup>2</sup>	Yes	Yes
95.	Transavia Airlines C.V. <sup>5</sup>	Yes	Yes
96.	Transbrasil S/A Linhas Aereas	Yes	No
97.	Trinidad & Tobago BWIA International	No	No
98.	Turk Hava Yollari A.O. (Turkish Airlines)	Yes	No
99.	Tyrolean Airways - Tiroler Luftfahrt - AG	Yes	No
100.	United Airlines <sup>2</sup>	Yes	Yes
101.	UPS Airlines	Yes	Yes
102.	USAirways, Inc. <sup>2</sup>	Yes	Yes
103.	Varig S.A.	Yes	No
104.	VIASA	No	No

**NOTES :**

- Information contained in this chart is unofficial. This information was obtained from Mr. David O'Connor, Director of the United States offices of the IATA, and reflects the progress of carriers to the extent the carriers have reported their status to the IATA.
- Filed tariff with DOT between 1996 and April 1, 1998.
- Have not signed MIA, but filed tariff or otherwise waived liability limits.
- Government approval on November 1, 1997.
- By declaration of November 25, 1996.

## Appendix B

<b>STATE STATUTES OF REPOSE</b>			
<b>State</b>	<b>Code Provision</b>	<b>Duration or Use Triggering Bar</b>	<b>Comments</b>
Arkansas	Ark. Code Ann. § 16-116-105 (Michie 1987)	Use beyond “ <b>anticipated life</b> ” of product may be considered evidence of fault by consumer.	Not a true statute of repose, since plaintiff is not absolutely barred by time.
Colorado	Colo. Rev. Stat. § 13-80-107 (1987)	<b>7 years</b> from first use by consumer.	
Connecticut	Conn. Gen. Stat. § 52-577a (1991 & Supp. 1995)	<b>10 years</b> from the time manufacturer relinquishes control of the product.	
Georgia	Ga. Code Ann. § 51-1-11 (Michie 1982 & Supp. 1995)	<b>10 years</b> from date of first sale for use or consumption.	
Idaho	Idaho Code § [6-1403] 6-1303 (1990)	“ <b>Useful safe life</b> ” of the product.	Presumption that product exceeded “useful safe life” arises <b>10 years</b> after delivery.
Indiana	Ind. Code Ann. § 34-20-3-1 (Michie 1992)	<b>10 years</b> from delivery to initial user or consumer.	<b>2 years</b> to bring action if injury occurs between <b>8 and 10 years</b> following delivery.
Kansas	Kan. Stat. Ann. § 60-3303 (1982 & Supp. 1993)	“ <b>Useful safe life</b> ” of product.	Presumption that product exceeded “useful safe life” arises <b>10 years</b> after delivery.
Kentucky	Ky. Rev. Stat. Ann. § 411-310 (Michie 1992)	Rebuttable presumption that product was not defective if injury occurs more than <b>5 years after sale</b> to first consumer or more than <b>8 years after date of manufacture</b> .	
Michigan	Mich. Comp. Laws § 600.5805 (1987 & Supp. 1995)	If product was in use for <b>10 years</b> , plaintiff receives no benefit of presumption (e.g., of strict products liability).	Not an absolute bar; places heavier burden on plaintiff (must prove negligence).
Minnesota	Minn. Stat. § 604.03 (1988)	Provides for defense that product exceeded its “ <b>useful life</b> .”	
Nebraska	Neb. Rev. Stat. § 25-224 (1989)	<b>10 years</b> from date of sale or lease for use or consumption.	
North Carolina	N.C. Gen. Stat. § 1-50(6) (Supp. 1993)	<b>6 years</b> from initial purchase for use or consumption.	Statute of limitations interpreted to operate as statute of repose.
North Dakota	N. D. Cent. Code § 28-01.4-04 (1997)	“ <b>Useful safe life</b> ” of <b>aircraft</b> or aircraft component.	<b>10 years</b> after date of first delivery creates rebuttable presumption that “useful safe life” has expired.
Ohio	Ohio Rev. Code Ann. § 2305.10 (Anderson 1998)	<b>15 years</b> from date of delivery to first purchaser or lessee.	
Oregon	Or. Rev. Stat. § 30-905 (1993)	<b>8 years</b> from date of first purchase for use or consumption.	

Tennessee	Tenn. Code Ann. § 29-28-103 (1980 & Supp. 1994)	<b>10 years</b> from date of purchase for use or consumption, or <b>1 year</b> from expiration of “anticipated life,” whichever is shorter.	
Washington	Wash. Rev. Code § 7.72.060 (1992)	<b>12 years</b> from delivery creates rebuttable presumption that “ <b>useful safe life</b> ” has been exceeded.	

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	27 Feb 1997
	Entered into Force	28 May 1997
The Hague Protocol - 1955	Signed	
	Adhered to	27 Feb 1997
	Entered into Force	28 May 1997
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Acceded to	27 Feb 1997
	Entered into Force	28 May 1997
- No. 2	Signed	
	Acceded to	27 Feb 1997
	Entered into Force	28 May 1997
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Adhered to	14 Jun 1998
	Entered into Force	12 Sep 1998
Guadalajara Convention - 1961	Signed	
	Adhered to	26 Feb 1997
	Entered into Force	27 May 1997
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	26 Oct 1981
	Entered into Force	24 Jan 1982
The Hague Protocol - 1955	Signed	
	Adhered to	26 Oct 1981
	Entered into Force	24 Jan 1982
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	15 Jan 1982
	Entered into Force	15 Apr 1982
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

## **PART II – NOTES ON AVIATION LIABILITY**

### **INTERNATIONAL CARRIAGE**

1.1 Vanuatu is a signatory of the Warsaw Convention. There are no national instruments of variation to the Convention in place. As at the beginning of 2001, Vanuatu had no plans to ratify the Montreal Convention.

