

LegCo Panel on Economic Services

Insurance Requirements for Civil Aircraft

Introduction

This paper seeks Members' views on the Administration's proposal regarding insurance requirements for civil aircraft¹ and other flying machines or equipment operating in Hong Kong.

Background

2. It has been the Government's requirement for many years that every aircraft operating air services for hire or reward to, from, or in Hong Kong must carry insurance for third party liability. This requirement is imposed on an administrative basis, i.e. an operator is required to provide details of the insurance of the aircraft to be used when it submits an application for a licence/permit to operate such services. The amount of insurance must not be lower than the applicable combined single limit (CSL) for any one accident, or incident, or occurrence, as published in the Hong Kong Aeronautical Information Publication.

3. This insurance requirement has not been applied to aircraft not engaged in flights for hire or reward (i.e. non-revenue flights), which mainly include corporate aircraft or aircraft belonging to the Hong Kong Aviation Club and its members, although they have to comply with the safety requirements.

4. At an earlier meeting of the Panel on 25 January 1999, Members discussed and indicated support for a proposal to enact legislation requiring all civil aircraft, whether or not being operated for hire or reward, to carry third party insurance. Members also supported the proposal that the current minimum insurance levels should continue except for the introduction of an additional level of US\$15 million for light aircraft (i.e. aircraft with a maximum

¹ In this paper, "aircraft" refers to aeroplane or rotorcraft. For other types of flying machines or equipment, please see paras. 16 to 18.

ramp weight up to 5,700 kg) in order to address the concerns expressed by operators and owners of private light aircraft about the cost of insurance. The figures are at Annex A.

Recent Developments

5. Since the Panel meeting in January 1999, there have been developments which necessitate a review of the proposal.

International Developments

6. At present, airlines' liabilities in respect of international carriage are governed by a group of international agreements known as "the Warsaw System". Since the Warsaw System was established many years ago, a number of the provisions are now outdated.

7. A new international convention, the Convention for the Unification of Certain Rules for International Carriage by Air (commonly known as the Montreal Convention) was concluded in May 1999 and is now open for signature by States. It aims to modernise the Warsaw System. Amongst other things, it includes a new provision under which State Parties shall require their carriers to maintain adequate insurance covering their liability under the Convention, which includes passengers, baggage, cargo, mail² and damage caused by delay in the carriage of the first three items. While the Montreal Convention has yet to come into force³, we have to consider whether to take into account this development.

Scope of "Third Party" Liability

² Under the Montreal Convention, in the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

³ The Montreal Convention has to be ratified by at least 30 States before it comes into force.

8. At present, the insurance certificates submitted by airlines under the administrative arrangements must include third party liability. In practice most of them also include other liabilities such as passenger, baggage, cargo and mail.

9. In drafting legislation for the proposal, we have also looked into the precise scope of the term “third party” liability. The following points are pertinent -

- (a) at present, there is no definition for “third party” in any of Hong Kong’s statutes which contain provisions about third party insurance requirement, e.g. the Motor Vehicles Insurance (Third Party Risks) Ordinance;
- (b) the Department of Justice has advised that it is difficult to define “third party”; and
- (c) advice from the aviation insurance industry shows that the term “aircraft third party” in aviation insurance may include or exclude passengers or property inside an aircraft.

Proposed “Required Items”

10. Taking into account the recent developments mentioned above, we have reviewed our proposal. Our view is that all civil aircraft landing or taking off in Hong Kong should be required to have a CSL insurance cover for liabilities in respect of five items, namely third party, passengers, baggage, cargo and mail (hereafter referred to as the “required items”). This requirement would result in greater protection for passengers and shippers. It is also in line with the requirements of the new Montreal Convention as mentioned in paragraph 7 above. The insurance of most airlines operating to Hong Kong already covers liabilities for these items.

