Airline Insolvency Review

A call for evidence by the Government's Airline Insolvency Review

ABTA response – May 2018

ABOUT ABTA

This response is submitted on behalf of the membership of ABTA – The Travel Association. ABTA has 1,157 separate legal entities in Membership, with a significantly larger number (more than 5,000) of operating brands. Members operate from over 4,000 physical locations, with an additional number of associated homeworkers and outside sales representatives.

ABTA Members provide 90% of the package holidays sold in the UK, with Members also selling millions of independent travel arrangements. Annually, ABTA Members' turnover is in excess of £37 billion. ABTA's focus is ensuring that Members can operate their businesses in a sustainable and successful manner, enabling their customers to travel with confidence.

ABTA's role in insolvency protection in the UK travel industry

ABTA is the UK's leading and largest BEIS 'Approved Body' under the 1992 Package Travel Regulations, providing financial protection to consumers, the others being the Confederation of Passenger Transport (CPT) Bonded Coach Holidays (BCH) scheme and the Association of Bonded Tour Operators Trust (ABTOT).

ABTA protects some £2.6 billion of turnover through its financial protection scheme for the 441 Members who undertake non-licensable (non-ATOL) package and non-package travel arrangements as principal.

ABTA also operates a scheme of financial protection in relation to retail agents under its own rules. The purpose of the scheme is primarily to provide pipeline protection to ABTA's tour operator Members in the event of an ABTA travel agent failure. The scheme, where required, will also consider claims from customers in the event that the agent has not booked the customers' holiday, or in certain cases, where the customers' contract with the principal is unenforceable and the customer is otherwise likely to suffer a financial loss.

ABTA holds some £536 Million in financial security, principally in the form of bank bonds or surety policies from insurance companies sourced by Members in relation to its schemes of financial protection.

ABTA Insurance PCC Limited is a wholly owned subsidiary of ABTA and has provided the vehicle for the reserve fund required by virtue of Regulation 18 of the 1992 Package Travel Regulations since 1993 in the form of a captive insurance protected cell company. The total assets of ABTA Insurance are some £20 million and of the ABTA Group are some £36 Million.

ABTA and the Federation of Tour Operators (FTO) have operated financial protection schemes for UK consumers since the late 1960s, before the ATOL scheme was introduced in the 1970s or the PTD/PTRs in the 1990s. ABTA and the FTO merged in 2008. ABTA is therefore the longest standing as well as a highly experienced financial protection organisation operating within the UK.

ABTA has a long-standing experience of financially protecting all types of holiday, including air travel, having operated the ABTA scheme of protection to include Members' ATOL activity until 1992. The FTO scheme included most major travel companies' ATOL activity until the same time. More recently, ABTA operated the ABTA-ATOL Joint Administration Scheme with the Civil Aviation Authority (CAA) from 2012 until 2017, providing an air and non-air integrated solution to up to 180 companies following the introduction of the 2012 ATOL Regulations.

ABTA therefore uniquely represents the full spectrum of the industry providing organised travel arrangements for consumers and business travel agents.

In relation to financial protection, ABTA represents:

- 659 ATOL holders
- 496 businesses providing financial consumer protection through ABTA as their 'Approved Body' under the Package Travel Regulations
- 359 of those businesses participate in both sets of arrangements

ABTA holds more than 1,240 individual performance Bonds with a total of value of more than £500 million in relation to our Members' travel activities. A much smaller number of Members utilise financial failure insurance products and the arrangements of the two other BEIS Approved Bodies (CPT BCH and ABTOT) to comply with ABTA's requirements and / or those under the Regulations.

ABTA has operated as a BEIS (formerly DTI/BIS) Approved Body since 1993 at the inception of the 1992 PTRs. The ABTA Scheme of Financial Protection, which Members may also extend voluntarily to protect single element sales (for example, accommodation only) in addition to packages, has operated without the need for any Government support or intervention for the 25 years that the PTRs have been in place.

