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Aviation to enter EU Emissions Trading Scheme by 2011

Well, it has finally come! After some 15 months of waiting (the European Commission committed itself in a September 2005 position paper to coming forward with proposals for legislation by the end of 2006), draft legislation to add civil aviation to the existing European Union Emissions Trading Scheme was finally unveiled on 20 December. Was it worth the wait? Well actually (and perhaps surprisingly) it was.

The Commission, although bowing to political pressure to stagger the introduction of its proposals across different routes (see below), ultimately did not duck the big issue of whether to apply the scheme equally to non-EU carriers as well as to EU airlines. By 2012, if the existing proposals survive what is likely on any view to be a difficult gestation, all arrivals and departures at EU airports by commercial airlines of any nationality will be subject to the new rules.

But before getting into the detail of the proposals, what exactly is emissions trading? Put simply, it is a scheme for managing CO₂ emissions under which:

- a cap for total CO₂ emissions is

established across an industry sector or sectors;

- allowances are then allocated to participating entities, allocation being possible under a number of different models;
- at the end of each year, those entities are required to surrender a number of allowances equal to their actual CO₂ emissions;
- in the event that an entity's allocated allowances are insufficient for this purpose, it must buy the necessary additional allowances from other entities within any of the participating industry sectors;
- conversely, if an entity has surplus allowances at the end of the year, it can

sell these to other participating entities; and

- the result is that a market in allowances arises, in which their price is driven entirely by supply and demand.

It is implicit in the above that a number of key "design" decisions need to be made in the creation, or expansion, of any emissions trading scheme. The way in which the European Commission has dealt with these within its proposals will have a key impact on the future economic (and environmental) effect of the scheme, if and when it finally comes into operation.

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Aviation to enter EU Emissions Trading Scheme by 2011 continued

Capping

The total allowances allocated to aviation will be effectively based on the aviation industry's 2005 emissions output. While this does not mean that aviation will in practice be limited to those historical emissions levels (because of the scope for allowance trading), it does mean that aviation will become increasingly dependent on buying surplus allowances from other industry sectors if it is to continue to grow at anything like existing rates.

Allocation

The proposals contemplate that during the first two years of the scheme's operation (2011-2012), up to 10 per cent of the total allowances will be auctioned, the balance being allocated free of charge. In subsequent years, the proportion being auctioned off is likely to rise in line with changes yet to be agreed in the wider European Emissions Trading Scheme. As to the 90 per cent+ distributed free of charge, these will be allocated on the basis of an airline's historical traffic levels, calculated on a tonne kilometre basis, the conversion rate into allowances then being the same for all carriers. This "benchmarking" approach is designed to reward carriers with more fuel-efficient fleets, as opposed to the alternative of "grandfathering", which bases allocation on a carrier's historical emissions (meaning that those with the dirtier fleets receive proportionately the greater number of allowances).

Scope of application

This was always going to be the most controversial aspect of the proposals. In the long run up to the publication of its proposals, the Commission let it be known that it favoured a "Big Bang" approach: applying the scheme to all departures from EU airports from the outset and to all (EU and non-EU) carriers. In the event, it bowed to political pressure and its final proposals are phased.

- During its initial year of operation from 1 January 2011, the scheme will apply only to intra-EU routes (i.e. routes wholly within the EU). While even at this stage the proposals will apply to all categories of carrier, the impact of this will of course be much reduced by this limited geographical footprint.
- With effect from 1 January 2012, however, the scope of the scheme will be expanded to include all departures from and all arrivals at EU airports (i.e. both intra- and extra-EU flights) and again will catch all carriers irrespective of nationality.

Needless to say, the second phase of operation promises to be extremely unpopular and controversial with non-EU carriers. Already there is talk within the industry of a legal challenge being prepared. The phasing of the proposals is intended to provide another year's breathing space, during which it is hoped that some form of global emissions trading scheme will have been developed. In reality, however, of far greater significance to this hope is the time between now and 2011. In that regard, 2007 promises to be a key year, with a triennial ICAO Assembly taking place in September at which the environment and emissions control is likely to be the most highly charged topic.

