Personal and corporate responsibility and liability in air accidents and incidents
Foreword

In our increasingly litigious society it is becoming more and more important for senior managers, post holders and chief executives to understand and plan for the very real threat of criminal procedures being brought against the company or individuals following a serious incident or accident.

These procedures can often be traumatic, lengthy and expensive and it is important that resources are put in place to defend the company and individuals as well as ensuring business continuity.

Being operationally prepared for a serious event is very different from being prepared for possible criminal action. The advice and information in this document explains what the threat is and, more importantly, how it can be managed if the worst should happen. There are also case studies of real events that show the real life consequences for the individuals and companies concerned.

This document has been put together in partnership and with the kind help of our member Hill Dickinson who have sourced expert advice and information to help members prepare and plan.

This will be a ‘living document’ and will be regularly reviewed and updated taking account of changes in regulation, incidents and events and I hope provides ‘best practice’ guidance and added value to ERA membership.

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Introduction and background

During the past decade, it is unlikely that any day has passed in which some senior airline executives, somewhere in the world, have not been faced with criminal charges arising from an air accident.

Criminalisation of air accidents has become a new and threatening feature in the responsibilities of directors and key post-holders in worldwide air operating companies. It requires airline Boards and senior management to prepare not only for an accident or incident but also for a potential criminal prosecution.

Preparation should include various measures including insurance, training, media strategy and establishing within the airline (in anticipation of a future incident/accident) the capability of conducting a parallel internal air accident investigation.

The same type of preparation is needed for any civil action that might arise following an incident or accident.

States can, and have, acted to introduce legislation to make it a criminal offence when a gross failure, negligence or breach of duty in an organisation results in death or serious injury.

Failures by senior managers to take the necessary measures can expose companies to corporate manslaughter charges.

Executive and non-executive Directors and management need to be fully aware of their legal obligations.

The tendency to criminalise air accidents is increasing particularly within the EU. Although the US has not followed in the footsteps of Europe it continues to measure blame by way of damages payable to the victims’ families.

The following are examples of the type of prosecutions currently taking place within Europe:

**La Rioja, Eurocopter – 10 March 2015**

Prosecutors in France have opened a manslaughter investigation after two helicopters crashed in Argentina, killing eight French nationals, whilst filming of a TV survival show, ‘Dropped’.

The helicopters apparently collided in midair near Villa Castelli in La Rioja province, about 730 miles (1,170km) northwest of Buenos Aires, La Rioja. All 10 people on board — eight French nationals (including 3 well-known sports personalities) and two Argentine pilots — were killed.

**Katekavia Flight 9357 – Russia, 3 August 2010**

Katekavia Flight 9357, a domestic flight operating from Krasnoyarsk to Igarka in Russia crashed in the early hours of 3 August 2010, killing twelve out of the fifteen people on board the aircraft. The aircraft crashed whilst on the approach to Igarka Airport around 700 meters short of the runway.

An investigation was carried out by the Russian Interstate Aviation Committee (MAK) who concluded that the crew failed to take a timely decision for a missed approach when the plane descended below the minimum safe height (100m) in the absence of reliable visual contact with approach lights and runway lights. The final report into the accident, which was released in October 2010, concluded that pilot error was the cause.

As a result of the crash, a government investigation to the operating practices of Katekavia was begun; the outcome of that investigation is not known. However, in around October 2013 the court in Krasnoyarsk, Siberia held that the captain of the flight could have averted the accident by waiting for better weather conditions before attempting to land but instead continued his landing approach in poor visibility. The captain blamed the air traffic control service and the airport’s meteorologists, saying that they had misled the flight crew. The Russian Court rejected the captain’s arguments and sentenced him to 4½ years in prison for his role in the accident. It is thought that the pilot sought to appeal the conviction, although the outcome of any appeal is not known.

**Spanair Flight JK 5022 – 20 August 2008**

An MD-82 crashed just after take-off from Barajas Airport in Madrid resulting in 154 fatalities and 18 survivors. The accident report indicates that the wing flaps failed to move into the required configuration and the alarm system that would normally alert pilots failed to activate.

A criminal investigation was opened by the Court of Instruction Nº11 of Madrid in August 2008, and five employees of Spanair were provisionally charged with 154 counts of “imprudent homicide” and 18 of “imprudent injury”. However on completing the criminal investigation in December 2011, the criminal judge considered that of those 5 employees, only the two Spanair ground engineers should stand trial.

In September 2012, on appeal to Madrid’s Audiencia Provincial, it was held that there was no criminal case to answer and the two Spanair employees were released from any charges and the criminal investigation was closed. The Audiencia Provincial held that the deceased pilots were solely to blame for the accident.
The victims and claimants are at present pursuing Spanair/their civil liability insurers in separate civil proceedings.

**Atlasjet Airlines Flight 4203 – Turkey, 30 November 2007**

A McDonnell Douglas MD-83, TC-AKM, was destroyed in an accident near Isparta Airport (ISE), Turkey. All fifty passengers and seven crew members were killed. The aircraft was leased by World Focus Airlines and flew on behalf of Atlasjet Airlines. The airplane crashed into a mountain on the approach to Isparta Airport.

Following a criminal investigation in Turkey, the general manager of World Focus Airlines, the company's training manager, and an Atlasjet manager were sentenced to 11 years and eight months each on charges of negligent homicide.

The maintenance director of World Focus Airlines received a prison sentence of 5 years and 10 months and two pilots received 2 years and 6 months each for false testimony.

The former Director General of Civil Aviation and the deputy Director General each received prison terms of 1 year and 8 months after being convicted of misconduct in office.

Twelve other defendants were acquitted.

**Gol 737-800 and Embraer Legacy collision – Brazil 2006**

The two Embraer pilots and four Air Traffic Controllers were indicted for exposing an aircraft to danger. Initially the charges against the two pilots and two of the Air Traffic Controllers were reduced but the charge of “imprudence” remained. In January 2010 a Brazilian Judge reversed this decision and reinstated the charges against the two pilots. In May 2011 the two pilots were sentenced to four years and four months prison; a sentence which was commuted to community service to be served in the United States.

In October 2012, Brazilian federal prosecutors announced that they had successfully appealed the sentence of the pilots, asking to increase their sentences by 17 months (a total of 5 years and 9 months). A new trial was scheduled 15 October [with the pilots again facing trial in absentia]. On that date, the court upheld the prior convictions, but modified the sentences to 37 months for each, requiring that the pilots “report regularly to authorities and stay home at night”.

In November 2012, a French appeals court in Versailles reversed its earlier comment that the Concorde programme had been improperly supervised for a number of years. EADS (which had taken over the supersonic programme from Aerospatiale) were also found vicariously liable for their employees’ misconduct.