The ABTA operated reserve fund has functioned without falling in to deficit at any stage. The FTO (now incorporated in to ABTA) scheme (formerly known as the TOSG Trust Fund scheme) successfully dealt with the 1982 Laker /Arrowsmith Holidays failure; the 1990s failures of ILG Travel (number two operator in the UK); the 1994 Best Travel / Grecian / Cypriana Holidays and Yugotours/ Medchoice failures. In each case, these were 'top ten' groups.

In total, ABTA has dealt with some 656 travel company failures over those 25 years.

ABTA's approach in responding to the Airline Insolvency Review

ABTA is approaching this first stage of the process with an open mind, and has consulted with Members on how the Government should proceed. Rather than advocating for any particular outcome, this response seeks to provide a balanced analysis of the current regulatory landscape and future regulatory options, as examined in the Review's Call for Evidence. We will also outline ABTA's own design principles, which seek to build upon those within the Review paper. We believe

alignment with these principles will deliver a solution that meets the interests of consumers and the wider travel industry.

While we approach this Review with an open mind, ABTA has previously supported an all-flight levy approach to protecting consumers in the event of airline insolvency. We have argued this could be delivered at national level or through the European Union. ABTA's support for an all-flight levy aligned with our calls for a level playing field and enhanced consumer clarity relating to travel-based consumer financial protection. This all-flights levy position was informed by the close historical links between airline failure and that of linked holiday companies, which is covered in more detail in the response, below.

Whichever route the Government chooses to pursue, ABTA would highlight the need to consider carefully the way in which the UK's aviation and travel industries have changed in recent decades, especially the trend away from consumer protection delivered through the mechanisms provided for in the EU Package Travel Directive. For flight-based consumer financial protection, this is most notably the ATOL scheme. The long-term decline in overall protection levels has arisen from the success and growth of low-cost carriers, especially since the liberalisation of air services in Europe in the mid-1990s, and the rapid spread of the internet enabled consumer self-build arrangements. Combined, these factors have driven an increasing trend towards do-it-yourself holidays.

The revised EU Package Travel Directive (PTD), coming into effect on 1 July 2018, is expected to increase levels of protection for some ATOL protected holidays, particularly as many current "flight-plus" holidays will become full packages. There also appears to be some move back to the traditional package holiday, most likely because of economic headwinds and pressures on household budgets. However, the proportion of all holidays protected through the ATOL regime as regards insolvency protection is not expected to increase notably, and overall protection levels are significantly below where they were historically. For example, in 2018 it is anticipated that around 50% of all flight-based holidays sold within the UK will remain outside of the scope of ATOL protection, and not subject to formal insolvency protections. The equivalent figure at the time of the original adoption of the EU Package Travel Directive, in the early 1990s, was in excess of 90%.

However, the reality is that, while the number of protected flights has declined over-time, the political pressures around a large-scale airline failure that leaves thousands of UK travellers overseas remain the same today as ever. The practical effect of this political pressure has been clear in the reactions taken by the respective Governments to two recent high profile failures: XL Group, which failed in 2008, and Monarch Travel Group, which failed in October 2017. The political imperative to act on behalf of stranded UK citizens is, of course, understandable but nonetheless the propensity to act first and seek clarity around protection status later, only adds to the continuing confusion and frustration when failure occurs. In particular, repatriation of all citizens regardless of protection status acts to muddy the waters around the value of purchasing protected travel arrangements.

In this response, ABTA has provided a background to airline insolvencies in Europe, including recent regulatory consideration at the European level. We have reflected upon the current landscape for flight-based consumer financial protection within the UK, and provided some observations around the future options explored in the Review. Finally, in the last section of this paper, ABTA has outlined its own design principles that we believe should guide the Government's approach to airline insolvency. These are separate from, but build upon, those outlined in the Review paper. ABTA's design principles are:

1. Giving consumers transparency and clarity around consumer protection;

2. Preventing market distortions between competing businesses – in particular not allowing a burden that only falls on UK airlines and travel organisers in a market where consumers are served by carriers from many other jurisdictions to a highly significant degree;
3. Avoiding duplication of consumer protection costs, and additional cost burdens for businesses currently providing protection;
4. Providing all purchasers of airline seats with equality of protection – consumers, business travellers, travel agents/intermediaries and organisers
5. Providing adequate liquidity for any solution.

