

AVIATION INSURANCE CLAUSES GROUP

15 June 2021

Chair: Graham Spencer-Brown
Secretariat: International Underwriting Association
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To: Bill Smith, Chair, LIIBA Aviation Executive Committee
Jette Varnals, Chair, IUA Aviation Technical Committee
Daniel Warburg, Chair, LMA Aviation Committee

[LETTER SENT BY EMAIL AND PUBLISHED ON THE AICG WEBSITE]

Dear Chairs,

AICG CONSULTATION DRAFT 61 ('CD61') FUELLING GROUNDING LIABILITY EXTENSION

In late 2020, AICG published a suite of updated grounding clauses, per below:

AVN128	Grounding Liability Clause	16/10/2020
AVN129	Partial Grounding Liability Endorsement	16/10/2020
AVN130	Non-Occurrence Grounding Liability Endorsement	16/10/2020
AVN131	Grounding Liability Clause (for attachment with AVN98)	16/10/2020
AVN132	Grounding Liability Clause (for attachment with AVN98A)	16/10/2020

Earlier this year, AICG was contacted by a market participant who requested AICG to consider whether an update to the [AVN106](#) (Fuelling Grounding Liability Extension) was also required to reflect the revised grounding terminology and approach. This was agreed by the AICG and a new clause drafted. The AICG Chair has agreed that the clause be published for market consultation.

Consequently, below is an updated clause incorporating the core provisions of the grounding language published last year. Also included below for reference is a tracked version from AVN106. We would highlight that the updated clause does not include two of the exclusions from AVN128 (exclusions 7 and 8) as these are not deemed relevant to the cover provided in the proposed clause.

This letter and draft clause will shortly be added to the AICG website, accessible via [AICG Activity](#). We welcome comments focused on the drafting utilised within the clause and their effect. AICG consultation drafts are normally subject to 30-day consultations. Therefore, please could you provide any comments on the clauses to the AICG Secretariat via the contact details above, addressed to either myself or the AICG Chair, or alternatively to christopher.jones@iua.co.uk by close of business on Thursday 15 July 2021.

Yours sincerely,



Christopher Jones on behalf of Graham Spencer-Brown
(Secretary, AICG)

c.c. Neil Roberts (LMA), Geraldine Wright (LIIBA)

FUELLING GROUNDING LIABILITY EXTENSION

This Policy is extended to pay on behalf of the Insured all sums which the Insured shall become legally liable to pay as damages for the loss of use of aircraft in respect of a Grounding that results from an Occurrence insured under Section 2 of this Policy.

The date of loss of all claims arising from the Grounding shall be the date on which the last Occurrence takes place which gives rise to the first airworthiness directive or mandatory order imposing the Grounding.

The following definitions are added:

GROUNDING

The term "Grounding" means a withdrawal from all flight operations of a Certified Aircraft imposed by an airworthiness directive or mandatory order which:

- i. is issued by a Regulatory Authority because of an existing, alleged or suspected condition affecting the safe operation of such aircraft; and
- ii. does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed.

A Grounding shall commence on the date on which the affected aircraft ceases all flight operations in accordance with the first airworthiness directive or mandatory order imposing the Grounding.

If the first airworthiness directive or mandatory order imposing the Grounding is preceded by:

- i. an airworthiness directive or mandatory order issued by another civil aviation authority; or
- ii. a service bulletin or equivalent issued by the Insured

in respect of the same existing, alleged or suspected condition affecting the safe operation of aircraft and which does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed

that results from an Occurrence arising out of the Products Hazard to which this Insurance applies, then the Grounding shall be deemed to commence on the date on which the affected aircraft ceases all flight operations in accordance with such earlier airworthiness directive or mandatory order or service bulletin or equivalent.

A Grounding shall be deemed to continue notwithstanding any operation of affected aircraft for non-commercial, non-revenue flights that are permitted by the airworthiness directive or mandatory order, or by other specific approval issued by the civil aviation authority with jurisdiction over the affected aircraft.

A Grounding shall cease on the earlier of the date when:

- i. the affected aircraft is no longer withdrawn from all flight operations by the terms of any airworthiness directive or mandatory order issued by a Regulatory Authority in respect of the existing, alleged or suspected condition; or
- ii. all airworthiness directives and mandatory orders issued by Regulatory Authorities in respect of the existing, alleged or suspected condition are withdrawn or become ineffective in respect of the affected aircraft.

CERTIFIED AIRCRAFT

The term "Certified Aircraft" means an aircraft for which a type certificate or supplemental type certificate has been issued by a civil aviation authority and shall include a military derivative of such aircraft.

