

Aviation Insurance Clauses Group
Fourth Statement of Activities - October 2008/September 2009

Overview

AICG operates under formal Terms of Reference (ToR) agreed between the International Underwriting Association ("IUA") and the Lloyd's Market Association ("LMA") with the European Commission in March 2005. Under the ToR, the Chairman is required to produce an Annual Statement of Activities, "summarising the key developments relating to the AICG and the wordings, clauses and variants considered by the AICG during the course of the preceding year."

The following represents a report of AICG's activities during the period October 2008 to September 2009. The Group has met monthly during this period, except for August and December 2008 and July and August 2009. There have also been meetings of a number of AICG Working Groups (WG), consisting of nominated AICG members and others, as provided for in AICG's ToR.

Activities

All AICG agendas, detailed minutes, and Consultation Drafts have been made publicly available on the AICG website. Accordingly, this report gives only a summary of the Clauses considered and published during the review period.

Products Liability

In my last report, I mentioned that an AICG Working Group has been working on amended versions of AICG Consultation Drafts (CDs) 14, 15 and 16, as well as a new AVN 48G based on AVN48C and a new AVN 52P(A), which would seek to address a number of shortcomings in the previously published AVN 52P.

With the passage of time, it has however become increasingly clear to AICG that regulatory approval for AVN 48C (and perhaps AVN 48D) is unlikely to be forthcoming, at least in the foreseeable future. While it could be argued that aircraft manufacturers and others seeking to provide coverage for the "products" hazard might not be bound by the same regulations as aircraft operators, AICG is reluctant to publish clauses which, being based on as yet not approved exclusions for such operations, are unlikely to be used. In reaching this conclusion, AICG has been mindful of paragraph 2.4 of its Terms of Reference which state:-

"The purpose of the AICG is to consider, and where appropriate, draft, non-binding standard wordings and clauses which command support from insurers and re-insurers, brokers and clients of aviation insurance underwritten in the London market and which comply with legal and regulatory requirements".

AICG has therefore decided to "mothball" the considerable amount of work which has already been done on these variants. If circumstances change (i.e. if either AVN 48C or AVN 48D receive the necessary approval), the prepared clauses could very quickly be issued for publication or consultation as appropriate.

AICG's work has however produced one "products" clause which, not being based on either AVN 48C or AVN 48D, can be used immediately. This is a products hazard write back endorsement based on AVN 52P. Like AVN 52P, it is for use with AVN 48B but now only applies to the "Manufacturer's Products Hazard", as defined within the endorsement, rather than relying on any such definition which might be included (or not) in the policy to which the endorsement might be applied. This new clause, previously AICG Consultation Draft 25, has been published as AVN 52P(A).

Manufacturer as Additional Insured and Waiver of Subrogation Endorsements

In my last report, I also mentioned that AICG were considering whether to publish as AVN Clauses the two draft clauses issued for consultation as AICG Consultation Drafts CDs 18 and 19. Although few comments on these drafts were received, and there was some doubt as to whether they would be widely used, AICG did eventually decide that these should be published as **AVN 101 and 102** respectively.

AVS 103 (50/50 Provisional Claims Settlement Clause)

AICG were asked by the LMA Aviation Committee to review a number of AVS clauses for possible publication as AVN Clauses. AVS Clauses are "slip clauses" reflecting an agreement between underwriters - usually on some processing issue or administrative issue - and generally do not impact directly on the insured(s). AICG felt that of the five AVS clauses currently in use, only AVS 103 (50/50 Provisional Claims Settlement Clause) would lend itself to conversion to an AVN Clause. It was also agreed however that while it was within AICG's terms of reference to address any drafting issues relating to AVS 103, AICG could not undertake a more fundamental review of how AVS actually worked. An AICG Working Group was therefore established to work on this. The resulting draft was published for Consultation as AICG Consultation Draft 28. A number of comments have been received.

Although it is widely accepted that AVS 103 is now out of date in many respects, a number of the comments received questioned whether this draft should be published as an AVS or an AVN Clause. These comments were along the lines that while the changes proposed to the previous version of AVS 103 clearly reflected a best efforts attempt to provide greater clarity and formality to the provisional claims settlement arrangements, it remained the case that there would be no direct contract between the underwriting parties.

AICG agreed that this issue remained difficult to address. AICG's Terms of Reference are intended to facilitate the production of aviation insurance wordings, not commercial agreements between different sets of underwriters. Despite the best efforts of the AICG Working Group and their legal advisers, AICG therefore agreed that they could not publish any version of this Clause.

That said, AICG did agree that Consultation Draft 28 was an improvement on the previous AVS 103, and that the Chairman might talk to a number of market practitioners to see if any might be interested in adopting this as a market wording.

Major Airport and Fuellers' Liability Wordings

Following a request from IUA, AICG agreed that the production of model AVN wordings for these coverages would be timely. In undertaking their work, the AICG Working Group tasked with this work examined a number of existing market forms.