1. Background: Airline insolvency and the travel industry

Airline Insolvency in the EU

The liberalisation of the EU aviation market heralded significant consumer benefits in terms of price competition and greater choice of destinations. These consumer benefits have also led to market disruption that has left a number of airlines unable to adapt. This has seen a significant rise in the number of airline insolvencies, significantly affecting passengers either left stranded overseas or losing out financially.

Following a number of significant failures of EU-registered airlines at the turn of the previous decade, and the differences noted in Member States' systems for dealing with airline insolvency, the European Commission obtained an impact assessment from the consultancy group, Steer Davies Gleave (SDG), in 2011. The impact assessment was part of a European Commission-led review that culminated in the Communication "Passenger protection in the event of airline insolvency", published in April 2013**.**

While the Commission ultimately did not recommend a regulatory solution, the review found that passengers' awareness of the type of protection they received was generally poor, with 66% of the people surveyed not knowing whether they were protected in the event of an airline insolvency[1]. The assessment identified that there were 96 insolvencies of EU-registered airlines operating scheduled services between 2000 and 2010, with a peak of 14 insolvencies in both 2004 and 2008.

SDG noted that the number of airline failures is closely linked to the size of the Member State's aviation market, with the largest number of failures in the UK and Spain – respectively the first and third largest aviation markets in the EU. It estimates that 1.8-2.2 million passengers were affected during that period, the majority of whom did not enjoy formal consumer protection (76%).

ABTA believes it would be useful for the Airline Insolvency Review to undertake similar research, especially around consumer awareness of the protection available under different booking scenarios, to inform any recommendations.

Impact of failures on the wider travel industry

Airline failures can often lead to the failure of travel organisers, as they are liable for all aspects of a package holiday under the Package Travel Regulations (PTRs). Travel organisers, as defined by the PTD, will be required to replace the flight component of a package holiday, and some other protected arrangements, to the same standard and at no extra cost to the consumers, or refund the consumer for all aspects of the holiday, at considerable costs to the travel company.

[1] European Commission – Impact assessment of passenger protection in the event of airline insolvency, March 2011.

A substantial proportion of the failure costs incurred in the ATOL scheme over the years have related to airline failures. Clarksons (Courtline); Laker and Arrowsmith Holidays (Laker Airways); ILG (Air Europe); XL Group (XL Airways) and Monarch Travel Group (Monarch Airlines). These failures led to significant costs being incurred by customers not protected under the ATOL scheme or the taxpayer, as demonstrated by:

- The XL Leisure Group's failure in 2008 left 85,000 holidaymakers stranded overseas, with another 200,000 holidays written off. 10,000 of the 85,000 holidaymakers were not protected under the ATOL scheme but were brought home by the CAA in any event because, it was reported to the CAA Board, of the difficulties in sorting people out at foreign airports and the risk to public order.
- Alitalia's failure where the Italian Government in May 2017 provided the failed carrier with a €600 million bridging loan to allow the airline to continue to operate for another six months. It was hoped a buyer would be found in this time but the Italian election delayed this. In 2016, Alitalia carried 22.6m passengers.
- Air Berlin's failure where the German Government in August 2017 provided a loan of €150 million to, as with Alitalia, allow it to continue operating while administrators negotiate with prospective buyers for parts of the business.
- Monarch failure where 80% of its stranded passengers (around 110,000) were unprotected, with the Government left to incur the costs at the taxpayers' expense, estimated at £60 million. The CAA also confirmed that an estimated 300,000 future bookings (600,000+ consumers) were cancelled because of this failure. This is in addition to the £25.6m spent the previous year for "contingency planning" for a repatriation programme in anticipation of Monarch's failure after the company suffered a period of uncertainty in October 2016.

2. The current regulatory landscape

Air Travel Organisers' Licensing (ATOL) scheme and the Air Travel Trust Fund (ATTF)

The Air Travel Organisers' Licensing (ATOL) scheme is the mechanism used to comply with the EU Package Travel Directive for flight-based package holiday arrangements, and some flight-only sales, protecting over 20 million passengers a year. This equates to roughly half of total leisure air holidaymakers, and a lower proportion still of all air travellers.

