

YOUR LONDON AIRPORT
Gatwick

WALA

Robert Herga
General Counsel

16th October 2018



Airline Insolvency-UK Perspective

- There is no special insolvency procedure in England and Wales applicable to airline insolvencies
- In the current legal and regulatory environment, it is unlikely that an airline which enters into insolvency proceedings in the UK will continue to operate flights, even for a limited period, in order to allow the repatriation of passengers to the UK
- Insolvency moratorium curtailed for aircraft lessors by Aircraft Equipment Cape Town (Convention) Regs 2015 but does not override statutory powers of detention.



Key elements for the operation of an airline

Trading essentials: The operation of an airline requires several key elements to be in place, including those below. For an airline to keep flying in administration, several parties would need to support the operation.



Airports

Airport charges are levied on a range of services, including take off and landing. If charges are unpaid there is a risk an airport may seek to exercise a lien and impound aircraft.



Aircraft Lessors

Most airlines have several leases for their fleet, including for airframes and engines. These leases may include termination clauses for cases of default.



Air Traffic Management

Airlines need to pay for their use of air traffic services. ATM bodies (e.g. Eurocontrol) may seek to detain an aircraft for unpaid charges.



Employees

Several key personnel would need to be in place to ensure the smooth and safe operation of an airline in administration.



IT and Data The continued access to IT and data systems and suppliers, both external and internal, are essential to the running of an airline.



Other essential suppliers

Including fuel suppliers, ground handling and maintenance and repair (MRO). They may seek to withhold supply for unpaid bills.



Insurance

Several policies will be in place to cover potential risks and liabilities as an airline and a business. These may include termination clauses.



Regulatory compliance

Airlines will need to maintain an Air Operator Certificate and Operating Licence and comply with other regulatory requirements.



Specific Concerns for Airports on Airline Insolvency

1. Recovery Of Airport Charges and other debts e.g property rents.
2. Recovery of possession of real estate
3. Repatriation of stranded pax-both inward and outward
4. Loss of future airport charges and other revenue
5. Who gets scarce slots?



Recovery of Airport Charges

- Powers of detention-Section 88 Civil Aviation Act 1982
- Balance between detaining before administration moratorium and bringing down house of cards by pre-emptive action.
- Fleet Detention- airport operator may detain the aircraft in respect of which the charges are due or any other aircraft of which the person in default is the operator at the time when the detention begins
- Changing terms of payment –beware preferential payment set aside.



Recovery of Possession of real estate

1. The Insolvency Act 1986 provides that a company has the benefit of a moratorium, preventing most creditor or other third-party action against it or its assets, from the point at which the administration process is instigated.
2. The moratorium is effectively a freeze on creditors taking action against the company or its assets for the duration of the administration process. Includes landlord's right to repossess property. Particular creditor actions can be taken with the consent of the administrators of the company or the permission of the court
3. Where a company in administration uses leasehold property for the benefit of creditors, the rent payable under the lease ranks as an expense of the administration-includes full rent due on a quarter day if applicable. Important to inform administrator that if he does not arrange vacant possession rent will be his responsibility.



Repatriation of Pax

1. Administration announcement and ceasing flying usually sudden announcement- frustrated pax in terminal and pax stranded overseas. Options: self organised repatriation,organised charter, keep fleet flying.
2. Whether pax receive compensation or reimbursement dependent on number of issues and often dependent on route air ticket was purchased.
3. Monarch- CAA sourced 25 aircraft through pre-existing arrangements and another 24 sourced post failure. It put on 567 flights which brought nearly 84,000 passengers back to the UK at cost of circa £60m.
4. Government initiated airline insolvency review-interim report July 2018. Report looks at Air Berlin example and poses possible changes to UK regime including special airline administration regime to support continuation of services and ensure pax repatriation.



What happens to insolvent airline slots-Monarch Airlines Limited v Airport Coordination Limited 2017 EWCA Civ 1892

1. Can administrator sell or do slots return to pool?
2. Monarch went in to administration on 2/10/17 after applying for historic slots but before they were allocated.
3. ACL, the coordinator, refused to allocate pending CAA decision on whether to revoke Monarch operating licence. Monarch clear not going to use slots but was going to “exchange” –sums involved estimated at £60m.
4. Case hinged on whether an airline in administration with no intention of flying and with its AOC provisionally suspended was an air carrier (“an air transport undertaking holding a valid operating licence at the latest on 31 January for following summer season”-Art 2 Slot Regulation) for the purposes of historic entitlement under Article 8 of Slots Regulation.
5. As a matter of language, it seems to us that a collapsed airline, even one that has “no realistic prospect of resuming air transport services”, can perfectly well be referred to as an “air transport undertaking”. It may be a failed “air transport undertaking”, but that need not stop it being an “air transport undertaking”;

