

GUIDANCE NOTE: EXTENDED COVERAGE ENDORSEMENT
(AVIATION LIABILITIES)

AVN52K for use in Aircraft Operator Policies etc.
AVN52L for use in Service Provider Policies etc.

This Note is for guidance only and is offered at the request of representatives of the buyers of aviation insurance. It is NOT an opinion on the coverage that may be provided by AVN52K and AVN52L.

The terms of the Note and the paragraph references refer primarily to AVN52K, but as AVN52L is substantially the same apart from coverage relating to passengers, their baggage and personal effects, and cargo and mail the Note and its references can also be used for AVN52L, ignoring references to coverage relating to passengers, their baggage and personal effects, and cargo and mail.

Paragraph 1 – Write Back Options

The various write back options are set out in paragraph 1. Each becomes operative as selected and stated in one or more of the sub-paragraphs of paragraph 1, which as a whole allow for the scope of the coverage provided by the endorsement to be determined: the paragraphs of AVN48D that are deleted and, in respect of any deletion of (b)(ii) and/or (b)(iii) and/or (b)(iv) of AVN48D, the circumstances in which such deletion applies.

No provision is made for the write back of nuclear perils per (b)(i) of AVN48D.

Sub-paragraph 1.1

1.1 provides for the deletion of paragraphs (a) to (g) of AVN48D other than paragraph (b).

Sub-paragraph 1.2(i) (if operative)

1.2(i) provides for the deletion of (b)(ii) and/or (b)(iii) and/or (b)(iv) of AVN48D as stated in 1.5(i) but only where the perils stated in those paragraphs are the cause of the claim(s) AND they originate solely and directly on board an aircraft.

Sub-paragraph 1.2(ii) (if operative)

1.2(ii) provides for the deletion of either or both of (b)(ii) and (b)(iv) of AVN48D as stated in 1.5(ii) but only where the perils stated in those paragraphs are the cause of the claim(s) AND they originate other than solely and directly on board an aircraft and the

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claim(s) is caused by reason of the crash, fire, explosion or collision of an aircraft or a recorded emergency causing abnormal operation of an aircraft.

If these criteria are met, coverage is written back under both 1.2(i) and 1.2(ii) for liability for both losses sustained within the subject aircraft AND for any third party claim(s) caused by that aircraft.

However coverage under 1.2(ii) is only provided for liability for claim(s) while an aircraft is “in flight” as defined in the endorsement. While there may be another “in flight” definition applicable to the policy as a whole, the definition in the endorsement applies to the coverage provided in 1.2(ii).

There is no provision in 1.2(ii) for the write back of the EMP exclusion b(iii) of AVN48D, unlike in 1.2(i).

Sub-paragraph 1.3 (if operative)

1.3 provides for the deletion of (b)(ii) and/or (b)(iii) and/or (b)(iv) and is not restricted to the specific aircraft related circumstances described in 1.2(i) and (ii). For example, the effect of 1.3 is to delete (b)(ii) and/or (b)(iii) and/or (b)(iv) in their entirety so as to write back all coverage excluded under these sub-paragraphs of AVN48D but only for the restricted limits as inserted in 3.3. For example, if the written back cover includes (b)(iii), then such cover will include liability arising from an EMP device external to an aircraft which is not covered by 1.2 to avoid an accumulation of full policy limits for multiple aircraft losses.

Sub-paragraph 1.4

This clause is designed to be used with 1.1 in all cases with the option of using either or both of 1.2 and 1.3.

Sub-paragraph 1.5(i) (if operative)

1.5(i) provides the option of writing back (b)(ii) and/or (b)(iii) and/or (b)(iv) where 1.2(i) has been stated as an operative paragraph. This provides flexibility as to which of the (b)(ii), (b)(iii) and (b)(iv) perils originating on board an aircraft are covered.

For example, if the intention is only to provide coverage for liability arising from an EMP device located on board an aircraft, then ONLY (b)(iii) should be stated.

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Sub-paragraph 1.5(ii) (if operative)

1.5(ii) provides the option of writing back (b)(ii) and/or (b)(iv) where 1.2(ii) has been stated as an operative paragraph. This provides flexibility as to which of the (b)(ii) and/or (b)(iv) perils originating other than on board an aircraft are covered.

For example, if the intention is only to provide coverage for liability arising from an EMP device on board an aircraft where the claim(s) arises by reason of the crash, fire, explosion et cetera of the aircraft, then ONLY (b)(iv) should be stated.

Sub-paragraph 1.6 (if operative)

1.6 provides the option of writing back (b)(ii) and/or (b)(iii) and/or (b)(iv) where 1.3 is stated to be an operative paragraph. This provides flexibility as to which of the (b)(ii) and/or (b)(iii) and/or (b)(iv) perils are to be covered.

For example, if the intention is only to provide coverage for the hostile use of radioactive materials, then ONLY (b)(ii) should be stated.

As the coverage provided by 1.3 allows the option of deleting (b)(ii) and/or (b)(iii) and/or (b)(iv) in their entirety, there is an overlap between the coverage provided by 1.6 and the more specific aircraft-related hazards under 1.2.

If the intention is NOT to provide any write back of one or more of (b)(ii) and/or (b)(iii) and/or (b)(iv), then these sub-paragraphs should NOT be specified in either 1.5 or 1.6.

If the intention is to provide a write back for one or more of (b)(ii) and/or (b)(iii) and/or (b)(iv) under 1.2 but NOT under 1.3, then the applicable paragraphs which are to be deleted from AVN48D should be specified in 1.5(i) and/or 1.5(ii), not in 1.6.

