

AVIATION INSURANCE CLAUSES GROUP (“AICG”)

FIRST STATEMENT OF ACTIVITIES 2005/06

Background

AICG’s Terms of Reference (Clause 4.6) require the AICG Chairman “to produce annually a 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 year has been dominated by the consideration, consultation and publication of various clauses extending AVN 48B to exclude cover for the hostile use of weapons of mass destruction more particularly defined in the clauses, and variants providing a limited write back of certain parts of that cover. A group of 7 clauses, referred to in this report as “the War Clauses”, were published by AICG at the beginning of August and this Report has been delayed as a result.

AICG is the successor to the Joint Technical & Clauses Committee (“JTCC”) which considered and produced clauses for use in the aviation insurance market from 1961 to 2005, and was recognised by participants in the market as a valuable source of expert drafting. However, JTCC was comprised of underwriters, had no requirement to consult other market participants (though it routinely did so informally), and reported to two trade associations through the Joint Executive Committee. In 2005, as part of a series of systemic reforms agreed between the aviation insurance market and the European Commission, JTCC was disbanded and AICG was created in July 2005.

Written Terms of Reference govern AICG and its activities; Clauses 4.1 and 4.2 set out the requirements for its Chairman, the need for him or her to act independently, and the Chairman’s responsibilities. Having recently retired from the market, I was appointed as its first Chair in June 2005 for one year and have subsequently agreed to extend that term until the end of June 2007.

Terms of Reference

This detailed document sets out the constitution of the Group: the way in which AICG is to be formed, its membership, the way in which meetings are conducted, and the consultation process among other things. There are however, four guiding principles on which AICG is to be based:

- 1) All AICG members are required by Clauses 4.2 and 4.5 to “ensure that there is no significant imbalance between the rights and obligations of insurers and insureds arising from the published AVN wordings and clauses.” We have used variant clauses where appropriate (for example in the War Clauses) to strike this balance.
- 2) AICG must operate in a transparent way under Clause 9. The website is public, with the agenda and minutes of all its monthly meetings being available, together with all consultation drafts and new AVN clauses. On request a representative of AICG will attend meetings of recognised bodies active in the market on behalf of insureds, insurers, brokers and aviation leasing companies.

- 3) The consultation process requires AICG to publish drafts for comment and/or for variants to be proposed. Detailed drafting will normally be carried out in sub-groups, which may contain representatives from market participants other than underwriters as well as AICG members and others invited to join as experts. All proposals are made public via the website and direct advice to the Lloyd's Market Association ("LMA"), the Aviation Technical Committee of the International Underwriters Association of London ("IUA") and the London Market Insurance Brokers' Committee ("LMBC").
- 4) It must be made clear when publishing each AVN clause that AICG makes no recommendation as to its use and that all insureds and insurers are free to use other wordings at their discretion.

I consider that AICG has operated in accordance with these guiding principles during its first year.

Membership

A list of the people who served on AICG during its first year is attached as [Annexe 1](#). Six members were nominated by LMA, six by IUA, three by Fédération Française des Sociétés d'Assurance ("FFSA"), one by Munich Re and one by Inter-Hannover. The Group also appointed two Experts as standing members. Including the Chairman, the membership stood at 20 at the end of the first year together with two Secretaries.

Work Product

A total of nine new wordings have been published. Details are as follows:

AVN 97. A new clause was published for consultation, based on a new arbitration and mediation service launched by the Air Law Group of the Royal Aeronautical Society. However AICG decided that it would not be appropriate to publish a clause which identified a particular arbitration service, and noted that the service had not then come into being. Accordingly, the clause as published simply enables the parties to refer disputes to arbitration but avoids nominating a particular service.

AVN 52P. This clause writes back coverage excluded by AVN 48B up to a sub-limit to be negotiated, with respect to product liability for manufacturers.

AVN 48C. This clause expands AVN 48B by excluding an additional range of perils such as claims caused by the hostile use of radioactive contamination or matter, the hostile use of an electromagnetic pulse, and the hostile use in certain defined circumstances such as for terrorist purposes, of poisonous or pathogenic chemical or biological materials. These perils are referred to in this Report as "the WMD risks".