REGULATORY AUTHORITY

The term "Regulatory Authority" means the European Aviation Safety Agency (EASA) or the Federal Aviation Administration of the United States of America (FAA) or the civil aviation authority that originally issued the type certificate for the airframe or engines of the affected aircraft.

The definition of "Occurrence" is deleted and replaced with the following:

OCCURRENCE

The term "Occurrence" means an accident or a continued or repeated exposure to conditions (other than a Grounding) occurring during the Period of Insurance which results in Bodily Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured.

All liability arising out of such exposure to substantially the same general conditions shall be deemed to arise from one Occurrence.

This coverage extension does not apply to:

1. loss of use of any aircraft which is for a period of less than 48 hours.
2. loss of use of any aircraft for any period which such aircraft is not available for flight operations for reasons other than a Grounding, or if the aircraft would not have been available for flight operations if no Grounding had occurred.
3. loss of use of any aircraft due to its certificate of airworthiness being withdrawn by reason of the aircraft's safe operational life having been reached or exceeded.
4. loss of use of any aircraft occurring during the period that the Insured does not use all reasonable means to find and eliminate the cause of the loss of use.
5. loss of use of any aircraft attributable to a culpable failure by the Insured to perform any obligation with respect to making available or delivering products to the owner or operator of such aircraft.
6. loss of use of any military derivative of a civil aircraft unless the Grounding also applies to the civil aircraft.
7. loss of use of any aircraft owned by or loaned to the Insured.
For the purposes of this exclusion, any aircraft as to which the Insured has retained title pursuant to
 - i. a conditional sales contract, chattel mortgage or similar lien, or
 - ii. a lease agreement, or
 - iii. a consignment agreement or similar contract of bailmentshall be deemed not to be owned by the Insured.
8. any liquidated or stipulated damages or penalties which the Insured is obligated to pay by reason of any contract or agreement which exceed any obligation the Insured would have had in the absence of such liquidated or stipulated damages or penalties in the contract or agreement.

Limit of Liability

The limit of liability applicable to this endorsement is as follows:

[Response]

any one Grounding and in the annual aggregate, such limit being included within, and not in addition to, the limit of liability in respect of Section 2 of this Policy.

AVN XXX XX.XX.21

(For attachment to AVN105)

AICG Consultation Draft 61

FUELLING GROUNDING LIABILITY EXTENSION

(Version tracked from AVN106)

This Policy is extended to pay on behalf of the Insured all sums which the Insured shall become legally liable to pay as damages for the loss of use of aircraft ~~caused by~~ in respect of a Grounding that results from ~~following~~ an Occurrence insured under Section 2 of this Policy.

The date of loss of all claims arising from the Grounding shall be the date on which the last Occurrence takes place which gives rise to the first airworthiness directive or mandatory order imposing the Grounding.

The following definitions ~~are~~ is added:

GROUNDING

The term "Grounding" means a withdrawal from all flight operations of a Certified Aircraft imposed by an airworthiness directive or mandatory order which:

- i. is issued by a Regulatory Authority because of an existing, alleged or suspected condition affecting the safe operation of such aircraft; and
- ii. does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed.

A Grounding shall commence on the date on which the affected aircraft ceases all flight operations in accordance with the first airworthiness directive or mandatory order imposing the Grounding.

If the first airworthiness directive or mandatory order imposing the Grounding is preceded by:

- i. an airworthiness directive or mandatory order issued by another civil aviation authority; or
- ii. a service bulletin or equivalent issued by the Insured

in respect of the same existing, alleged or suspected condition affecting the safe operation of aircraft and which does not permit flight operations for more than 48 consecutive hours or 5 flight cycles or 10 flight hours, before the withdrawal from all flight operations is imposed

that results from an Occurrence arising out of the Products Hazard to which this Insurance applies, then the Grounding shall be deemed to commence on the date on which the affected aircraft ceases all flight operations in accordance with such earlier airworthiness directive or mandatory order or service bulletin or equivalent.

A Grounding shall be deemed to continue notwithstanding any operation of affected aircraft for non-commercial, non-revenue flights that are permitted by the airworthiness directive or mandatory order, or by other specific approval issued by the civil aviation authority with jurisdiction over the affected aircraft.