In December 2010, Continental Airlines and one of its employees (a welder) were fined €200,000.

**DHL Boeing 757 and Bashkirian Tu-154 – 1 July 2002**

A DHL Boeing 757 and a Bashkirian Tu-154, aircraft collided in mid-air over Uberlingen, Germany with the loss of 71 lives. Four years later, negligent homicide charges were brought against eight Swiss Skyguide air navigation services controllers by Swiss prosecutors. (The controller on duty at the time of the accident was later stabbed to death by the father of one of the crash victims).

In September 2007, a Swiss court convicted four of the eight mid-level managers; four others were acquitted.

However, it must be emphasised that such prosecutions are not limited to Europe:

**Air France Flight 4590 (Concorde) – 25 July 2000**

Concorde crashed following take-off at Charles de Gaulle International Airport with all 109 passengers and crew, as well as four people on the ground fatally injured. The BEA conducted a four-year investigation and the December 2004 report found the likely cause to be a fallen titanium strip from the thrust reverser of the Continental Airlines DC-10 that departed moments before Concorde.

Continental was subjected to investigation in 2005 and its vice president appeared in France for a seven-hour hearing. In July 2008, a French judge ordered Continental and five other individuals to stand trial on charges of involuntary manslaughter.

The trial commenced in February 2010 and a verdict was handed down in December 2010. Continental Airlines and one of its employees (a welder) were found guilty of manslaughter and unintentionally causing injury. The employee received a 15 month suspended custodial sentence; Continental was fined €1,000,000.

In separate civil proceedings, damages of €1,000,000 were awarded to Air France and other civil claimants were also awarded various sums. The welder was found guilty of gross criminal negligence and whilst none of the French accused were found guilty of any criminal charges the court did comment that the Concorde programme had been improperly supervised for a number of years. EADS (which had taken over the supersonic programme from Aerospatiale) were also found vicariously liable for their employees’ negligence and were ordered to contribute to the damages paid to the victims of the accident (30%).

In November 2012, a French appeals court in Versailles reversed its earlier ruling, clearing Continental Airlines of criminal charges in connection with the crash. The court also dropped charges against two employees of Continental, which merged with UAL Corp., the parent company of United Airlines.
Airlines, in 2010 to become United Continental Holdings Inc. A manager of the French civil-aviation authority, DGAC, was also cleared.

The appeals court however also concluded that Continental had some responsibility and upheld an earlier ruling in the civil suit against Continental in favour of Air France.

Valujet – USA 1996

Although the causes were split between the airline, its maintenance contractor and the FAA (for failing to mandate smoke detectors and fire suppression systems), the maintenance contractor (SabreTech) was charged with mishandling hazardous materials. Three SabreTech employees were also prosecuted.

In 2001, SabreTech was found guilty on the mishandling hazardous materials and improper training charges, and was fined $2 million and ordered to pay $9 million in restitution.

Two of SabreTech’s employees who faced trial were acquitted on all charges, while one, who failed to appear, was indicted in absentia for contempt of court. Mauro Valenzuela, who helped certify that a set of cabin oxygen generators had been properly removed and replaced fled before trial and remains on the EPA’s most wanted list.

In 2001, the United States 11th Circuit Court of Appeals reversed the SabreTech guilty verdict in part concluding that at the time of the crash federal law could not support a conviction for mishandling hazardous materials and that the government did not prove that SabreTech intended to cause harm. The panel did, however, uphold the conviction for improper training, and on remand, the District Court sentenced SabreTech to a $500,000 fine, three years’ probation, and no restitution.

Prior to the federal trial, a Florida grand jury indicted SabreTech on 110 counts of manslaughter and 110 counts of third-degree murder: one for each person who died in the crash. SabreTech settled the state charges by agreeing to plead no contest to a state charge of mishandling hazardous waste and to donate $500,000 to an aviation safety group and a Miami-Dade County charity.

SabreTech was the first American aviation company to be criminally prosecuted for its role in an American airline crash.
Possible protection measures prior to an accident/incident

Normal insurances

Airline Boards and CEOs will already be aware of the main types of insurance but it is vital that they make sure that they are fully aware of the limitations and exclusions that are embedded in these policies.

It is important to note that an airline policy excludes injury to employees, namely directors/employees acting in the course of their employment, operational crew (which can be purchased at an additional premium), passengers (insured under Section III), property belonging to, or in the care, custody and control of the insured, noise and pollution.

It is also important to pay special attention to exclusions related to war and acts of terrorism.

Insurers will indemnify an airline for all sums that the airline becomes legally liable to pay as damages (including legal costs) in respect of accidental bodily injury or property damage caused by the aircraft or by any person or object falling therefrom. It is therefore essential for airlines to ensure that their policy is tailored exactly to their exposures, whether this be geographical, types of operation, limits of liability and aircraft type.

Airlines should consider the limit of indemnity being purchased and seek advice from their insurance broker to ensure that the limit provides adequate protection given their fleet size, aircraft type and area of operation in order to avoid insurance shortfalls leaving the airline liable for damages and legal costs in excess of policy limits. European Regulations will also have to be adhered to with regards to minimum insurance liability limits for both passengers and third parties, which is determined by aircraft type, take-off weights and seating capacity.

Insurers will indemnify the airline for all sums the airline becomes legally liable to pay as damages (including legal costs) in respect of accidental bodily injury to passengers whilst entering, on board or alighting from the aircraft and for loss of or damage to baggage/personal effects arising out of an accident to the aircraft.

Again, employees and operational crew are excluded. It would be common practice for airlines to purchase an independent Personal Accident policy to cover pilots, crew and other passengers.

Airlines should be conscious of the numerous exclusions that exist within an aviation policy in today’s environment, with particular attention paid to ‘war’ and ‘terrorism’ type risks. It is standard for AVN48B to be included within the wording of a policy. This clause ‘expands’ the exclusion beyond those pure ‘war’ perils and airlines should pay close attention to what perils are excluded. In essence, the clause excludes above and beyond the basic ‘war, invasion and acts of foreign enemies’ and goes further to exclude (inter alia) any hostile detonation of a weapon, strikes, riots, civil commotions, malicious acts or acts of sabotage, confiscation, nationalisation, seizure by any Government or local authority and hijacking without the consent of the insured. It is common practice for airlines to ‘buy-back’ the majority of these exclusions in respect of both hull and liability coverage.