If that Assembly yields no suggestion of progress on a global level regarding the regulation of aviation CO₂ emissions, then we can expect to see the Commission coming under increasing pressure to modify its proposals in the light of what opponents will say is *realpolitik*. At that stage we may well see how much stomach the Commission and the EU member states have for a fight. ■

Richard Gimblett

Environmental update

Aidan Thomson reviews a number of recent legislative changes following which companies in the UK and their directors must have an increasing focus on environmental matters including requiring directors specifically to consider such issues in carrying out their duties, liability considerations in relation to environmental incidents including the availability of insurance coverage, the registration of chemical substances and the treatment of waste electrical and electronic equipment.

Climate change, and the possible future regulation on the aviation industry to help counter it, continues to be the dominant environmental issue within the aviation sector. However, there were a number of important environmental law developments in late 2006 which will be of relevance to companies in the aviation sector. They are summarised below.

Companies Act 2006 ushers in new environmental responsibilities for directors

The Companies Act 2006 received Royal Assent on 8 November 2006. It introduces sweeping changes to simplify and improve company law. A number of the changes relate to corporate environmental matters.

In particular, the statutory statement of directors' duties has been revised. As before, directors are required to act in the way that they consider would be the most likely to promote the success of the company. However, in doing so they must now have regard to six specified factors, one of which is "the impact of the company's operations on the community and the environment".

The Act also requires companies to produce a "business review" so as to inform members of the company and help them to assess how the directors have performed the above duty. Quoted companies must specifically include "information about environmental matters" in their business review.

The impact of the above changes on directors is augmented by a further change, namely the expansion of the existing procedure for shareholders to initiate and pursue claims against individual directors in the name of the company. It is anticipated that the expanded procedure might be used by environmental pressure groups to put pressure on directors in respect of decisions taken affecting the environment.

Implementation of the Environmental Liability Directive

On 1 December 2006, the Department for Environment, Food and Rural Affairs ("Defra") issued the first of two consultations on the implementation of the Environmental Liability Directive ("ELD") in England, Wales and Northern Ireland. The ELD is supposed to be implemented at Member State level by 30 April 2007. The ELD seeks to harmonise existing environmental liability law across the EU. In short, it aims to establish a framework for the prevention and remediation of damage to protected species and natural habitats, water and land.

The ELD focuses on emissions, events or incidents that take place wholly after 31 April 2007. It will, therefore, have no impact on the remediation of historic contamination issues.

Liability falls on the operators of widely-defined "occupational activities" that cause the damage or an imminent threat of damage.

As well as requiring the "usual" remediation of damage, where protected species, natural habitats or water have been damaged, the ELD requires "complementary" and "compensatory" remediation to be carried out. These additional remediation concepts, which will essentially require improvements to be made at sites other than those damaged, are new to domestic law.

Defra's consultation sets out a series of implementation options together with some

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Environmental update continued

firm implementation proposals for comment. The deadline for comments in response to the consultation is 16 February 2007. Draft legislation is anticipated to be the focus of a second consultation.

Remediation costs and public liability insurance policies

There has long been discussion as to the effectiveness of cover in public liability policies for common environmental liabilities. A recent case has confirmed the lack of coverage.

In *Bartoline Limited v Royal & SunAlliance Insurance plc and Heath Lambert Limited*, pollution resulted from foams used to fight a fire at Bartoline's warehouse. The Environment Agency took emergency measures to clean up and (as it was entitled to do) sent Bartoline the bill. It also ordered Bartoline to carry out further clean up works, which Bartoline carried out. Bartoline claimed its and the Environment Agency's costs under its public liability insurance, which indemnified Bartoline against "legal liability for damages in respect of ... accidental loss of or damage to property ... nuisance, trespass to land or trespass to goods or interference with any easement right of air, light, water or way". The Mercantile Court in Manchester decided (on 30 November 2006) that the sums claimed did not constitute "damages" and were not therefore covered.

Although this case only deals with the specific policy wording in question, the case highlights a potential hole in insurance cover for the wide spectrum of companies that may suffer liability following an environmental incident. The potential hole will only become more significant when the ELD is finally transposed.

Chemicals regulation: "REACH"

The EC's "REACH" Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals) was published in the Official Journal of the European Union. It will enter into force on 1 June 2007.

Once in force, REACH will require the registration over a period of 11 years of some 30,000 chemical substances. This includes substances that are already in use

today as well as new substances.

