Aerospace

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AEROSPACE BULLETIN

According to official statistics, nearly a quarter of Chinese flights were delayed in 2011. In this, our third HFW Aerospace Bulletin, James Jordan looks at whether the developing climate of passenger claims arising from flight disruption might lead to China adopting passenger rights legislation. New product liability laws came into force in China in 2011, and Peter Coles examines how these laws may expose foreign manufacturers to a greater risk of product liability claims in China. On a similar legislative theme, Lee Tam outlines recent proposals which have been put forward in Hong Kong for the adoption of a mechanism for class actions which, if implemented, could result in a greater number of class actions by passengers in Hong Kong.

In Europe, until the long-awaited final decision of the European Court of Justice as to whether EU Regulation 261 entitles passengers to compensation following long flight delays, there remains considerable uncertainty. Pierre Frühling looks at the different approaches adopted by various European courts in recent unreported judgments. He also highlights recent developments regarding the provision of State aid to airlines, pending the outcome of the European Commission's review of its 1994 guidelines on this issue. Sue Barham, in conjunction with RGL Forensics, then considers how the introduction of carbon credits pursuant to the EU Emissions Trading Scheme will have an impact when evaluating loss of use claims by airlines operating within the EU. In our final article, we report on a new Recommended Practice by IATA in order to facilitate e-freight on Warsaw and Warsaw-Hague trade routes.

The bulletin also contains information on forthcoming conferences and events. For further information about any of the articles, or aviation and aerospace issues in general, please contact one of the team, or your usual contact at HFW.

Giles Kavanagh, Partner and Head of Aerospace.

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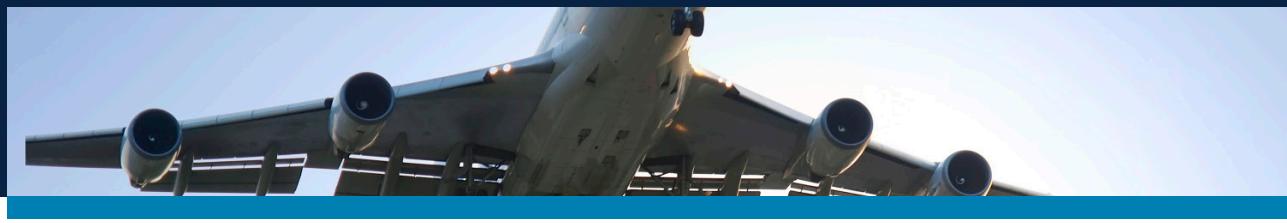

Storm on the runway: compensation for passenger delays in China

A recent spate of incidents involving runway incursions by angry passengers has caused the industry to shine a spotlight on flight delay issues which are hindering the ambitious growth of civil aviation in China.

On 11 April 2012, 28 passengers waiting for a flight at Shanghai Pudong International Airport rushed onto a runway to protest against their treatment after their flight was delayed due to a thunderstorm. According to sources, passengers were asked to board and then disembark the aircraft three times and then endured a sleepless night as they waited nearly 21 hours for the flight to depart. Two days later, on 13 April 2012, several passengers waiting for a flight at Baiyun Airport in Guangzhou also rushed onto the tarmac after heavy rains delayed their flight. Eyewitnesses said that one male passenger was so incensed that he took his shirt off and lay on the ground on the tarmac to prevent the progress of a van carrying VIP passengers! Both incidents demonstrate the growing dissatisfaction among the Chinese public with flight delays, which have become increasingly commonplace in the country.

Frequency and causes

According to statistics from the Civil Aviation Administration of China (CAAC), 23.5% of Chinese flights were delayed in 2011. By comparison, in the same year, the US Department of Transportation reports that 85% of US flights arrived on time.

China suffers from frequent and unpredictable bad weather, and many airlines have protested that this is a factor beyond their control. However, some industry commentators have stated that procedures have not kept pace with demand in the world's fastest growing aviation market.

An additional problem is the restriction of a large part of Chinese airspace for military use. According to a recent military study, 42% of airspace in eastern China is closed to commercial flights and reserved for the Chinese air force. This region includes areas around Beijing and Shanghai, the country's political and economic hubs respectively.

Punishment and compensation

According to reports, passengers in the Shanghai and Baiyun incidents received RMB1,000 (c. US$160) and RMB500 (c. US$80) respectively in compensation. This is despite the fact that under Chinese criminal law, "assembling crowds to disturb order at civil aviation stations" is a specific offence punishable by a minimum fine of RMB200 (c. US$32), or as much as five years in prison. A microblog for the Shanghai airport police stated that the passengers who entered the taxiway had been "punished", without providing further information. The police have also confirmed they will hand down administrative punishment to those concerned.

