



**Memorandum on Aviation Insurance
in the context of
Financing and Leasing**

July 2010

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Memorandum on Aviation Insurance in the context of Financing and Leasing

Introduction

1. This memorandum has been prepared by the Aviation Working Group “AWG”. AWG began work in 1994, at the request of the International Institute for the Unification of Private Law (UNIDROIT), as an ad hoc industry group to contribute to the development of the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Matters Specific to Aircraft Equipment, which was signed in 2001. In 2002, the AWG became a not-for-profit legal entity and its scope of activity has significantly expanded. It now addresses a wide range of topics affecting international aviation financing, including issues relating to insurance. For example AWG was heavily involved in the discussions to update AVN67B to AVN67C in 2007. AWG is also a forum for considering new issues as they emerge and develop, as well as continuing to monitor issues of importance to the international aviation financing and leasing community.
2. AWG is co-chaired by Airbus and Boeing, and its members and affiliates comprise the major aviation manufacturers and financial institutions, including most of the world’s largest leasing companies. AWG’s members and their affiliates manufacture substantially all modern commercial aircraft and engines, and lease and finance a substantial majority of such new equipment. The following are members of AWG: Airbus; Boeing; AerCap; Airastle; ATR; Aviation Capital Group; AWAS; BNP Paribas; BOC Aviation; Bombardier Aerospace; Calyon Airfinance; Citibank; Deutsche Bank; Dubai Aerospace Enterprise Ltd; DVB; Embraer; General Electric; GE Capital Aviation Services; Goldman Sachs; International Lease Finance Corporation; JPMorgan; KfW IPEX-Bank; Mitsubishi Corporation; Mitsubishi Regional Jet Corporation; Morgan Stanley; RBS Aerospace; Rolls-Royce; SAFRAN and United Technologies Corporation (Pratt & Whitney Division).
3. In this memorandum the following topics are addressed:
 - A brief overview of the aviation finance and leasing industry and the documentation involved.
 - Aviation insurance in the context of aircraft financing and leasing and, in particular, the role of the AVN67B endorsement and its predecessors.

Aviation Finance and Leasing

4. Aviation is one of the fastest growing and most dynamic sectors of the world economy. By way of example, according to the Airbus Global Market Forecast for 2009 – 2028, the demand for new passenger (over 100 seats) and freight aircraft over this period will result in 24,951 new deliveries (worth US\$3.1 trillion) and that the world's fleet will grow from 15,750 aircraft in 2009 to nearly 32,000 aircraft by 2028. The Boeing Market Outlook for 2010 – 2029 (which includes regional jets) anticipates delivery of 30,900 new aircraft over that period, with a value of US\$3.6 trillion, and an increase in the global fleet from 18,890 aircraft in 2009 to 36,300 aircraft in 2029.
5. The need to finance the ever increasing demand for aircraft and airline travel has meant that dynamic and innovative developments have occurred to meet the requirement for such finance. The situation was far simpler in the early days of commercial aviation where until the late 1970's there were relatively few airlines - most of which were state owned - which financed their aircraft either from funds provided by their government shareholder or commercial bank loans secured on the strength of the airline's balance sheet or from share issuances. It was also the case that aircraft were comparatively cheap. In the late 1960's the typical value of a Boeing 707 or McDonnell Douglas DC8 aircraft was between US\$5 – US\$7 million each, whilst the first Boeing 747's which were delivered in the late 1960's were sold for around US\$20 million. This should be compared with the substantial agreed values today of a new Airbus A320 or Boeing 777-300 aircraft, whilst the cost of a new Airbus A380 is beyond the contemplation of any airline or financier 30 years ago.
6. Given the dramatic changes that have occurred in the industry it is not surprising that the methods used for the financing of the continuing supply of new aircraft, as well as providing for the acquisition of older aircraft, have developed and are now extremely wide and varied. If one ignores the acquisition of aircraft from an airline's own financial resources or from external non-aircraft related sources such as the capital markets, there are broadly two alternatives for basic financing based on the value of the asset itself. One is based on the ownership of the aircraft, where, for example, the aircraft is financed by the owner but leased to an operator; the other is based on a security interest in the aircraft, where the operator owns the aircraft but creates a mortgage over it by way of security to the person lending the finance. These two

fundamental alternatives are frequently blended and used in combinations to create the many types of transaction that are actually used. The precise method which is used depends on a wide variety of factors, such as:

- the size and type of the aircraft;
 - the requirements and financial strength of the airline;
 - tax, accounting or insolvency considerations;
 - any relevant local law requirements;
 - the relevant aviation authority; and
 - whether or not protection is available to the financier under the Cape Town Convention, referred to in paragraph 1 of this memorandum.
7. The complexity of a transaction and the parties involved depend very much on the structure chosen in the light of those factors mentioned above. So for example, a transaction can be as easy as a simple loan to an airline secured by a way of a mortgage or can be a hugely complex transaction involving syndicates of banks, investors, special purpose companies and export credit agencies dealing with new aircraft deliveries to airlines. A particular feature of the industry is the growth in the last 30 years of specialist aircraft operating leasing companies which lease an aircraft under an operating lease to an operator which acquires its use without the obligation to pay off the full cost of ownership, either directly or indirectly. The operator will be responsible for the operation, use and maintenance and insurance of the aircraft whilst it is in its control and for the return of the aircraft with the engines and their records all in a prescribed condition and location and following any tests or inspections agreed in the lease.
8. The length and number of the documents has also changed. In the 1960's, in the age where documents were typed on a manual typewriter and word processing, let alone electronic correspondence, was unheard of, the documentation tended to be very short. Now there is a vast range of documentation involved, even in relatively simple transactions, such as a commitment letter, term sheet, confidentiality agreement and facility agreement. There may also be any number of security agreements, sub-participation agreements, assignment agreements, agency agreements and trustee agreements.

