

22/04/2021

## AVIATION INSURANCE CLAUSES GROUP ("AICG")

### TERMS OF REFERENCE

#### 1. DEFINITIONS

**"AICG Members" or "Members"** means individuals that have been nominated in accordance with sections 3.1, 3.3 or 3.4;

**"Annual Statement of Activities"** means a summary of key developments relating to the AICG and the wordings, clauses and variants which the AICG has considered, consulted on and published. The Annual Statement will be prepared by the AICG Chair, and will be published on the AICG website;

**"Aviation Insurance"** means the provision of insurance or reinsurance cover with respect to any risk relating to: (i) the manufacture, sale, leasing, ownership or operation of aircraft or spacecraft; (ii) the carriage of passengers and/or cargo by air; and (iii) the provision or operation of airports, air traffic services, groundhandling services or any other services relating to aircraft;

**"Association Member"** means an underwriting undertaking that is a member of either the LMA or the IUA;

**"AVN or AVS Wordings or Clauses"** means wordings or clauses made available for use specifically in Aviation Insurance by the AICG after consultation with Third Parties and includes any variants. These can include clauses mandated by national or international law as well as wordings or clauses and variants regularly used in aviation insurance policies. AVS clauses specifically refers to clauses impacting the administrative operation of the insurance policy, commonly referred to as slip clauses;

**"AICG Chair"** means the Chair of the AICG nominated in accordance with section 4.1;

**"Chair's Responsibilities"** means those considerations and interests that the AICG Chair must have due regard for when fulfilling their duties under these Terms of Reference set out in section 4.2;

**"Consultation Draft"** means a draft version of proposed wordings or clauses which is made publicly available to third parties for comments as part of the consultation process, prior to any publication as AVN or AVS Wordings or Clauses;

**"Crisis Response Protocol"** is the protocol agreed between the IUA ATC and LMA Aviation Committee dated 17 March 2005;

**"Expert"** has the meaning attributed to it in section 3.1 and 3.4;

**"IATA"** means the International Air Transport Association (or its successor from time to time);

**"IUA ATC"** means the Aviation Technical Committee of the International Underwriting Association (or its successor from time to time);

**"JTCC"** means the Joint Technical and Clauses Committee;

**"LMA"** means the Lloyd's Market Association (or its successor from time to time);

**"LMA Aviation Committee"** means the committee elected by LMA Members with an interest in aviation insurance;

**"LIIBA"** means the London & International Insurance Brokers' Association (or its successor from time to time);

**"Proposer"** means a person or body as referred to in Section 6.2;

**"Recognised Trade Association"** means any group or committee formally set up that represents the interests of participants active in the Aviation Insurance industry (e.g. the insurers, the insureds, the brokers or aviation leasing companies) at a national, European or international level such as the IATA, LIIBA, LMA, or IUA;

**"Third Party"** means any active participant in the aviation industry, that is not a member of the AICG, which is likely to be affected by its activities. Third Parties can include members of Recognised Trade Associations representing undertakings that either buy or sell Aviation Insurance;

**"Sub-Group"** means any small group of AICG Members and any Experts to whom the AICG Chair has delegated a specific project in accordance with section 5.5.

## **Background and Objectives**

- 2.1 The Joint Technical and Clauses Committee ("JTCC") was established in 1961 with representatives from both the Committee of the Lloyd's Aviation Underwriters' Association (now replaced by the LMA Aviation Committee) and the former Aviation Insurance Offices Association ("AIOA") (now represented by the IUA Aviation Technical Committee ("IUA ATC")). The JTCC was set up in order for both associations to participate in the discussions on the drafting of policy wordings and clauses which would then be made available for use by the market.
- 2.2 The LMA Aviation Committee and the IUA ATC wish to formalise the way in which standard aviation insurance policy wordings and clauses are proposed and consulted on. Therefore, the former JTCC will hereby cease to exist and will be replaced by a newly created group, the Aviation Insurance Clauses Group ("AICG"), which will operate only in accordance with these Terms of Reference.