Given the potential for criminal conviction, why are passengers taking such drastic risks to protect their consumer rights? The reason many passengers feel so aggrieved could be that there is no unified standard for the handling of passenger delay claims in China. The CAAC issued guidance in 2004, which suggests that airlines should compensate passengers if flights are delayed for more than four hours, but does not recommend a standard compensation figure. Airlines are therefore free to set standards that they feel are appropriate, with most paying around RMB500 (c. US$80). Airlines can, of course, choose not to make any compensation payments at all. Although RMB500 is not an insignificant amount, the growing Chinese middle classes - the main demographic of air passengers in China - are likely to find this unsatisfactory.

Time for EU Reg 261 - a unified standard for passenger compensation?

The question has been asked whether legislation similar to European Union Regulation 261/2004 should be implemented in China. The CAAC seems keen to resist the adoption of such a measure. There is a widespread view in the industry that the scope and application by the courts of EU Regulation 261 has tilted the balance too far in the direction of consumer protection.

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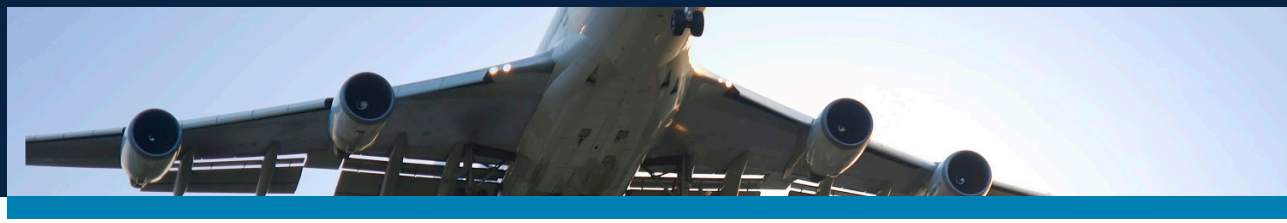

Adopting EU Regulation 261 as a model for passenger rights legislation in China would prove deeply unpopular with the airlines that are investing significant amounts in China's civil aviation industry. The majority of Chinese airlines are state-owned, and creating compulsory passenger compensation could represent a significant cost to the government. It is worth noting, however, that there is an appetite for this type of legislation in Greater China, and that Macau is in the process of amending its domestic legislation to provide passenger rights in the event of denied boarding, cancellation and delay. Although a unified compensation regime seems a step too far for the mainland, the issues surrounding passenger delays need to be addressed at an operational, regulatory and governmental level.

Quelling the storm - addressing the passenger delay problem

China plans to invest more than RMB1.5 trillion (c. US$238 billion) in its aviation industry by 2015. With such investment should come an improved passenger experience, with airlines and airports better placed to handle delays. A relaxation of the strictly controlled military airspace would also enable commercial flights to operate on different routes in the event of bad weather. As Chinese consumer expectations increase, airlines need to take significant steps to ensure that even when delays are unavoidable, procedures are in place to keep passengers happy. Airlines could, of course, follow Dalian Airport's recent strategy to calm 30,000 passengers who were stranded due to bad weather, by hiring dancers to entertain the crowds - no runway incursions were reported!

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> "...foreign manufacturers are likely to face more product liability claims in China and be less able to confine litigation risks to their Chinese distributors."

Product liability litigation in China: impact on foreign manufacturers

Foreign manufacturers should by now have implemented stringent manufacturing and distribution practices to meet China's new product liability laws that came into force in 2011. The new laws present several novel features that open up foreign manufacturers to the risk of increased liability.

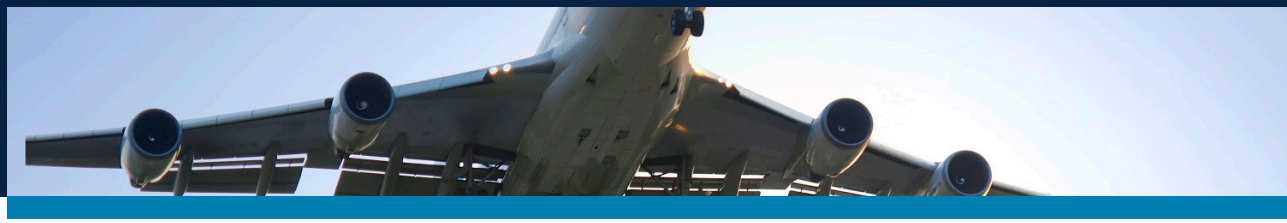
The Choice of Law Statute

On 1 April 2011, the Law of the Application of Law for Foreign-Related Civil Relations of the People's Republic of China (the Choice of Law Statute) came into force. The new law provides claimants with greater flexibility as to choice of redress in cross-border product liability litigation. Previously, courts applied the law of the place where the tort occurred. Now, a claimant may elect for the court to apply (i) the law of the claimant's domicile (if the defendant has relevant business operations in the claimant's domicile); or (ii) the law of the defendant's principal place of business; or (iii) the applicable law where the tort took place.

