



## **AIPP LEGAL WORKING GROUP (LWG) POLICY V5**

### **Introduction**

The Association of International Property Professionals (AIPP) is a not-for-profit organisation whose aim is to improve standards of professionalism in the international property market, which is a largely unregulated industry. The AIPP also aims to educate and inform the public as how best to purchase property abroad due to a significant lack of consumer awareness on the legal issues surrounding international property purchases.

AIPP has a number of legal members with expertise in different jurisdictions and in some cases they are firms that are handling multijurisdictional matters.

As part of the AIPP institutional commitment to Corporate Responsibility (CR) the AIPP wishes not only to educate the public but, where appropriate, to give assistance should matters go wrong.

As part of this commitment, and recognising the increasing nature of the legal focus in consumer interaction with AIPP members, the AIPP Legal Working Group (LWG) had been formed to facilitate the participation of legal members in providing education and assistance to consumers.

The aim of the LWG is to act as a complimentary focal point for buyers and owners of a foreign property. In doing so the focus will be two-fold;

- To play an active educational role for the benefit of consumers on the legal aspects of property buying abroad.
- To give initial opinions at no cost in relation to legal issues such as disputes or litigation that arise as a result of property purchases.

This policy has been endorsed by the AIPP Board of Directors and provides the framework under which qualified pro bono legal assistance will be undertaken.

### **Statement of principals**

AIPP regards education of consumers and assistance when things go wrong with property purchases to be an important aspect of the association's activities in reaching out to the consumer.

Participation in the LWG is encouraged amongst legal members of the AIPP but is not mandatory. AIPP acknowledges that whilst it is a membership organisation, it must also contribute to the wider community surrounding the International Property market place. Through the provision of the LWG, AIPP will increase consumer awareness of legal matters attached to an international property purchase.

Use of this facility is in no way a replacement for any disciplinary, complaints or dispute resolution system that the AIPP may have in place at any time.



If a consumer has already started using the AIPP Complaints or Dispute Resolution facilities in respect to a particular situation then they will not be able to take advantage of the AIPP LWG facilities for the same subject until that Complaint or Dispute Resolution process has been finalised.

## Scope

The provision of advice under the LWG is not intended to be a substitute for consumers to engage lawyers to advise on a case. The AIPP is aware that, unfortunately, some consumers will try to avoid using lawyers by a combination of internet research, speaking to other people who have bought properties and taking advantage of the LWG to gather free advice. The AIPP wishes to discourage consumers from doing this as it is contrary to the ethos that consumers should use an independent lawyer to buy overseas property.

The scope of the pro bono work does not only cover the legal matters related to the AIPP members or their actions. The consumers may use the facility on a subject that is not related to an AIPP member. These are to be assessed and approved in the same way and according to the same criteria.

It is important to differentiate between education to consumers who are looking at buying a property and those who have a legal issue with the current ownership of their property. As such the advice that is to be given for free (Pro Bono) under the LWG and under the two separate streams should be as follows;

### 1. Purchase of property

- a. The minimum advice to be given is up to an hour spent educating and informing the consumer as to how the process of buying a property in that country works at a general level (i.e. not specific to their particular circumstances). The amount of time spent can be less than an hour if the consumer requests it or if the Legal Member believes that the consumer is trying to gather information for the purpose of not using a lawyer at all to help them buy a property.
- b. If the consumer requires any specific advice relating to a purchase over and above the education and information in section 1(a) above then it will be up to the lawyer to decide at which point they will stop providing Pro Bono work. There is no requirement for legal members of the LWG to provide any advice over and above 1a above.

### 2. Problems with existing property

- a. Review of the brief provided by the consumer relating to the legal matter in hand and its background.
- b. Appointed review of the copy of the documents and the correspondence between the relevant parties which should not exceed 50 pages and which may include the promotional material, contract and the relevant correspondence in relation to the legal matter in hand.



- c. Up to 1 hour discussion with the consumer to gather further information and to discuss the matter with them.
- d. Provide a legal opinion in writing as to the situation, the possible options going forward and potential costs of proceeding with each option.
- e. If the legal member of the LWG wishes to, they can take on the case going forward at no cost on a completely Pro Bono basis but there is no requirement to do so.

### **Process**

Given the lack of consumer awareness in international property legal matters, special care may be needed in communicating expectations of the consumer who is the beneficiary of the facility and the way a matter is likely to proceed.

The AIPP LWG administrative staff, with the guidance of the Coordinator, should ensure that the terms of engagement are clearly articulated and understood by the consumer before the facility is used.

The AIPP LWG administrative staff will liaise with the LWG Legal Member whose turn it is to receive the enquiry as to whether there are any conflicts of interest or potential conflicts of interest before passing on the matter.

The client letter sets out the particular work that the LWG Legal Member will do for the consumer under this facility. The Legal Member will carry out the work with the same professional skill and diligence as they would do if they were being paid by the consumer to provide the advice. His or her only duty of care will be to the beneficiary of that advice. If any other person wants to rely on the work carried out under this facility by an AIPP legal member they do so at their own risk, unless the Legal member and AIPP agree in writing that they may also rely on it.

Following the receipt of the formal request from the consumer, the Coordinator will allocate the matter to the Legal Group member who has expertise for the relevant Jurisdiction. In cases where more members become available on a specific jurisdiction, the Coordinator will ensure that equal opportunity will be given to all members on a fair allocation basis so that they are able to participate and provide the pro bono work. In some cases joint work may be carried out.

### **Coordination**

AIPP has appointed a Legal Working Group Coordinator from within the legal members to manage LWG services.

