

Aviation Insurance Clauses Group (AICG)
Fifth Statement of Activities - October 2009 - September 2010

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 2009 to September 2010. The Group has met monthly during this period, except for December 2009 and January, February, April and August 2010. The long break in meetings between November 2009 and March 2010 was a direct consequence of the unexpected illness and death of my predecessor, Stephen Matthews, as AICG Chairman. My first meeting as AICG Chairman was in March this year. 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.

LSW 708A - Civil Aviation Authority Safety Regulation Group Clause

LSW 708A has been in existence in one form or another for a number of years and is designed to add as a Joint Assured under the Policy any Civil Aviation Authority (CAA) - or its local equivalent - approved pilot for the purpose of a test flight, primarily in the context of granting a certificate of air worthiness to the aircraft in question. However following changes in the relevant EC regulations, AICG was asked by a broker to review LSW 708A in relation to 'EU' registered aircraft as any flights required in connection with a certificate of air worthiness may no longer necessarily be carried out by the CAA.

In considering this request, AICG felt that in view of the changes to EU aviation safety regulations, a civil aviation authority test pilot clause was probably not required at all in the European context and, to the extent that it might be, LSW 708A remained adequate for that purpose. AICG felt however that there might be a need for a civil aviation authority test pilot clause for jurisdictions outside of Europe who have not yet moved to a self-certification regime.

AICG therefore considered in detail the possible language of such a clause, using LSW 708A as a model. A draft clause was therefore published for consultation as AICG Consultation Draft 29, and a number of comments were received.

In subsequent discussion of the comments received, a number of further changes were agreed to the draft. AICG agreed that while this further draft appeared to meet the original drafting objectives for the clause and also points subsequently made by commentators on AICG Consultation Draft 29, the resulting redraft was substantially quite different in its format from that previously issued for consultation. It was agreed that it might therefore be appropriate to issue this revised draft for further consultation before it was finally published. This revised draft was therefore published as a further AICG Consultation Draft 29(A). A further number of comments were received, and following discussion by AICG, this has now been published as AVN110.

Sanctions

IUA's Aviation Technical Committee (ATC) asked AICG to draft a generic sanctions clause. The likelihood of more specific sanctions being introduced by the US, UN or other relevant bodies was of concern and could cause problems in drafting such a clause. Nevertheless it was felt that it made sense for AICG to produce some appropriate wording for use in the aviation market.

In discussion of this, AICG noted that whilst there is a great deal of support for drafting such a clause, it felt that there might be some further drafting difficulties with this, in view of the way sanctions might affect different Insurers in different ways subscribing to the same risk, depending on the structure, ownership, management and capitalisation of the insurer concerned. Taking into account all such concerns, AICG published a draft Sanctions Clause as AICG Consultation Draft 30. A number of comments on this were received and discussed within AICG, and with representatives of the broker community. This clause has now been published as AVN111.

Space Product Liability Policies

An AICG member has suggested that a review of space product liability insurance wordings might be appropriate, including the inefficacy language used in space product policies.

AICG has noted that the concept of space product liability insurance was introduced in the mid 1980's for what was then predominantly Government involvement in space.

However, since the 1980's, the space market had changed significantly and developed to a much more commercial enterprise. This change from Governmental to commercial involvement mean significantly different risks are now emerging. The request therefore was for AICG to review the space coverage provided under AVN 98, to see if these were in need of review. AICG has agreed to consider this.

AICG Membership

During the last year, membership of AICG has remained relatively stable, although one representative of FFSA has resigned following a change in his employment, while a number of representatives of LMA and IUA have been replaced by their sponsoring organisations. Details of current membership are attached.

Commentary

Although AICG has been less active over the past twelve months, mainly due to the unexpected death of my predecessor, the aviation insurance market, brokers and clients continue to identify 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.

Having now completed my first 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 complex wordings and clauses. The AICG is a very worthwhile committee and it has been a pleasure in chairing such a group of Market professionals.