The onus will be on industry to generate the data required for the registration process relating to the hazards posed by each substance and the identification of appropriate risk management measures to ensure their safe use. REACH will enable more rapid total or partial bans where unacceptable risks are detected and will ensure a comprehensive flow of information about the risks of substances throughout industry and to consumers.

Manufacturers should now intensify their preparatory activities so that they will be ready to fulfil their duties in time. Users of chemicals have to communicate proactively with their suppliers to ensure that their uses are covered by the registration dossiers of manufacturers and importers.

Whilst information gathering should lead to safer products, the greater transparency and onus on manufacturers to do the necessary "legwork" will likely make it easier for liability claims to be brought. Manufacturers and users of chemicals (even chemicals that are commonplace) will have to be especially vigilant in observing the new legislation and acting in accordance with the available information if they are to avoid liability and costly product recalls.

Waste Electrical and Electronic Equipment ("WEEE")

On 12 December 2006, the Waste Electrical and Electronic Equipment ("WEEE") Regulations 2006 were laid before Parliament. These long-overdue Regulations transpose the WEEE Directive in the UK.

The WEEE Directive aims to minimise the impact of electrical and electronic equipment on the environment during its lifetime and when it becomes waste. It applies to a huge spectrum of products. It encourages and sets criteria for the labelling, collection, treatment, recycling and recovery of WEEE.

A host of organisations within the electrical and electronic equipment supply, use and recycling chains have obligations under the new Regulations. Broadly speaking, the main ones are as follows:

- Manufacturers and importers of electrical and electronic equipment have new obligations to mark their equipment appropriately and to provide others with certain types of information about their equipment. They must join an approved "producer compliance scheme" (through which WEEE obligations of collection, treatment and recycling will be managed).
 - Distributors of electrical and electronic equipment have obligations in relation to household WEEE to provide certain environmental information to customers and to provide facilities that enable customers to dispose of WEEE free of charge for environmentally sound treatment and recycling.
 - Business end users have to arrange for and finance the sending of certain types of their WEEE to treatment facilities.
- The majority of the WEEE Regulations came into force on 2 January 2007, with the remainder coming into force on 1 April 2007 and 1 July 2007. ■ Aidan Thomson

Ending of block exemption for IATA conferences

Provisions of EC Regulation 1459/2006 relating to the block exemption hitherto afforded to IATA passenger tariff conferences and slots and scheduling conferences came into effect from 1 January 2007. From that date, passenger tariff conferences for routes within the EU and routes between the EU and Switzerland, Norway, Iceland and Liechtenstein no longer enjoy an exemption from EU competition law prohibiting agreements between firms affecting trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition with the common market. The exemption for slots and scheduling conferences also ended at the same time.

The European Commission assessed that IATA's system of interlining which is facilitated by the passenger tariff conferences has declined to the extent that more than 97 per cent of journeys within Europe are either not interlined at all or are interlined through a system which does not depend on the IATA tariff conferences such as airline alliances, code-shares or bilateral interlining agreements. Accordingly, the Commission's conclusion is that there is no longer an ongoing justification for the block exemption from EC competition rules which has applied to the IATA tariff conferences since 1993. Tariff conferences between the EU and the US and Australia remain exempted until 30 June 2007; and on routes between the EU and other non-EU countries until 31 October 2007.

It is important to stress that the removal of the exemption does not mean that IATA tariff conferences are automatically prohibited under EC competition rules. It does, however, mean that conferences will henceforth need to ensure that they comply with competition law. The Commission has stated that it considers the risks to competition law to rest in the regular meeting of carriers at which pricing and commercial information is exchanged with a view to agreeing on prices for interline tickets.

The Commission's view is that it is legitimate to remove the block exemption on IATA slots and scheduling conferences because those conferences in fact currently comply with competition rules in any event in that the benefits to consumers ensuring well-co-ordinated journeys outweigh any negative effects on competition. ■ Sue Barham

Chile: New regulation allows foreign insurers to offer direct insurance

Pursuant to the Free Trade Agreement (FTA) entered into between Chile and the European Union, the Superintendent of Insurance has issued General Rule 197.