The resulting wordings were published for Consultation as AICG Consultation Drafts 20 and 21. AICG also agreed that the Working Group should draft a Fuelling Grounding Liability Extension, to be used in conjunction with the Aviation Fuellers Liability wording referred to above. This was published as AICG Consultation Draft 22.

A number of helpful comments on these AICG Consultation Drafts were received. Where appropriate, these comments have been acted upon by AICG and these wordings have now been published as new Clauses **AVN 104, 105 and AVN 106**.

London Aircraft Insurance Policy - France

Following the return to work after an accident of the Chairman of the AICG Working Group of French speakers dealing with this, an amended version of AVN 1C France was eventually published as AICG Consultation Draft 23. In view of the very specific and limited application of this form (i.e. to risks which are actually subject to the French law on Terrorism and the French Insurance Code), AICG also asked the French insurance association (FSSA) to distribute this Consultation Draft to their members for comment. In the event, no substantive comments on this AICG Consultation Draft were received. However, although this revised form was produced to update the previously issued AVN1C France - which no longer reflects current French requirements - AICG felt that, since both the new form and the previous AVN 1C France are substantially different from the original English version of AVN 1C upon which they were based, there would be benefit in breaking this link, so this new wording simply had allocated to it the next available AVN number and has been published as AVN 107.

Corporate Manslaughter - Defence Cost Extension

AICG were asked by the IUA's Aviation Technical Committee (ATC) to draft a model aviation wording addressing the issue of Corporate Manslaughter. This arises because many aviation risks are now being presented to aviation underwriters with corporate manslaughter cover (i.e. legal expenses insurance) included. AICG agreed that a model wording might be of use.

An AICG Working Group, including representatives of IUA and LIIBA was therefore set up to draft such a wording and have identified a number of issues. These included whether there was a need for Corporate Manslaughter cover to be provided outside of the UK (the existence of similar legislation outside the UK is uncertain) and the need for appropriate authorisation for the insurer(s) to issues legal expenses cover (which it was decided was a matter for the insurer(s) concerned, rather than for AICG). AICG also noted however that, as there had been very little experience to date of cases brought under the UK Corporate Manslaughter Act, it was difficult to predict likely outcomes and consequences. AICG agreed therefore that the publication of the Defence Costs Extension as an AICG Consultation Draft might assist AICG in identifying further issues to be taken into account. The resulting draft was therefore published for Consultation as AICG Consultation Draft 26, and a number of comments were received.

Where appropriate, these comments have been acted upon by AICG and a new Defence Costs Exclusion has now been published as AVN 108.

Cut-Through Clause

AICG has received a request to review "cut-through" clauses currently being used in the market. The aviation version of this is felt to be acceptable but not ideal. AICG recognises that this is a difficult area. While there is a clearly a commercial demand for such clauses, particularly in contracts involving aircraft lessors, there is also a distinct lack of case law on the application of such clauses, and there are also a number of inherent risks in their use. AICG has therefore agreed that while it would not be able to draft clauses which would contravene local legislation, AICG might be able to improve the clauses currently being used in order to avoid the most obvious pitfalls. An AICG Working Group was therefore asked to look at this, with input being sought from brokers, reinsurers and from lawyers, to consider whether a model clause, perhaps with UK jurisdiction as a default, could be produced. The resulting draft was being published for Consultation as AICG Consultation Draft 27, and a number of comments on this Consultation Draft have been received.

Where appropriate, these comments have been acted upon by AICG and a new Cut Through Clause has now been published as AVN 109.

AICG Membership

During the last year, membership of AICG has remained relatively stable. One new member has joined by application, while three members, including two representatives of LMA, have been replaced by their sponsoring organisations. Details of current membership are attached.

Commentary

AICG has been very active over the past twelve months, due to the aviation insurance market, brokers and clients identifying AICG as a useful forum for comment on a variety of matters related to aviation policy wordings. Aviation insurance being of such a specialised nature, AICG continues to provide the expert body to develop the policy wordings the aviation insurance market, brokers and clients require. All concerned find this a very useful forum and deserving of support.

The AICG system of using specialist working groups has been very successful and has had a considerable input when clauses are being considered, not only from AICG members who volunteer for the various tasks but also from brokers, insureds and when required legal and industry representation. The review of clauses has proven to work better in these smaller working groups, reporting back to the full AICG, rather than the whole of the committee being involved in the detailed drafting. This has led to our good response in time and detail on the many items we have been asked to look at over the past twelve months.

Having now completed my second year as AICG Chairman I think the whole process works extremely well. A considerable amount of this is due to the individual members of AICG who give up a large part of their working day to participate in the drafting of very complex wordings and clauses.

Having completed this final year I would like to thank the secretariat plus the committee for all the help and assistance they have given to me.

The AICG is a very worthwhile committee and it has been a pleasure in chairing such a group of Market professionals.