The ATOL scheme, despite the issues noted below, has been largely effective in protecting consumers in the majority of cases.

The ATOL scheme was for the majority of its life based on a two-tier structure, with each participant providing, at its cost, primary security to the scheme. The reserve fund, the Air Travel Trust Fund (ATTF), was just that, a reserve fund that acted as a secondary layer as a mutual fund dealing with cases where the primary security proved insufficient.

The ATTF went into deficit for many years because of a combination of two issues. The first was a failure to collect contributions for many years, despite a reducing fund balance and the industry and the Air Travel Insolvency Protection Advisory Committee (ATIPAC)'s calls for this to be addressed. Levy powers had been lost from the Regulation.

The second reason was to allow participants, in most cases, to release the primary security provided and to operate the ATTF as a primary underwriter of the ATOL schemes liabilities. The ATTF was then (and remains) funded by a flat rate contribution system (APC). This was originally set at £1 per person and then raised following additional losses to £2.50.

This was, for the majority of participants, a benefit, which released banking facilities and increased the headroom available for business development and investments.

However, it also acted to transfer risk from individual participants in the scheme to the fully mutualised pool and from the pool to the taxpayer, who ultimately stand behind the scheme and its obligations to consumers by virtue of the Member States' obligations under the PTDs and as a political reality.

The flat rate APC of £2.50 applies in all cases – whether a low cost package costing a few hundred pounds or a round the world cruise costing tens of thousands of pounds. The flat rate cost applies to the strongest company and the weakest equally. It also applies equally to any structure of payment terms – so that a business requiring payment of the full cost at the time of booking carries the same cost as a business only requiring a low level of deposit. In each case, lower risk competitors and the taxpayer cross subsidise the risk that others represent.

This must, inevitably, represent a perverse incentive to unconstrained growth, with participants carrying part of the cost/risk of other participants in the scheme who do not carry their appropriate cost share.

The ATTF also serves an important role as the provider of the liquidity to facilitate repatriation operations, given the guarantees and pre-payments that may be required.

The ATOL scheme does not completely align as a method for the proper implementation of the Package Travel Directive by a Member State. One reason for this is that there is conditionality in relation to when claims will be paid on the insolvency of an ATOL holder, even when the consumer holds a valid ATOL Certificate. For example, a claim may be declined for technical reasons relating to agency agreement paperwork between a travel agent and the failed ATOL holder, a fact of which the consumer could not possibly have any knowledge or understanding.

2.1. Section 75 (s75) of the Consumer Credit Act 1974

In addition to the separate ATOL and PTRs, in the UK we have a unique piece of consumer protection legislation in the Consumer Credit Act. Section 75 of the Act imposes liability on credit providers for some but not all credit card transactions. This statutory liability does not exist in relation to debit cards, charge cards, corporate credit cards or consumer credit cards belonging to non-travelling consumers or those where the value is out of statutory range (£100 to £30,000) although card issuers might accept voluntary liability in some cases. There are also long standing questions in relation to the status of card payments made to intermediaries and in respect of non-family members within groups.

ABTA has long raised concerns around duplication of protection in relation to credit card payments and s75. The same is also true of the non-statutory Charge-Back scheme, where the card-issuing bank will charge back to the merchant's acquiring bank the cost of reimbursing a consumer who has made a payment for a service not received. S75 raises the cost of taking card payments for the industry, and in many cases provides no additional consumer benefit as the arrangement purchased is also covered under the PTD.

2.2. Insurance, bonding, trusts

The use of Bank and Insurance Bonds, insurance policies and combinations thereof was the norm for the majority of ATOL and non-ATOL travel financial protection for many years. The ABTA, ABTOT and

CPT BCH schemes still utilise these instruments, as do the CAA in relation to new and high-risk applicants. These options are embedded into the 1992 and 2018 PTRs regime.