A Grounding shall cease on the earlier of the date when:

- i. the affected aircraft is no longer withdrawn from all flight operations by the terms of any airworthiness directive or mandatory order issued by a Regulatory Authority in respect of the existing, alleged or suspected condition; or
- ii. all airworthiness directives and mandatory orders issued by Regulatory Authorities in respect of the existing, alleged or suspected condition are withdrawn or become ineffective in respect of the affected aircraft.

~~means the complete and continuous withdrawal from all flight operations at or about the same time of one or more aircraft due to the mandatory order of any airworthiness authority because of an existing, alleged or suspected like defect, fault or condition affecting the safe operation of two or more aircraft and which results from an Occurrence. Any liability of the Insured arising from such Grounding shall attach to the Period of Insurance in which the Occurrence took place.~~

~~A Grounding shall be deemed to commence from the date on which the first such order becomes effective and to continue until the date on which the last such order relating to the same existing, alleged or suspected like defect, fault or condition is withdrawn or becomes ineffective.~~

CERTIFIED AIRCRAFT

The term "Certified Aircraft" means an aircraft for which a type certificate or supplemental type certificate has been issued by a civil aviation authority and shall include a military derivative of such aircraft.

REGULATORY AUTHORITY

The term "Regulatory Authority" means the European Aviation Safety Agency (EASA) or the Federal Aviation Administration of the United States of America (FAA) or the civil aviation authority that originally issued the type certificate for the airframe or engines of the affected aircraft.

The definition of "Occurrence" ~~for the purpose of this extension~~ is deleted and replaced with the following:

OCCURRENCE

The term "Occurrence" means an accident or a continued or repeated exposure to conditions (other than a Grounding) occurring during the Period of Insurance which results in Bodily Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured.

All liability arising out of such exposure to substantially the same general conditions shall be deemed to arise from one Occurrence.

This coverage extension does not apply to:

1. loss of use of any aircraft which is for a period of less than 48 hours.
2. loss of use of any aircraft for any period which such aircraft is not available for flight operations for reasons other than a Grounding, or if the aircraft would not have been available for flight operations if no Grounding had occurred.
3. loss of use of any aircraft due to its certificate of airworthiness being withdrawn by reason of the aircraft's safe operational life having been reached or exceeded.
4. loss of use of any aircraft occurring during the period that the Insured does not use all reasonable means to find and eliminate the cause of the loss of use.
5. loss of use of any aircraft attributable to a culpable failure by the Insured to perform any obligation with respect to making available or delivering products to the owner or operator of such aircraft.
6. loss of use of any military derivative of a civil aircraft unless the Grounding also applies to the civil aircraft.
7. loss of use of any aircraft owned by or loaned to the Insured.

For the purposes of this exclusion, any aircraft as to which the Insured has retained title pursuant to

- i. a conditional sales contract, chattel mortgage or similar lien, or
 - ii. a lease agreement, or
 - iii. a consignment agreement or similar contract of bailment
- shall be deemed not to be owned by the Insured.

8. any liquidated or stipulated damages or penalties which the Insured is obligated to pay by reason of any contract or agreement which exceed any obligation the Insured would have had in the absence of such liquidated or stipulated damages or penalties in the contract or agreement.

~~The insurance afforded by this extension will not apply to loss of use of any aircraft:~~

- ~~(a) occurring during maintenance, routine overhaul or alteration, or whilst being modified for purposes other than those relating to Grounding;~~
- ~~(b) occurring during the period that the Insured does not use reasonable diligence to find and eliminate the cause of the loss of use;~~
- ~~(c) caused by the culpable failure of the Insured to perform any obligation with respect to making available or delivering goods or products to the operator of such aircraft;~~
- ~~(d) owned by, used by or in the possession of the armed services of any government;~~
- ~~(e) in the care, custody or control of the Insured other than aircraft temporarily returned to the Insured for modification relating to Grounding;~~
- ~~(f) after it is designated by the manufacturer or required by the direction of any airworthiness authority to be removed from all flight operations due to its certificate of airworthiness being withdrawn by reason of the aircraft's safe operational life having been reached or exceeded.~~

Limit of Liability

The limit of liability applicable to this endorsement is as follows:

insurance afforded by this extension shall be subject to a limit of liability of

[Response] any one Grounding and in the annual aggregate, which shall be such limit being included within, and not in addition to, the limit of liability in respect of Section 2 of this Policy.

AVN ~~106..22.1.09~~XXX XX.XX.21

(For attachment to AVN105)

In common with all AICG produced AVN Clauses, this Clause is published by AICG, but it is expressly non-binding and AICG makes no recommendation as to its use in particular policies. Insurers are of course free to offer different policy wordings and clauses to their policy holders.