

## **Applicability of General Principles of Insurance to Aviation Insurance: An Overview**

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### **Abstract**

*This article is an attempt to elaborate the general principles of insurance and to discuss how they are applicable to aviation insurance. For example, the principle of indemnity, when applied to the 'limited liability regime' of the aviation liability, does not restore the injured passenger to the similar position, as he was in, when the loss occurred but compensate to the extent only as provided in Warsaw Convention 1929 and other related instruments including the latest Montreal Convention 1999. Aviation Insurance is a complex matter and includes various different types of insurance policies like hull insurance and liability insurance. Financial burdens involved in different policies make reinsurance indispensable. Complexities of insurance make the liability regime towards passenger and third party even more complex.*

### **Keywords**

*Aviation, aircraft, insurance, hull, liability.*

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## **Introduction**

Insurance is one of the contemporary legal institutions that has emerged in response to life's increasing complexity and uncertainties. It serves a variety of purposes, all of which contribute to today's social and economic administration in varied degrees. Insurance provides security to individuals and their transactions, and it is a growing industry for many others since it is a fantastic tool for distributing risk and enabling society-wide development. It is well acknowledged that defining a contract of insurance satisfactorily is a challenging task. It may be described as a contract in which one party, the insurer, agrees to pay money or money's worth to the other party, the insured, in exchange for a monetary payment, the premium, on the occurrence of an unknown event more or less unfavourable to the interests of the insured.<sup>1</sup>

Insurance is a method of spreading risk that is anticipated to be caused by unforeseen or unexpected future occurrences, so that the cost of any loss is shared among a wide number of people rather than the unfortunate individual immediately impacted.

In insurance for the hull the insurance will cover the insured against physical loss or damage to the aircraft. Liability insurance covers the event of loss or damage including injury or death to passenger or third-party.<sup>2</sup> Insurers will not insure against future occurrences that are guaranteed to occur since they want to cover contingent events.<sup>3</sup>

Insurance will not cover loss or damage caused by the insured intentionally.<sup>4</sup> As a result, insurers will seldom cover liability of a lessor or lessee to the other for willful lease violations. Fines and penalties levied on the insured are not covered by insurance.<sup>5</sup>

They will also seldom insure a party's creditworthiness or financial position, while some specialty insurers will occasionally guarantee an aircraft's residual value. Furthermore, Lloyds' underwriters are prohibited by laws from writing financial guarantee insurance without the Financial Guarantee Committee's previous written approval.

## **Aviation Insurance**

Aviation Insurance contracts, like other specialized insurance contracts, are regulated by some unique insurance rules. The following are the guiding principles:

### **1. Uncertainty of Events**

Insurers avoid insuring against occurrences that are guaranteed to occur in the future because they cover events of contingent nature.<sup>6</sup> This is one of the

characteristics of insurance that distinguishes it from wagering, in which there is no risk before a bet is placed, and once the bet is placed, the event is guaranteed to occur, unlike with insurance.

## **2. Insurable Interest**

The concept of insurable interest states that no one may insure something unless he has an interest in it, which implies that if the insured item is intact and safe, he will gain from it, but if it is destroyed or lost, the assured would suffer loss. No insurance policy shall be enforced unless it is for the benefit of someone who has an insurable interest in the insured property. Any person with a financial stake in an aircraft, such as the owner, investor, lender, lessor, or lessee, will almost always have an insurable interest in the aircraft. A person can insure his own aircraft since if it is damaged, he would incur a loss because he will have to pay to have it repaired. He is unable to insure an aircraft owned by someone else in which he has no substantial interest since any loss or damage to it will have no bearing on him. On the other hand, if that individual is going to be compensated for any loss or damage to another person's aircraft, he could be motivated to assist in the loss or damage. As a result, it is considered "against public policy" to insure anything by individuals who aren't interested in it.

As previously stated, the necessity of insurable interest in the subject matter of insurance separates a contract of insurance from a wager. The contract would be invalid if there was no insurable interest. The most obvious example of insurable interest is ownership of aero plane. With the onset of deregulation and the arrival of more expensive wide-body aircraft, airlines have turned to alternative sources of funding rather than owning them outright. Modern aeroplanes are typically purchased through a syndicate of banks or other financial organizations, as well as by manufacturers, resulting in a variety of financial and leasing arrangements. Financiers and mortgagors' interests are completely covered by aviation insurance in the joint names of the owners and financiers, because they all have an insurable stake.

Bailees with insurable interests include hanger keepers and repairers. The aircraft operator's insurable interest in the crew members' lives and the validity of their certification.

## **3. Disclosure Obligation**

### ***[a] Utmost Good Faith***

One of the fundamental concepts of insurance contracts is *uberrimae fidei*, or utmost good faith. The terms of the contracts and the amount of the premium are determined by the insurers based on the risk disclosed by the person to be covered. When making disclosures to the insurer, either directly or through a broker, the

person to be covered must behave in good faith. The insurer and the insured are both bound by the obligation of good faith.