Aviation insurance

Introduction

9. In this section, we address the topic of aviation insurance, with particular emphasis on how the insurance industry has accommodated the requirements of financiers / lessors in the face of the dramatic changes which have taken place in the aviation finance and leasing sector since the 1960s. The principal focus is on the standard endorsement which was introduced for use in aviation finance / leasing transactions - the original version of which was AVN67, subsequently amended by AVN67A in February 1991 and again in October 1994 by AVN67B. An updated version was published in November 2007 (AVN67C), but it is AVN67B which has long been used and is still the form of wording used to provide coverage for the majority of financiers and lessors today.
10. The importance of insurance in aviation finance and leasing transactions cannot be overstated. As a matter of general practice, lessors and financiers pay particular attention to ensure that an AVN67B endorsement exists and that the list of contracts and Contract Parties in the endorsement are complete and correct. Generally a certificate and letter of undertaking from the airline's broker is the way in which insurance protection would be shown.
11. It is vital that financiers and lessors obtain adequate protection against the risk of loss of their asset as well as potential liability to passengers or third parties. As time has passed, the nature of their interest in the asset has been recognised by the insurance cover that is available for them. It is no longer the case, as it once was, that the aircraft operator is the only party which is interested in insurance.

The position prior to AVN67

12. As stated in paragraph 8, in the days before word processing, finance and lease documentation was much shorter and simpler than it is now. This approach was reflected in the insurance provisions that appeared. In many cases, the following wording was considered to be sufficient: "*the operator shall ensure that the aircraft is properly insured at all times*". As transactions became more complicated (and aircraft values and potential liabilities increased), and insurers and financiers began to appreciate the nature of the risks involved, policies became more sophisticated, the requirements of insurers and financiers became more demanding and consequently the insurance wording expanded.

13. In terms of the procedures for arranging insurance, from the 1960s through to the 1980s the situation developed from the very short and simple wording referred to in paragraph 12 above to the use of much more sophisticated wording to cater for the developing requirements of financiers and lessors. A good example is the so-called breach of warranty endorsement, whose purpose was to protect the “innocent” party from having its cover voided or repudiated by insurers in the event of the primary insured breaching certain of the warranties in the insurance policy, even if not causally related to the loss. The standard endorsement for breach of warranty, introduced in January 1959, was originally known as AVN28 (it was subsequently amended). A fairly common practice involved AVN28 and selected text taken from the finance / leasing documentation being prepared and presented to underwriters. As time went on, more and more individually drafted manuscript endorsements were used and it became not uncommon for the complete finance / lease documentation, or, at the very least, the relevant insurance provisions, to be presented to underwriters for agreement. This was against a background where there was no standard airline policy, let alone any standard endorsement for financiers / lessors. Often timing constraints meant that complex documents would be presented to underwriters at a very late stage in a transaction, shortly before it was due to close, with the message being conveyed that the transaction could collapse if underwriters did not agree to provide the cover sought in precisely the terms presented. It is fair to say that underwriters were often prepared to accept and agree much of what was sought, but a practice did develop where endorsements, agreements, or extracts were agreed “*subject to the policy coverage, terms, conditions and limitations.*” This was unsatisfactory in a number of respects, not least that it was never clear whether the intent of such words was to seek to remove any extra coverage that may have been granted inadvertently.

AVN67 – a standard form of endorsement for financiers and lessors

14. By the end of the 1980s, the process of arranging insurance for financing / leasing transactions had become complicated and unsatisfactory - for all parties involved – and, against a background of an ever-increasing proportion of aircraft which were subject to some form of finance or lease agreement, had not kept pace with the changes which had occurred. Because of the difficulties with which underwriters were being faced on a regular basis, there was a desire on their part to try to simplify and streamline the process and introduce a standard form of endorsement which

would be instantly available for use with aircraft financing and leasing, while clarifying the extent of the cover that they were prepared to provide to financiers and lessors.

