



SPECIALIST  
PROFESSIONAL  
INDEMNITY  
INSURANCE

# Air Charter Brokers

Specialist professional indemnity insurance



ITIC  
IS MANAGED  
BY **THOMAS  
MILLER**

# Professional indemnity insurance for air charter brokers

## Policy highlights

- Worldwide professional indemnity (errors & omissions) cover
- Legal defence costs insurance
- Automatic cover for subcontractors
- Contractual risk management guidance
- Quality loss prevention advice
- No external shareholders
- Support from worldwide network of correspondents
- Discretionary insurance adjudicated upon by fellow transport industry professionals
- Mutual dividends paid at renewal
- Underwritten with industry knowledge



## Why choose **ITIC** ?

<b>ITIC provides professional indemnity insurance at cost</b>	ITIC is the mutual insurer of the transport industry with no external shareholders to take a profit from the business.
<b>ITIC will provide a sympathetic approach</b>	ITIC understands that you will often have commercial relationships which will need preserving and will work with you to allow that business association to continue. ITIC's unique insurance cover could support any claim which may not normally be paid by another professional indemnity insurer.
<b>ITIC understands your business</b>	ITIC's specialist knowledge of your business will make it quicker and easier for you to obtain advice and support on a claim under your professional indemnity insurance.
<b>ITIC is more than just insurance</b>	As an assured at ITIC you will receive support from a team who understand the unique situations and liabilities that your business faces.
<b>ITIC pays dividends annually</b>	Surplus funds have been paid out to the members in the form of continuity credit since 1994.

Whether you arrange the charter of small jets, fix flag carriers or are involved in the fixing of aircraft under ACMI, wet, dry or damp leases, ITIC covers your professional indemnity needs. To demonstrate potential liabilities in this sector, the following claims scenarios may be helpful.

## Turbo technical trouble

The broker reviewed the available options for the principal and recommended the use of a small business jet which would offer a short flight time and enhanced comfort. However, the principal wanted a cheaper alternative and the broker instead looked to source a small turbo-prop for the flight.

The broker was unable to identify a suitable aircraft from his normal network. However, a colleague advised of a small operator who they had used before at short notice. This operator did have an aircraft available and the lease agreement was quickly drawn up. As part of his usual due diligence processes, the broker checked the air operator's certificate (AOC) and details of the aircraft registration on the CAA website. He also obtained verbal assurances from the operator that the aircraft met all continuing airworthiness requirements.

Shortly after the planned departure time the broker received another call from his principal saying that the aircraft had diverted into East Midlands Airport with a technical defect. The broker eventually made contact with the operator and learnt that the aircraft technical problem was related to a known defect that had been deferred for some time under the provisions of the minimum equipment list. The aircraft was consequently not airworthy for several days while the defect was rectified.

The principal accused the broker of negligence. He claimed that the broker had failed to exercise reasonable care when sourcing the aircraft, and held the broker liable for the costs of leasing an alternative aircraft. ITIC defended the broker's position as it was felt that the broker had acted with all due skill and care, and had taken all the steps that a reasonable broker would have done in such a limited time frame.

A settlement was eventually reached, but the legal costs incurred were substantial. Both claim and costs were covered by ITIC.

## Own goal

**An air charter broker entered into a chartering contract with the operator of an Airbus for the transportation of 500 football fans from Spain to Italy. The air charter broker signed the contract as agent for their Principal, which was a Spanish travel agency.**

The chartering contract stated that the football fans were to be flown from Madrid to Milan, over a series of two flights. The return flights were scheduled for a day or two later. The total cost of the flights was US\$ 475,000.

As the aircraft was being prepared for the empty leg to Spain, it was grounded by the UK Civil Aviation Authority (as it was located in the UK) for failing a safety inspection. The failure was due to a number of safety defects coming to light which were not in compliance with international aviation standards. The following day, which was the scheduled date

of the first flight, the chartering contract was terminated due to the serious nature of the safety problems, and the timescales for repair not being known.

The air charter broker then entered into a second chartering contract, (again acting as agent for their travel agent Principal) with an operator of a Boeing 737-800. This contract was to carry out three flights (as the aircraft was slightly smaller) from Spain to Italy between 24th and 28th May, and a return flight on 29th May. The return flight was stated as being "subject to availability". The total cost of the new flights was US\$ 917,000; US\$ 442,000 more expensive than the first flights – and not all the passengers would fit on the single flight home.

However, on 28th May, the return flight, (which had always been known by the travel agency to be "subject to availability") was cancelled by the second operator – as it was not available. The air charter broker notified the travel agency and reimbursed them US\$ 200,000, which was the cost of the return flight.

The travel agency still had 500 football fans to return home. As a result, they entered into a third chartering contract for two return flights with a new aircraft operator, which was arranged without the intervention of the air charter broker. These return flights were US\$172,000 more expensive than the previously cancelled flight.

The travel agency sent a letter of claim to the air charter broker alleging firstly that they breached their duty of care to their Principal, and secondly that they had failed to perform their contractual duties. This second claim was brought not under the terms of the chartering contract, but under the terms of a separate contract which was in place between the air charter broker and the travel agency. Indemnity was sought for all additional costs incurred by the travel agent in relation to the alternative flights operated, as well as reputation damage, communication and PR expenses, loss of earnings, various additional expenses incurred by the travel agent's client and defence costs. The total quantum for both documented and undocumented losses came to just under EUR 3.3m.

The air charter broker's general terms and conditions limited their liability, and stated that they could not be held liable for direct or indirect losses resulting from the operation or absence of operation of any flights on behalf of their Principal, its Employees, Agents or Passengers and also excluded consequential damages. The travel agent disputed that they were bound by these general terms and conditions as they did not sign them. The action was brought in Germany as German law governed the contract.

ITIC assisted in the defence of the air charter broker. Ultimately the defence was successful. It was held that they had not been negligent and were not to blame for the failures of the operators of the aircraft, over which they had no control. Despite successfully defending the claim, the air charter broker incurred legal costs of over EUR 280,000. These costs were reimbursed by ITIC.

The cost of innocence can be high. The manufacturers offered to repair the keel but if they had done so it would still have been unsuitable for racing due to the design error. ITIC agreed that a keel of the correct specification should be supplied and additional costs were settled by ITIC.

# ITIC facts & figures at a glance

All figures US\$  
All facts and figures correct as of 1st January 2022

Fact Sheet Series

Air charter brokers

## Gross premium

\$60m

for the year

## Claims paid

\$425m

since 1992

## Members

3,400

## Security rating

Backed by at least "A-" rated security



## Worldwide insurance cover

ITIC is able to provide professional indemnity insurance, without restrictions, worldwide. An ITIC account executive is responsible for each country and will be your first point of contact. The ITIC team speaks French, German, Greek, Japanese, Mandarin and Spanish.

## Credits paid

\$160m

surplus funds have been paid out to the members in the form of continuity credit since 1994

## Disbursements & commissions

\$225m

of disbursements and commissions collected for members since 1992

## Free reserves

\$214m

for ITIC and TIMIA combined

## Annual premium

from **\$1,500**  **\$1m** or more

ITIC is committed to consistently providing competitively priced professional indemnity insurance (and related insurance covers) with valuable and high quality loss prevention advice to businesses servicing the marine, aviation, rail and general transport industry. The ITIC team have a wealth of experience and knowledge.

23

Staff

A full time team to provide you with the best service possible.

18

Years

Average staff member's experience in the insurance /transport industry.

13

Years

Average staff member's time with ITIC. Several staff have over 25 years of service.

5

Lawyers

5 lawyers and a full time dedicated claims team of 3.

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