The previous applicable regulations allowed any Chilean citizen or company to buy insurance outside Chile and to approach a foreign insurer for that purpose. However, foreign insurers or brokers were not allowed to offer insurance within Chile.

The new regulation applies to foreign insurance intermediaries and companies that are established in a country that is party to the FTA with Chile. The FTA was signed not only by the European Union, but also directly by each of the EU member states. In order to qualify, a foreign insurer must provide the superintendent with evidence that it: (i) is regulated and supervised in its country of origin; and (ii) has appointed a person domiciled in Chile as its legal representative.

In accordance with General Rule 197, foreign insurers and brokers which comply with these requirements may offer and sell direct insurance cover in Chile relating to international marine transportation, international commercial aviation and cargo in international transit. In addition, such insurance covers are exempt from the 22 per cent offshore tax that applies to other types of insurance contracted out of Chile and are not subject to any other tax. ■ Emilio Sahurie, Estudio Carvallo, Chile

Nigeria: Civil Aviation Act 2006

On 17 November 2006, Nigerian President Olusegun Obasanjo signed into law a new Civil Aviation Act (2006) replacing the Civil Aviation Act of 1964.

The Act establishes the Nigerian Civil Aviation Authority (NCAA) and provides fresh guidelines for the aviation industry. The new law seeks to establish aviation safeguards, enforce safety guidelines, improve security checks, prescribe ministerial powers during emergencies, define offences that endanger safety and also enact penalties for violations. It also addresses compensation for passengers, regulates licensing and permits of air transport particularly concerning eligibility, suspension and revocation.

In pursuance of securing safety oversight autonomy for the NCAA, the Act clearly restricts the Federal Ministry of Aviation or any ministry having responsibility for aviation, to policy and economic regulation, and prohibits political interference with safety regulation. The Act makes it clear that all other sub-sectors of aviation are within the oversight bracket of the CAA, except for the newly-created independent and autonomous Accident Investigation Bureau, whose commissioner of accident investigation reports to the president. ■ Peter Coles

When is a package holiday not a package holiday? The confusion continues

The task of deciding whether holiday arrangements are caught by UK package travel legislation has been made a little harder by a recent decision of the Court of Appeal which requires a case-by-case analysis of whether holiday components, e.g. flight, hotel and car hire, are sold in combination or are sold separately but at the same time - a fine distinction which does nothing for certainty or clarity in this area of travel law. **The Association of British Travel Agents Ltd v Civil Aviation Authority (2006).**

In issue 24 of Aerospace News, we reported on the judgment of the English court concerning a guidance note issued by the CAA in connection with some amendments to the Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995. The case went on appeal and the Court of Appeal gave judgment on 17 October 2006.

The case has a wider significance for the travel industry beyond the question of whether a travel agent requires an ATOL for certain sales. The case applies equally to the Package Travel Regulations 1992, in particular the definition of "package" for the purpose of those regulations. If holiday arrangements are "packages", the travel organiser who sells the holiday (typically a tour operator but sometimes a travel agent) has extensive obligations and potential liabilities and also a potentially expensive obligation to hold a bond or other similar financial protection for the purpose of refunding or repatriating consumers in the event of the organiser's insolvency.

To constitute a package under the relevant legislation, holiday arrangements must be sold at an "inclusive price" and the first instance judgment hinged on the judge's interpretation of that phrase. The court held that an inclusive price is not simply an aggregate or total price of different elements of a holiday; those elements must be connected or dependant on each other in some way in terms of their availability or pricing.

The Court of Appeal unfortunately has muddied the waters considerably. It focussed not on the question of "inclusive price" but rather on whether elements of a holiday are sold as "components of a combination" - in which case they will constitute a package; or whether they are sold "separately but at the same time" - in which case they do not constitute a package.

The Court gives the following illustrative example of a consumer booking a holiday:

(1) the consumer is told by a travel agent the cost of the flight, the accommodation and the transfers but is also told that he can purchase any one or more of those services without the need to purchase the others; (2) the agent ascertains the cost of the flight, the accommodation and the transfers and, without disclosing the individual cost of each, offers the combination to the consumer at the total price which he accepts without further enquiry. Example 1 is not a package; example 2 is a package.