- 2.3 The AICG shall ensure that it only proposes drafts or publishes any AVN or AVS Wordings or Clauses that comply with the provisions of *Commission Regulation 358/2003 of 27 February 2003 on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector* (or any amendments thereto or subsequent EU or UK competition legislation) and in particular shall not:
- 2.3.1 contain any indication of the level of commercial premiums;
  - 2.3.2 indicate the amount of cover or the part which the policy holder must pay themselves (the "excess");
- 2.4 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, without excluding the possibility of variants that meet the needs of one element of the foregoing groups. Standard individual wordings and clauses can bring efficiency gains for insurers; they can facilitate market entry by small or inexperienced insurers; they can help insurers to meet legal obligations; and they can be used by the insureds and regulators as a benchmark to compare insurance policies offered by different insurers.
- 2.5 The intention is for the AICG to promote best principles and practices in Aviation Insurance. It will therefore seek to make available for use within the Aviation Insurance market wordings and clauses that can be used responsibly by underwriters taking into account the legal and regulatory environment in which underwriters and buyers of Aviation Insurance operate and any procedural issues. The standard clauses and wordings will continue to be published with the prefix AVN or AVS as appropriate.
- 2.6 The AICG shall not impose the use of the AVN or AVS Wordings and Clauses, nor shall it recommend their use. Any publication of AVN or AVS Wordings and Clauses, and Consultation Drafts shall expressly state that they are not binding and all Members are free to offer different policy wordings and clauses to their customers.
- 2.7 In any event, the AICG shall not in any circumstances be a forum for the discussion of commercial insurance or reinsurance premiums; or financial limits on insurance or re-insurance cover (other than those imposed as a result of legal, regulatory or technical requirements); or other matters that could give rise to an infringement of relevant competition laws.
- 2.8 AICG's Members will consist of representatives of aviation underwriters as per sections 3.1 and 3.3, however, as set out in these Terms of Reference any potentially affected market participant active in Aviation Insurance will have the right to propose wordings or clauses and comment on drafts before any wording, clause or variant is published by the AICG as AVN or AVS Wordings or Clauses.

### **3. Membership**

- 3.1 Membership of the AICG will be open to individuals who have either legal or technical expertise, and relevant practical experience and who are employed by an undertaking active in underwriting Aviation Insurance in the UK or any Member State of the European Union. LMA Aviation Committee and IUA ATC can nominate two Experts as full participating Members of the AICG.
- 3.2 Membership of the AICG will be reviewed on an annual basis.
- 3.3 Both the LMA Aviation Committee and IUA ATC will each nominate up to six representatives from their Association Members to attend meetings.
- 3.4 With respect to undertakings that are not members of the LMA Aviation Committee or the IUA ATC, but who are active in underwriting Aviation Insurance in the UK or any Member State of the European Union, they may apply to the AICG Chair in writing setting out their legal or technical expertise, and relevant practical experience. The AICG Chair shall consult with the existing AICG Members at the next scheduled meeting and respond to the request in writing. Any Membership shall be conditional on the undertaking in question making reasonable pro-rata contribution to the costs of the AICG.
- 3.5 In addition to its Members the AICG may invite certain individuals to attend its meetings on the basis of their technical or legal expertise ("Experts"). These Experts may participate fully in the meetings as though they were AICG Members, or alternatively may be invited to assist in a particular project that has been delegated to a Sub-Group.
- 3.6 Any AICG Member or Expert wishing to withdraw from AICG need only inform the Chair in writing. AICG Members and Experts may also be requested to withdraw by the AICG Chair in writing in the case of concerns about non-compliance with these Terms of Reference.

### **4. Officers**

- 4.1 The AICG Chair will be appointed in alternate years by the LMA Aviation Committee and the IUA ATC, or as otherwise agreed between these two committees. The AICG shall establish the appropriate procedures for the appointment of its chair, the qualifications required and the circumstances in which the Chair would cease in their functions.
- 4.2 The AICG Chair will, in fulfilling their duties as AICG Chair, use their best endeavours to act independently with due regard for the interests of all Aviation Insurance market participants, not just those of underwriters, and in accordance with any legal or regulatory requirements. It is the AICG Chair's duty to ensure that there is no significant imbalance between the rights and obligations of insurers and insureds arising from the published AVN or AVS Wordings and Clauses ("Chair's Responsibilities").
- 4.3 The AICG Chair, after consultation with all AICG Members present at the meeting, shall take the ultimate decision regarding the following matters:-