Airlines should look to purchase a liability “writeback” which provides liability coverage for the majority of the excluded perils contained in AVN48B. This clause is known as AVNS2 and is regularly amended and updated. The majority of insurers now offer this coverage up to the “Combined Single Liability Limit” within their policy and airlines should ensure that such coverage is in line with their lease/finance agreements in order to avoid any coverage shortfalls, thus leaving the airline corporately exposed. If the incumbent insurer is unable to offer AVNS2 coverage up to the limit of liability, then it can be purchased separately, independently through alternative insurers with such capacity.
The Board, CEO and senior executives, including post-holders, should always ensure that their company establishes and maintains on their behalf Directors and Officers Liability Insurance. It routinely covers any acts or omissions by the Directors in carrying out their legal obligations as a senior officer of the company and usually includes legal expenses cover in respect of criminal proceedings.

It is also important to note that legal expenses are generally not covered in cases of deliberate action or omission.

It is possible to obtain insurance to provide coverage for criminal defence costs. The policy will provide assurance to all potentially affected employees and also comes with access to specialists in the number of aerospace specialities who are available to support the defence. ERA has exclusive access to a policy providing such cover. Please contact the ERA directorate for more information.

It is important to remember that it is not only the senior management team which could face criminal action: this could extend to lower ranking staff including engineers and other ground handling staff.

It is therefore imperative that airline Boards and CEOs liaise with insurers to establish what level of insurance protection can be extended to all airline staff who could face prosecution.

In the event of an accident/incident it is important to maintain a united front and ensure that all staff members are adequately protected from any ensuing action. The last thing an airline needs following a major crisis is to have warring factions internally and disgruntled staff that could go straight to the media if they feel they are being made a scapegoat.

A robust media/PR strategy should be in place. Regular media training for key personnel is essential. Likewise, regular liaison with a retained PR/media company PR is advisable in order to provide them with relevant updates about the operation and to confirm what would be expected of them in the event of an incident.

More information on these aspects of emergency management can be found in the attached Appendix One, ERA's Emergency Planning handbook and ERA/Kenyon's Emergency Response Preparedness Standards.
Criminal lawyers

Many airline Boards and CEOs have never adequately considered the need to think about criminal representation: they need to do so.

In an ideal world, it would be advisable for the airline’s lawyers to consider sourcing well regarded criminal lawyers in each of the major jurisdictions, to which the airline routinely operates or overflies, in order to ensure that its rights are immediately protected.

Airline Board members and CEOs quite understandably do not consider that they would ever be thought of as “criminals” in the traditional sense of the word.

However, criminal prosecutions can be brought in foreign territories and, should the worst occur, individuals in company management teams could find themselves facing proceedings in a foreign country, a foreign language and very different court procedures from those “at home”.

It should always be remembered that in most European jurisdictions a parallel criminal investigation (in addition to the accident investigation) is started as soon as an airline accident occurs. A company management team could require criminal legal advice far sooner than expected.

Criminal defence especially in continental European countries is far more expensive than civil litigation and it is rare for airline management to qualify for legal aid.

It is also highly unlikely that “legal aid” lawyers will be in a position to provide a sophisticated legal defence for a complicated criminal defence arising out of an aircraft accident and specialist counsel should be the preferred option.

Witness statements

Any post-holder or employee asked to provide a witness statement to local judicial authorities should establish if the right exists to be legally represented.

In some cases legal representation will not be permitted and in such cases when witness statements are taken, it is likely that no provision is available to provide the interviewee with a copy. In these circumstances, the airline representative/s should try to attend with someone who can act as a note-taker during what can be a very traumatic experience. The airline and/or the personnel concerned might have to rely on such statements in their defence, so it is imperative that an accurate record is kept or that a copy of the statement is provided.

It is extremely important to retain a copy of any statement as it might prove to be extremely useful if criminal proceedings are issued.

Jurisdictional/Cultural Awareness

It is imperative for Boards and CEOs to be aware of the different jurisdictions and cultures of the nations to which the airline routinely operates and overflies: these could be jurisdictions within which the airline and its personnel will need to defend against possible prosecutions.

The need for jurisdictional and cultural awareness does not relate simply to any criminal investigations but also to any crisis response; for example the way in which passengers and families are handled, the local media, the local authorities, and the local representative office staff.

It is not unusual for an airline to face public and media hostility following an incident. The way in which the airline takes care of the families of passengers needs to be sensitive (to the greatest possible degree) to both local cultures and the cultures and religions of the families themselves.
Local Air Accident Investigation Authorities

Ideally, the airline’s Emergency Response Plan should include organisational information and contact details for the Accident Investigation bodies of the countries to which the airline routinely operates or overflies.

In some States, the local air accident investigation authorities might have little investigative experience. Likewise, in many States, accidents can become politicised and investigation authorities pressured either to produce quick results and/or to reach certain politically/commercially acceptable conclusions. Airlines need to prepare to manage (and respond to) any impromptu statements made by representatives of investigative bodies that might excite further media interest.

In some instances, investigative bodies might refuse to deal with the airline concerned. Annex 13 of the ICAO Convention does not make the participation of the airline in the accident investigation obligatory. Its participation and actual role in the investigation is very much dependent on the accredited representation of the State of the Operator and Chief investigator. This is particularly important because other parties with a possible role including manufacturers routinely are involved and will have opportunities to defend their product to the possible dis-benefit of the airlines.

Furthermore, Annex 13 does not make it compulsory to distribute the draft accident report to the airline for comments. Experience has shown that a good working relationship with the accident investigation authorities help ensure balance and fairness with regard to representation of the airline’s actions during the drafting of the accident report.

Implementation of a company ‘just culture’

The sincere ‘top down’ implementation of a ‘just culture’ or ‘no penalty reporting’ culture is probably the most effective means of managing safety to prevent the risk of accidents and incidents.

However, failure to act on the reported safety data can be used against the Board, CEO and senior executives, including post-holders, in the aftermath of an accident and in any subsequent criminal prosecution.

The value of having a ‘Just Culture’ within any organisation concerned with the safety of air operations has been widely recognised by air operators, safety experts and regulators. The Board of ERA adopted the concept of ‘just culture’ in the early 1990s. Regulators have enshrined it in EU Regulations and most Eurocontrol States are actively moving towards its implementation for Air Navigation Service Providers.

The reported safety data enables a company to react to safety events that would otherwise go unreported and to put corrective action in place. ‘Just Culture’ enables the proactive management of safety (orientated towards prevention) rather than traditional reactive safety management (detailed analysis discovering the set of circumstances that caused a specific accident, following which corrective measures are implemented).

Data reported under ‘Just Culture’ conditions is only valuable if the Board and CEO ensure that adequate resources and authority are put in place to act upon the reported data. Failure to act on a reported event (or series of events) that later result in a significant incident or accident could leave the company open to accusations of dereliction of duty and neglect.
Actions and issues following an incident or accident

Utilisation of lawyers

The role of lawyers should be considered before an incident occurs. It should include, within their contract, their immediate availability for Board, CEO and senior executives, including post-holders, when an incident occurs.