11. Since an operator may carry only some, but not all, of the “required items”, it should be allowed to have the option of not including in the CSL liabilities for those items not carried by it. For example, for an all-cargo

airline not carrying passengers, it should be allowed to have the option of not including passenger and baggage liabilities in the CSL. However, an operator should not be allowed to lower the CSL for this reason.

12. We do not propose to require airlines' insurance to cover liability for damage caused by delay, which is the other item required under the Montreal Convention. Advice from insurance experts is that such liability should not be a high profile exposure for a carrier. We are not aware of any aviation authorities in the world requiring carriers to have insurance cover for this item. Requiring insurance for this item will be out of line with international practice. We therefore consider that, for the time being, it is not appropriate to include damage caused by delay as a "required item". We will review the need for its inclusion at a later stage, taking into account the progress of the ratification of the Montreal Convention.

Proposed Insurance Levels

13. Whilst the "required items" would include passenger, baggage, cargo and mail, in addition to third party, we consider that the minimum insurance levels at Annex A are adequate. According to insurance brokers, for the past 15 years the highest total claims settled for one major loss in an air accident involving mainly passenger legal liability and also third party damage on the ground totaled US\$520 million (1988, Pan Am, Lockerbie) and US\$515 million (1998, Swissair, Peggy's Cove, although in this case there may be outstanding claims to be resolved). Under our proposal, most airlines operating scheduled services to Hong Kong would be required to have a CSL insurance of at least US\$1,000 million.

14. For light aircraft (i.e. aircraft with a maximum ramp weight not exceeding 5,700 kg), the proposed minimum insurance level is US\$15 million. It is necessary to ensure adequate cover for the "required items" while not imposing an excessive burden on light aircraft operators. This minimum insurance level is considered appropriate after consultation with relevant parties (e.g. the Hong Kong Aviation Club) and noting that a minimum third party and bodily injury insurance cover of HK\$100 million (i.e. around US\$12.8 million) is required for motor vehicles in Hong Kong.

Liability Items other than the “Required Items”

15. At present, most airlines purchase a CSL insurance covering not only the “required items”, but also some other items such as premises liability. The inclusion of such items is permitted under our existing administrative arrangements. We have considered whether such inclusion may continue to be permitted in our proposed legislation. Our view is that operators should be allowed to include in their CSL insurance coverage other items in addition to the “required items”, except for the aircraft hull of the insured operator, for the following reasons :

- (a) It is a common practice for airlines to purchase a CSL cover for all liabilities arising from accidents, except for their own aircraft hull which is usually covered by a separate limit. Amongst the countries on which information about their insurance requirements is available, most (including Germany, Switzerland and USA) would allow airlines to include other liability items in the CSL. Disallowing operators to include other liability items would not be in line with the common international practice. It would also create difficulty for airlines operating to Hong Kong;
- (b) our proposed requirement as well as the aviation insurance practice is that the CSL applies on a per occurrence basis. The possibility of coincidental claims for compensation in respect of the “required items” and claims for other liabilities (except for aircraft hull) *arising from the same occurrence* is very remote. For example, it is very unlikely to have an incident which would result in claims for both passenger and premises liabilities. Moreover, our proposed minimum insurance levels are generally higher than the corresponding requirements in other places (comparison at Annex B). The risk of any possible erosion of protection should not be a big concern; and
- (c) the sole exception we propose is that the aircraft hull of the insured operator should not be allowed to be included in the same CSL, since the possibility of claims for its compensation is often coincidental with claims for the “required items”.

Balloons, Airships and Gliders etc.

16. At present, flying machines or equipment, such as airships, balloons, gliders etc., are not commonly operated in Hong Kong. We have considered the application of the proposed insurance requirements to them in case some of them may be operated. Taking into account the potential damage that may be caused in the event of an accident, we consider that the following types of flying machines or equipment should have insurance cover -

- (i) airships;
- (ii) balloons which can carry passengers; and
- (iii) gliders.

The above machines or equipment are normally able to carry passengers. They are also generally similar to aeroplanes in the context of airworthiness and operation requirements.