- 4.3.1 the initiation of work on proposed wordings, clauses or variants;
  - 4.3.2 the participation of AICG Members, and Experts in the initial drafting process;
  - 4.3.3 publication of the Consultation Draft; and
  - 4.3.4 publication of a wording or clause as a recognised AVN or AVS wording or clause ("AVN or AVS Wordings and Clauses").
- 4.4 A Deputy Chair will equally rotate on an annual basis between the LMA Aviation Committee and IUA ATC or as otherwise agreed between the two committees. Where possible the Deputy Chair will be a nominee from the association which that year does not hold the Chair.
- 4.5 All AICG Members when considering new wordings or clauses or variants shall have due regard for the interests of all Aviation Insurance market participants, not just those of underwriters, and in accordance with any legal or regulatory requirements. They shall ensure that there is no significant imbalance between the rights and obligations of insurers and insureds arising from the published AVN or AVS Wordings and Clauses.
- 4.6 At the end of each year the AICG Chair shall 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.
- 4.7 The Secretary to the AICG will be either from LMA or IUA, whoever is available for the meeting.
- 4.8 The AICG Chair and Deputy Chair shall retire at the end of each year but shall be eligible for re-nomination.
- 4.9 At an AICG meeting the majority of the AICG Members may decide to remove and replace the AICG Chair during the course of a year if there are serious concerns as to how they are discharging their role under these Terms of Reference. The AICG Chair will cease to act with immediate effect and the Deputy Chair will become the new Chair until a replacement has been appointed. The AICG Chair can appeal their removal in accordance with section 10.

## **5. Conduct of Meetings.**

- 5.1 In the conduct of all its meetings the AICG shall comply with all applicable, competition, and other relevant laws. (See also section 12 below).
- 5.2 The AICG Chair, or the Secretary at their request, will ensure that an agenda for each meeting is circulated ahead of each meeting.
- 5.3 A copy of the minutes of every meeting of the AICG shall be sent as soon as reasonably practicable to every Member.

- 5.4 Both the agenda and the minutes of the meeting will be published on the AICG website by the Secretary.
- 5.5 Where it is deemed necessary the AICG Chair may set up a sub-group to deal with specific projects and invite a limited number of Members and Experts to participate (a "Sub-Group"). The Sub-Group shall report back to the AICG with any recommendations which will be considered by the AICG before drafting is published as a Consultation Draft or AVN or AVS Wordings or Clauses.
- 5.6 The AICG will consider and the AICG Chair will invite where it is felt to be appropriate or necessary, any individual from a recognized body representing the buyers of insurance to participate on a Sub-Group as an Expert, e.g. a representative from London & International Insurance Brokers' Association ("LIIBA") the International Air Transport Association ("IATA"), the European Regions Airline Association ("ERAA") or the Airports Council International ("ACI"). The AICG Chair shall be required to admit a Third Party that has a direct interest in a clause and that has made a specific request to attend meetings where that particular clause or variant is planned to be discussed. Where a Third Party proposes a clause or variant in accordance with these Terms of Reference, that Third Party shall itself have or shall be entitled to nominate a representative to have observer status on such body or Sub-Group as shall be responsible for considering the clause or variant in question.
- 5.7 The AICG Chair, or in their absence the Deputy Chair, shall preside at meetings. In the absence of the AICG Chair and the Deputy Chair, a chair elected by those Members present at the meeting shall preside.
- 5.8 The quorum for AICG meetings shall be half the AICG Members nominated in accordance with sections 3.1 and 3.3.
- 5.9 Meetings shall normally be held once a month or as considered necessary by the AICG Chair.

## **6. Initiation of proposals for new wordings, clauses or variants**

- 6.1 Any AICG Member can propose that the AICG consider either a new clause, a variant or modification of existing AVN or AVS Wordings or Clauses. The AICG Chair, after consultation with all Members present at the meeting shall take the ultimate decision regarding the initiation and timing of work on proposed wordings, clauses or variants.
- 6.2 Any Third Party can request that the AICG consider either a new clause, or propose to the AICG a variant or modification of existing AVN or AVS Wordings or Clauses. Such proposals may be made via that Third Party's Recognised Trade Association (such Third Party or its trade association, as the case may be, being referred to as the "Proposer"), who will submit a written request to the AICG Chair.