15. A committee of Lloyd's and London Company underwriters was established to consider how to achieve this goal. The result was AVN67, "The Airline Finance/Lease Contract Endorsement", which was introduced in February 1991. The aim was to produce a standard wording that reflected the requirements of financiers and lessors, which was also acceptable to the insurance market, and which was available immediately, effectively "off the shelf". It would put an end to the situation described in paragraph 13 where underwriters would be presented with lengthy documents produced by the parties that were requesting cover and asked to confirm that it was available within a very short timescale with very little opportunity to review the documentation and understand properly what was being sought. It would also mean that underwriters would no longer have to review the documentation for each transaction or communicate directly with all the parties involved in it. They could simply confirm that AVN67 cover was available. In fact, the finance / lease documentation is not provided to underwriters when cover for financiers / lessors is arranged. Instead, it is reviewed by the broker for the purposes of preparing the endorsement, which is then presented to the lead insurer for approval (for further information, see paragraph 28 below which describes the placement of risks process and our comments at paragraphs 34 and 35). Having been recorded in the schedule to the endorsement as evidence of the financier's / lessor's insurable interest, the circumstances in which underwriters would need to refer to the contractual documents are limited, such as to ascertain what provisions have been agreed in relation to payments that are to be made in the case of an accident.
16. It is fair to say that the introduction of AVN67 was met with considerable criticism from the finance and leasing industry and its advisers. While the concept of a standard endorsement was not objectionable, matters were not helped by the fact that neither financiers nor lessors or even brokers (which was particularly surprising given their role in maintaining the link between the buyer and seller of insurance) were consulted or involved in any of the discussions prior to the introduction of the endorsement. Accordingly, they felt that their interests, which the wording was intended to protect, had been largely ignored, or disregarded.

The transition to AVN67A and AVN67B

17. The widespread criticism of AVN67 effectively resulted in its rejection by the large leasing companies and financial institutions. In 1992 efforts were made to address the concerns that had been expressed. Unlike the discussions leading to the introduction of AVN67, representatives of lessors, bankers and lawyers were involved. This led to the establishment of a working party comprising two representatives each of Lloyd's Aviation Underwriters' Association, the Aviation Insurance Offices Association and the Lloyd's Insurance Brokers Committee. Their remit was to produce an updated version of AVN67 to take account of the criticisms that had been aired but retaining its main underlying purpose, namely, a standard form of coverage that was instantly available to financiers and lessors. Detailed discussions took place and the views of the insurance market, financiers, lessors and brokers were sought and considered. The result was the release of a draft form of AVN67A in December 1992. The final form of the endorsement was published in May 1993.
18. While the broad underlying concepts introduced by AVN67 remained, AVN67A contained some important concessions to which underwriters had agreed in order to address concerns raised by financiers and lessors. A further aim was to create an endorsement that was seen as being more "user friendly".
19. The general view was that AVN67A was an improvement on AVN67. However, there was still some dissatisfaction, primarily on the part of US-based financiers. The new wording found more favour in London where there was a campaign to get it accepted, with the London insurance market taking the position that all new arrangements would be subject to it. Brokers supported it as well. The result was that AVN67A was generally accepted in London (one comment being that it was "*not really that bad*"), but less so elsewhere.
20. AVN67B was introduced in October 1994 following further discussions and consultations involving the working party which had been responsible for AVN67A and representatives of the insurance and finance and leasing industries. The result was a revised endorsement which was largely similar to AVN67A but with a few amendments.

Breach of warranty cover for financiers / lessors under AVN67B

21. It is not the purpose of this memorandum to describe all of the changes that were introduced by AVN67A/B. However, we do address the issue of the cover available to financiers / lessor in the event of a breach by the primary insured given its considerable importance to the aviation finance / leasing industries (which remain unchanged in AVN67B). The text of the AVN67/A/B endorsements can be found at pages 1-6 of the annex to this memorandum.
22. In recognition of the differing requirements of an aircraft financier / lessor and operator, one of the principal concerns of the former was to ensure that insurance cover was still available in the event of any act or omission (including a misrepresentation or non-disclosure) – in respect of which financiers / lessors had no control or knowledge - by the primary insured prior to inception of the policy or during its term. Before the introduction of AVN67A/B, the effect of breach of warranty cover was far from clear, in particular whether, on the one hand, the inclusion of such wording constituted an extension of the cover available under an existing policy or, on the other hand, created a separate contract of insurance between a financier / lessor and insurer. There was a desire to clarify the situation and the wording of AVN67A/B sought to make the position clear that separate contracts exist.
23. The first attempt to address financiers' / lessors' concerns – introduced by AVN67 - was met with considerable criticism by financiers and lessors. The relevant wording provided that *“the interests of each Contract Party..shall not be prejudiced by any act or omission of any other person or party provided that the Contract Party so protected had no actual or constructive knowledge of, has not condoned, caused or contributed to the said act or omission...”*. Great concern was expressed by financiers and lessors that coverage would be excluded if such financier / lessor had constructive knowledge of any act or omission that might invalidate the policy, which was an onerous provision, particularly in the light of the fact that operational control is the responsibility of the airline/lessee. Further, there was no reference to misrepresentation or non-disclosure and so it was unclear as to whether such conduct by the primary insured – whenever it occurred – would entitle insurers to treat the policy as void. Underwriters accepted these criticisms and a revised wording was introduced by AVN67A (which was unchanged in AVN67B) which states that cover would not be invalidated as a result of *“any act or omission (including misrepresentation or non-disclosure) of any other person or party which results in a*

breach of any term, condition or warranty of the Policy". The clause then continues with a proviso that Contract Party must not have "*caused, contributed to or knowingly condoned the said act or omission*" (the previous words, "constructive knowledge", have been removed, although concern has still been expressed about the meaning of the replacement wording). It has been accepted by insurers that the burden of proof lies with them in relation to this proviso.