Sub-paragraph 1.7

1.7 addresses any possible conflict between the coverage written back by the endorsement and any radioactive contamination and/or noise and pollution exclusion clauses which also form part of the policy. However the intention is NOT to provide cover for pollution or contamination, unless caused by a sudden act or event.

Where such a conflict exists then the coverage provided by the endorsement should prevail over such exclusion clauses.

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Paragraph 2 – Exclusions

2(a) confirms that no cover is provided for claims excluded by (b)(i) of AVN48D nor for claims excluded in any part of (b) of AVN48D if only 1.1 is operative. No cover is provided by the deletion of sub-paragraph (b)(iv) of AVN48D for claims excluded by (b)(ii) of AVN48D.

2(b) only applies to cover extended by the deletion of paragraph (a) and/or the deletion of (b)(ii) and/or (b)(iii) and/or (b)(iv) of AVN48D where those perils arise out of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.

The exclusion does NOT apply to any cover extended by the deletion of paragraphs (c) and/or (d) and/or (e) and/or (f) and/or (g) of AVN48D, nor to any cover extended under sub-paragraphs (b)(ii) and/or (b)(iii) and/or (b)(iv) which do NOT arise from the perils of paragraph (a) of AVN48D.

The intention of the exclusion is that it applies in the same manner as under previous AVN52 clauses. It has been necessary to clarify the scope of this exclusion as the devices and materials specified in paragraph (b) of AVN48D can be used in a war, invasion etc situation as described in (a) of AVN48D.

Paragraph 3 – Limitation of Liability

The purpose of paragraph 3 as a whole is to allow the insertion of different limits applicable to the coverage to be provided by various sections of the endorsement that are operative.

The specified limits apply to any one Occurrence, aggregated on an annual basis for third party losses.

Different limits apply or, in the case of 3.3, can be specified for Insured's liability for passengers, their baggage and personal effects, cargo, and mail. This is referred to below as "passenger liability".

If the policy form to which the endorsement attaches does NOT apply on an Occurrence basis, then "Occurrence" should be replaced as appropriate: for example, with "any one Accident".

The third party liability limits specified in paragraph 3 are part of the overall policy limit and are NOT in addition thereto. The limits specified in 3.2 and 3.3 are NOT cumulative but form part of the third party sub-limit under 3.1.

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Sub-paragraph 3.1

3.1 requires the third party sub-limit applicable to 1.1 to be stated. This does not apply to passenger liability for claims arising under 1.1

Sub-paragraph 3.2

3.2 requires the third party sub-limit applicable to 1.2 to be stated. This does not apply to passenger liability for passengers etc on board the aircraft for claims arising under 1.2

A limit should only be included in 3.2 if 1.2 has been stated as operative in 1.4.
If 1.2 is not operative, then 3.2 should be left blank

Sub-paragraph 3.3

3.3 requires the sub-limits applicable to 1.3 to be stated.

Limits should only be included in 3.3 if 1.3 has been stated as operative in 1.4.

The third party limit to be stipulated in the second line of 3.3 does NOT apply to passenger liability. Instead there is provision to stipulate separate limits where the policy affords cover for passengers and their baggage and personal effects and for cargo and mail.

These separate limits only apply where the policy affords cover for the Insured's liability for passenger liability in respect of passengers of an aircraft operator to whom cover is provided for liability to its passengers arising out of the operation of aircraft. The intention is NOT to provide these separate limits for an Insured's liability for other passengers, baggage, personal effects, cargo and mail. They are third parties for whom the limit stated in the second line of 3.3 will apply.

If 1.3 is not operative, then 3.3 should be left blank.

Sub-paragraph 3.4

3.4 clarifies which limit applies where a claim could be made for the (b)(ii) and/or (b)(iii) and/or (b)(iv) perils of AVN48D which simultaneously arise from any other perils for which coverage is provided by the endorsement. The applicable limit is the limit specified in 3.2 and 3.3 (as applicable) and NOT the limit in 3.1.

For example, the hi-jacking of an aircraft by the discharge of chemical materials on board the aircraft could trigger coverage under 1.1 and 1.2(i), provided both are operative, with

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the limits under 3.1 and 3.2, but the limit that applies is that specified in 3.2 in so far as the loss is caused by the discharge of the chemical materials.

Sub-paragraph 3.5

3.5 acknowledges that there is a duplication of coverage under 1.2 and 1.3, provided both are operative, as 1.3 is a complete write back of any or all of (b)(ii) and/or (b)(iii) and/or (b)(iv) of AVN48D while 1.2 is restricted to specified aircraft-related incidents and does not provide, for example, any write back of (b)(iii) external to an aircraft.

In the event that both 1.2 and 1.3 are operative, then only one aggregate limit will apply. If the aggregate limits are different then only the higher limit will apply to claims covered by both paragraphs.

Paragraph 4 – Automatic Termination

The main change from the previous AVN52 clauses is that reference to (b)(ii), (b)(iii), and (b)(iv) of AVN48D is now included in 4(ii). References to “the Insured Aircraft” in previous clauses has been changed to aircraft covered under the Policy.

Paragraph 5 – Review & Cancellation

The only change from the previous AVN Clauses is an expansion of paragraph 5(b) which now provides for limited cancellation on the expiry of forty-eight hours from 23.59 GMT on the day on which notice is given by reference to cancellation of (b)(ii), (b)(iii), (b)(iv), (c), (d), (e), (f), and (g) of AVN48D following a hostile detonation as specified in 4(ii).

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