It is important to distinguish between lawyers retained by insurers in relation to passengers and liability issues and the possible need for legal representation of the airline and its personnel. It might be necessary for the Directors and management team to seek early individual legal advice in order to protect their own interests against the risk of possible prosecution.

In most cases the airline’s liability insurers will retain specialist law firms on behalf of the airline in order to begin liaising with claimant lawyers with a view to handling passenger claims.

As the Warsaw and Montreal Conventions provide for strict liability in the event of airline accidents, the passenger claims are largely a case of negotiation between claimant and defendant lawyers. However, it should be recognised at all times that lawyers retained by insurers act on behalf of the insurer and the insured.

Damages vary between jurisdictions and are dependent on a number of variable factors including the number of dependents (if any), country of residence and other liabilities and/or responsibilities the deceased may have had.

The retained lawyers will also liaise with insurers to activate immediate assistance payments to families whilst the matters are being investigated. These payments are to assist with day to day expenses for immediate family in the event of a fatality.

The lawyers will also source and liaise with local lawyers within the jurisdiction in question with a view to liaising with families in their own language (where applicable).

It is vital for the retained lawyers to have a good working relationship with relevant post holders in the airline before an accident. In order for a relationship to develop, consider involving the lawyers in a review of accident procedures and practice disaster runs.

Co-operation with authorities/air accident investigators

It is important to co-operate with the local law enforcement authorities and air accident investigators.

It is common for an airline management team to be excluded from the official accident investigation. ICAO Annex 13 does not grant the operator a right to participate in the investigation itself and this will largely be determined by the investigating authority.

In the event that the airline is restricted to the periphery of an accident investigation it should move quickly to put in place a parallel investigation of its own.

The airline’s home air accident investigation board is also likely to be involved in the accident investigation and any comments or grievances the airline has will undoubtedly be channelled through them to the actual investigation authority.

Identify the necessary experts to assist you in order to preserve your rights as much as possible. In the event of any ensuing criminal proceedings, any alternative theories or scenarios could make all the difference to your ultimate acquittal and the preservation of the airline.

The airline’s emergency response plan should have already identified potential experts (such as ex-air accident investigators, piloting/technical experts on type, relevant human factors experts and possibly training experts) to conduct its own parallel investigation if this proves to be necessary.

It is also important to keep photographic records of relevant aircraft wreckage and panels as useful evidence may go missing by the time an accident report is published.
Record of losses/consequential loss issues

In dealing with the immediate aftermath of an incident or accident, the airline Board, CEO and senior executives, including post-holders, should not overlook the airline’s day to day operational needs and accounting for its losses whilst the airline recovers.

As soon as an accident occurs the airline should set up a separate accounting code to record all costs attributable to the incident.

If, at some stage, it is deemed that the accident is linked to a third party that could give rise to a claim for damages against the third party, the airline will need to rely on accurate records that reflect the costs and losses incurred. In order to make such a recovery, those records must be kept from the first day as they can be very hard to recreate. The assigned lawyers can assist in advising what data needs to be kept and regarding supporting documents.

Recorded data should include, for example, passenger ticket costs (where they are booked on alternative flights), welfare and assistance costs, cancelled tickets, cancelled supplier contracts, loss of revenue. This ledger cannot deal with the loss of growth opportunities or other such commercial issues but it will provide you with a starting point from which the airline’s third party claim for damages can be built (if applicable).
Every airline should (and EU airlines must) have a robust emergency response plan or a crisis management manual. Business continuity largely depends on an airline’s reaction following a major incident. Without an adequate emergency response plan, an airline can only add to the confusion that ensues following any incident or accident; especially one involving multiple loss of life.

A good emergency response plan should include full names and contact details of the entire emergency response team. The plan should take into account that it is not always possible to get in contact with the entire team in the event of an incident; this is especially true of evenings and weekends or holiday periods.

The emergency response team should have dedicated duties allocated to them in order for them to act promptly and appropriately when required to do so following an incident. There is no time following an incident to explain to the team what they should be doing and it is essential that they be adequately trained and prepared to react properly as soon as they are mobilised.

It is essential for an airline to identify any areas where they may not have adequate staff to cover certain situations or teams i.e. due to staff shortages or within smaller airlines. In these circumstances the management team should identify outsourced solutions or strategic partnerships to the problem in advance.

There is a “golden hour” that follows every potential crisis that should be utilised to gather as much information about a potential incident and prepare the responses that the media will inevitably be looking for; this can only be achieved if this valuable time is not wasted.

Media training is a fundamental part of any emergency response plan and it is essential that this is factored in as a matter of course. The media has the power to effectively make or break an organisation and, as such, it is a delicate issue that must be given adequate attention in advance. Many airlines attempt to mobilise PR companies after an event that inevitably means there is a learning curve for the organisation involved and only serves to add to the frustration following an incident.

Selection of the advisors needs to be undertaken carefully. The airlines PR agency may not have the expertise necessary to deal with the very demands it will face as a result of an accident and to address criminalisation issues.

This also leaves the media open to obtain information from unauthorised sources which can be extremely inaccurate and leaves the public open to draw their own conclusions based on misinformation – this is a very dangerous for an airline from a business continuity perspective.

Dealing With Relatives and Loved Ones

The way in which an airline treats the families and loved ones of victims of an air accident could shape the way in which the entire incident is perceived. It is essential to remember that, whilst the management is focussing on dealing with air accident investigators and regulators, the relatives of the victims will be waiting for answers and they should not be overlooked. Emotions will be running extraordinarily high and the need to treat the families with the appropriate level of care and consideration should form an integral part of any emergency response plan. Careful thought should be given to family assistance centres, counsellors and immediate financial need.

Following the incident, the families should be moved to a secure, private location away from the media who are not unknown to encourage and ignite emotions in the interests of journalism. By taking care of the families at an early stage an airline and its management team have an invaluable opportunity to “do the right thing” for the sake of the relatives and retain some control over the incident.

The implementation of EU Regulation 996/2010 also places various obligations on an airline in this regard and reference should be made to the Regulation when drafting emergency response plans.

The process of protecting the airlines and its employees is tied up with its relationship with the families which must be open, honest and caring. The families need information on many matters following the accident and often have recourse to external sources including hostile media and claimants lawyers if their needs are not met. Consider an information site on the company website and use of the social media. The content of this information should be discussed with various addresses including your providers, emergency services, media advisors and lawyers.

Language change

Training is of paramount importance when preparing your team for a co-ordinated emergency response. Training can take many forms including emergency drills that should see the entire crisis response team mobilised and media training in order to ensure that the company spokespersons are adequately prepared to respond to the media.