24. The position of financiers / lessors is further reinforced, in relation to misrepresentation and non-disclosure prior to inception of the policy, by the words which were introduced in the pre-amble of AVN67 (which were unchanged in AVN67A and B) providing that "*the Insurance afforded by the Policy is in full force and effect*".
25. Finally, wording was introduced by AVN67B to provide comfort to financiers and lessors against the risk that the breach of warranty protection available under AVN67A would be lost if they acquired knowledge in another capacity (e.g. as a manufacturer). Previously this protection had been available by way of a separate endorsement (AVN70, the so-called "other interests" clause).
26. The intent of the provisions described above is that AVN67B insulates a Contract Party from any acts or omissions, including, any misrepresentation or non-disclosure, of the primary insured both prior to inception and during the policy (the Contract Party is not, of course, relieved of its own legal duties and is not provided with protection from its own acts / omissions). This is precisely what it was designed to achieve (especially given the importance of misrepresentation and non-disclosure in an insurance context) and is consistent with the underlying purpose of having a standard form of endorsement. No suggestion was made that the position was anything other than this, not even during the discussions which took place in relation to AVN67C, which AWG was involved in. Indeed, if the provisions were not interpreted in this way, then protection available to financiers and lessors would be minimal and they would not be prepared to accept it.

Conclusion

27. Things have moved on considerably since the early days of aircraft finance and leasing and the provisions regarding insurance are no exception. It is clearly in the interest of both the insurance and finance / leasing industries to have a standard endorsement where (a) insurers do not have to be concerned with reviewing complex

and lengthy documentation which varies from transaction to transaction and (b) financiers and lessors can proceed in the knowledge that a standard wording which addresses the principal issues which are of concern to them is instantly available. As stated at the beginning of this section, insurance is now a vital part of any aviation finance or leasing transaction. Any development which results in a return to pre-AVN67 days would not be in the interest of any party. We conclude this section by quoting Peter Viccars, the former Chief Operating Officer of the aviation division of Marsh, who was heavily involved in the development of AVN67A/B and who once said of AVN67B: *“It must have saved literally thousands of hours of time and effort for underwriters and brokers alike, not to mention the financiers and lessors and their legal advisers. It replaced uncertainty with consistency and a very good set of words that works.”* While AVN67B is not perfect, it is, on the whole, fit for purpose.

The placement of AVN67B risks

28. We have described above certain features of the insurance cover which is available to financiers / lessors and the background as to how and why the present arrangements have come about. In terms of what happens in practice when AVN67B cover is required, the process is relatively straightforward, as follows:

- The insured will advise its insurance broker that it intends entering into a finance/lease transaction and it will provide the insurance broker with a copy of the finance/lease contract for its review of the insurance provisions.
- The insurance broker will review the insurance provisions and compare them with the insured's (re)insurance policy to determine whether the coverage provided by the policy is sufficient to cover the insurance requirements of the finance/lease contract and to enable it to advise the insured of any uninsured liability which it is assuming.
- If the policy coverage is not sufficient to cover the insurance requirements, the insurance broker will approach insurers for an amendment to the current policy i.e. a higher maximum agreed value, or for a new policy, that is, deductible insurance.
- The insurance broker will then issue a draft certificate of (re)insurance in respect of the finance/lease contract, evidencing the insured's coverage in this regard and noting the relevant transaction details for the AVN67B endorsement.

- The lease/finance parties will then review and either approve or advise of its required amendments to the draft certificate of (re)insurance. Discussions will normally centre on ensuring that the relevant contract details and contract parties are correct.
 - Once the draft certificate of (re)insurance is in final agreed form, the insurance broker will prepare the AVN67B endorsement document and present this to the lead insurer for approval. A copy of the finance/lease contract itself is not normally provided.
 - Once the AVN67B endorsement has been approved and stamped by the lead insurer, the insurance broker will sign and issue the final certificate of (re)insurance incorporating the AVN67B endorsement.
29. In some cases, it is possible for certificates of (re)insurance to be issued by the insurance broker without obtaining the prior approval and stamp of the insurer (within certain parameters).
30. Whether such delegation of authority is provided to the insurance broker depends on the relationship between the insurer and insurance broker. The delegation is normally agreed at the time of inception of the policy and will be evidenced in writing as part of the slip wording. A number of large insurance brokers have obtained this delegation, including Marsh Ltd and Willis Limited.

Disclosure in relation to the Structuring of Finance and Contractual Documentation

31. In this section, following on from the discussion above regarding the standard endorsement available to financiers / lessors, we consider the possible implications if there was a duty on the part of financiers / lessors to disclose to insurers prior to obtaining cover, such matters as:
- any departures from standard practice in aviation finance;
 - any 'unusual' provisions in the financing documentation;
 - the way in which the finance party's security was structured.
32. We have highlighted above the difficulties which insurers were faced with, prior to the introduction of AVN67, when they would be presented with complete aircraft lease

and finance documentation relating to a transaction at a late stage in the process and asked to confirm within a short period of time that cover would be provided in accordance with the terms of such documentation. This was the main reason why a standard form of wording was introduced.