The contract is usually formed on the basis of printed proposal forms with a certification that the disclosures are truthful and correct. When an agent or broker acquires insurance for a client, as is customary in the aviation industry, he should give all detail that the assured would have revealed to him if he had gotten the cover himself.

#### ***[b] Misrepresentation And Non-Disclosure***

The policy is voidable by the person who was deceived due to non-disclosure or misinformation. Even if the error is accidental, the underwriter will be misled, and the policy will be voided.

#### **4. Indemnity**

According to the concept of indemnity, an insurance contract restores a person who has incurred a loss to the same position he was in before the loss, but does not enable him to benefit from it because that would be against public policy. Insurance is based on indemnification, whereas gambling is focused on profit. Of course, the theory cannot be used to restoring a person's life or limb that has been lost under such circumstances. As restitution is unattainable in such instances, an amount of money becomes due to compensate for the loss caused by the loss of life or limb.

The notion of indemnification is used in aviation insurance to cover the loss or damage to the aircraft. In the event of a partial loss of an aircraft hull, compensation is granted in the form of repair and replacement costs, although wear and tear and degradation are not covered. In "agreed value" plans, the amount to be paid is agreed upon at the start of the contract, rather than after the loss occurs.

These insurance are likewise indemnity contracts, however the sum is agreed upon ahead of time. Indemnity also covers legal liability for injuries to passengers and third parties, and it can be extended to pay legal costs paid by the insured in defending any action brought against him with the insurer's written approval.

#### **5. Subrogation**

The word 'subrogate' implies 'to take another's place.' It puts the insurer in the shoes of the insured and gives him all of the assured's rights and remedies against any third party. If it is determined that the accident was caused by, say, a manufacturing flaw in the engine, the airline operator may have recourse against the aircraft manufacturers. The underwriters would gain from such rights of recovery through subrogation in such circumstances.

Subrogation prohibits an indemnity from becoming an unfair benefit to the damaged party. Assume A has insured his cargo with B and it is damaged as a result of C's carelessness. A will, of course, file a claim against B, who will compensate A for the loss. However, because C was negligent, A's legal case against C would very probably result in C being awarded damages. As a result, A would be rewarded twice, which would be a violation of the 40. *ibid.* p. 13 indemnity principle. To avoid this, B, the insurer, takes the place of A, the guaranteed, in any legal action against C. Every right of the insured that will reduce the damage they have been compelled to suffer, whether it is a contractual right, a tort action for negligence, a right over property, or a statutory right, is available to the insurer.

If a successful action by an airline against a manufacturer or a negligent party is contingent on the claimant complying with any legal formalities, such as providing adequate notice of the defect within a certain time limit, the claimant must ensure that he does so in order to protect the insurer's position. Otherwise, the insurer subrogates to an unsatisfactory legal position due to the claimant's negligence. The claimant must help the insurer in enforcing the insurer's rights against third parties and must not do anything that jeopardizes the insurer's interests. The right of subrogation applies exclusively to the sum paid out, not to any amount beyond that. In the case of life insurance and personal accident insurance, subrogation does not apply.

In the case of life insurance and personal accident insurance, subrogation does not apply. In such instances, the claimant has the option of filing a claim with his insurance company as well as filing a lawsuit against any culpable party.

If an insurer pays an insured the full amount of compensation under a policy and the assured later recovers the same amount from another source, the insurer is entitled to a complete refund.

In *Phoenix Assurance Co. v. Spooner*<sup>7</sup> the defendant had insured some structures against fire. The buildings were then issued with a compulsory acquisition notice by Plymouth Corporation. The structures were eventually consumed by fire. The defendant learned that because the insurers had paid the entire purchase price for the buildings, he was also entitled to the full purchase price from the Plymouth Corporation because they had ensured the risk of the properties from the date of the notice. The insurers were subrogated to the defendant's entitlement, and may reclaim the full amount they had already paid, according to the Court.

## **6. Contribution**

Indemnity is linked to contribution. An insurer who has indemnified the insured for a loss under a policy has the right to collect a proportionate amount from other insurers who are also liable for the loss under their policies.

This concept states that a person cannot insure the same risk twice and then claim money from both insurers. To do so would entail putting the insured in a better financial situation than he was before the catastrophe. It would be a breach of the indemnification agreement as well as a violation of public policy. As a result, if two policies cover the same catastrophe, the insurance firms share the loss pro rata, and the assured is only returned to the indemnity position. In such instances, the insurer's obligation is joint and several.

In fact, the contracts include a contribution clause that requires each insurer to pay a proportionate amount of the premiums in the event of duplicate or multiple insurance.

As we have seen, aviation insurance contracts are a separate sort of contract with unique characteristics with application of principles of insurance such as greatest good faith, insurable interest, indemnity, subrogation, and contribution. Though these principles are common to all types of insurance contracts, aviation insurance, on the other hand, has its unique set of features that are to be dealt with accordingly.

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5. (1996). In some US States, it is prohibited on the ground of public policy e.g. Cal. Ins. Code 533.5 [a]. in English law this is not so precluded if policy wording otherwise allows it. *Lancashire County Council v. Municipal Mut. Ins. Ltd* All E.R. 545.
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7. (1905). KB 753.