In general terms, although certainly not over supplied, the bond and surety market has continued to operate well for the BEIS Approved Bodies. There is no difficulty for good quality risks to procure the required facilities. Equally, poor quality risks have always faced greater difficulties and collateral requirements, but that very fact provides a beneficial incentive for businesses to strengthen their balance sheets and working capital positions. A flat rate APC protection system risks supporting growth unconstrained by the true costs of protection.

Trust accounts, under the old PTR regime were almost completely unregulated, with no requirements in terms of the independence of Trustees and prohibitions against pre-payments from the trust to suppliers, before delivery of the travel service. The new 2018 PTR regime introduces more requirements on Trusts, which if enforced by Trading Standards, would improve the current situation where there is little, if any, assurance around trusts.

For these reasons, ABTA does not accept Trust Account arrangements in isolation for these purposes and is not immediately minded to alter that position under the new PTRs.

3. Other regulatory options for protecting consumers in the event of airline insolvency

3.1. Rescue Fares

Largely in response to the European Commission's consideration of a regulatory solution in 2014, IATA, the airline trade body, adopted a voluntary scheme for its airline members whereby carriers agree to make available 'rescue fares' for those affected by the insolvency of another carrier.

IATA claims the availability of these fares reduces the need for a formal regulatory mechanism for airline insolvency, which it opposes as offering little consumer benefit. IATA states that rescue fares should be made available under the following conditions:

- They should be charged at a nominal amount;
- They should be available for purchase up to a maximum of two weeks after the event to anyone flying to and from or within Europe who does not already possess insurance covering this eventuality.

ABTA, and our European trade body ECTAA, have long raised concerns as to the effectiveness of the rescue fares regime. Taking account of recent failures, we believe there is little evidence that the scheme is working in the way IATA has set out, and we would urge the Review to take a closer look at the evidence around the effectiveness of this regime.

We believe that rescue fares, in fact, are least likely to be made available when they are needed most. That is to say, when the exit of an airline creates capacity constraint, market forces cause prices to rise immediately and the actual price dynamic is often one of rising fares. Relying on rescue fares would not provide an adequate solution to the scale of the potential problem when an airline fails.

Indeed, in relation to the Monarch Airlines failure, it is the view of the DfT that a shadow airline operation was required precisely because there was no adequate or economic market capacity available, despite the failure happening in October.

3.2. Orderly wind-down of airlines in the event of insolvency

ABTA notes that the Review considers the orderly wind-down of airlines, as one of the main proposed future regulatory options to be considered, and that reference is made to similar schemes in Germany (Air Berlin) and America (Chapter 11 protection).

The primary condition for any orderly wind-down system is that the airline involved would have to be offered a form of protection from its creditors for a period of time, probably a relatively short period of around two weeks, during which it would repatriate any customers that would otherwise be stranded overseas. ABTA is unsure how, and indeed whether, such a scheme could be practically extended to non-UK airlines, and we welcome comments from the Review, in their interim report, on the ability of the UK Government to legislate in this area for non-UK carriers.

ABTA acknowledges the attraction, in terms of the Government's exposure to the consumer impacts of an airline failure, presented by the option of an orderly wind-down procedure. However, it must be recognised that a fundamental element of any such scheme is the ability to provide sufficient funds to ensure an airline's creditors will honour their contractual obligations during the period of wind-down. Therefore, any such scheme is necessarily reliant on access to significant funding which, in ABTA's view, must logically mean either compulsory insurance (excluding the ability of insurers to withdraw cover when financial difficulties become clear) or some form of reserve fund.

Airline wind-down in the UK: Case Study – Paramount Airways

The 1990 failure of Paramount Airways led to one of the only examples of an attempt to operate an orderly wind-down of an airline operation in the UK, while that business was in Administration. The wind-down was attempted in order to prevent an even greater detriment to consumers and the travel companies involved. While the Administration met its operational objective to keep customers flying during the peak summer period (August 1990), the costs and issues were very significant and none of the principals involved would readily consider supporting such an operation again.

The reality was that an Administration Order from the UK Courts provided some protection from creditors, but it had a very limited effect on securing the unencumbered right to continue operating a flying programme. Airports and other key suppliers are detention creditors or effective monopoly suppliers and any stand still position on historic debts does not compel such suppliers to support future operators.