33. Nowadays, it is not unusual to see the following statement in lease and finance documents:

“So long as it remains general industry practice to insure aircraft financed by financial institutions and banks on the basis of Lloyds Form AVN 67B and AVN 67B (Hull War) endorsements (or any updated version thereof, if such endorsement(s) shall then be the general aviation industry standard), then Lessee shall procure endorsements to the insurances required to be maintained under Article [] hereof so as to incorporate the terms of Lloyds Form AVN 67B and AVN 67B (Hull War) endorsements (or such updated version thereof) into the insurance policies effected pursuant to this Article [] hereof and Lessor agrees that to the extent any provision of AVN67B and/or AVN67B (Hull War) conflicts or is otherwise inconsistent with the requirements in this Article [], then such AVN67B endorsement shall be deemed to satisfy the relevant requirements of this Article [].”

This is effectively an acknowledgement that regardless of what may be in the contract, AVN67B is what the financier / lessor is going to expect from insurers in terms of protection.

34. It will be apparent from the description of the placing process set out in paragraphs 28 - 30 that insurers treat information from financiers / lessors and the nature of their security as immaterial. Indeed, in the AWG members' experience, insurers do not even make enquiries of the contract parties in relation to the cover they are seeking. Insurers look to the airline or its brokers rather than a Contract Party for information regarding matters such as the operation, crewing or maintenance of an aircraft. Cover for financiers and lessors under AVN67B is in practice automatic. This is reinforced by the fact, as is stated in paragraphs 29 and 30 that in some cases, the insurance broker has authority from insurers automatically to agree AVN67B endorsements without obtaining their consent each time (within certain parameters). But, in any event, even without this authority, AVN67B is now so entrenched in aviation insurance practice, that the presentation of an AVN67B endorsement to insurers is seen by insurance brokers to be a formality.

35. If financiers / lessors (as Contract Parties) were subject to a duty of disclosure to insurers, it would result in a situation which (a) is impractical and (b) does not reflect the way in which the insurance market currently works, or is expected to work, or indeed could work, In particular:

- In many cases, it is unlikely that the Contract Parties will know the identity of the underwriters. This is certainly so prior to, and, quite often, even after, conclusion of the contract of insurance. Indeed, it is clear from the description of the placement process that it is the broker who has primary responsibility for arranging AVN67B cover.
- If financiers / lessors were subject to a duty of disclosure, it would be entirely inconsistent with the main underlying purposes of having a standard endorsement, namely, to enable cover to be instantly available in a form which met the requirements of financiers and lessors and which brought an end to the highly unsatisfactory situation which had developed of insurers having to spend time reviewing lengthy documentation and individually drafted endorsements.
- A major concern of financiers and lessors was that insurance cover should be available notwithstanding any acts and omissions (including misrepresentation and non-disclosure) of the primary insured or its broker prior to inception of the policy. As a result, the provisions described in paragraphs 23 – 25 above were introduced. AWG's members have taken that to mean that insurers accepted that the duty of disclosure of information relating to the risks that are to be insured rests with the primary insured / its broker, not a Contract Party. This addressed the concerns of financiers and lessors and achieved the desired aim, referred to above, of insulating them from the insurance placement and broking process.
- The position outlined above is entirely appropriate and commercially fair: the possibility of a misrepresentation or non-disclosure by the airline or its broker is real but a financier / lessor is not involved in the insurance placement. As such, they cannot know what was and was not represented by or on behalf of the primary insured and consequently would have no opportunity to correct any errors. By agreeing to the provisions described in paragraphs 23 –25, insurers have accepted this as reasonable and have recognised that their rights in the event of any misrepresentation or non-disclosure are against the

primary insured and the broker (who, it should be noted, is not chosen by the Contract Party).

- The commercial objective of AVN67B would be substantially undermined if a Contract Party's rights to payment depended upon whether the primary insured (or the broker) had made full disclosure and/or whether the Contract Party had verified the truth of representations that had been made. If a Contract Party were to be involved in presenting the risk, and so be party to the disclosures that were being made, then insurers would not expect the Contract Party to be allowed to benefit from the insurance to the extent that it knew that the underwriters were being misled by any non-disclosure or misrepresentation. This is why there is a proviso in AVN67B that a Contract Party does not obtain protection if it has caused, contributed to or knowingly condoned an act or omission of another party.

36. Any change to the current practice which involved insurers being provided with further information or documentation about a transaction is likely to see a return to the unsatisfactory situation which occurred before the introduction of AVN67 and its successors. It is clear from the description of the placing process and our comments in paragraphs 34 and 35 that insurers are not concerned with the structure of aircraft finance transactions, such as details of mortgage registration and their effects on third parties. That is very much reflected by current market practice. Instead, insurers' primary focus is, entirely appropriately, on the creation of an insurable interest, and the correct identification of the Contracts and Contract Parties rather than details of the transaction and any complexities or intricacies which specifically relate to it.