Such flexibility presents the claimant with the option of choosing the law that is most favourable to his case, having regard to the prospects of success and the damages likely to be awarded. Consequently, foreign manufacturers are likely to face more product liability claims in China and be less able to confine litigation risks to their Chinese distributors.

This inevitably creates strategic complexity for claimant and defendant alike, particularly with respect to issues concerning the burden of proof, evidentiary requirements, and the rules governing joint and several liability. Further, the proof of foreign laws will progressively become a common component of litigation in China, which could prolong proceedings and increase the overall cost of litigation. The application of foreign law could pose a challenge for those Chinese lawyers who lack expertise in foreign legal regimes. Additional costs may be incurred if translators, and foreign legal and technical experts are engaged.

Procedural convenience will no longer be a major motivator for Chinese claimants to confine their actions against local distributors and/or domestic manufacturers of foreign trade-marked goods, if claims against foreign manufacturers could result in more generous damage awards. Foreign manufacturers might be better



advised to enter into commercial settlements with Chinese claimants in certain cases.

New Tort Law

On 1 July 2011, the Tort Law of the People's Republic of China (the Tort Law) came into effect. The new law expands consumer protection provisions set out in the existing Product Quality Law. The Tort Law is engaged when the court holds that Chinese law applies to a product liability case pursuant to the Choice of Law Statute.

The Tort Law provides for a strict liability regime against manufacturers and sellers of defective products, regardless of who caused the defect. A product contains a "defect" if the product poses an unreasonable danger to people and property, or if the product does not comply with applicable national or industry health and safety standards.

Pre-existing defect

Where a seller can show that a product contains a pre-existing defect, the seller has the right to seek contribution from the manufacturer (assuming that the manufacturer can be identified). Where the defect is caused by the seller, then the manufacturer can seek contribution from the seller. The Tort Law further provides that if the defect is caused by a third party, such as a carrier or warehouse, both manufacturer and seller may seek contribution from that third party after first paying compensation to the claimant.

Proactive duties

A key feature of the Tort Law is the imposition on manufacturers of proactive duties to warn and to initiate mandatory recalls where a defect is found after a product is put into circulation. Failure to provide timely and effective remedial measures can lead to a finding of liability if harm is caused. In contrast to the previous position, any attempts to defend liability with an argument that there was a lack of technical expertise to discover the defect in the product at the time of circulation are unlikely to succeed. The current obligation extends beyond the time that the product was first placed on the market. In effect, manufacturers have the responsibility for tracking potential defects. This requires careful implementation of infrastructure and management practices, including oversight of distribution networks.

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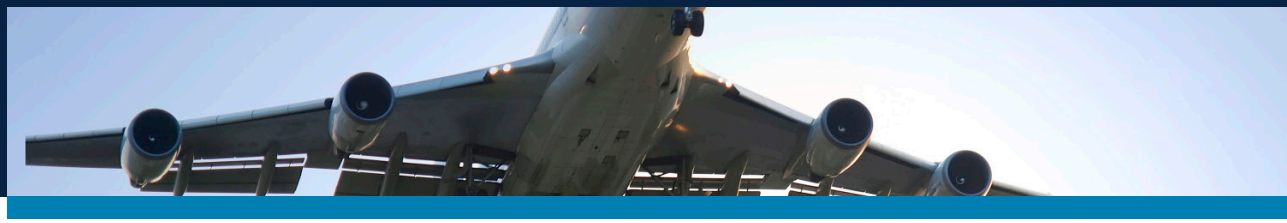
Punitive damages

The Tort Law introduces punitive damages, which are now recoverable in product liability cases if the manufacturer or seller continues to produce and/or distribute a product while knowing of the defect, and that defective product subsequently causes death or serious injury. Most notably, the level of punitive damages recoverable is not stated as a fixed multiple of the price of the goods (as it has traditionally been in other Chinese regulations), and the Tort Law has not placed any other limits on the amount that can be awarded. Further, claimants may recover damages for emotional distress.

Under the Tort Law, any party whose rights have been infringed may require the manufacturer or seller, regardless of whether injuries have actually been sustained, to remove the impediment or eliminate the danger, where defects in the product endanger the safety of persons or property. This means that a claimant could potentially apply to a court to mandate a product recall, which is likely to have costly consequences, both financially and in terms of reputation, for the manufacturer concerned. Even if a court does not order a product recall, a manufacturer may wish to give serious consideration to the appropriate remedial measures required to alleviate the threat of punitive damages.

