



The South African Model Aircraft Association

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INTERNAL MEMORANDUM

To: All SAMAA members
From: The SAMAA Management Committee
Date: 21 April 2021
Ref: #004
Re: SAMAA Insurance – Legal advice gained – **MOST IMPORTANT TO NOTE**

Dear SAMAA members,

Below an elaborate response towards the many questions raised in the last few weeks. The information is based on high level legal advice received & reviewed.

We urge all members to take the time to read the document, we advise Club committees to study the material for relevant actions.

Do not just discard this information, please see this as very important.

1. SAMAA derives its right to operate model aircraft from the South African Civil Aviation Authority (CAA) via the Aero Club of South Africa. In this regard, we refer members to CAA Regulations part 24.01.1 (1) (k), part 24.02.1 (1), part 94.05.1 (1), part 94.06.11, and part 149 of the Civil Aviation Regulations.
2. Further to the above, and on 30 September 2013, the SAMAA received delegated authority whereby SAMAA *“is expected to render the management, administrative and coordinating functions to all persons wishing to undertake radio controlled aviation”* with the dispensation afforded to SAMAA in terms of the above regulations and associated technical standards.
3. Further to the above, and in line with the relevant delegated authority, *“SAMAA shall ensure that all radio controlled model aviation activities are **only performed** at sites and at the height limitations as approved by RAASA, and published in a NOTAM, AIC or AIP, as the case may be”*. We sincerely hope that this for once and all brings to an end the plethora of hate mails and legal threats the SMC receives on a daily basis regarding this topic.
4. Model flying activities take place from 152 SAMAA-registered flying fields (registered flying clubs). SAMAA currently has 3300 paid-up members, all of whom are also registered members at the 152 clubs. Competitive model flying also falls under the auspices of 11 Special Interest Groups (Sig’s). SAMAA, on an ad hoc basis, and with the approval of CAA, can mandate flying from non-registered flying sites, such sites being awarded temporary status and airspace approval for the duration of the approved event.
5. Each of the 152 clubs, the 11 Sigs, and SAMAA, have separate constitutions. Further to the guidance contained in the SAMAA constitution, SAMAA has issued several Manual of Procedures and Policies that regulate model flying activities at the relevant clubs. This was all done to mitigate the risk to SAMAA, and



Associate member of the Aero Club of South Africa. Affiliated to the Fédération Aéronautique Internationale.
The SAMAA is a non-profit, public-benefit organisation, PBO Reg. No. 930030082.
Committee (from March 2020):

Danie Potgieter, Burt Botha, Alec Groenewald, Johan Blom, Linda Dold, Juanita Smith, Roland Suhmüller, Bob Skinner



SAMAA has the right to discipline any of its members for failing to adhere to the policies and procedures (for reasons that will become more apparent below). It is the further responsibility of the registered clubs and Sigs, through their own constitutions and management committees, to ensure compliance with the SAMAA policies and procedures. Most notably is that all Clubs and Sigs must have appointed safety officers that must be present and oversee flying at the clubs or at any event. Most notably to ensure no reckless flying, or to allow any member to fly while under the influence of any alcoholic substance, or mind-altering substances.

6. Until recently, and as well-communicated to all SAMAA members, or at least those that bother to read the communications, an airside exception was noted with the renewal of our insurance policy in October 2020. Contrary to the popular belief shared by members in derogative posts on WhatsApp chat rooms, **the SMC has not been doing nothing about this situation.** When the exception was noted by the new SMC, we immediately engaged with the insurers to get clarity around certain clauses in the policy. The insurers waived the premium increase and inception date of the new policy for two months while we attended several meetings with them. We also requested the Aero Club to assist with these negotiations. Finality was not reached by the end of December 2020, and it was agreed with the insurers that we will resume our negotiations in January 2021. We in the meantime also requested our broker to start looking around for alternate options should we not be able to reach consensus with the insurers. The Aero Club also assisted through their network to establish if there was an appetite in the market from their insurer.
7. As is now well known, we were not able to sway our insurers to reintroduce the airside cover, and our members were duly informed. We are still in negotiation with firms for replacement insurance, a process that is hampered by the continued interference from certain of our members.
8. The SMC deemed it appropriate to obtain a legal opinion from a reputable attorney firm specializing in insurance law and insurance damages. This opinion was an eye-opener to the SMC and no doubt will also be to our members, especially the opinion expressed regarding the liability of members should a claim arise for damages. We therefore urge our members to take serious note of the below, as no doubt it should influence your demeanor, or lack thereof, the next time you arrive at the flying field.
9. The Public Liability Insurance Cover [“this/the Insurance”] which is the subject of our advice, and this assessment, covers damages caused to an entity, or person, or the public [“Third Parties”] due to the negligence of SAMAA, its Clubs, or members.
10. The legal position is that only the entity (e.g. SAMAA, a SAMAA registered Club, or an individual SAMAA member) who was negligent, and caused damages as a result, can be held liable if such entity/member was negligent in causing any damages, for instance to any aerodrome structures, aircraft, or to another member’s property or persons [“Third Party Property”].
11. Because the Insurance only covers damages, caused negligently, we deal first below with the basic legal principles in respect of damages caused negligently.
12. The legal principle, is that only the actual entity or person who negligently or willfully caused the damages can be held liable. Any other related bodies, Clubs, or members cannot be held liable.
13. For instance, the SAMAA cannot be held liable if an individual SAMAA member’s negligence caused the Third Party property or personal damages. Neither can a SAMAA Club be held liable, for any individual SAMAA member’s negligence, or any SAMAA member, for another SAMAA member, or SAMAA Club’s negligence.