37. If insurers were to become concerned with the structure of a particular transaction, such that it had to be analysed, dissected, summarised and presented to insurers, this would amount to a significant change to current market practice. Further, not only would the cost to the insured increase, by means of increased legal costs and increased rental / finance costs (which will be required to cover the lease/finance parties' increased legal costs), but the cost to the insurers and brokers will increase because of the need to hire extra staff and the procedure itself would become slower and there would be a real risk that it would revert to the pre-AVN67 position.

38. In general terms, it is more efficient to agree the standard form of insurance protections which will be provided by the relatively small number of aviation insurers

in the worldwide insurance market than it would be to attempt to agree a standard lease/financing structure with each and every provider of finance and each and every lessor of aircraft in the aviation market.

39. Putting it simply, if Contract Parties were required to make separate disclosure to insurers or were to be held responsible for any misrepresentations or omissions in the presentation of the risk to insurers, the difficulties previously experienced by the aviation insurance market would return and this would defeat the whole purpose of having a standard AVN67B style endorsement.

END

ANNEX

AIRLINE FINANCE / LEASE CONTRACT ENDORSEMENT

It is noted that the Contract Party(ies) have an interest in respect of the Equipment under the Contract(s). Accordingly, with respect to losses occurring during the period from the Effective Date until the expiration of the insurance or the expiry or termination of the Contract(s) whichever shall first occur, in respect of the interest of the Contract Party(ies) and in consideration of Additional Premium it is confirmed that the Insurance afforded by the Policy is in full force and effect and it is further agreed that the following provisions are specifically endorsed to the Policy:-

1. Under the Hull and Aircraft Spares Insurances

- 1.1 In respect of any claim on an aircraft that becomes payable on the basis of a Total Loss, settlement shall be made to, or to the order of the Contract Party(ies). In respect of any other claim, settlement (nett of any relevant policy deductible) shall be made with such party(ies) as may be mutually agreed between the Contract Party(ies) and/or the Insured as their interests may appear and Insurers.

Such payments shall only be made provided they are in compliance with all applicable laws and regulations.

2. Under the Legal Liability Insurances

- 2.1 Subject to the provisions of this Endorsement, the Insurance shall operate in all respects as if a separate Policy had been issued covering each party insured hereunder, but this provision shall not operate to include any claim howsoever arising in respect of loss or damage to the Equipment insured under the hull or spares insurance of the Insured. Notwithstanding the foregoing the total liability of Insurers in respect of any and all Insureds shall not exceed the limits of liability stated in the Policy.
- 2.2 The Insurance provided hereunder shall be primary and without right of contribution from any other insurance which may be available to the Contract Party(ies).
- 2.3 This Endorsement does not provide coverage for the Contract Party(ies) with respect to claims arising out of their legal liability as manufacturer, repairer, or servicing agent, of the Equipment.

3. Under ALL Insurances

- 3.1 The Contract Party(ies) are included as Additional Insured(s).
- 3.2 The interests of each Contract Party hereunder shall not be prejudiced by any act or omission of any other person or party PROVIDED THAT the Contract Party so protected has no actual or constructive knowledge of, has not condoned, caused or contributed to the said act or omission.
- 3.3 Except in respect of outstanding premium in respect of the Equipment, the Contract Party(ies) shall have no responsibility for premium and Insurers shall waive any right of set-off or counterclaim against the Contract Party(ies).
- 3.4 Upon payment of any loss or claim in accordance with this Endorsement, Insurers shall to the extent of such payment be thereupon subrogated to all legal and equitable rights of those indemnified hereby, but Insurers shall not exercise such rights without the consent of those indemnified, such consent not to be unreasonably withheld. At the expense of Insurers, such consent shall include full and unconditional co-operation in doing and facilitating everything which may be necessary in the exercise of the said rights.
- 3.5 Except in respect of any provision for Automatic Termination or Cancellation specified in the Policy or any endorsement thereof, cover for the interests added by this Endorsement may only be cancelled or materially altered in a manner adverse to the said interests by the giving of not less than Thirty (30) days notice in writing to the appointed broker. Notice shall be deemed to commence from the date

such notice is given by the Insurers. Such notice will NOT, however, be given at normal expiration date of the Policy or any endorsement.

EXCEPT AS SPECIFICALLY VARIED OR PROVIDED BY THE TERMS OF THIS ENDORSEMENT:-

1. THE INTERESTS ADDED BY THIS ENDORSEMENT ARE COVERED BY THE POLICY SUBJECT TO ALL TERMS, CONDITIONS, LIMITATIONS, WARRANTIES, EXCLUSIONS AND CANCELLATION PROVISIONS THEREOF.
2. THIS POLICY SHALL NOT BE VARIED BY ANY PROVISIONS CONTAINED IN THE CONTRACT(S) WHICH PURPORT TO SERVE AS AN ENDORSEMENT OR AMENDMENT TO THE POLICY.