AVN 52H. This clause provides for the limited write back up to a sub-limit to be negotiated, of risks excluded by AVN 48C in aircraft operator policies. The clause is not designed to write back the "WMD risks" referred to above.

AVN 52J. This clause facilitates write back of risks excluded by AVN 48C (other than WMD risks) in the same manner as described in AVN 52H, but for use in service provider policies.

AVN 48D. This clause, which is designed for use with the write back clauses AVN 52K and L, described below, excludes the same range of risks as AVN 48C, but in slightly different terms with respect to the WMD risks.

AVN 52K* This clause provides a flexible basis for writing back some or all of the excluded WMD risks up to one or more sub-limits to be negotiated. The clause is for use in Aircraft Operator Policies.

AVN 52L* This clause facilitates write back of excluded WMD risks in the same way as AVN 52K, but is designed for use in service provider policies.

* These two clauses are complex and a guidance note on their terms has been published on the AICG website.

AVN 51A. This clause is designed for use with aircraft hull policies and writes back certain risks excluded by AVN 48C up to a sub-limit to be negotiated.

Work in Progress

Aviation products grounding etc insurance. A 36 page policy wording known as the "SBAC" wording has been used in the aviation and insurance market for many years, having been originally drafted to cater for a limited range of risks within the United Kingdom. The wording is in the process of being modernised to take account of market developments and to be suitable for international use.

Product liability wordings. As a result of comments received during the consultation process which led to the publication of AVN 52P, the Working Group which drafted that clause has been reconvened to consider new wordings to be published as possible variants.

AVN67B. A new Working Group has been formed to consider potential changes to the clause at the request of an organisation representing certain aircraft and product manufacturers. The clause is concerned with the application of insurance to aircraft and components which are leased.

AVN 1C. Changes have been proposed to this standard policy wording, particularly to reflect a change in French law which impacts directly upon the French translation of the policy wording. Pending completion of the French legislative changes, work has not yet begun on the detailed consideration of the wording.

Comments

I consider that the newly constituted AICG has made a satisfactory start in carrying on the work of JTCC while observing the guiding principles contained in the Group's Terms of Reference. The following comments, which are those of the author rather than AICG members collectively, are offered to provide a basis for further consideration of the Constitution and workings of AICG in mid 2007:

- 1) AICG is purely a drafting committee and it is expressly prohibited from recommending the use of its clauses. It is axiomatic that it cannot operate as the representative of a sector of the Aviation Insurance Market, nor as a negotiator to try to effect a compromise between opposing positions. There is a fine line between attempting to provide a basis for balanced clauses and falling

foul of this prohibition. LMA and IUA are rightly loth to be seen to instruct AICG in any way and this at times leads to a lack of proposals for new clauses to be considered by AICG.

- 2) The criteria for membership of AICG are not demanding and a group of 22 people is at the far end of feasibility given the detailed nature of its work. Much of the drafting work is carried out through smaller working groups and although this is effective, the full membership of AICG must consider all wordings in detail before they can be published as AVN clauses.
- 3) The nature of aviation insurance requires the production of detailed and often complex clauses which are difficult if not impossible to negotiate on an individual policy basis. I firmly believe that the production of standard, non binding, clauses published by an expert drafting body is an important tool in the operation of an efficient and orderly market. The group is striving to operate efficiently in accordance with its Terms of Reference but it is inevitably a learning process. Some aspects of the procedures could be streamlined in the interests of efficiency without losing the consultative transparency which is an integral part of its constitution.
- 4) Clause 13 of the Terms of Reference anticipates that a review will take place of the workability and practicality of the terms. I intend to seek the views of the various Trade Associations (including LMBC, IUA and LMA) active in the aviation insurance market in the spring of next year to establish what changes if any, are to be proposed to the European Commission for amendment to the existing Terms of Reference.

I should like to record my appreciation to the members of AICG for the time and expert guidance which they have given to the workings of AICG over the past year and also to those who supported the work of the group by participating in Working Groups and providing comments on the consultation drafts which we have published.

K J M Walder – Chairman
18th August 2006