

LEGISLATIVE COUNCIL BRIEF
Civil Aviation Ordinance
(Cap. 448)

CIVIL AVIATION (INSURANCE) ORDER

INTRODUCTION

At the meeting of the Executive Council on 16 May 2000, the Council ADVISED and the Chief Executive ORDERED that the Civil Aviation (Insurance) Order, at Annex A, should be made under section 2A of the Civil Aviation Ordinance (Cap. 448) to prohibit civil aircraft from landing or taking off in Hong Kong unless there is in force in relation to the use of the aircraft in Hong Kong a policy of insurance in a combined single limit coverage which covers third party risks and passenger, baggage, cargo and mail liabilities.

BACKGROUND AND ARGUMENT

General Background

2. It has been 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 cover 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 limits (CSLs) for any one accident/incident/occurrence as published in the Hong Kong Aeronautical Information Publication (extract at Annex B).

3. This insurance requirement has not been applied to aircraft engaged in non-revenue flights, such as corporate or private aircraft. In accordance with Article 5 of the Chicago Convention, the operations of these aircraft do not need a licence/permit, although they have to comply with certain safety and certification requirements.

Review

4. Following a review of the current arrangements, we consider it

important to make aircraft insurance a statutory requirement in order to provide a more solid enforcement framework covering third party, passenger, baggage, mail and cargo liabilities. Moreover, since an aircraft, whether engaged in commercial or non-revenue flights, may cause damage in the event of an accident, we propose to extend the requirement to cover aircraft engaged in non-revenue flights.

5. The insurance items that are required and other insurance items that may be allowed to be included, the minimum insurance levels and the applicability to different flying machines under the Order are set out in the following paragraphs.

The Required Items

6. Under the existing administrative arrangements, it is a practice that most airlines include third party liability as well as other liabilities in their CSL, such as liabilities for passengers, baggage, cargo and mail carried on board. Moreover, a new international convention, the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention)¹, was concluded in May 1999 and is now open for signature by States. Amongst other things, it provides that State Parties shall require their carriers to maintain adequate insurance covering their liability under the Montreal Convention, which includes passenger, baggage, cargo, mail² and damage caused by delay in the carriage of the first three items.

7. Taking these factors into account, we consider 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, passenger, baggage, cargo and mail (the “required items”). This requirement will provide greater protection for passengers and shippers.

8. We do not consider it appropriate to require carriers’ insurance to include liability for damage caused by delay, an item required under the Montreal Convention. Advice from insurance experts is that such liability should not be a high profile exposure for a carrier. Moreover, we are not aware of any aviation authorities in the world currently requiring carriers to have insurance cover for this item. Including it as a “required item” will be out of line with international practice. We will review the need for its

¹ At present, airlines’ liabilities in respect of international carriage are governed by a group of international agreements known as the “Warsaw System”. The Montreal Convention aims to modernise the Warsaw System. It will come into effect only after ratification by 30 or more states.

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.

inclusion at a later stage, taking into account the progress of ratification of the Montreal Convention.

9. Since some operators may carry only some of the “required items” on their aircraft, they will be given the option of not including in their CSL the liabilities for those items not carried by their aircraft. For example, an all-cargo airline will be allowed to have the option of not including liabilities for passenger and baggage in its CSL. However, an operator will not be allowed to lower the minimum CSL for this reason.

Other Liability Items that may be Allowed to be Included

10. Under the existing administrative arrangements, most airlines purchase a CSL insurance covering not only the “required items”, but also some other items such as premises liability (i.e. liability arising from the use of their premises). We consider that operators should continue to be allowed to include in their CSL liabilities for other items except for their own aircraft hull, 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 the relevant information is available, most (including Germany, Switzerland and USA) allow airlines to include other liability items in the CSL. Disallowing operators to include other liability items would not be in line with international practice. It would also create difficulty for airlines since normally their CSL cover their aircraft on a world-wide basis and they would then have to make special arrangements for their aircraft operating services to Hong Kong; and
- (b) CSL applies on a per occurrence basis. The possibility of coincidental claims for compensation in respect of the “required items” and claims for other items (except for the aircraft hull of the operator) arising from the same occurrence is very remote. For example, it is very unlikely to have an incident which would result in claims in respect of both passenger and premises liabilities. Therefore, inclusion of other liability items in the CSL should not be a major concern. The only item that should not be included is the aircraft hull of the insured operator, since the possibility of claims for its compensation is often coincidental with claims for the “required items”.

Minimum Insurance Levels

11. We consider that the existing minimum CSLs should continue to apply, with the exception that a lower minimum level for light aircraft should be added, for the reasons explained in paragraphs 12 and 13 below.

12. Since it has been a practice that the CSL insurance purchased by most airlines already includes the “required items” and the other items that may be allowed to be included under the Order, it is appropriate for the existing minimum CSLs at Annex B to continue. Moreover, according to insurance brokers, for the past 15 years the highest claims settled for an air accident totalled US\$520 million (1988, Pan Am, Lockerbie) and US\$515 million (1998, Swissair, Peggy’s Cove, although in this case there may be some outstanding claims). Under the Order, most airlines operating scheduled services would be required to have a CSL of at least US\$1,000 million.