The LWG coordinator, with the assistance of AIPP administration staff, will have the day-to-day responsibility for managing the LWG projects undertaken by the Legal Working Group. All LWG matters will be registered and their progress monitored by the LWG Coordinator.

Specific responsibilities include:

- Ensuring that all legal members of AIPP who have shown interest in LWG activities have an equal opportunity to participate.
- Coordinating LWG projects established by the Legal Working Group.
- Acting as the first point of contact for the AIPP Legal Working Group.
- Arranging for the Legal Working Group to have regular meetings via conference calls to discuss the way the service is run and feedback from the participants involved in the working practices.
- Promoting an LWG culture within the AIPP's existing and new legal members.
- Collating LWG data for regular input to the AIPP Board and for annual reports.

### **Distribution**

It is vital that an even-distribution of consumer enquiries is given to LWG members. It is equally vital that the consumer gets allocated a suitable lawyer. The distribution of consumer enquiries to LWG Legal Members shall therefore be in accordance with the following;

1. A pool of firms is identified for that type of case which takes into consideration things such as the following;
  - a. Jurisdiction of the case. i.e. does that lawyer deal with that jurisdiction?
  - b. If applicable the physical location of the case. e.g. some lawyers may be able to cover the whole of a particular country but some lawyers may only want to cover a certain part of a specific country.
  - c. Type of work. i.e. does that lawyer deal with that type of legal work?
2. The lawyers can turn on and off the tap according to how busy they are and therefore whether they can properly dedicate time to the consumers. (i.e. "I am too busy at the moment please stop sending enquiries & cases to me" or "I am happy to receive these"). The pool of lawyers will therefore increase and contract in each round of allocation according to how many members there are and whether those members want to be involved at that time.
3. Rotation according to who is "next on the list" to receive something. If you have opted out of stage 2 or weren't a member at the time then you lose your turn that round and get added to the bottom of the list for the next round. The less people in the list the quicker each firm will come around in the rotation and the larger the number the slower they will come around.



When an AIPP legal member joins the LWG they will be asked to set out the jurisdictions, geographical scope and types of work that they are happy to deal with. If any of those parameters changes then the legal members are obliged to inform the AIPP co-ordinators so that the list of available lawyers and their scope can be updated.

### **Ending the service**

The beneficiary of the LWG guidance may withdraw his/her instructions at any time and for any reason.

### **Conflict of interest**

Members will be asked at the outset whether they have a conflict of interests in that particular case. If the member determines at any point that there is a conflict then it must be for the member to discontinue the LWG guidance. The member will inform AIPP who will also communicate with the consumer that as a result of a conflict of interest the member can no longer provide the LWG guidance or any advice in any event. The case will then be allocated by AIPP to the next suitable lawyer on the rota

### **Competency, service and obligation**

LWG guidance is to be carried out by the member with the necessary diligence and timeliness to be expected of lawyers handling matters of a similar nature.

Legal working group members who provide LWG guidance must have expertise in the relevant jurisdiction for the matter in hand and must be able to demonstrate evidence of that expertise if required to do so. Expertise is understood as the competency of the individual member or and/or the member firm, gained through professional qualifications and expertise.

### **Charging for LWG guidance**

The AIPP will not charge individual LWG consumers for the work carried out by the Legal Working Group in relation to the LWG service.

It is in keeping with the spirit and culture of AIPP to encourage and support the LWG initiative by the legal members. The member support means member firms being prepared to allow their lawyers to leave work in sufficient time for them to meet with a consumer or provide other LWG duties, to permit them to make phone calls and to perform other minor work on LWG matters during the business day if necessary.

### **Disbursements**

The Legal Working Group members' internal costs such as photocopying, calling, faxing etc. will not be charged to the consumer or AIPP.



### **Confidentiality and publicity**

AIPP staff and Legal Working Group members will keep information about LWG matters confidential unless one or more of the following apply:

- The consumer in question agrees to the member disclosing it.
- AIPP is legally compelled to disclose it.
- AIPP is required to disclose it to auditors and/or its professional advisors.

Each consumer using the LWG service consents to AIPP publishing the fact that legal members have provided guidance on a given legal matter, but without disclosing the consumer's identity. For example, for the benefit of other consumers AIPP may disclose in a document, brochure, or other publication that AIPP have provided guidance to an individual in relation to a specific matter in respect of the law of the jurisdiction in question.

### **Liability**

Legal Members of the LWG shall maintain suitable indemnity insurance in accordance with their relevant law society or bar association to cover any advice that they give to the consumer. Legal members may not limit that liability in any way and must maintain a suitable level of insurance relevant to that particular case.

### **Electronic communication**

AIPP and LWG Legal Members have various electronic means of communicating. These may involve some special risks – for example, the risks of interception, transmission of computer viruses and unauthorised amendment. The consumer accepts those risks and he/she releases AIPP and Legal Working Group members from any liability, loss (including consequential and economic loss), damage or expense caused by those risks.

### **Archiving and destroying files**

LWG Legal Members shall hold files and documents for the legal amount of time required by their respective law society or bar association. Any original documents should be returned to the consumer, unless otherwise agreed with the consumer.

### **Copyright**

Copyright in any documentation prepared by a Legal Member of the LWG shall be retained by that member. AIPP retains and will own copyright in all documents prepared by AIPP.



### **Governing law and jurisdiction**

This policy may be changed or updated from time to time by the AIPP with the endorsement of its Board of Directors and the most recent version of this policy will always be available on AIPP's website.

The LWG service and any claims arising from it will be governed by the laws of England and Wales. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this policy via mediation. If the matter is not resolved through mediation, then it shall be resolved by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce. The parties submit to the exclusive jurisdiction of the courts of England and Wales.