Although the Court says that determining whether there is a package is a question of fact in each case, it is also apparent from the example above that much is likely now to depend on what the consumer is told and on his perception of what he is buying. If that perception is that what is being purchased is a combination of components, whether separately priced or not, that is likely to be regarded as a package - not a very satisfactory way to determine the applicability of significant legislative and financial obligations.

The Court unfortunately has done little to assist clarity in this area of the law. There is ideally a need for new legislation which will properly deal with the many ways in which holiday products are now sold, including internet sales and so-called "dynamic packages" so that those involved in structuring and selling such products can have more clarity and predictability than exists currently as to whether or not they must comply with package travel legislation.

■ Sue Barham

EU air carrier blacklist update

Bulgarian carriers are under threat of being added to the latest blacklist of carriers banned from operating in the EU when the updated list is published shortly. In the meantime, the experience of at least one carrier suggests some potential flaws in the Commission's decision-making processes for adding carriers to the blacklist and in its notification process to carriers who are being considered for inclusion on the list.

In February of this year, the European Commission ("EC") will publish the latest version of the list of carriers which are banned from operating within the EU or are subject to operating restrictions - otherwise known as the EU Carrier Blacklist.

Whilst the publication of this list will be keenly awaited by those operators who are either seeking to challenge existing bans or which have been subject to investigation by the EC, the latest version will be of particular interest as there is the possibility that, for the first time, an EU state could see its carriers added to the blacklist.

Bulgaria, one of the two countries which became EU member states from 1 January 2007, potentially faces a ban following European Aviation Safety Agency ("EASA") reviews of the Bulgarian CAA conducted in 2005 and 2006. EASA reported serious deficiencies in the administrative capacity of the Bulgarian CAA but, as at January 2007, no detailed corrective plan had been received by EASA.

Political embarrassment as well as the economic implications for Bulgarian carriers may mitigate against an outright ban (which would effectively ground all Bulgarian carriers) and so some restriction on operations and/or non-recognition of certificates and approvals issued by the Bulgarian CAA is perhaps more likely. However, the EC has been adamant in the past that its decisions are motivated by concern for the safety of the travelling EU public and that may override political or economic considerations.

A further issue, which has been brought to our attention by one of the carriers which has been subject to a ban, is the process by which carriers might be added to the blacklist. The criteria for addition focus on the use of antiquated, poorly-maintained or obsolete aircraft; the results of ramp

inspections carried out at EU airports; and the ability of an airline to rectify shortcomings identified during such inspections.

In practice, there appear to be some significant flaws in the system. Blacklisting decisions can be made on the basis of Safety of Foreign Aircraft Assessment ("SAFA") reports prepared following ramp inspections. However, it has been reported to us that the carrier's response to an adverse ramp inspection is not passed automatically to the EC, so the risk is that the EC may only see one side of the story when assessing the SAFA reports. This can mean that a carrier is at the whim of the competence and/or qualifications of the relevant SAFA inspectors. A carrier to whom we have spoken was effectively powerless to correct the inappropriate categorisation of defects in a series of SAFA reports which ultimately led to that carrier's addition to the blacklist. The situation was made even worse in that case by the lack of notice provided by the EC. EU legislation requires carriers to be notified if they are being considered for inclusion on the blacklist and given the opportunity to make representations. Nevertheless, in this case no such notice was received either by the carrier or its regulatory authority and the first that the carrier knew of the situation was the grounding of its aircraft upon arrival in the EU. Of course, the list is only updated at approximately three-month intervals which, in the case of the carrier which spoke to us, was enough to bring it to the brink of insolvency.

The information passed to us suggests that the manner in which some SAFA inspections

are conducted, as well as the qualifications of the personnel conducting those inspections within some EU Member States, would benefit from review given the potentially serious financial consequences for carriers. As from 1 January this year, responsibility for the coordination of the SAFA programme passed to EASA. Whilst

the maintenance of the highest aviation safety standards must remain the overriding objective for EASA, the use of EU-wide bans is a draconian sanction and, therefore, must be applied following a balanced and informed assessment of all of the evidence available. We will continue to monitor developments. ■ Keith Richardson

