



**“AN INTRODUCTION TO AVN 67C AND AVN 99”**

**THURSDAY 22 NOVEMBER 2007**

- 3.30 Welcome by Jeffrey Wool (AWG)
- 3.35 Introductory Remarks by Stephen Matthews (Chair of AICG Working Group on AVN 67C)
- 3.50 Summary of Developments in AVN 67C and AVN 99 – Jeffrey Wool and Andrew Littlejohns (Freshfields)
- 4.30 The Broker’s Perspective – Tony McCarthy (Willis) and Andrew Bratby (Marsh)
- 4.45 Panel Discussion / Questions and Answers – All Speakers
- 5.15 Drinks

**AT FRESHFIELDS BRUCKHAUS DERINGER,  
NORTHCLIFFE HOUSE, TUDOR STREET, LONDON EC4**



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# Summary of Developments in AVN 67C and AVN 99

Jeffrey Wool and Andrew Littlejohns  
November 2007



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- We will summarise:
  - Airline Finance/Lease Contract Endorsement AVN 67C
  - Finance/Lease Continuing Liability Endorsement AVN 99
- Outcome of co-operative in-depth discussions in AICG Working Group
- AWG January 2006 letter to AICG – AWG concern over timing for 67B termination
- WG discussions led to other improvements and clarifications, plus AVN 99
- WG has preserved key features of AVN 67B, which have served industry well
- WG keen to have single “*consensus*” version of 67C, as opposed to variants



## Key Features of AVN 67B and 67C

- AVN 67B is "*stand-alone*" endorsement – express provisions override conflicting provisions in Policy
- Financiers do not need to read Policy
- Insurers do not need to review Lease/Loan - except as expressly stated in AVN 67, financiers are subject to terms, conditions, etc. of Policy
- Breach of warranty and severability of interests protection for financier
- Insurer to give broker 30 days' notice of cancellation or material alteration (except for cancellation or automatic termination). 7 days for hull war



## Main Developments in AVN 67C:

- Simplify termination wording, and create notice-based system
- Greater certainty on timing of termination
- Ensure coverage for lease servicers / managers, and clarify “servicing agent”
- Ensure financier coverage for crew liability claims
- Prevent risk of “theft” claim by financier in case of inability to repossess, while ensuring cover for operational losses during non-repossession period
- Substantive benefits for financiers, and improve/simplify administration
- Orderly procedural link with tail cover (AVN 99)

Does not obviate need to take **assignment** of hull and hull war insurance from airline



## Termination of Endorsement - Preamble

In AVN 67B, Endorsement falls away upon:

- expiry of the Insurance
- expiry or agreed termination of the Contracts
- the obligations under the Contracts are terminated by action of Insured or Contract Party(ies)

Third limb problematic – raised in 67B discussions in 1994, but not resolved

Arguably catches early termination by lessor for airline default

So financier potentially uninsured until aircraft recovered



AVN 67C has simplified regime:

- expiry of the Insurance
- *"date and time at which Insured has no further obligation to insure Equipment under Contract(s) (as amended or supplemented), as notified by Designated Contract Party to Insurers (via Appointed Broker)"*.

Protects financier in two situations:

- mid-term default where financier has not yet repossessed (or airline has continuing obligation to insure)
- *"holdover period"* beyond lease expiry date – return condition snagging items

Significance of *"insure the Equipment under the Contract(s)"*:

- does not overlap with tail cover obligation
- excludes refinancing, where airline obligation to insure is under new contracts.

*"Contract(s)"* is defined in Schedule to mean listed contracts, *as amended or supplemented*.



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## Designated Contract Party:

- Will notify Insurers (via broker) that the Insured has no further obligation to insure
- Will be separately identified in Schedule to 67C
- If there are multiple financing parties, they will nominate primary contact point for this purpose
- Not relevant to Insurer notices of cancellation or material change – all Contract Parties will receive notice directly from broker



## Standard form of termination notice:

- Available on AICG website
- Designated Contract Party will notify Appointed Broker of date / time when airline obligation ceased (to provide AVN 67C cover for Contract Parties)
- Designated Contract Party to notify Insurers "*promptly, and in any event within 30 days*"
- Removal of cover will be **retroactive** to date when airline's obligation actually ceased



## Debate within Working Group, and consultation comments:

- WG wanted to create certainty as to time of termination – hence DCP notice mechanism
- A few commentators were concerned at risk of DCP delay or oversight, resulting in:
  - Unintended coverage post-redelivery
  - Extra premium cost for airline
- Concerns addressed by:
  - Obligation to notify within 30 days
  - Retroactive removal of Contract Parties from Policy
- Also DCP has incentive to give notice, so as to trigger AVN 99 coverage



## Liability as Manufacturer, Repairer or Maintainer: Paragraph 2.3

- AVN 67B - no liability cover for claims from Contract Party legal liability as *"manufacturer, repairer or servicing agent"*
- *"servicing agent"* causes confusion with role of servicer or lease manager
- AVN 67C uses clearer phrase *"manufacturer of, or performer of maintenance, repairs or other operational activities in respect of, the Equipment"*
- *"other operational activities"* means activities such as cleaning and refuelling



## Financier Liability to Pilots and Crew: Paragraph 2.4 of AVN 67C

Some aviation policies exclude:

- liability of the Insured (or in some cases, any Insured) to employees for bodily injury arising out of and in the course of employment, or
- liability for injury or loss sustained by any member of flight, cabin or other crew whilst engaged in operation of aircraft, or
- liability under workmen's compensation legislation.