SCHEDULE IDENTIFYING TERMS USED IN THIS ENDORSEMENT

- | | |
|--|------------|
| 1. Equipment: | {Response} |
| 2. (a) Contract Party(ies): | {Response} |
| AND (b) in addition, in respect of Legal Liability Insurance: | {Response} |
| 3. Contract(s): | {Response} |
| 4. Effective date: | {Response} |
| 5. Additional Premium: | {Response} |

AVN 67 10.12.90 (per LAUA 'Blue Book')

AIRLINE FINANCE/LEASE CONTRACT ENDORSEMENT

It is noted that the Contract Party(ies) have an interest in respect of the Equipment under the Contract(s). Accordingly, with respect to losses occurring during the period from the Effective Date until the expiry of the Insurance or until the expiry or agreed termination of the Contract(s) or until the obligations under the Contract(s) are terminated by any action of the Insured or the Contract Party(ies), whichever shall first occur, in respect of the said interest of the Contract Party(ies) and in consideration of the Additional Premium it is confirmed that the Insurance afforded by the Policy is in full force and effect and it is further agreed that the following provisions are specifically endorsed to the Policy:-

1 Under the Hull and Aircraft Spares Insurances

- 1.1 In respect of any claim on an aircraft that becomes payable on the basis of a Total Loss, settlement shall be made to, or to the order of the Contract Party(ies). In respect of any other claim, settlement (net of any relevant policy deductible) shall be made with such party(ies) as may be necessary to repair the Equipment unless otherwise agreed after consultation between the Insurers and the Insured and, where necessary under the terms of the Contract, the Contract Party(ies).
Such payments shall only be made provided the same are in compliance with all applicable laws and regulations.

2 Under the Legal Liability Insurance

- 2.1 Subject to the provisions of this Endorsement, the Insurance shall operate in all respects as if a separate policy had been issued covering each party insured hereunder, but this provision shall not operate to include any claim howsoever arising in respect of loss or damage to the Equipment insured under the Hull or Spares Insurance of the Insured. Notwithstanding the foregoing the total liability of Insurers in respect of any and all Insureds shall not exceed the limits of liability stated in the Policy.
- 2.2 The Insurance provided hereunder shall be primary and without right of contribution from any other insurance which may be available to the Contract Party(ies).
- 2.3 This endorsement does not provide coverage for the Contract Party(ies) with respect to claims arising out of their legal liability as manufacturer, repairer, or servicing agent of the Equipment.

3 Under ALL Insurances

- 3.1 The Contract Party(ies) are included as Additional Insured(s).
- 3.2 The cover afforded to each Contract Party by the Policy in accordance with this Endorsement shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or party which results in a breach of any term, condition or warranty of the Policy PROVIDED THAT the Contract Party so protected has not caused, contributed to or knowingly condoned the said act or omission.
- 3.3 The Contract Party(ies) shall have no responsibility for premium and Insurers shall waive any right of set-off or counterclaim against the Contract Party(ies), except in respect of outstanding premium in respect of the Equipment.

3.4 Upon payment of any loss or claim to or on behalf of any Contract Party(ies), Insurers shall to the extent and in respect of such payment be thereupon subrogated to all legal and equitable rights of the Contract Party(ies) indemnified hereby (but not against any Contract Party). Insurers shall not exercise such rights without the consent of those indemnified, such consent not to be unreasonably withheld. At the expense of Insurers, such Contract Party(ies) shall do all things reasonably necessary to assist the Insurers to exercise said rights.

3.5 Except in respect of any provision for Cancellation or Automatic Termination specified in the Policy or any endorsement thereof, cover provided by this Endorsement may only be cancelled or materially altered in a manner adverse to the Contract Party(ies) by the giving of not less than Thirty (30) days notice in writing to the appointed broker. Notice shall be deemed to commence from the date such notice is given by the Insurers. Such notice will NOT however be given at normal expiry date of the Policy or any endorsement.

EXCEPT AS SPECIFICALLY VARIED OR PROVIDED BY THE TERMS OF THIS ENDORSEMENT:-

1. THE CONTRACT PARTY(IES) ARE COVERED BY THE POLICY SUBJECT TO ALL TERMS, CONDITIONS, LIMITATIONS, WARRANTIES, EXCLUSIONS AND CANCELLATION PROVISIONS THEREOF.
2. THE POLICY SHALL NOT BE VARIED BY ANY PROVISIONS CONTAINED IN THE CONTRACT(S) WHICH PURPORT TO SERVE AS AN ENDORSEMENT OR AMENDMENT TO THE POLICY.