Hong Kong: implementation of the Montreal Convention 1999

Implementation of the Hong Kong Carriage by Air (Amendment) Ordinance 2005 took effect on 15 December 2006, bringing into law the Montreal Convention 1999. This applies the Convention to international carriage as defined by the Convention (where the place of departure and destination on the ticket or air waybill are in countries that have implemented the Montreal Convention or where the place of departure and destination are in the same country which has implemented the Convention but where there is an agreed stopping place in another country), carriage between Hong Kong and Mainland destinations and non-international carriage (including domestic carriage within Hong Kong and carriage between Hong Kong and Thailand and Taiwan). The Warsaw Regime will continue to apply to those claims where the place of departure and destination on the ticket or air waybill are in countries that have only implemented the Warsaw Convention 1929 or the Warsaw Convention as amended by the Hague Protocol 1955.

Subsidiary legislation in respect of a proposed advanced payment scheme is still under discussion. We are advising the industry in respect of this and we will report on the scheme once finalised.

Macau and Mainland China implemented the Montreal Convention in November 2004 and July 2005 respectively. ■ Peter Coles

BLG news

- Willis South American Aviation Insurance Conference, Cartagena, Colombia, 23-25 January 2007: **Jeremy Shebson** participated in a panel discussion.
- Aon Turkish Aviation insurance seminar, Istanbul, 4-6 February 2007: **Mert Hifzi** speaking on IATA Ground Handling Agreements and Major Loss Handling.
- IATA Legal Symposium, Istanbul, 12-14 February 2007: **Giles Kavanagh** speaking on Aviation Liability and Insurance in the Age of Terror and **Richard Gimblett** speaking on Aviation Global Environmental Initiatives.
- Annual European Airline Engineering and Maintenance Conference, Zurich, 20-21 February: **Sue Barham** speaking on the EU Carrier Blacklist and the Accomplishment of Ramp Inspections.
- Asian MRO Conference, Singapore, 28 February - 2 March 2007: **Peter Coles** speaking on MRO and Airline Liability Exposures: Controlling the Risks Through Contracts and Insurance.
- 14th International Space Insurance Conference, Milan 22 - 23 March 2007: **Nicholas Hughes** participating on the Legal Panel.

New UK legislation and criminal penalties for air carriers

Two new UK statutory instruments impose criminal penalties on air carriers for breaches of EU laws on provision of information to passengers and unlawful slot transfers.

In implementing EU legislation in the aviation field and creating enforcement provisions, the UK customarily creates criminal offences for carriers and sometimes for individual directors for non-compliance with EU rules. Carriers will wish to note that new statutory instruments relating to the identification of operating carriers and airport slot transfers are no exception to that practice.

The Civil Aviation (Provision of Information to Passengers) Regulations 2006

These regulations came into force in the UK on 16 January 2007 and contain enforcement provisions in relation to EC Regulation 2111/2005 on the establishment of a list of air carriers banned from operating within the EU and on informing passengers of the identity of the operating carrier.

The Regulations have nothing to do with the EU carrier blacklist. Instead, they focus on the second aspect of EC Regulation 2111/2005 relating to the obligations of "air carriage contractors" - i.e. airlines, tour operators and potentially also travel agents - to inform passengers of the identity of the carrier who is to operate their flight. Under the EC Regulation, the air carriage contractor is obliged on reservation to inform the passenger of the identity of the air carrier operating the flight; where the identity is not known at the time of reservation (often the case with the sale of package holidays where the airlines to be used may not be confirmed for some time), the passenger must be informed as soon as the identity is known.

The EC Regulation contains standard provisions requiring Member States to establish "effective, proportionate and dissuasive penalties" for infringement and, in line with common practice in the implementation in the UK of enforcement measures, the UK statutory instrument creates criminal offences for failure of air carriage contractors to meet these information requirements. That, in itself, is by no means unusual though those involved

in selling air carriage should also note that the UK regulations also provide for the possibility of individual criminal liability on the part of any director or other officers implicated in the offence. Both companies and individuals face a fine if convicted.

The Airport Slot Allocation Regulations 2006

These regulations came into effect on 1 January 2007 and replace the Airport Slot Allocation Regulations 1993.