Training should also extend to any overseas or satellite offices and ground handling teams as inevitably an accident or incident rarely occurs on home ground. Following an incident or accident your representative offices could face the very tough task of keeping a watching brief on events and dealing with families on the ground. It is imperative that they act in accordance with your instructions with clear pre-defined levels of authority; this is something that only the training can help achieve.
Immediate mobilisation of the response team

Following an accident or incident the emergency response team must be mobilised immediately until the extent of the crisis is established. It may be that some of the team stand down if they are not required but it is necessary to evaluate the situation prior to taking any such steps.

On-site teams should be sent to the relevant destination as quickly as possible. It is likely that domestic and international media will be at the accident location before the company’s emergency response team. It is therefore essential to ensure that any local representatives be drafted to attend the accident scene as soon as possible. If they are not to address the media then this should be clearly communicated to the team and media should be directed to the airline press office or relevant statements. It is essential to communicate with the media very quickly.

Pre-prepared ‘template’ statements

Pre-prepared ‘template’ statements should be a part of the company’s emergency response plan. It is unlikely that the emergency response team will have the time and resources to draft sensitively and carefully worded statements when faced with a multiplicity of different demands in the immediate aftermath of an accident.

Basic information

Basic information regarding the incident should be readily available i.e. aircraft type, registration and age, any dangerous goods carried, original departure point and destination (including any stopovers), number of passengers and crew on board (there will be much focus on the number of children on board), airline information including incorporation date, size and age of fleet etc.

More comprehensive reference information regarding the aircraft type’s incident history, year built, years’ in service etc is routinely available from the ERA Directorate. It is strongly suggested that the Emergency Response Plan includes a requirement for the Emergency Response Team to notify the ERA Directorate of the incident so that this information can be made immediately available to the airline.

Such information should be distributed quickly in order to provide the media with some information whilst further details are gleaned during the ‘golden hour’. Any statements should confirm the time of the next anticipated statement and should be regularly updated as soon as further information comes to light.

Management visibility

The senior management team should be visible at this time. The gold standard of crisis response is often quoted as being Sir Michael Bishop following the BMI Kegworth accident. As the Chairman of the airline he personally attended the accident site and essentially rolled up his sleeves to assist the team on the ground. At the same time he provided press statements and promised to find out the cause of the accident whilst offering his sympathies to the families affected.

Prohibition of access to records

The emergency response plan should include a procedure that can be enacted to prohibit immediately, within the company, access to technical and operational records and data concerning the flight, the accident aircraft and the operating crew. Such data, leaked inadvertently or deliberately by disaffected employees can create long-term problems in any subsequent criminalisation proceedings.

An essential part of this process is the establishment of a pre-arranged process to remove password access authorities to data related to the incident aircraft and other related records.

Protection of records

Another key obligation is to preserve and retain copies of relevant technical and regulatory aircraft records. In the event of a criminal investigation, you may find that the authorities remove these documents (without warning) and it will be extremely difficult for you to try and duplicate these at a later date. Electronic copies should be fully up to date and backed up. Where paper records are available, try to obtain copies prior to handing anything over. You will probably be refused access to such documents once they are removed from your premises.
APPENDIX TWO

PERSONAL AND CORPORATE RESPONSIBILITY AND LIABILITY WITHIN THE EU

EC Regulation 996/2010

EC Regulation 996/2010 (which adopts many of the Standards and Recommended Practices [SARPs] set out in Annex 13 to the Chicago Convention) came into force in December 2010; the sole objective being the prevention of future accidents and incidents without apportioning blame or liability, through increased and improved transparency relating to the reporting, analysis and dissemination of safety related incidents.

The Regulation lays down rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident and aims to improve the assistance to the victims of air accidents and their relatives through the provision of confidential and information – albeit in controlled circumstances.

In addition, the Regulation requires each EU Member State to appoint a national civil aviation Safety Investigation Authority (SIA) which must be given sufficient resources and budget to conduct full safety investigations and be independent of other aviation authorities (e.g. certification authorities, airworthiness authorities, etc.), and of any other party or entity, the interests of which could influence its objectivity.

The Regulation also established a European Network of Civil Aviation Safety Investigation Authorities (the Network), composed of the heads of the SIA in each of the EU States. The role of the Network is to improve the quality of investigations conducted by SIAs and to strengthen their independence. To date, the majority of the Network’s work appears to have been carried out through the establishment of a number of Working Groups concerned with a number of different areas including: Network Communication; Inventory of resources and budget to conduct full safety investigations and be independent of other aviation authorities (e.g. certification authorities, airworthiness authorities, etc.), and of any other party or entity, the interests of which could influence its objectivity.

Other key provisions of the Regulation include:

- Clarification of EASA as a certification authority rather than judge/party (art. 8);
- Laying down a framework for the production of investigation reports and timeframes for publication of the same (art. 16);
- Better implementation of safety recommendations; introducing the obligation to reply to recommendations and provide justification where a recommendation is rejected (art. 18);
- Establishment of the European Recommendations Information System to facilitate the sharing of recommendations (art. 18);
- Immediate and unlimited access to the investigator-in-charge (art. 31);
- Open co-operation between safety investigation authorities and other parties, i.e. the judiciary (art. 12);
- Sensitive information; defining the purpose for which it may be used and circumstances in which it may be disclosed (art. 14);
- Provision of occurrence reporting and analysis of the same – EASA and Member States’ competent authorities granted access to European Central Repository (ECR) which contains civil aviation occurrences from 27 Member States (art. 19);
- Provisions on victims and families; including access to information, obligatory minimum insurance for compensation payments and obligation for airlines to establish crisis plan.
- Please note that the Regulation was due for review in December 2014. However, no steps appear to have been undertaken in order to do so.

United Kingdom

Corporate Responsibility

The introduction on 6 April 2008 in the UK of The Corporate Manslaughter and Corporate Homicide Act, necessitated that Directors and senior company officers must be aware of the potential ramifications of their actions at management level. The Act sets out a new offence for convicting an organisation where a gross failure in the way activities were managed or organised causes the death and amounts to a gross breach of a duty of care to the deceased.

A company will be guilty if it fails to ensure that all the necessary measures and steps were taken to protect the health and safety of those employed or affected by the company’s activities. A substantial part of the failure must have been at a senior level, including both centralised headquarters functions as well as those in operational management roles.

A company can be convicted on its organisational failure alone at a senior level of management. It is not necessary to identify an individual within the company (whose acts constitute the offence of corporate manslaughter).

If a company is found guilty, it will be subject to an unlimited fine and perhaps other appropriate orders. The Court can impose a publicity order requiring the company to publicise details of its conviction that can result in reputational harm for the company. Courts can also grant a remedial order requiring the company to take steps and address the failures causing any death.

