

Aviation Update

Business Continuity in Challenging Times

With commercial air traffic at a historic low, airlines are as keen as ever to conserve cash to last out the crisis. Aircraft owners/lessors in heavy negotiations with distressed airlines/lessees are weighing competing factors:

Need to maintain own cash flow through rental income	<i>versus</i>	Futility of doing something to put customer out of business
Interest in protecting physical asset including by taking possession	<i>versus</i>	Lack of alternative use for asset at present (i.e. little opportunity for re-leasing)
Desire to preserve customer relationship	<i>versus</i>	Desire to avoid being “last on the list” of creditors

With those considerations in mind, those aircraft owners negotiating compromises, concessions and the restructuring of aircraft lease arrangements with cash-strapped airlines are asking themselves the following questions:

1. Is it worth discounting heavily in order to get cash in sooner? Or is it better not to discount but allow more time to pay?
2. What assumption should be made about the length of the crisis?
3. Before compromising on existing terms should you insist on a new term accelerating the debt in the event that the airline receives Government aid?
4. Will the airline agree that during the period of any compromise deal there will be no payment of dividends or capital distributions to shareholders?
5. Is it possible to secure formal submission to a particular jurisdiction (over and beyond that specified in the lease) in the event that it is necessary to take enforcement action in some particular court where airline assets, or indeed your aircraft, are likely to be found?
6. What is the domicile of the airline and is there a risk of Government legislation being introduced to change the insolvency regime to prevent enforcement action by the owner?
7. Could such a change in the law cut across elections already made under the Cape Town Convention?
8. Is the airline in a location whereby the aircraft could be re-routed to domestic routes thus rendering arrest/repossession more difficult for the owner?

As at the date of this Update, the courts in England are functioning and there is no suspension on the presentation of winding up petitions or the issuing of money claims. There is also no reason why injunctions and arrest orders cannot be obtained on the usual basis. English judgments remain enforceable in the EU on the same basis as pre-Brexit.

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