



Introduction of wide-bodied aircraft - 747 first flight 9th Feb 1969



Risk allocation within aviation fuel JVs



Hydrant construction 1960/70s



Santa Barbara Blow Out & Oil Spill 1969



Brief History of Aircraft Refuelling Indemnity (Tarbox) Agreements

Tarbox Legal Committee update 26th August 2015

From their implementation in the 1970s Aircraft Refuelling Indemnity (Tarbox) Agreements ("Tarbox Agreements") have been a great success and are used extensively world-wide by fuel suppliers and the insurance industry to establish liability for aircraft refuelling risks and ensure fuel suppliers are appropriately insured to cover these risks. This document provides a brief history of why the Tarbox Agreements developed.

Need for Tarbox Agreements

The need for Tarbox Agreements was triggered by two main influences:-

Introduction of Hydrant Systems and Formation of Joint Ventures (JVs)

Firstly as a result of the wide spread construction of hydrant systems in the 1960/70s to meet the increasing fuel demands of larger jet aircraft, such as the Boeing 747. This led to the formation of a significant number of industry Joint Ventures (JVs) and the need to determine how to allocate risk between the JV Participants.

These new JVs introduced a number of complexities in terms of risk allocation, including the duty of care of the JV Participant selected to act as operator of the JV, how to apportion risk where equity may be equal but facility usage was not and the validity of indemnification language, depending on the applicable law.

Santa Barbara Oil Spill 1969 Resulting in the 1971 JV Endorsement Clause

Secondly, in 1969 there was a producing oil well blow-out at Santa Barbara California involving a consortium of 4 oil companies. Substantial third party damage occurred from the resultant oil pollution.

Insurance companies found that they had issued or were participating in liability policies for 2 or more consortium oil companies which meant they had a greater total commitment for the one occurrence than initially anticipated. In other words, they found that they had pledged their maximum commitment under each policy and then found that several policies had to respond to one incident.

To correct this, early in 1971, Lloyds introduced the Joint Venture Endorsement Clause (Clause NMA 1687) to all aviation fuel suppliers' insurance policies. The Joint Venture Endorsement Clause related to ALL joint venture operations and had the effect of reducing cover/indemnity limit of a policy to the percentage interest of the insured in the joint venture, the intent being no insurer could find itself committed to more than 100% of its policy limit for one occurrence regardless of the number of JV participants.

Whilst this was not a concern for JV participants where they could only be held legally liable to the extent of their equity share; it was a major concern where they, as JV Operator, provided aircraft refuelling into-plane services and were fully liable for third party losses resulting in their insurance not providing adequate cover.

Aircraft Refuelling Endorsement 1971

A lawyer from Mobil, Fisk Tarbox, made a proposal to address these issues by assigning all Aircraft Refuelling risk and liability to a single JV Participant, typically the JV Participant whose customer was being served by the JV when a claimable loss occurred.

This approach resolved the concerns of the JV Participant selected to act as operator and the equity versus usage issues. However it required agreement from the insurance industry as a single JV Participant would have full exposure to the claimable loss, but only part of such party's insurance to call on based on the JV Endorsements.

In 1971 agreement was reached between major oil companies and the insurance industry under the Aircraft Refuelling Endorsement which overrode the Joint Venture Endorsement and granted full access to insurance limits to the affected JV Participant (i.e. in the event of a claim, the impacted JV Participant is not limited in its ability to claim up to its equity participation in the JV, rather it has access to the full extent of the policy level) provided that:-

- *The Supplier holding the contract for the customer being fuelled is the participant who accepts sole liability and holds all others harmless;*

- *The Supplier fuelling customers of other suppliers on assignment accepts sole liability for an incident. [E.g.: fuelling on Airworld cards/Carnet Cards].*

2013 Gross Negligence/Wilful Misconduct (GN/WM) Carve-Out

The 2013 Industry Tarbox Review deemed it was the right time to re-characterise the agreements with an appropriate risk-sharing for acts of GN/WM. The agreements now place the burden of liability resulting from

an act of GN/WM on the party responsible for such act.

Why Tarbox Agreements are Governed by English Law

The Tarbox Legal Committee has confidence that litigation under English law will result in the indemnities that are given and received within Tarbox Agreements, working as intended by the interested parties.

Aircraft Refuelling Insurance underwriters are generally either UK or US based corporations operating in accordance with English or US laws. In the event of a claim, the insurance underwriters would be expected to respond in accordance with their domiciled laws.

Structure of the Tarbox Agreements

Whilst amendments have been made to some points of detail since the original agreements were developed and agreed in the 1970s; the concept and structure of the Tarbox Agreements has remained unchanged.

The suite of Tarbox Agreements meet the requirements of a variety of operational scenarios where aircraft refuelling liability occurs between two or more parties involved in aircraft refuelling at an airport location.

Two Central Agreements covering Applicable Law and Control and Conduct of Litigation – may be signed by the parent company of any supplier that is a party to a Local Tarbox Agreement (which are also known as Exhibits).

Nine Local Tarbox Agreements or 'Exhibits' (Exhibits 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B and 5) – one of these is to be executed locally to suit the local aircraft refuelling liability operating scenario.

Guidelines for Aviation JV Liability Language for the recommended provisions within

incorporated or unincorporated JV Operating Agreements for Non Aircraft Refuelling Liabilities and Insurance.

Copies of the standard form Tarbox Agreements and guidance on their use are available from the Tarbox Legal Committee (TLC) via the JIG web site (ref More Information).