- 6.3 The existing workload of the AICG Members and perceived need for the wording or clause or variant, taking into account legal, technical, regulatory or procedural developments should be considered when determining the timing and order in which drafting work is allocated on proposed wordings, clauses or variants.
- 6.4 Variants to a proposed wording or clause can be considered during the pre-consultation period or after the publication of the Consultation Draft. The AICG shall consider the possibility of having one or more variants to a wording or clause having due regard to technical, legal, regulatory and procedural requirements.
- 6.5 The AICG Chair, after consultation with all the AICG Members present at the meeting can reject any proposed variants to AVN or AVS Wordings or Clauses when in the AICG Chair's reasonable opinion, the proposed variant would lead to material ambiguity having regard for the Chair's Responsibilities as set out in section 4.2.
- 6.6 The AICG Chair shall inform the AICG Member or Proposer as the case may be in writing of the outcome of the AICG's deliberations as to whether it accepts that work needs to be carried out and by when. The fact that a request has been made shall also be reflected in the published minutes of the Group meeting.
- 6.7 If the AICG concludes that a wording or clause or variant is not necessary, or alternatively feels it is unable to start work on it within a reasonable timeframe, and the relevant AICG Member or Proposer disagrees with the AICG's decision, it can appeal the AICG's decision, in accordance with the procedure set out in section 10.

## **7. Pre Draft Consultation**

- 7.1 Any Third Party that wishes to participate in the initial drafting discussions may submit a request in writing to the AICG Chair, who shall duly consider the request in consultation with all Members, and in particular when would be the most appropriate stage for the Third Party to be involved. All Third Parties will in any event be afforded ample opportunity to comment on proposed drafts in accordance with the consultation process set out in section 8.
- 7.2 When the AICG is satisfied that sufficient consideration has taken place as to the drafting of a proposed wording, clause or variant, or if the AICG Chair believes that a proposed wording or clause is sufficiently advanced, it shall be adopted as a "Consultation Draft" and submitted for Third Party consultation. The AICG Chair and the AICG Members shall have due regard for their responsibilities as set out in section 4.2 and 4.5.

## **8. Post Draft Consultation**

- 8.1 Copies of Consultation Drafts will be sent to the Chair of the LMA Aviation Committee and the IUA ATC, for them to disseminate amongst their Association Members as they consider appropriate. In addition, copies of the Consultation Drafts will also be sent to the Chair of the Aviation Executive Committee of the LIIBA (or its successor body). A copy of a Consultation Draft shall also be posted on the AICG website.

- 8.2 Within 30 days (or a stated longer period if agreed by AICG Members) of the posting of the Consultation Draft all Third Party comments must have been submitted in writing to the AICG Secretary or Chair. The Secretary will collate all comments and submit them to the AICG for consideration at their next meeting. Having due regard for the Third Party comments and any further deliberations of the AICG, the AVN or AVS Wordings and Clauses will then be published on the AICG website.
- 8.3 The AICG Chair, after consultation with all the Members present at the meeting, shall take the ultimate decision as to whether a draft should be published as an AVN or AVS Wording or Clause. The AICG Chair and the Members shall have due regard for their responsibilities as set out in section 4.2 and 4.5.
- 8.4 In the case that variants can be drafted and agreed, the AICG shall ensure that all variants are published in the widest possible and transparent way when adopted as AVN or AVS Wordings or Clauses.

## **9. Transparency**

- 9.1 It is the intention of the AICG to be transparent, while allowing the AICG Members and Experts to discuss proposed drafting from a technical or legal perspective in an open and constructive manner.
- 9.2 The AICG's consultation process is intended to ensure a formal, structured and transparent consultation with all relevant and potentially affected industry participants (underwriters, the brokers, the insureds, the regulators and any other interested Third Party).
- 9.3 The AICG website will be accessible not only by AICG Members but any Third Party. Links will be created from both the LMA and the IUA website to the AICG website.
- 9.4 In order for the Third Parties to keep abreast of the work that the AICG is carrying out, the agenda and minutes of all its meetings will be published on its website.
- 9.5 All Consultation Drafts will be published on the AICG website, as will the new AVN or AVS Wordings or Clauses.
- 9.6 If it is thought to be helpful, or at the request of a Recognised Trade Association, the AICG may send a representative, which may be but need not necessarily be the AICG Chair, to a meeting of another Recognised Trade Association to explain the background and current position of an AVN or AVS Wording or Clause or any Draft.
- 9.7 For information purposes a copy of the Annual Statement of Activities shall be submitted to the EC Commission as well as being published on the AICG website.