Rationale - airline should protect itself by **employer's liability insurance** rather than aviation insurance.

Some policies endorse **AVN 73** - passenger liability coverage will include *"liability of the Insured to the pilots and operational crew of the insured Aircraft, but excluding liability required to be insured under employers' liability or workman's compensation legislation or any similar legislation"*.



## Crew Liability – AVN 67C Solution

AVN 67C provides specific confirmation in all cases that Contract Parties are covered for liability to pilots / crew, BUT:

- No cover for financier where pilots/crew are **employed by financier** – eg financier ferry flight.
- No cover if underlying policy does not provides cover for liability to passengers – eg perhaps, **pure cargo policy**
- Though cargo policy may cover quasi-passengers – loadmasters etc.



## Debate within Working Group, and consultation comments:

- Draft crew paragraph stated that Insurance includes third party liability of Contract Parties to pilots / crew for death / injury
- A few commentators concerned that this might override ALL Policy exclusions – war, noise, nuclear, etc.
- So WG redrafted crew paragraph to “*benchmark*” it to passenger liability coverage



## Theft – Airline Refusal or Failure to Redeliver: Paragraph 3.2

Insurers' concern - financier might seek to claim hull total loss under **theft section** of hull policy:

- financier unable to repossess from airline at lease expiry or in mid-term default
- prolonged refusal to redeliver and/or active steps to put aircraft beyond reach = theft
- breach of warranty clause = airline misconduct does not vitiate financier cover
- aircraft "lost" because "*unavailable, with no prospect of recovery*"

Historical note - AVN 67A slip endorsement states "*This endorsement does not provide coverage to the Contract Party(ies) in the event of the repossession of the Equipment*".



Some aviation policies have express exclusion for –

*“change in title or ownership of the Aircraft, or any theft or alleged theft of the Aircraft by any named insured or additional or joint insured”*

In AVN 67C, paragraph 3.2 is narrower:

- No Contract Party can claim loss by theft / alleged theft in cases of dispossession or refusal or failure to deliver the aircraft by Insured or any other Contract Party
- BUT Contract Parties still covered for other loss or damage to aircraft during period of Endorsement
- Example – physical damage before financier repossesses



## Lease Servicers and Managers: Paragraph 3.4 of AVN 67C

- AVN 67B - Endorsement applies to Contract Parties solely in their capacity as "*financiers/lessors in the identified Contracts*", and not in any other capacity
- Is a servicer a "*financier*"?
- In AVN 67C, this sentence has been extended so that it clearly embraces lease servicers and managers, and a sentence has been added at the end of paragraph 3.3 to explain the meaning of these terms.



## Schedule to AVN 67C

### Changes to the Schedule:

- Addition of "*Designated Contract Party*"
- If DCP changes, need to get new certificate issued
- "Contracts" means contracts as amended or supplemented
- AVN 67B notes in text converted into footnotes in 67C
- Footnote 3 clarifies meaning of "*Effective Date*"
- Either the date when financier acquires interest (mid-year) or Policy renewal date



## HULL WAR-ONLY VERSION OF AVN 67C

Identical to comprehensive version, apart from:

- deletion of provisions relating to liability cover
- deletion of theft paragraph (no theft cover in Hull War)
- 7 days' notice of cancellation or material alteration of cover
- we deleted *“(or such lesser period as is customarily available)”*
- too vague, and conflicts with opening words *“Except in respect of any provision for Cancellation or Automatic Termination specified in the Policy or any endorsement thereof”*



## TAIL COVER - AVN 99

- Lease usually requires ongoing third party liability cover for financing parties for up to two years after expiry
- AVN 99 provides first standard form of endorsement
- Based on AVN 67C, with references to hull and spares cover deleted
- Schedule has no reference to Policy Deductible or Additional Premium
- "*Effective Date*" in AVN 99 is either:
  - Date when AVN 67C falls away, for tail cover commencing mid-policy year, or
  - Policy renewal date, for subsequent tail cover renewal.
- AICG has published standard AVN 99 termination notice.



## TRANSITION TO AVN 67C

Each lessor/financier to discuss with broker (or the airline's broker) how best to transition to AVN 67C for particular aircraft, if agreed by parties and underwriters.

AWG does not make recommendations regarding transactional practice.

**Individual financing contract** will dictate whether financier can require AVN 67C certificate:

- mid-policy year;
- at next policy renewal

For **new financings**, consider stipulating AVN 67C (and note role of DCP) when drafting financing contracts.

For **existing financings**, consult brokers.



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