Airport slot allocation is the subject of EC legislation. EC Regulation 793/2004 on common rules for the allocation of slots at Community airports made significant amendments to the original slots regulation (No. 95/93) and, with this new UK statutory instrument, English law now catches up with the applicable EC regulatory provisions which have been in force for some time. Of particular note is the fact that the new statutory instrument maintains the position that any air carrier which transfers slots in breach of the EC Regulation is guilty of a criminal offence and liable to a fine; criminal sanctions can also apply to any director, manager or officer of the air carrier who is implicated in the offence. Such individuals in theory could face imprisonment for involvement in unlawful transfer of slots though that ultimate sanction is perhaps unlikely.

There are significant restrictions on carriers' ability to deal in slots. Under the Regulations, a slot transfer is lawful only if it is from one route or type of service to another operated by the same air carrier; or

within the same corporate group; as part of an acquisition of the capital of an air carrier; in a total or partial takeover; or if it is a "one for one" exchange between carriers - the

latter being the mechanism by which slots can in effect be "traded" but only on a swap basis from one carrier to another. ■

Sue Barham

Turkey brings aviation insurance regulation in line with EU law

Turkey has enacted new legislation which extends EU rules on minimum insurance to carriers flying into, out of, or over Turkey.

On 15 November 2006, Turkey implemented a new regulation concerning insurance requirements for air carriers and operators. This new regulation is remarkably similar to European Regulation 785/2004, which was a product of the 9/11 air attacks in the United States and a realisation by the air transport industry, with the European Union, that an examination of the insurance requirements in the aviation industry was required.

All Turkish carriers that fly into, out of, or over the territory of an EU member State are already required to comply with the provisions of 785/2004. The new Turkish Regulation effectively extends the scope of the provisions in the EU Regulation to carriers that fly into, out of, or over Turkey.

It sets limits of required insurance at 250,000 SDRs per passenger and, in respect of non-commercial operations by aircraft with a MTOM of 2,700kg or less, a minimum insurance cover of 100,000 SDRs per passenger. These limits follow the minimum limits recommended by 785/2004.

While the Turkish government had no obligation to introduce legislation to comply with current EU Regulations, this is one of a number of major legislative changes within Turkey which reflect its ambition to become part of the EU. However, this is not the only reason. The desire to develop further existing domestic law has also had an impact on its introduction. Article 132 of the Turkish Civil Code already states that aircraft operators must insure the possible risks arising from the contracts between the passengers and aircraft operators. The new Regulation aims specifically to determine the limit of the required insurance.

The Regulation requires that proof of such insurance shall be provided to the Turkish Ministry of Transport. Further, it appears that the Turkish government is set to take this Regulation seriously. From 15 May 2007, Turkish and foreign air carriers and air operators who do not comply with the Regulation will be subject to sanctions, such as a ban from Turkish airspace and, in the case of a Turkish operating aircraft, the Ministry of Transport will have the authority to withdraw its operating licence.

Like Regulation 785/2004, the Turkish Regulation has been created to ensure a minimum level of insurance to cover the liability of air carriers in respect of passengers, baggage, cargo and third

The introduction of such legislation within Turkey is evidence of the desire to regulate air carriers that operate in and out of Turkey in accordance with existing EU Regulations, with one eye on EU membership! ■

Mert Hifzi, with many thanks to Erçin Bilgin Bektasoglu

BLG Aerospace expands

We are delighted to announce that Neil McGilchrist will be joining BLG Aerospace as a Consultant in February. Neil is a former senior partner of Beaumont & Son and current head of aviation in the London office of Gide Loyrette Nouel. Neil will bring with him the rest of his UK team from Gide: Anna Anatolitou and Maria Galan who will be joining us as associates. Neil and his team have a wealth of experience in the handling of major losses and aviation claims worldwide and their arrival will further strengthen our Aerospace practice and consolidate its first tier ranking in the legal directories.

The Asia team of our Aerospace Department is also pleased to be joined by Ian Lo, working in our Hong Kong office. Ian is a qualified Hong Kong solicitor and has experience defending airlines and ground handling agents in respect of fatal, personal injury and employees' compensation claims, as well as cargo and baggage claims. High profile matters include the China Airlines accident at Chek Lap Kok in 1999 and the Hong Kong Court of Final Appeal's decision in **Cathay Pacific Airways v Wong Sau Lai** (see Autumn 2006 edition of Aerospace News). Ian speaks English, Cantonese and Mandarin. ■

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