SCHEDULE IDENTIFYING TERMS USED IN THIS ENDORSEMENT

1. Equipment (Specify details of any aircraft, engines or parts to be covered):
2. (a) Contract Party(ies):
AND (b), in addition, in respect of Legal Liability Insurances:
3. Contract(s):
4. Effective date (being the date that the Equipment attaches to the Policy or a specific date thereafter):
5. Additional Premium:

AIRLINE FINANCE/LEASE CONTRACT ENDORSEMENT

It is noted that the **Contract Party(ies)** have an interest in respect of the **Equipment** under the **Contract(s)**. Accordingly, with respect to losses occurring during the period from the **Effective Date** until the expiry of the Insurance or until the expiry or agreed termination of the **Contract(s)** or until the obligations under the **Contract(s)** are terminated by any action of the Insured or the **Contract Party(ies)**, whichever shall first occur, in respect of the said interest of the **Contract Party(ies)** and in consideration of the **Additional Premium** it is confirmed that the Insurance afforded by the Policy is in full force and effect and it is further agreed that the following provisions are specifically endorsed to the Policy:-

1. Under the Hull and Aircraft Spares Insurances

- 1.1 In respect of any claim on **Equipment** that becomes payable on the basis of a Total Loss, settlement (net of any relevant **Policy Deductible**) shall be made to, or to the order of the **Contract Party(ies)**. In respect of any other claim, settlement (net of any relevant **Policy Deductible**) shall be made with such party(ies) as may be necessary to repair the **Equipment** unless otherwise agreed after consultation between the Insurers and the Insured and, where necessary under the terms of the **Contract(s)**, the **Contract Party(ies)**.
Such payments shall only be made provided they are in compliance with all applicable laws and regulations.
- 1.2 Insurers shall be entitled to the benefit of salvage in respect of any property for which a claims settlement has been made.

2. Under the Legal Liability Insurance

- 2.1 Subject to the provisions of this Endorsement, the Insurance shall operate in all respects as if a separate Policy had been issued covering each party insured hereunder, but this provision shall not operate to include any claim howsoever arising in respect of loss or damage to the **Equipment** insured under the Hull or Spares Insurance of the Insured. Notwithstanding the foregoing the total liability of Insurers in respect of any and all Insureds shall not exceed the limits of liability stated in the Policy.
- 2.2 The Insurance provided hereunder shall be primary and without rights of contribution from any other insurance which may be available to the **Contract Party(ies)**.
- 2.3 This Endorsement does not provide coverage for the **Contract Party(ies)** with respect to claims arising out of their legal liability as manufacturer, repairer, or servicing agent of the **Equipment**.

3. Under ALL Insurances

- 3.1 The **Contract Party(ies)** are included as Additional Insured(s).
- 3.2 The cover afforded to each **Contract Party** by the Policy in accordance with this Endorsement shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or party which results in a breach of any term, condition or warranty of the Policy PROVIDED THAT the **Contract Party** so protected has not caused, contributed to or knowingly condoned the said act or omission.
- 3.3 The provisions of this Endorsement apply to the **Contract Party(ies)** solely in their capacity as financier(s)/lessor(s) in the identified **Contract(s)** and not in any other capacity. Knowledge that any **Contract Party** may have or acquire or actions that it may take or fail to take in that other capacity (pursuant to any other contract or otherwise) shall not be considered as invalidating the cover afforded by this Endorsement.

- 3.4 The **Contract Party(ies)** shall have no responsibility for premium and Insurers shall waive any right of set-off or counterclaim against the **Contract Party(ies)** except in respect of outstanding premium in respect of the **Equipment**.
- 3.5 Upon payment of any loss or claim to or on behalf of any **Contract Party(ies)**, Insurers shall to the extent and in respect of such payment be thereupon subrogated to all legal and equitable rights of the **Contract Party(ies)** indemnified hereby (but not against any **Contract Party**). Insurers shall not exercise such rights without the consent of those indemnified, such consent not to be unreasonably withheld. At the expense of Insurers such **Contract Party(ies)** shall do all things reasonably necessary to assist the Insurers to exercise said rights.
- 3.6 Except in respect of any provision for Cancellation or Automatic Termination specified in the Policy or any endorsement thereof, cover provided by this Endorsement may only be cancelled or materially altered in a manner adverse to the **Contract Party(ies)** by the giving of not less than Thirty (30) days notice in writing to the **Appointed Broker**. Notice shall be deemed to commence from the date such notice is given by the Insurers. Such notice will NOT, however, be given at normal expiry date of the Policy or any endorsement.

EXCEPT AS SPECIFICALLY VARIED OR PROVIDED BY THE TERMS OF THIS ENDORSEMENT:-

- 1. THE CONTRACT PARTY(IES) ARE COVERED BY THE POLICY SUBJECT TO ALL TERMS, CONDITIONS, LIMITATIONS, WARRANTIES, EXCLUSIONS AND CANCELLATION PROVISIONS THEREOF.**
- 2. THE POLICY SHALL NOT BE VARIED BY ANY PROVISIONS CONTAINED IN THE CONTRACT(S) WHICH PURPORT TO SERVE AS AN ENDORSEMENT OR AMENDMENT TO THE POLICY.**

SCHEDULE IDENTIFYING TERMS USED IN THIS ENDORSEMENT

- 1. Equipment** (Specify details of any aircraft, engines or spares to be covered):
- 2. Policy Deductible** applicable to physical damage to the **Equipment** (insert all applicable Policy deductibles):
- 3. (a) Contract Party(ies):**
AND, (b), in addition, in respect of Legal Liability Insurances:
- 4. Contract(s):**
- 5. Effective Date** (being the date that the **Equipment** attaches to the Policy or a specific date thereafter):
- 6. Additional Premium:**
- 7. Appointed Broker:**

AVN 67B 28.9.94