1983 Industry Tarbox Review – Amendment to Aircraft Refuelling Definition

The endorsement wording resulting from negotiations with Lloyds was not to fuel suppliers' satisfaction as the wording required by the insurers stated "sole liability for all liabilities arising out of aircraft refuelling".

The definition of "Aircraft Refuelling" was unclear and could be interpreted to exclude certain operational activities such as receipt and storage of fuel and related activities not strictly confined to the act of Aircraft Refuelling. Further the definition of "Assured's customers" was absent, whereas it is defined in the JV agreements

BP, Caltex, Esso, Mobil and Shell formed a Tarbox Sub-Committee to review changes to the definition of "Aircraft Refuelling" and modifications to Exhibits 3 and 4 (to accommodate Throughputters). Final changes made at an industry meeting (with Lloyds and oil companies) in London on the 30th of Nov 1983 with the objective that the definition of "Aircraft Refuelling" left no room for interpretation by particularly the insurers:

"Aircraft Refuelling" shall mean the supply and delivery via the Facilities of Fuel, Lubricants and related Products, and defuelling and related operations and services"

1991 Industry Tarbox Review

In the 1980s the Central Agreements, local Exhibits and appendices were reviewed, updated and extended to deal

with some issues that were identified, ultimately being released on 18 July, 1991 and it is these versions that represent the “official” Tarbox documents prior to the 2013 review. The oil companies participating in the 1991 review were Agip, BP, Caltex, Chevron, Elf, Exxon, Fina, KPIAC, Mobil, Shell, Statoil¹, Texaco and Total,.

2013 Industry Tarbox Review - Issues and Summary of Changes

In January 2009 a group of existing Tarbox signatories (BP, Chevron, ENI, ExxonMobil, KPIAC, Shell, Statoil and Total) collected together a number of Tarbox related issues that had arisen since the last review in 1991 and agreed to form an industry work group to review and update the Tarbox Agreements.

This review was completed early 2013. The main revision was the carve-out of gross negligence and wilful misconduct as defined in the Tarbox Agreement from the Tarbox indemnity. The other revisions are minor but address a number of real issues that have arisen to ensure greater clarity over liability which is important for fuel suppliers and their insurers to ensure that the Tarbox Agreements work as intended. A summary of the 2013 Tarbox Agreement amendments is available from the TLC via the JIG web site (see More information).

2015 Industry Tarbox Review

The TLC in an attempt to simplify the implementation process arising from the 2013 review, agreed that, due to the carve out of gross negligence and wilful misconduct, it was no longer a prerequisite to be a party to the Central Agreements prior to executing Local Tarbox Agreements. However, being party to the Central Agreements is still

considered mutually beneficial for fuel suppliers.

Future Support For and Administration of Tarbox Agreements

Tarbox Agreements are fundamental to address aviation refuelling liabilities within the aviation industry.

The 2013 Industry Tarbox Review identified a need to formalize the administration and support of the Tarbox Agreements on behalf of all interested parties (fuel suppliers, insurers, airlines, airport authorities and other third parties) to ensure document version control and maintain an up to date list of signatories to the Central Agreements.

The 2013 Industry Tarbox Review established the TLC and appointed JIG as the Tarbox Secretariat noting the following points of principle:-

- *The Tarbox Agreements need to treat all signatories equally,*
- *The Tarbox Agreements need to be recognised by signatories, potential signatories and third party stakeholders (e.g. insurers, airport authorities, airlines) as a fair, transparent and reasonable way to allocate liabilities that arise between parties involved in aircraft refuelling,*
- *Review and revision of the Tarbox Agreements needs to be open to all existing and prospective signatories and also be acceptable to the aviation insurance industry.*

Tarbox Legal Committee Role

The primary purpose of the TLC is to have the substantive responsibility for ownership and revision of the Tarbox master documents on behalf of the aviation industry so that these documents remain recognised by signatories, prospective signatories and interested third party stakeholders (e.g. insurers, airport authorities) as a fair, transparent and reasonable

way to allocate aviation refuelling liabilities that arise between parties involved in aircraft refuelling.

The TLC will not be a formal/legal organization but an open, independent aviation industry committee at whose meetings all existing Tarbox signatories will be eligible to be represented and prospective signatories and other interested third party stakeholders may be present.

Tarbox Secretariat Role

The Tarbox Secretariat role is purely administrative with all substantive matters being dealt with by the TLC. The Tarbox Secretariat will provide open access to the master Tarbox Agreements and maintain a current list of signatories to the central agreements.

The Joint Inspection Group (JIG) has been appointed as the current Tarbox Secretariat.

More Information

Contact the Tarbox Secretariat through www.Tarboxonline.com or www.jigonline.com for more information including key reference documents:-

CP 3.01 – withdrawn (no longer used).

CP 3.02 - Administration of Tarbox Agreements.

CP 3.03 - Brief History of Tarbox.

CP 3.04 - Introduction to Aircraft Refuelling Indemnity (Tarbox) Agreements (Training Presentation).

CP 3.05 – CP 3.11 - The Standard Form Tarbox Agreements (Central Agreements, Exhibits 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B and 5).

CP 3.13 - Aircraft Refuelling Indemnity (Tarbox) Agreements – Summary of 2013 Revisions.

CP 3.14 - withdrawn (no longer used).

CP 3.18 - Signatory Company letter explaining changes to Tarbox effective July 2015.

¹ In January 2015 Statoil Fuel & Retail Aviation became an Affiliate of BP plc.