Going forward, there will inevitably be a period during which the interpretation and implementation of the key provisions of the Choice of Law Statute and the Tort Law are uncertain. China has a civil code system, and it is therefore important to continually monitor legislative and judicial developments, especially in relation to the enactments of judicial interpretations of the PRC Supreme People's Court. Of particular interest will be the development of guidelines for the award of punitive damages.

With the increased risk of litigation, manufacturers outside the PRC should be well advised to establish an effective quality-control system, an after-sale defect warning system,



as well as a product-recall plan. The continual implementation of these measures should alert manufacturers to risk management issues, including the need to re-evaluate any sales and distribution contracts to ensure in particular that any indemnity, warranty, guarantee and disclaimer provisions remain suitable and relevant.

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Class action reform in Hong Kong

In Hong Kong, it is common for disgruntled passengers to present group claims against airlines for delays, ruined holidays and alleged poor treatment, particularly during the typhoon season and in relation to flights to/from the mainland. Class action reform will now make it possible for test cases to be brought before the courts.

Currently under Hong Kong law, the sole mechanism for multi-party proceedings is regarded as restrictive and inadequate. Consequently, the mechanism has seldom been used and the approach so far has been to resort to extra-judicial compensation schemes or test actions.

The Law Reform Commission of Hong Kong (the Commission) published a report in May 2012 proposing the adoption in Hong Kong of a mechanism for class actions. The Commission recommends, inter alia, that:

- In accordance with class action regimes elsewhere, a case should only be allowed to proceed as a class action if it satisfies various criteria (including legal merit, a minimum number of identifiable claimants, and sufficient common interest and remedy between class members) and has been so certified by the court.

- Members of the defined class will be automatically bound by the class action, unless they "opt-out" within the time limits prescribed. As regards foreign claimants, the default position should be an "opt-in" procedure, i.e. foreign claimants will not be included in the class action unless they take active steps to "opt-in" to the action, and the court has the discretion to adopt an "opt-out" procedure if the particular circumstances of the case warrant it. On opting-in, foreign claimants would need to give a declaration and undertaking that the class action judgment or settlement would amount to a final and conclusive resolution of their claims.

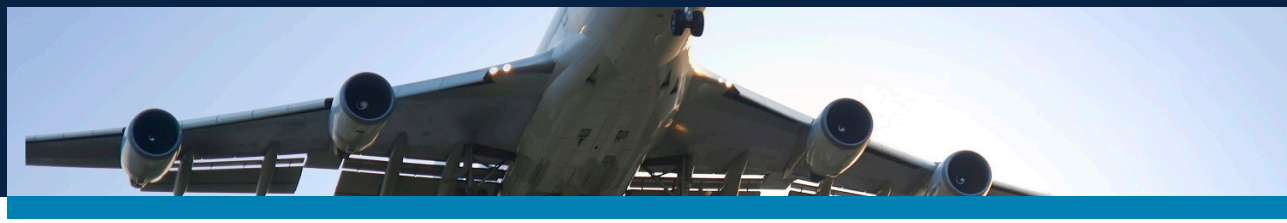
- Where a class action is brought against a foreign defendant, the usual procedural rules on service of process outside Hong Kong should be equally applicable, with an adaptation to the effect that as long as the representative claimant can make out a case, an order should be made for service out of jurisdiction.

- The court should be empowered to stay class actions involving foreign parties in reliance on the common law rule of *forum non conveniens*, if it is clearly inappropriate to exercise its jurisdiction and if a court elsewhere has jurisdiction, which is clearly more appropriate to resolve the dispute.

- Procedural safeguards should be adopted to avoid abuse of the court's process, and to ensure that those put at risk of litigation should be fairly protected - the representative claimant should be required to prove at the certification stage that he would be able to satisfy an adverse costs order if the class fails in the action, and that suitable funding and costs-protection arrangements are in place. The court should also be empowered to order the representative plaintiff to pay security for costs of the class action in appropriate cases.

- The proposed regime should be implemented in phases - starting with consumer cases, including tortious and contractual claims made by consumers in relation to goods, services and immovable property. The regime may then be extended to other types of cases in the future in the light of experience gained.

- The proposed regime should be introduced first in the Court of First Instance (with jurisdiction over claims in excess of HK$1 million (c. US$128,886)), and its extension to the District Court (with jurisdiction over claims above this level) should be deferred for at least five years until sufficient experience and a body of case law have been established. If the regime is eventually extended to the



District Court, judges should also be given the power to transfer complex cases to the Court of First Instance.