14. Of course, if any other entity, e.g. SAMAA, a SAMAA Club, or SAMAA member was also negligent, along with an entity or individual whose negligence caused the damages, then that other person or entity's negligence can be shared (apportioned) between those entities or persons who were negligent.
15. For instance, if SAMAA or a SAMAA Club, in addition to the SAMAA member, should ordinarily and reasonably have taken steps to prevent the SAMAA member causing damages, but failed to take such preventative steps, and if such failure gives rise to, or contributed to such damages, then SAMAA or a SAMAA Club can also be held liable in addition to the SAMAA member whose primary negligence caused the damages.
16. An example may be where SAMAA knowingly "allows" a known errant and non-compliant SAMAA member, who may have caused previous damages, to participate in an event and that member then causes damages, SAMAA could be held liable as well.
17. Thus, for the most part, only the individual SAMAA member whose negligence actually causes the damages can be held liable, and jointly on rare occasions also SAMAA, or a SAMAA Club.
18. We were advised that the SAMAA Constitution does not contain a clause which indemnifies and holds harmless, SAMAA or any SAMAA Club, or other members, against damages caused by another SAMAA individual member to Third Parties. Whilst such an Indemnity will have no relevance *vis-a-vie* damages caused to Third Parties (outsiders) e.g. aerodromes or aircraft, such an indemnity in SAMAA's Constitution will at least assist in limiting the liability of SAMAA or SAMAA Clubs, or other SAMAA members.
19. Such an Indemnity will not prevent Third Parties from instituting action against SAMAA, SAMAA Clubs, or other SAMAA members, but at least, SAMAA, the SAMAA Clubs, or such other SAMAA members will have the right of recourse in terms of such an Indemnity in the Constitution against the SAMAA member who actually caused the damages.
20. It was recommended that SAMAA at least, and also the SAMAA Clubs and SIG's, insert such an Indemnity clause in their Constitutions.

Public Liability Insurance

21. The first important aspect is that any Policy of Insurance will only cover an insured, in our case SAMAA, the SAMAA Clubs, or SAMAA members, to the extent that the policy provides for such cover i.e. has a sufficient limit of indemnity in the policy to cover the Third Party damages, and the damages are not excluded by the Exclusions in the Policy.
22. This means that even with our present Policy, Third Parties remain entitled to recover from SAMAA, the SAMAA Clubs, or any SAMAA members (only to the extent that they are negligent) if such Third Party's damages **exceeds** the amount of insurance cover held by SAMAA. To this extent i.e. in respect of Third Party damages in excess of the damages covered by insurance, SAMAA, the SAMAA Clubs, or individual SAMAA members are not covered by insurance at present in any event.
23. The second important aspect is that any insurance cover in place, including our existing cover, is a contractual relationship between SAMAA and the insurance company, and does not bind any Third Parties, who are of necessity not parties to the insurance contract.
24. **In practice this means that regardless of whether SAMAA has insurance or not, Third Parties can still hold the SAMAA member, the SAMAA Clubs, or SAMAA liable. All that the cover in terms of any policy**

provides, is a contribution to such Third Parties' damages, to the extent that SAMAA, or its Club, or its member is negligent or liable.

25. Also, as stated above, if a Third Party's damages exceeds the cover under the Policy, the Third Party may still continue to recover such damages from SAMAA, its Clubs, or the individual member directly.
26. In addition, and in any event, for the most part the actual individual SAMAA member whose negligence caused the damages, will be held liable, and not SAMAA or the SAMAA Clubs, unless, as stated, on rare occasions where SAMAA or a SAMAA Club was contributory negligent as well.
27. In the unlikely event that SAMAA or a SAMAA Club, as opposed to an individual member who caused the damages, being liable, SAMAA or the Club will still be held liable by Third Parties, if of course SAMAA or a SAMAA Club was also negligent as explained above. As stated, the fact that SAMAA Clubs or individual members may have insurance, has nothing to do with any Third Party who may have suffered damages.
28. An Insurance Policy is a contract between an Insurance Company and SAMAA, or a SAMAA Club or the individual member, and not with any Third Party, and no Third Party is bound by it. An Insurance Policy will only assist to contribute to the liability of a SAMAA Club or SAMAA member with its own insurance cover.
29. Regarding SAMAA or a SAMAA Club's legal liability if we allow members to continue operating from the registered aerodromes, SAMAA or the SAMAA Clubs, can only be held liable if SAMAA, or the SAMAA Club's negligence, actually also caused, or contributed to the damages, as opposed to the individual member who actually caused the damages being primarily liable.
30. In this regard, we will send separate correspondence to the current 22 affected clubs.
31. To summarise, it is therefore blatantly clear that in law, the individual SAMAA member will always be liable for the damages he causes. Any form of insurance we have will assist in mitigating the value of the claim instituted against said member. If found to have been negligent, the insurance company might repudiate the claim, in which case, the member will be solely liable for the damages claimed, and in exceptional circumstance, the Club, SIG, or SAMAA.
32. Given that at all relevant times a SAMAA member is in control (flying) his aircraft, it follows that any form of accident would be as a result of the negligence of the SAMAA member, possible exclusions being damage caused by radio interference and engine failure.
33. Given the above, SAMAA will, going forward ensure stricter compliance with its policies and procedures and would urge the relevant SAMAA clubs and relevant safety officers to ensure compliance, failing which they might be held liable for the damage caused by members belonging to the respective clubs.
34. As a possible deterrent, all clubs should immediately also erect notices at the entrance to their sites warning third parties, and members of the public, that the premises are private, model flying activities could cause potential injury or damage to property, that said individuals are entering the premises at their own risk, and that the clubs and its members will not be held liable for any such damages.

Regards

The SAMAA Management Committee