13. Under the existing administrative arrangements, the lowest minimum CSL is US\$25 million for aircraft weighing 10 000 kg or less. In the Order, a minimum CSL of US\$15 million is added for light aircraft (i.e. aircraft with a maximum ramp weight not exceeding 5 700 kg). This insurance level is considered appropriate to ensure adequate cover for the “required items” while not imposing an excessive burden on light aircraft operators. It is also noted that a minimum third party bodily injury insurance cover of \$100 million (i.e. around US\$12.8 million) is required for motor vehicles in Hong Kong.

Application to Flying Machines

14. The new insurance requirements will apply to the operation of the following flying machines in addition to the operation of aeroplanes and rotorcraft -

- (a) airships;
- (b) balloons which can carry passengers; and
- (c) gliders.

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

15. On the other hand, the insurance requirements will **not** apply to other flying machines such as balloons which cannot carry passengers, hang gliders, kites, parachutes and model aircraft. These machines are relatively small and the risk of endangering third parties is remote. Moreover, they

normally do not carry passengers, baggage, cargo or mail. For special instances in which insurance cover should be required, insurance requirements may still be imposed through administrative measures as the concerned flying machines generally require special permission to fly.

THE ORDER

16. The main provisions of the Order are -
- (a) Section 2 is the interpretation clause. The word “operator” is defined to mean the person who for the time being, has the management or control of that aircraft and any other person authorized by that person to use the aircraft to provide air services. This definition aims to ensure that the insurance requirements will continue to apply to leased aircraft.
 - (b) Section 3 provides that the Order shall apply to civil aircraft only and that the Order does not apply to balloons that cannot carry passengers, hang gliders, kites, parachutes or model aircraft.
 - (c) Section 4 provides that the Director of Civil Aviation (DCA) or any authorized person may exempt any aircraft from any provision of the Order such as aircraft without the appropriate insurance that need to be diverted to Hong Kong for landing due to the closure of neighbouring airports.
 - (d) Section 5 provides that an aircraft shall not land or take off in Hong Kong unless there is in force in relation to the use of the aircraft a policy of insurance which complies with the Order. This section does not apply in the case of an emergency.
 - (e) Section 6 sets out the “required items” to be included in the CSL. It also provides that other liability items, except for the aircraft hull of the insured operator, may also be included. Employees liability may be included but it is not a required item, since compensation for employees is covered by labour legislation.
 - (f) Sections 7 to 15 are the enforcement provisions. These include the keeping and production of documentary proof of insurance, the declaration to be made by an operator, DCA’s power to prohibit aircraft landing or take-off and to inspect aircraft etc, and the penalties for contravention of the concerned provisions.

- (g) Section 16 provides that DCA may authorize in writing any other person to exercise any of the powers and perform any of the duties conferred or imposed on an “authorized person”.
- (h) The Schedule to the Order sets out the minimum CSL for aircraft of different weight groups.

PUBLIC CONSULTATION

17. The Legislative Council Panel on Economic Services and the Aviation Advisory Board (which includes representatives from Hong Kong airlines and the Hong Kong Aviation Club) support the new insurance requirements. The International Air Transport Association, which has consulted its member airlines operating to Hong Kong and major aviation insurance underwriters and brokers, and the Hong Kong Federation of Insurers also consider the new requirements acceptable.

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the Order does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the Order is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE ORDER

20. The Order does not affect the current binding effect of the Civil Aviation Ordinance (Cap. 448).

FINANCIAL AND STAFFING IMPLICATIONS

21. Civil Aviation Department will need to spend more resources in implementing the Order, when compared with the current insurance requirements which are imposed on an administrative basis. For example, resources are needed in checking the insurance documents of aircraft engaged in

non-revenue flights as well as balloons which can carry passengers, airships and gliders. However, the resulting financial and staffing implications are not expected to be significant and will be absorbed by Civil Aviation Department.

ECONOMIC IMPLICATIONS

22. In practice most commercial airlines already comply with the insurance requirements set out in the Order. As regards non-revenue flights, the number of aircraft engaged in such operations is small. The Order is therefore not expected to have any significant economic implications.

LEGISLATIVE TIMETABLE

23. The legislative timetable is as follows –

Publication in the Gazette	19 May 2000
Tabling at the Legislative Council	24 May 2000

COMMENCEMENT

24. Under our current plan, the Order will come into effect in late 2000, in order to provide a grace period for aircraft operators to comply with the new requirements. The exact commencement date will be appointed by the Secretary for Economic Services by notice in the Gazette.

PUBLICITY

25. A press release will be issued on 17 May 2000 and a spokesman will be available for answering media enquiries.

OTHERS

26. If there are any questions on the Order, please contact Mr Alan Lo, Assistant Secretary for Economic Services (New Airport), at 2810 2235.

17 May 2000
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