1.3 Air Vanuatu and Vanair are party to the IATA Inter-carrier Agreements.

1.5 Carriers are regulated by the Vanuatu Civil Aviation Act no. 16 of 1999 and associated rules.

### **GENERAL AVIATION**

Operators of general aviation aircraft are governed by the Vanuatu Civil Aviation Act No. 16 of 1999, and associated Regulations order No. 22 of 1984 and Civil Aviation Rules.

### **THIRD PARTY LIABILITY/MANDATORY INSURANCE REQUIREMENTS**

The Civil Aviation Act 114 requires operators to carry third party insurance and also liability cover for \$135,000,000 for any one claim.

### **SOCIAL SECURITY AWARDS**

There is no social security cover in Vanuatu. However, there is a National Provident Fund which could address situations on an individual basis.

### **PRODUCT LIABILITY**

Not applicable. No aviation products manufactured.

### **AIR TRAFFIC CONTROL**

Aerodromes are administered by Airports Vanuatu Ltd. There are 3 international airports – Bauerfield, Whitegrassa and Peko. There are 26 outer island airports, which are privately owned by landowners but leased to the Vanuatu government.

### **TAX REGIMES**

Vanuatu has a VAT system of 12.5%.

Date Part 1 Entry Reviewed: September 2004

**PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC**

Warsaw Convention - 1929	Signed	
	Adhered to	15 Jun 1955
	Entered into Force	13 Sep 1955
The Hague Protocol - 1955	Signed	28 Sep 1955
	Ratified	26 Aug 1960
	Entered into Force	1 Aug 1963
Guatemala City Protocol - 1971	Signed	8 Mar 1971
	Not Ratified	
Montreal Additional Protocols – 1975 – No. 1	Signed	25 Sep 1975
	Ratified	14 Jul 1978
	Entered into Force	15 Feb 1996
- No. 2	Signed	25 Sep 1975
	Ratified	14 Jul 1978
	Entered into Force	15 Feb 1996
- No. 3	Signed	25 Sep 1975
	Not Ratified	
-No. 4	Signed	25 Sep 1975
	Not Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	5 Jun 1962
	Not Ratified	
	Entered into Force	
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	27 Jan 1967
	Ratified	3 Mar 1970
	Entered into Force	3 Mar 1970
Space Liability Convention - 1972	Signed	29 Mar 1972
	Ratified	1 Aug 1978
	Entered into Force	1 Aug 1978

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	11 Oct 1982
	Entered into Force	9 Jan 1983
The Hague Protocol - 1955	Signed	
	Adhered to	11 Oct 1982
	Entered into Force	9 Jan 1983
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty – 1967	Signed	
	Acceded to	20 Jun 1980
	Entered into Force	20 Jun 1980
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention - 1929	Signed	
	Adhered to	6 May 1982
	Entered into Force	4 Aug 1982
The Hague Protocol - 1955	Signed	
	Adhered to	6 May 1982
	Entered into Force	4 Aug 1982
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Ratified	
	Entered into Force	
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	26 Sep 1986
	Entered into Force	25 Dec 1986
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	1 Jun 1979
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 55		
	Succeeded to	25 Mar 1970
	Entered into Force	24 OCT 1964
The Hague Protocol - 1955	Signed	
	Adhered to	25 Mar 1970
	Entered into Force	23 Jun 1970
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention - 1961	Signed	
	Adhered to	1 Mar 1971
	Entered into Force	30 May 1971
Rome (Third Par ty) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	28 May 1999
	Ratified	
Outer Space Treaty - 1967	Signed	
	Acceded to	20 Aug 1973
	Entered into Force	20 Aug 1973
Space Liability Convention - 1972	Signed	
	Acceded to	21 Aug 1973
	Entered into Force	21 Aug 1973

Date Part 1 Entry Reviewed: September 2004

## PART 1 – PARTICIPATION IN INTERNATIONAL AGREEMENTS ETC

Warsaw Convention – 1929	Signed	
See Annex A – Note 56		
	Succeeded to	27 Oct 1980
	Entered into Force	18 Apr 1980
The Hague Protocol - 1955	Signed	
	Ratified	27 Oct 1980
	Entered into Force	24 Jan 1981
Guatemala City Protocol - 1971	Signed	
	Acceded to	
Montreal Additional Protocols – 1975 – No. 1	Signed	
	Ratified	
	Entered into Force	
- No. 2	Signed	
	Ratified	
	Entered into Force	
- No. 3	Signed	
	Ratified	
-No. 4	Signed	
	Ratified	
	Entered into Force	
Guadalajara Convention – 1961	Signed	
See Annex G – Note 15		
	Succeeded to	27 Apr 1982
	Entered into Force	18 Apr 1980
Rome (Third Party) Convention - 1952	Signed	
	Adhered to	
	Entered into Force	
Montreal Convention	Signed	
	Ratified	
Outer Space Treaty - 1967	Signed	
	Ratified	
	Entered into Force	
Space Liability Convention - 1972	Signed	
	Acceded to	
	Entered into Force	