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Subject: Review of limits of liability conducted by ICAO under Article 24 of the Montreal Convention of 1999 – Notification of revision of limits of liability

Action required: a) to take note of revision of limits; b) to take cognizance of the revised limits of liability that shall become effective for all States Parties to the Montreal Convention of 1999 six months following this notification unless within three months of this notification, i.e. no later than **30 September 2009**, a majority of the States Parties register their disapproval with ICAO; and c) to make provisions to adjust as necessary implementing legislation to take into account the revision of the liability limits once effective

Sir/Madam,

1. I have the honour to refer to the *Convention for the Unification of Certain Rules for International Carriage by Air*, done at Montreal on 28 May 1999 (Doc 9740) (Montreal Convention of 1999). The Convention establishes in its Articles 21 and 22 the liability limits of the air carrier for damages in relation to the carriage of passengers, baggage and cargo. The amounts so established are expressed in Special Drawing Rights (SDRs), a unit of account established by the International Monetary Fund (IMF).

2. The SDR is defined as a basket of currencies whose composition is periodically reviewed by the IMF to ensure that it reflects the relative importance of currencies in the world's trading and financial systems. Today, the basket of currencies consists of the euro, Japanese yen, pound sterling and U.S. dollar. The table below illustrates the history of the basket composition and weights:

SDR Valuation Basket: Percentage Weights at Inception of Period						
	1981-85	1986-90	1991-95	1996-2000	2001-05	Proposed 2006-10
U.S. dollar	42	42	40	39	45	44
Euro	–	–	–	–	29	34
Deutsche mark	19	19	21	21	–	–
French franc	13	12	11	11	–	–
Japanese yen	13	15	17	18	15	11
Pound sterling	13	12	11	11	11	11

Source: IMF – Finance Department

3. At the Diplomatic Conference which adopted the Montreal Convention of 1999, States were mindful of the need to ensure that the limits of liability retain their economic value with the passage of time and that they would not erode due to inflation or other economic factors subsequent to the coming into force of the Convention.

4. To take this into account, the Convention provides in its Article 24 (Review of Limits) a built-in mechanism, sometimes referred to as the escalator clause, which sets out the process for a periodic review and revision as necessary of the aforementioned limits of liability. The review mechanism was deliberately designed along the lines of a tacit approval process, ensuring general application while involving all States Parties.

REVIEW UNDER ARTICLE 24 OF THE CONVENTION

5. Article 24 provides that the limits of liability be reviewed by the Depositary (ICAO) at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of the Convention.

6. In its relevant part, Article 24, paragraph 1, stipulates that the limits be reviewed by reference to an inflation factor which corresponds to the accumulated rate of inflation since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor is the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the SDR. As the Montreal Convention of 1999 entered into force on 4 November 2003, ICAO initiated the process of reviewing the limits at the end of 2008, and the inflation factor used corresponded to the accumulated weighted rate of inflation over the period 2003-2008. As the IMF released pertinent official 2008 data only in April 2009, the review could only be concluded thereafter.

RESULTS OF REVIEW – DETERMINATION OF INFLATION FACTOR

7. Historical Consumer Price Index (CPI) data was obtained from the IMF World Economic Outlook Database, April 2009 Edition, available on the IMF public website. This database is usually updated in April and September of each year. The table below summarizes the analysis regarding the annual per cent change in average consumer prices for the period concerned:

	United States		Euro area		Japan		United Kingdom		Weighted Index
	CPI	weight	CPI	weight	CPI	weight	CPI	weight	
2003									100.0
2004	2.7	0.45	2.18	0.29	0.0	0.15	1.3	0.11	102.0
2005	3.4	0.45	2.19	0.29	-0.3	0.15	2.0	0.11	104.4
2006	3.2	0.44	2.20	0.34	0.3	0.11	2.3	0.11	107.0
2007	2.9	0.44	2.15	0.34	0.0	0.11	2.3	0.11	109.4
2008	3.8	0.44	3.29	0.34	1.4	0.11	3.6	0.11	113.1

REVISION OF LIABILITY LIMITS

8. As a result of the above review and calculations set out in paragraph 7 above, it has been determined that the inflation factor has **exceeded 10 per cent**, the threshold stipulated in the Convention for triggering an adjustment of the limits of liability. The determined inflation factor is **13.1 per cent**. For ease of reference, it should be recalled that the Montreal Convention of 1999 established the following limits:

- a) 17 SDRs per kilogram in the case of destruction, loss, damage or delay in relation to the carriage of cargo (Article 22, paragraph 3, Montreal Convention of 1999 refers);
- b) 1 000 SDRs for each passenger in case of destruction, loss, damage or delay with respect to baggage (Article 22, paragraph 2, Montreal Convention of 1999 refers);
- c) 4 150 SDRs for each passenger in relation to damage caused by delay in the carriage of persons (Article 22, paragraph 1, Montreal Convention of 1999 refers); and
- d) 100 000 SDRs for each passenger for damage sustained in case of death or bodily injury of a passenger (for the first tier, Article 21, paragraph 1, Montreal Convention of 1999 refers).

9. As a consequence, the limits of liability would need to be revised as follows:

Old Limits (SDR)		Revised Limits (SDR)	Rounded Revised Limits (SDR)
17	x 13.1%	19.227	19
1000	x 13.1 %	1 131	1 131
4150	x 13.1%	4 693.65	4694
100 000	x 13.1%	113 100	113 100

10. Following the consideration of this matter, the Council, pursuant to its decision on 10 June 2009 (C-DEC 187/3), requested that States Parties to the Montreal Convention of 1999 be notified of the outcome of the review and the revised limits of liability.

NOTIFICATION TO STATES PARTIES

11. In accordance with Article 24, paragraph 2, of the Convention, ICAO has to notify States Parties to the Montreal Convention of 1999 of the outcome of the review and the revisions of the limits. In line with the tacit approval mechanism spelled out in paragraph 2 of Article 24, the said revisions **shall become effective for all States Parties six months following this notification, unless within three months after this notification a majority of States Parties have registered their disapproval with ICAO.** Should the latter occur, the revisions would not become effective and ICAO would be required to refer this matter to a meeting of the States Parties (Diplomatic Conference). The current list of States Parties to the Montreal Convention of 1999 can be found on the ICAO public website (www.icao.int) as part of the Legal Bureau's Treaty Collection.

12. Accordingly, in the absence of notifications of disapproval received from a majority of States Parties to the Montreal Convention of 1999 by no later than **30 September 2009**, ICAO will notify at the lapse of six months following the issuance of this letter all signatories and States Parties in accordance with Article 53, paragraph 8 (d), regarding the date of the coming into force of the revised limits of liability.

13. In light of this situation, States may find it opportune to make provisions as necessary in accordance with their domestic legal requirements to give full effect of the revised limits, once effective.

Accept, Sir/Madam, the assurances of my highest consideration.

Taïeb Chérif
Secretary General