- The resources of the Consumer Council's Consumer Legal Action Fund should be increased to make funding available for class actions arising from consumer claims. Once experience is accumulated in the funding of class actions by the Fund, the establishment of a general class action fund (a special public fund, which can make discretionary grants to all eligible impecunious class action claimants, and which in return the representative claimants must reimburse from proceeds recovered) could be considered if the proposed regime is extended to other types of cases.

- The proposed regime should coincide with the ongoing development of alternative dispute resolution procedures (such as mediation and arbitration) in Hong Kong - such procedures are especially useful to the resolution of the issue of quantum in class actions.

The introduction of class actions would represent a significant development for civil litigation practice in Hong Kong, and the Commission's recommendations are generally welcomed. However, those recommendations remain to be considered by the Hong Kong Government.

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EC Regulation 261/2004 update: recent unpublished case law in The Netherlands, Belgium, France and Austria

There is still no clear-cut interpretation and application of European Union Regulation 261/2004 (Regulation 261) throughout Europe, as uncertainty and controversy reign supreme when it comes to the application of the *Sturgeon* ruling of the European Court of Justice (ECJ) in 2009. That ECJ judgment, which held that passengers were entitled to compensation under Regulation 261 following long flight delays, is currently being reconsidered by the ECJ in consolidated proceedings referred by the German Court and the English High Court.

The German case (C-581/10) concerns an action brought against Lufthansa by passengers whose flight was delayed by more than 24 hours beyond its scheduled arrival time. In the English case (C-629/10), TUI Travel, British Airways, easyJet and the International Air Transport Association (IATA) commenced proceedings following the Civil Aviation Authority's refusal to interpret the EU provisions in such a way as to relieve airlines from their obligation to compensate passengers in the event of flight delay.

Pending the ECJ's final decision in those two cases, we highlight below the different approaches adopted by various European courts in unreported judgments regarding the application of the *Sturgeon* decision.

The Netherlands

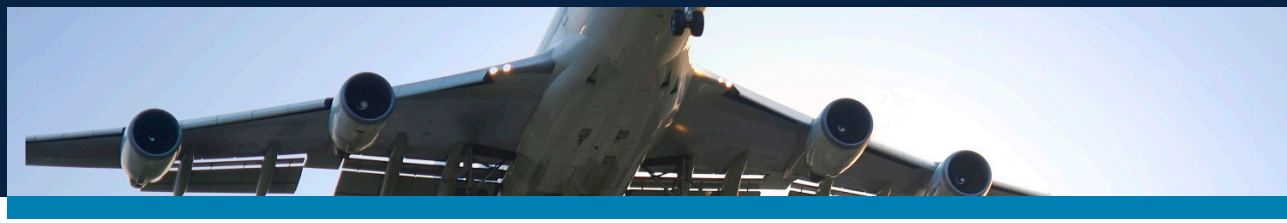
Until the end of 2011, the Dutch courts strictly applied the *Sturgeon* decision. However, since then there has been a trend (especially by the courts of Haarlem's-Gravenhage and Alkmaar) to stay claims brought under Regulation 261, pending the outcome of the ECJ's final decision in the consolidated proceedings referred to above. In a ruling on 15 June 2012, this stance was supported by the Supreme Court of the Low Countries.

Belgium

At present, there is no conclusive case law in Belgium regarding the interpretation of the *Sturgeon* judgment. Although the Commercial Court of Brussels recently strictly applied the *Sturgeon* judgment, that decision has been appealed (indeed, the Commercial Court is not the natural forum for such cases, which should be heard instead by the Court of First Instance).

France

The situation is far from uniform in France, where local courts have adopted an independent approach. For example, the local court of Aulnay-sous-Bois, which has jurisdiction over Charles de Gaulle airport, is known for several rulings which do not comply with *Sturgeon*, finding instead that Article 6 of Regulation 261 (which deals with delays), does not entitle passengers to compensation under Article 7. In a similar case, the local court in Paris decided that only Articles 4 and 5 of Regulation 261 (dealing with denied boarding and flight cancellation respectively) provide for the possibility of compensation, and that no financial compensation can be granted in the case of flight delay.



Austria

The local court of Schwechat, which has jurisdiction over Vienna airport, has strictly applied both the *Sturgeon* and *Wallentin-Hermann v Alitalia* (Case C-549/07) rulings. In response to arguments from airlines that technical problems amount to "extraordinary circumstances" under Regulation 261, airlines may be challenged by an Austrian court to fund a court-appointed technical surveyor in order to examine this issue. This could, however, easily result in a financial outlay by an airline which is disproportionate to the compensation sought by the passenger.

What next?