Admissibility of air accident investigation reports in civil proceedings

The conflict between the requirements underpinning accident reports (as reinforced by EC Regulation 996/2010), which establish that their sole purpose is the prevention of accidents; rather than the apportionment of blame or fault; and the purpose they may serve in directing claimants to the targets of litigation and supporting any civil claim for damages was examined in detail for the first time in the recent Court of Appeal case of Scott Hoyle v Julia Mary Rogers, Jade Nicola Rogers v Secretary of State for Transport, International Air Transport Association [2014] EWCA Civ 257.

The case first arose following a fatal air crash that occurred on 15 May 2011. Orlando Rogers was a passenger in a vintage 1940 Tiger Moth propeller biplane, piloted by the appellant Scott Hoyle and was killed when during the course of the flight, the plane crashed. The claimants in the original action were the mother and sister of the deceased, claiming damages for his death, which they attributed to Mr Hoyle’s negligence.

The claimants wished to rely on the Air Accident Investigation Bureau (AAIB) report both as a factual account of what occurred prior to the crash and as expert opinion on the evidence.

The claimants were successful at first instance in the High Court and the defendant subsequently appealed at which point both the Department for
Transport (DfT) and IATA intervened to request that the report also be ruled inadmissible. The appeal was put on three main grounds:

- Pursuant to the principle laid down in Hollington v Hewthorne & Co, the AAIB report was inadmissible on the basis that decisions in an earlier tribunal are not admissible in later proceedings as it is unlikely to be possible to determine the basis upon which the earlier findings were made and whether they were correctly or reasonably made. The defendant argued that the AAIB report, as a document containing findings of fact based on an evaluation of evidence, fell within the scope of this rule.

- The AAIB report, in so far as it was to be taken as ‘expert evidence’, was inadmissible as it failed to meet the requirements laid down in Civil Procedure Rules on expert evidence.

- Alternatively, to the extent that the AAIB report was found to be admissible, the High Court had failed to properly consider the points of policy (raised by IATA and the DfT) when failing to exercise its discretion to exclude the report from evidence; including the prejudice that might be caused to future air accident investigations as a result of the use of AAIB report’s in civil proceedings.

The Court of Appeal, in dismissing the appeal, held that the report was admissible, but if any part was subsequently found not to be, it should be left out of account. In reaching its conclusion, the Court concluded that the AAIB was not acting in any judicial or quasi-judicial capacity when producing the report, and that therefore the rule in Hollington v Hewthorne & Co did not apply; the report did not fall within the CPR Part 35 requiring the permission of the court; and its admissibility was not likely to prejudice the interests which the AAIB was there to serve, such that the report should generally be excluded from evidence – the Court noting that AAIB reports are generally available to litigants anyway and can be used as the foundation of claim or defence in any event.

The full repercussions of the Court of Appeal’s decision remain to be seen. However, the decision sits uncomfortably alongside a European and International framework aimed at increasing and improving transparency in relation to air safety incidents. We await seeing whether the concerns raised by IATA and the DfT are justified and whether participants in future investigations will be less forthcoming with information if they believe that such evidence may be used in civil proceedings. The reality is that this decision has opened the door to confidential information being used in civil proceedings and once made public, there is every possibility that the information could be used in criminal proceedings.

In addition, there is no doubt that Claimants’ reliance on AAIB reports in civil proceedings will only now increase over time. The decision will ultimately ease the evidential burden on claimants seeking to establish the cause of an accident – this, notwithstanding that the Court of Appeal was keen to stress that the decision should not be taken to mean that anything in the report can be treated as prima facie conclusive of anything; or as shifting the burden of proof.

**Germany**

Under German law, a company cannot be held criminally liable for the death of a person by way of criminal prosecution. There is no, corporate manslaughter law in Germany.

However, under Art. 30 of the German Regulatory Offences Act, an administrative fine can be imposed on a company, thus also on an air carrier, if a person who is authorized to represent a legal entity or who is a member of the company’s representative organ commits a criminal or a regulatory offence by violating the company’s duties. The fine amounts to up to Euros 500,000.00 in the case of a negligent offence and up to Euros 1,000,000.00 in the case of intent. The legal duty to care or to maintain safety are e.g. such duties of the company that, when violated by the company’s representative, can lead to a corporate fine for the air carrier.

Under Art. 222 of the German Criminal Act, an airline employee may be criminally liable for the death of a person. The article reads as follows:

> “Whosoever through negligence causes the death of a person shall be liable to imprisonment of not more than five years or a monetary penalty.”

According to this provision, an airline employee can be criminally prosecuted if he can be accused of an action or an omission which is causative of the death of a person.

German criminal law features the so-called “principle of guilt”. Accordingly, in order for conduct to be considered for prosecution, the person acting must have acted either intentionally or negligently. A precondition for negligence in this case would be e.g. that an airline employee fails to observe the duty of reasonable care and, additionally, that the death of a person was foreseeable and avoidable.

This principle demonstrates that the German legislator requires the fulfillment of very strict prerequisites before holding an airline employee culpable for the death of a person. It is mandatory to ascertain the individual guilt of the airline employee.

An example of possible criminal conduct in respect of an airline employee would be that, despite the lack of safety, he allows the transport of persons with an unsafe aircraft, and a fatal accident happens because of this lack of safety.

**Spain**

Wherever there is an accident involving death or serious personal injury, there will be a criminal investigation. This criminal investigation will usually be opened by the local criminal court and will unite all potential parties in one forum. A Public Prosecutor will represent all the victims and claimants in that investigation, in addition to any private complaints.

The criminal judge will unlikely have any specific experience in aviation accidents, but will have very wide powers to investigate all aspects of the accident and gather evidence in order to determine whether there exists any criminal liability and with that, any potential civil liability ex delicto.

All parties to the proceedings are entitled to submit and seek evidence at court to assist the judge not only on issues of causation, but also on any right to damages and quantum. The criminal judge will rely on reports prepared by the police etc and can appoint as many experts and reports as deemed necessary. The criminal investigation is not open to the public and can take many years to complete.

The air carrier may be advised by its legal counsel to voluntarily appear as a party in the criminal investigation from the outset, along with their civil liability
Personal and corporate responsibility and liability in air accidents and incidents

insurers, in order to be able to participate in the investigations to ensure that their interests are protected, as well as obtaining full access to the criminal court file.

During the course of the criminal investigation, the evidence may point at potential persons of interest. These persons will be provisionally charged as “imputados” to allow them to protect their interests in the investigation and exercise the right to legal representation, and will give testimony under caution. The criminal judge can order that bail be posted to avoid provisional imprisonment of any “imputado” pending completion of the criminal investigation.