17. We also propose that the same minimum insurance levels in Annex A should apply to these machines or equipment. They normally have a maximum weight less than 5,700 kg.

18. On the other hand, it is considered that the proposed insurance requirements should *not* apply to other flying machines or equipment such as balloons which cannot carry passengers, hang gliders, kites, parachutes and model aircraft. These machines or equipment are relatively small and the risk of endangering third parties is very remote. Moreover, as they normally do not carry passengers, baggage, cargo or mail, the need for insurance cover for these liability items would not arise. If insurance is required for a particular event (e.g. kite flying display in a crowded stadium), the insurance requirements may still be imposed, such as through administrative measures as the concerned flying machines or equipment generally require special permission to fly.

Consultation

19. CAD has consulted the Aviation Advisory Board (AAB), the

International Air Transport Association (IATA), the Hong Kong Federation of Insurers (the Federation), three major international aviation insurance brokers and airlines.

20. The AAB supports the proposed insurance requirements. After consulting its member airlines which operate to Hong Kong and discussing with aviation insurance underwriters and brokers, IATA has responded that the proposals set out in paragraphs 10 to 15 above are acceptable. The aviation insurance brokers and the Federation have also replied that they do not see any major issue with the proposals.

21. Amongst the 62 airlines operating scheduled services to Hong Kong, 60 have included or indicated that they are prepared to include in their CSL insurance the five required items. The position of the remaining two airlines is not clear. However, since the proposed requirements are reasonable and in the public interest, we have informed these two airlines we intend to take steps to enact the legislation.

Way Forward

22. We plan to enact legislation to put the proposed aviation insurance requirements in place. The Department of Justice has advised that subsidiary legislation may be made under section 2A of the Civil Aviation Ordinance (Cap. 448)⁴ for this purpose.

23. Any views from Members on the proposed requirements would be welcome.

Economic Services Bureau / Civil Aviation Department
19 January 2000

⁴ Section 2A of Cap. 448 provides, among other things, that the Chief Executive in Council may by order make such provision as appears to the Chief Executive in Council to be necessary or expedient generally for regulating air navigation, provided that such provision deals only with the routine business and technical management of civil aviation.

Annex A

	Group Classification	Combined Single Limit
	Maximum Ramp or Taxi Weight (if not applicable, Maximum Take-off Weight or Maximum Weight whichever is larger) of the Aircraft or the Flying Machine or Equipment as stipulated in the Manufacturer's Flight Manual or Operations Manual	Combined Single Limit for Third Party, Passenger, Baggage, Cargo and Mail Liabilities for any one accident, incident or occurrence to be not less than US\$
(1)	5 700 kg or less	15 million
(2)	5 701 kg – 10 000 kg	25 million
(3)	10 001 kg – 28 000 kg	60 million
(4)	28 001 kg – 100 000 kg	200 million
(5)	100 001 kg – 170 000 kg	500 million
(6)	170 001 kg and above	1 000 million

Annex B

Amount of Aviation Insurance Cover Required
(Please see notes at the end of this table)

	Canada	Germany	Switzerland	USA	Hong Kong (Proposal)
Amount of aviation insurance cover required (US\$)	170 million	60 million	98 million	134 million	1,000 million

Notes:

- (1) The above table compares the minimum insurance levels for a B747-400 aircraft (with a maximum ramp or taxi weight of around 400,000 kg) carrying 380 passengers. B747-400 passenger aircraft are commonly used on international service to or from Hong Kong.
- (2) All monies are in US dollars or converted to US dollars using the exchange rates as at 23 November 1999.
- (3) Information in the above table is based on surveys conducted by the Civil Aviation Department in 1998 and updated in 1999.
- (4) The figures for the four places other than Hong Kong refer to the amount of insurance cover required for third party (or public liability in the case of Canada) and passenger liabilities.
- (5) The table is for illustration purpose only, as some of the detailed insurance requirements in different places cannot be compared on a like-with-like basis.