The main issues now are whether the ECJ will follow the opinion of its Advocate General in the consolidated proceedings currently before it and confirm the *Sturgeon* decision, in spite of its flaws and inconsistencies with earlier ECJ case law (not to mention the conflict with the Montreal Convention 1999) and, the extent to which a confirmation of the *Sturgeon* decision would affect the stance currently being taken by the independently-minded local courts in The Netherlands and in France. Only time will tell.

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State aid developments

In the European Union, State aid to airlines is governed by several unwieldy sets of rules:

- 1994 Aviation Guidelines - back in 1994, the European Commission enacted its main Guidelines on State aid to airlines. These Guidelines are still in force, although they reflect the early thinking of the Commission on State aid.
- 2004 Guidelines - rescue and restructuring aid must be handled in line with these Guidelines (which apply to all sectors, not just aviation), except when the 1994 Aviation Guidelines provide for different rules.
- 2005 Guidelines - sections of the 1994 Aviation Guidelines dealing with operational aid have been superseded by these 2005 Guidelines on regional airport operations, which now allow limited operational aid.
- Public service obligations (PSOs) - account must be taken of the new rules introduced by EU Regulation 1008/2008, as well as of two post-*Altmark* packages of measures for the reform of State aid rules relating to services of general economic interest, which were adopted by the Commission in 2005/2006 and 2011/2012 respectively.

The European Commission is currently busy reviewing and updating the original 1994 Aviation Guidelines, although this process is not yet complete. In the meantime, there have been some interesting recent developments.

In the *Air Malta* case, on 27 June 2012, the Commission gave its final decision approving the restructuring plan and related €130 million State aid scheme to Air Malta, following an in-depth investigation. This is an interesting decision, as most State aid precedents were handed down in the 1990s (Air France, Sabena, TAP, Aer Lingus and Iberia), prior to the 2004 Guidelines on restructuring. The Air Malta decision is one of the first following the implementation of the 2004 Guidelines and provides a comprehensive insight into the Commission's current requirements. The decision is not yet published, but interesting material is found in the invitation to submit comments published by the Commission after the stage one decision (OJ C 50/7, of 21 February 2012). What is striking is the extent of the compensatory measures and own contribution which is required, although the Commission has softened its approach in respect of other requirements, such as the 'one time, last time' principle. It has also agreed to take some account of the fact that Malta is geographically isolated.

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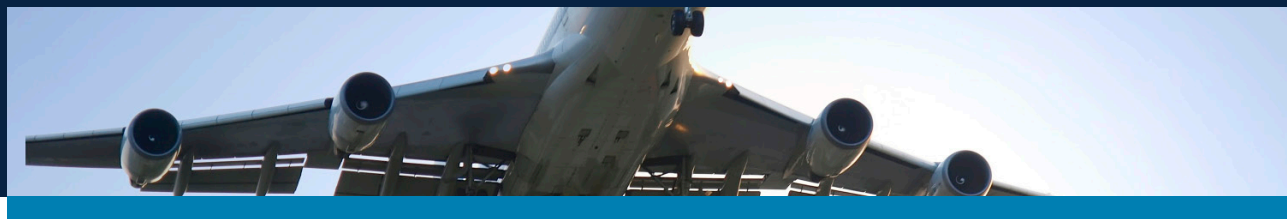

Another interesting development relates to PSOs, following the publication of the second post-*Altmark* package in early 2012, a decision on 20 December 2011 relating to PSO compensation, and subsequent additional Commission communications (OJ L7 and C 8, both of 11 January 2012). Most rules applicable to PSOs are laid down in Regulation 1008/2008, which governs the operation of air services within the EU. Compliance with those rules ensures that PSO compensation which is granted should not constitute State aid. The 2011/2012 package provides additional rules that apply to special situations, such as islands traffic. It also provides guidance when the PSO provider is an airline in difficulty, as well as other special situations.

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EU ETS: a perspective on the valuation of carbon credits

The EU Emissions Trading Scheme (ETS) rules relating to air carriers operating into and out of the EU came into effect on 1 January 2012. The scheme continues to attract a great deal of controversy and opposition - both legal and political - relating in particular to its application to the entire length of flights which depart from or arrive into the EU, rather than only that part of each flight taking place within EU airspace.

Whilst the future of the EU ETS rules for aviation remains somewhat uncertain due to continuing opposition from a number of countries (including China, Russia, the US and India), airlines are however factoring ETS compliance into their operating costs and procedures. There are, though, some consequences of participation in EU ETS which seem set to have financial consequences for airlines and their insurers that are less immediately obvious than direct compliance costs. RGL Forensics are experienced in assessing business losses in the aviation sector, and in this article we consider with them what impact EU ETS may have on the calculation of such claims in the future.

Impact on loss of use claims

The introduction of carbon credits into the aviation sector will have a practical impact which will need to be taken into consideration where the evaluation of loss of use claims for airlines with a European Economic Area presence arises.