Once the investigation is complete, the judge will issue a fully reasoned ruling either identifying the parties who must go on to stand trial, or closing the investigation with a finding of no criminal case to answer. Only where there is a criminal case to answer (and this has been upheld on appeal) will criminal proceedings be opened against specific persons and the formal charges listed. The criminal proceedings are then conducted by a separate criminal court and judge(s) to guarantee due process.

The air carrier, its directors and employees will usually be obvious targets of any criminal investigation in Spain. Directors and employees can be charged with criminal offences of “imprudent homicide” or “imprudent injury” with up to 4 years imprisonment, and up to 6 years withdrawal of the right to practice their professional occupation (whether it be as a director or an engineer etc). However, the burden to establish criminal liability is very high and so far, has proven difficult to meet in relation to aviation accidents in Spain.

An amendment to the Spanish Criminal Code in 2010 now allows a company to be found criminally liable. However, this amendment does not apply to cases of “imprudent homicide” or “imprudent injury”. That said, the directors and employees, as well as the company's civil liability insurers are directly civilly liable to pay compensation to the victims and the claimants. However, the company is subsidiarily civilly liable where neither the directors/employees nor the civil liability insurers are financially able to pay the damages awarded. The civil liability insurer may be required to deposit security for damages at court.

France

The source of criminal law in France is the Code Pénal (i.e. Penal Code). The code has the purpose of unifying the law and from a technical point of view, codification is systematic. Equally, the source of criminal procedure is the Code de Procédure Pénale (Code of criminal procedure). Case law cannot be classified in the source of criminal law and criminal procedure as far as:

1/ the judges are not allowed to interfere with the legislature and its law-making function;

2/ judges are forbidden to make law intended to govern future cases;

3/ court decisions do not constitute binding precedents.

French criminal proceedings (poursuites) are usually initiated on the instruction of the French Public Prosecutors (Procureur de la République) who are trained and recruited in the same manner as judges sitting on the bench. Generally, the Public Prosecutors bring the charges following a preliminary police inquiry. However, French criminal law (unlike other countries such as Italy or Spain who also have a codified system) also allows a victim or claimant to bring its claim before the criminal court; this is called “action civile”.

In the past there was a greater risk that the court would not uphold the criminal offence and that the claimant (generally a victim) would be left with no choice but to start a new suit before the civil court; sometimes some 15 or 20 years after the facts. The law was however revised in around 2000 introducing a new article in the French code of criminal procedure (see article 470-1) which dramatically changed the picture for the responsible parties. The criminal courts may now, at the request of the claimant, decide if the ‘defendant’ has committed a criminal offence or any other wrongful action, even with no criminal aspect, such as a simple negligence and importantly may also make a damages award akin to that of the civil court (as demonstrated in the Air France disaster referred to previously).

As a consequence of the change in the law, all claimants in major accidents now elect to claim before the criminal courts where discovery is free of any costs for the claimant as it is carried out by a court appointed investigating magistrate (the “juge d’instruction”). That said, the criminal investigation can often be a very long process (more than 10 years in the Concorde accident) and a costly process for the State, who, in a number of cases can no longer afford to pay for expensive expertise; which many consider to be an unsatisfactory state of affairs for victims, air carriers and/or manufacturers who often cannot afford the risk of a long litigation.

In terms of the criminal procedure, in the case of serious offences or complex cases the Public Prosecutor is obliged to refer the matter to a juge d’instruction and may also decide to take no further action or refer the case directly to the trial court.

Air accidents occurring in French territories are subject to a preliminary police inquiry under the supervision of the Public Prosecutor as they constitute an infringement of public order. The decision to refer the matter to a Juge d’instruction is rarely taken by the public prosecutor because:

a/ the preliminary investigations state that no criminal offence was committed; or

b/ because the pilot is criminally responsible for the crash and deceased during the accident; or

c/ the committed offence is a minor offence.

Furthermore, Public Prosecutors would never refer cases involving air accident directly to the trial court because of the technical issues which are far too complex to be dealt with in a “fast procedure”.

The role of the Juge d’instruction as a member of the judiciary is to examine all the evidence which has been gathered during the police enquiry and to obtain any additional evidence. Once the Juge d’instruction concludes his investigation he makes his final decision on the case by either referring the defendant to the trial court or discontinuing the process of prosecution. As regards air accidents, the luge d’instruction plays a major role when appointing the technical experts and leading the queries. Yet it must be highlighted that the investigation rarely lead to trial because in most cases no criminal offence was committed.

However, some notorious cases have been tried before French criminal Courts where they were dismissed because the prosecution was misguided and could not justify a criminal sentence and the evidence gathered by the
police was not conclusive enough to justify a guilty sentence. Nevertheless, the criminal procedure has in all cases permitted an analysis of the causes of the air accidents and has identified the persons liable for civil compensation to the victims. In effect, the absence of a discovery process in French civil procedure and the fact that there is no trial in the common law sense in French civil procedure prevents the parties from having the air accident investigated if not in a criminal process.

Because of their cultural and historical closeness the Belgium and the Swiss system are very close to the French one.

**Italy**

- **Crimes Related To Air Accidents**

Under Italian criminal law, any accident involving death or injuries to anybody on board an aircraft can be considered:

a) a crime against human life and/or health (accidental killing and/or accidental injury); both crimes are relevant in the event of an air accident even in the absence of intentional wrongdoing by the perpetrator (art. 589-590 it. crim. code);

b) a crime against the safety of transportation:
  
  (ba) in the most severe form (aviation disaster – art. 428 i.c.c.); or
  
  (bb) in a less severe form (damage to an aircraft following by risk of aviation disaster – art. 429 i.c.c.); and
  
  (bc), finally, in a further less severe form as attempt to the transportation safety – art. 432 i.c.c.

Also these type of crimes (not related to the human life/health preservation, but to the public interest in the transportation safety) are mandatory crimes and any case of air accident also generates this kind of accusation, even in the absence of injuries (a minor crime, under art. 432 i.c.c.).

c) under law (decreto legislative) n. 231/2001 (legal regime of administrative responsibility for legal persons and companies) any air accident can also generate an accusation for administrative/management mistakes or misconducts, to be considered as related to the air accident, directly against the company or legal entity involved in the case, together with the single persons inquired for the above mentioned crimes.

- **Procedural Rules**

Under Italian criminal procedural law the Public Prosecutor’s Office has the duty to open a file in cases of accidental death (Art. 330 and following of Italian criminal proceedings code). Simultaneously a mandatory file is opened for the administrative responsibility issues. In cases of injuries, the victim can also file a formal request for punishment (“querela”, Art. 336 and following i.p.c.c.) within a period of 90 days from the accident and/or from the day that the victim regains the capability to submit the request.