## **10. The appeal procedure**

- 10.1 Where an underwriter of aviation insurance business has been refused nomination as an AICG Member, they can appeal such decision in accordance with the procedures set out in these Terms of Reference.
- 10.2 An AICG Member or Expert who has been asked to withdraw may appeal in writing to the Chair of the LMA Aviation Committee and IUA ATC in accordance with these Terms of Reference.
- 10.3 An AICG Chair that has been removed under section 4.9 can appeal their removal to the Chair of the LMA Aviation Committee and the IUA ATC.
- 10.4 If a proposal to consider a wording or clause or a variant has been rejected by the AICG, the AICG Member or the Proposer can appeal their rejection in accordance with the appeal procedures set out in these Terms of Reference.
- 10.5 The first step will be for the underwriter who has been refused to approach the AICG Chair setting out the arguments for membership; or for the AICG Member or Proposer to submit to the Chair the grounds for consideration of a draft wording or clause or variant. The AICG Chair will then reconsider the matter having due regard to the Chair's Responsibilities set out in section 4.2.
- 10.6 In cases where membership of AICG is refused or withdrawn, or a proposal for a wording or clause or variants is rejected, the AICG Chair shall respond in writing within ten business days setting out the reasons for their decision.
- 10.7 If an applicant, AICG Member, Expert or Proposer is still not satisfied with the outcome of the AICG Chair's decision he may appeal to the Chair's of the LMA Aviation Committee and IUA ATC. The Chair's of the LMA Aviation Committee and IUA ATC shall jointly decide on the matter and respond in writing within fifteen business days.
- 10.8 A final appeal may be made to a suitably qualified and independent arbitrator ("the Arbitrator") who has been appointed within ten business days of the response being given under section 10.7 by common agreement of the CEOs of the LMA and IUA and the affected party that is appealing, or, failing agreement within that period, on the application of any party by the President of the Chartered Institute of Arbitrators within ten business days of the request being made to the President.
- 10.9 The Arbitrator shall provide the parties with their decision on the issue being appealed within 30 business days of their appointment being made, subject to a single extension of a maximum of 15 business days if the Arbitrator believes it is necessary in the circumstances. The decision of such Arbitrator shall be final and binding and all rights of review or appeal are waived irrevocably.

## **11. Fees and costs**

- 11.1 Membership of the AICG or participation in a Sub-Group is completely voluntary.
- 11.2 Should a majority of the AICG agree that an Expert's advice is required for a specific project, and such Expert needs to be remunerated, the AICG Chair shall submit a request for funding proposal setting out a reasonable estimate of costs to the LMA Aviation Committee and IUA ATC. The expenditure will need to be approved by both Committees. If both of the committees approved the request they will share equally in the expenditure. Each committee will need to follow their own internal procedures in relation to approving the expenditure.
- 11.3 Where a Third Party initiates a proposal for consideration by the AICG, it shall on request make such reasonable contribution to the costs of the AICG's activities in considering that proposal as the AICG may request.

## **12. Competition law statement**

- 12.1 It is the intention of AICG that its Members shall at all times comply with all EU and UK competition law which determine the scope of what they may discuss and agree, including but not limited to such matters as: the preparation of non-binding standard wordings, clauses, forms or terms, collection of statistical data and calculation of average cost of covering a specific risk. All AICG Members and Experts shall ensure that they understand their legal responsibilities and shall take part in their association's (e.g. LMA and IUA) competition compliance programme, notwithstanding they are taking part on an ongoing basis in their own employer's competition compliance programme.

## **13. Review**

- 13.1 The AICG Chair, in consultation with the LMA Aviation Committee and IUA ATC may, and shall in response to a reasoned request from a Recognised Trade Association, undertake a review of the workability and practicability of these terms and, in the light of the outcome of such review, make proposals for changes to these terms so as to make them more effective and reduce the administrative burden of operating the AICG. The conclusions and AICG's proposed amendments to procedures shall be sent to the Directorate General for Competition of the European Commission and be published on the AICG website shortly after the review.

## **The Aviation Insurance Clauses Group**

### **The Consultation Process**

1. Proposals for new wording, clause or variant. By AICG Member or Third Parties.
2. Proposals considered and accepted or rejected by AICG. Can be appealed stating reasons for proposal.
3. Drafting of text. By AICG or Sub-Group which will include representatives from brokers, customers, leasing companies as Experts (pre-draft consultation) and any Proposer.
4. Publication of Consultation Draft. Publication on AICG website and sent to Chair's of the LMA Aviation Committee, IUA ATC and the Aviation Executive Committee of LIIBA.
5. Receipt of any written comments from Third Parties within 30 days of publication. May include a proposal for a variant.
6. Reconsideration of text. AICG, and may include Experts.
7. Publication as AVN or AVS Wordings or Clauses