Consider the hypothetical example of the loss of a Boeing 747-400 aircraft performing daily flights between London Heathrow and New York JFK. Assume that the airline identified a permanent replacement aircraft (with a four week lead time) and therefore took the operational decision not to alter the schedules of the remaining aircraft, thus minimising disruption to the overall fleet operations.

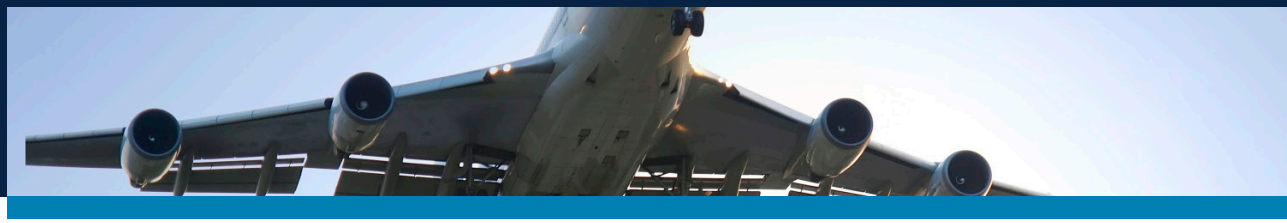
In this example, the airline's loss is manifested through the shortfall in profit from not completing the 28 return flights between the UK and the US in the four week period until the replacement aircraft was introduced into the fleet. This quantification would encompass the measurement of revenue that would have been achieved on the LHR - JFK route, less the saved variable operating costs (such as fuel, landing, handling fees and navigation charges).

Revenue impact

Some airlines are currently looking to offset their ETS compliance costs - most obviously the cost to them of purchasing carbon allowances over and above those allocated free of charge - by the introduction of ticket surcharges. In an ideal world for the airline, it would look to pass on all the additional costs to the passengers. However, competition to keep prices low may mean that, in reality, this does not occur. Furthermore, carbon price movements may mean that the surcharge does not fully offset the cost. When assessing loss of use claims, one would need to understand the policies in place and ensure that the ticket surcharge is included in the analysis of the revenue generated.

Cost impact

Taking the above example, a typical 747-400 aircraft would emit around 8,500 tonnes of carbon dioxide in completing 28 flights to and from JFK, and would need to surrender 8,500 carbon credits at the appropriate time. As those flights did not occur, the airline now has a net gain of 8,500 carbon credits. Airlines receive a free allocation of credits for each year. However, this has no bearing on the number of "saved credits" as the table on page nine shows.



Description	No incident	Loss of aircraft	No incident	Loss of aircraft
Total annual carbon emissions	60,000	60,000	50,000	50,000
Less: saved emissions due to aircraft loss		(8,500)		(8,500)
		51,500		41,500
Free credit allocation	50,000	50,000	50,000	50,000
Purchase of/surplus in credits	10,000	1,500	0	(8,500)
Total credits to be surrendered	60,000	51,500	50,000	41,500

The first example shows that the 8,500 saved carbon credits has the effect of reducing the number of additional carbon credits which need to be purchased by 8,500 credits, from 10,000 to 1,500. In the second example, the airline has sufficient free credits (perhaps an unlikely scenario for most carriers participating in ETS) and there is now an excess (of 8,500) which are available to be sold. In both cases, there is a gain for the airline, resulting from a reduction in the number of additional credits which need to be purchased or an excess of credits that can be sold.

Carbon credit prices fluctuate, and therefore such movements can have a significant impact on the valuation of the carbon credit gain. At the current price of around €8 per credit, the value of the net gain (of 8,500) would be in the region of €68,000. However, prices have in the past reached the €30 mark, which would have a more marked impact on the valuation.

Determination of the appropriate price for valuation purposes is also not straightforward, and might be influenced by the airline's customary purchasing strategy for carbon credits. For example, companies may argue that, under normal circumstances, they calculate their credit shortfall at a particular point (be it their year-end or, say, a month before the surrendering date) and therefore that the appropriate price should be the price at that date. Alternatively, companies may say that they monitor their carbon situation closely and look to take advantage of market movements, purchasing additional credits when the price is low. In those circumstances, they would argue that the carbon credit gain should be measured at lower prices (when the saved additional credits would have been purchased) and not necessarily the price prevalent throughout the loss period.

Mitigation

The above example is simplistic, in that it is likely that an airline would attempt to mitigate the loss of an aircraft by altering the flight schedules of the remaining fleet. In addition, an operator may look to lease-in aircraft on a temporary basis, in the event that a flight cannot be accommodated by the remaining fleet. In either scenario, consideration should be given to the carbon consequences of such actions, including the additional emissions resulting from positioning flights, and differences in emissions arising from the use of alternative aircraft with different fuel consumption rates and therefore different emissions. In particular, if the replacement is not a like-for-like exchange, the financial consequence of any increase or decrease in the fuel efficiency, and therefore level of carbon emissions, should be taken into account.