Furthermore, the Public Prosecutor must open a file not only for the health-related crimes, but also for the transportation safety-related crimes mentioned above, even where there are no injuries in this category.

The indicted persons can be the pilots and/or the technical and legal representative of the airline, and/or the maintenance company, and/or the aircraft owner. Criminal charges can also be brought against groups of persons involved in flight operations, including against the Air Traffic Control operators, as seen from recent developments in this area.

The Public Prosecutor, if he has to obtain a una tantum (or unrepeatable) evidence, must permit access to his activities to the lawyers and technical experts of the persons subject to inquiry. This includes providing them with full disclosure of his file and particular advice (art. 360 i.c.p.c.). Usually the Public Prosecutor’s activity and acts are confidential until the end of the investigation and his final recommendation to proceed with a prosecution or close the file.

Normally, the Public Prosecutor delegates to the police a number of activities, e.g. seizures, investigations, testimonial hearings etc. However, he can also act by himself particularly regarding the most relevant parts of the investigations.

In addition, the indicted person’s lawyers are permitted, with some limitations, to promote and develop private/defensive investigations.

The crimes described are punishable with a custodial sentence (suspended or otherwise) and the Court is composed only of professional judges.

- **Individual Positions and Risks**

During investigation the Public Prosecutor may order the seizure of documents and parts, yet personal freedom limitations against indicted persons are uncommon.

More often, if a case goes to the Court, victims request that the case be extended to include the legal entities that will face the economic consequences of the acts of the accused (companies, employers etc.) in accordance with art. 83 and following of i.c.p.c.; the Courts tend to grant such requests. In this case, the legal entities must appear before the Judge and have the right to fully participate in the criminal trial. The legal entities can be found guilty along with the individuals and be ordered to pay compensation (conserving to some extent, the right of subrogation against the guilty individuals).

Any individual or legal entity found guilty, the Public Prosecutor’s Office and the victims all have the right to file an appeal against the first degree decision initially to the Appeal Courts and, later, to the Supreme Court. The restoration/payment decisions of Criminal Courts can be executed even while an Appeal is pending if the Judge so decides (and often it happens in cases of air accidents).

- **Technical Investigation Authority and Relations**

The Italian accident investigation authority (ANSV – Agenzia Nazionale Sicurezza Volo; the Italian equivalent to NTSB, AAIB and BEA) has no formal role in criminal cases and investigations and develops a pure technical investigation with the aim of improving the air safety. In practice, the Public Prosecutor requests the technical assistance of the ANSV and, in order to avoid any misunderstandings he tends to appoint experts from the ANSV technical staff, thereby creating a parallel between the two Public Offices.

However, it is always possible that the Public Prosecutor will not take into consideration the ANSV investigation and may appoint technical experts. In these cases, the ANSV reports form part of the evidence and any party can use them in Court; however they do not have a definitive impact on the judicial decision.

**Greece**

Greek criminal law does not make provision for the offence of corporate
manslaughter as recently introduced in English law. Companies as such are not responsible and cannot be prosecuted for committing criminal offences.

However, a company is represented by its Board of Directors, which is responsible for the company’s actions and/or omissions and it bears strict liability for them. In practice, the legal representative of the airline and its CEO would be the first to face charges from a criminal prosecutor in the aftermath of an accident. Also members of the staff appointed by the company with specific safety-related duties – i.e. chief pilots, engineers – can be held criminally liable where the accident is caused by an act or omission that falls within their sphere of duties. Insufficient implementation of safety regulations or inadequate staff training are typical examples of actions or omissions that can lead to the criminal liability of the Board of Directors as well as key-employees of an airline.

The criminal offences under which employees and/or members of the Board of Directors may be held liable are the following:

1. Under art.291 of Greek Criminal Code (GCC) whoever intentionally disturbs the safety of aerial navigation with intention is punished:
   a. with at least two (2) years of imprisonment if property is endangered as a result of his action,
   b. with imprisonment from five (5) to twenty (20) years if lives are endangered from his action; or
   c. with life imprisonment or imprisonment of at least ten (10) years if his action resulted in death.

If the offender acted negligently, he will be punished with imprisonment of up to five years. Furthermore, if his actions lead to the breach of an administrative regulation that is related to the safety and the use of air navigation, he will be punished with a monetary fine of up to 15,000 Euros.

2. Under art.299 GCC, which is entitled ‘Manslaughter with intention’, whoever kills another person with intention is punished with imprisonment. If the offender acted negligently, art.302 GCC (“manslaughter with negligence”) provides that he will be punished with imprisonment of up to five years; under certain circumstances the sentence can be increased to 10 years.

It is important to note that manslaughter with intention also encompasses the following:

a. with at least two (2) years of imprisonment if property is endangered as a result of his action;

Furthermore, section 210 of the Criminal code states that any person who by a careless, reckless or dangerous act or behavior, which does not amount to culpable negligence, without intention, causes the death of another person, is guilty of an offence and in case of conviction is subject to up to 4 years imprisonment or a fine that does not exceed 2500 Euros.

These provisions in essence mean that a person representing an air carrier can be criminally prosecuted as long as that person can be accused of an unlawful act or omission, or alternatively, a careless, reckless or dangerous act, which causes the death of another person. The defendant will usually face these counts expressed in the alternative, namely a first count of culpable negligence (which carries a heavier sentence) and an alternative count of reckless, careless or dangerous act not amounting to culpable negligence.

In order for a company to be found criminally liable for manslaughter, it is necessary for the mens rea and the actus reus of manslaughter to be established, against those who are identified as being the embodiment of the company itself. This means that unless the individual’s conduct can be characterized as gross criminal negligence, and that conduct can be attributed to the company, the company is not liable for manslaughter.

All of this means that in any case involving corporate criminal liability, a distinction will have to be made between the people in the company who are mere agents and those who represent the directing mind or will of the company. The general principle is that the state of mind of the managers and directors of a company is the state of mind of the company itself.

Therefore, in order for an air carrier to be found guilty for the death of a person, it must be proven that the directing mind of the air carrier acted in a way that was grossly negligent. The prerequisites for deciding this are set out in the Cypriot Criminal Code and the common law.
Hill Dickinson LLP would like to thank the following for their assistance with Appendix Two:

Dr. Peter Urwantschky L.L.M. of Urwantschky Dangel Borst & Partner, Germany
Thibaut de Mallmann, France
Luis Alberto Garcia and David Diez of Rogers & Co Abogados, Spain
Avv. Prof. Carlo Golda and Avv. Massimo Ambrosino of Ghelardi & Associati, Italy
Vassilis Arvanitis of John Thrakitis Law Firm, Greece
Polyvios Polyviou of Chryssafinis & Polyviou LLC, Cyprus

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