The EU ETS and the consequent introduction of carbon credits into the aviation sector does have an impact on claim evaluation. Its quantification requires a detailed understanding of the operational impact of an aircraft loss to identify any carbon gains or losses, even before arriving at a suitable methodology for valuing them.

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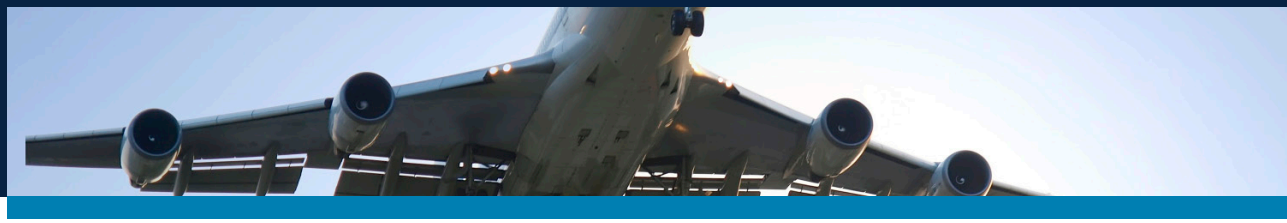

E-freight - extension to Warsaw trade lanes

On 5 June 2012, the IATA Cargo Services Conference adopted a revised Recommended Practice (RP) 1670 (Carriage of cargo using Electronic Data Interchange (EDI)). The new RP contains a number of changes to the IATA EDI template agreement, which has been used by the industry to date.

The original IATA EDI template agreement contemplated EDI-based contracting on trade lanes that are governed by the Montreal Convention 1999 or by Montreal Protocol No. 4 to the Warsaw Convention 1929. The new RP seeks to extend this by introducing a new, optional, Annex D to the template agreement, in order to facilitate elements of e-freight on Warsaw and Warsaw-Hague routes. The new Annex is founded upon the carrier being authorised to make out and sign an air waybill on behalf of the freight forwarder or its underlying consignor, as the case may be. By doing so, it seeks to address the formal documentary requirements for making out air waybills found in the older Conventions which did not contemplate electronic cargo contracting, and thereby to preserve Convention limits of liability. The carrier is protected against claims asserting loss of such limits by an indemnity from the freight forwarder.

This development is of course welcome, but carriers need to bear in mind that the new RP - just like its predecessor - provides users with a template agreement that needs to be tailored to their individual needs. Carriers should therefore not only assess how the new RP might impact them operationally but also, importantly, consider any potential impact upon their insurance arrangements and the steps which need to be taken to mitigate this.

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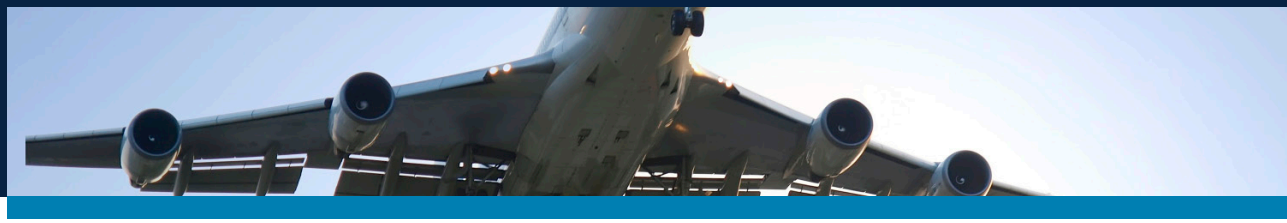

Conferences & Events

Airclaims Aviation Insurance Training Course
Singapore
(28 September 2012)
Keith Richardson

AON Lessors and Financiers Seminar
Dublin
(5 October 2012)
Nick Hughes, Sue Barham,
Pierre Frühling and Elinor Dautlich

MRO Europe 2012
Amsterdam
(10 October 2012)
Zohar Zik

Willis Latin America Seminar
Bogota
(17 October 2012)
Jeremy Shebson and Fernando Albino

Butterworths' Aviation Law and Regulation Conference
London
(25 October 2012)
Sue Barham and Richard Gimblett

Aircraft Asset Management Training Seminar
Hong Kong
(29-30 October 2012)
Peter Coles and Ashleigh Williamson

HFW Airline Regulatory and Liability Conference
Dubai
(6 December 2012)
Richard Gimblett, Giles Kavanagh,
Mert Hifzi, Sue Barham and
Charles Cockrell

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