Insolvency practitioners seeking an Administration Order will only do so with sufficient funding in place to support the need to pre-pay key suppliers going forward and to meet all liabilities. This will then require those funding the Administration to fully fund operations that may already have been paid for in whole or part and, often, to settle historic debts in order to avoid detention of aircraft at airports. In the case of Paramount Airways, despite an Administration Order, it was necessary to go through the Court to have the snowploughs parked around an aircraft at a UK airport removed. The aircraft was released, but the de-facto detention power of such suppliers (including handlers/fuellers) should not be under-estimated. Beyond the EEA, such powers may be unconstrained by Administration Orders.

The Paramount case study, above, and the Air Berlin example, demonstrate that protection from existing creditors is insufficient to manage an orderly wind down of an airline's operations, returning all customers who are overseas, utilising the airlines' own aircraft. The insolvency practitioner(s) involved, as Administrators, will require adequate funding and guarantees to undertake such an operation. This may require more than 'new' costs to be covered, as creditors are under no obligation to continue to deal with an airline where its historic debts have not been settled. There are a series of creditors who are critical and often enjoy a monopoly or quasi monopoly supplier position (destination airports, handlers, fuel suppliers), who may leverage their position to recover earlier losses.

The DfT operation for the UK Government in relation to Monarch Airlines, executed by the CAA alongside the ATOL repatriation operation, was successful for travellers but was achieved at a very high cost in both the 2017 contingency planning operation (£26 million) and the 2018 actual operation (c. £60 million). It is not an example of an orderly wind-down, but rather an example of a high cost (£500 per seat) shadow flight operation utilising premium third party (to the failed airline) aircraft capacity, primarily from overseas airlines, at a relative low point in the season (October).

4. Design principles for future regulatory reform

ABTA believes that any solution to the issue of Airline Insolvency within the UK must adhere to the following principles:

1. Giving consumers transparency and clarity around consumer protection;
2. Preventing market distortions between competing businesses – in particular not allowing a burden that only falls on UK airlines and travel organisers in a market where consumers are served by carriers from many other jurisdictions to a highly significant degree;
3. Avoiding duplication of consumer protection costs, and additional cost burdens for businesses currently providing protection;
4. Providing all purchasers of airline seats with equality of protection – consumers, business travellers, travel agents/intermediaries and organisers;
5. Providing adequate liquidity for any solution

We have outlined the rationale for these principles, below.

4.1 Giving consumers transparency and clarity around consumer protection

The current landscape is such that protection received in the event of a failure is determined by the decisions made by the consumer at the time of booking and purchasing their flights, decisions that are often made without insight or additional thoughts into the potential consequences of the decision being taken.

As has been so clearly demonstrated above, whilst, in theory, the exclusion of airlines from a scheme of protection means that their customers are not protected against financial loss, in practice, those passengers have repeatedly been repatriated at cost to the taxpayer and other industry participants.

The lack of clarity around the meaning of the "ATOL Protected" branding is an important part of this problem. The CAA, who governs the ATOL scheme, currently require any company holding an ATOL to reference ATOL within their marketing, regardless of what is being sold. In practice, this means that where a company sells a range of products, including some that lie outside of ATOL protection, their marketing can often give a misleading sense of what is protected – without any intention to do so by the trader. Monarch was a case in point, whereby their broadcast advertisement carried the phrase "ATOL Protected" despite protection actually only applying to around 10% of their sales (at time of failure).

ABTA believes the overriding rationale of the approach taken by the CAA was to drive up overall recognition amongst consumers of the ATOL brand. This approach has been successful – ABTA's consumer survey shows recognition has risen sharply in the previous five years and now stands at around 70%. However, ABTA would suggest that it is more important, from a public policy perspective, that people have a greater level of understanding of what the ATOL brand means, specifically in relation to the protection of their own travel arrangements, rather than a vague association with the brand. There is no indication this more sophisticated level of understanding of consumer protection exists, or that there has been any concentrated attempt to deliver this outcome.

ABTA believes that whatever option is adopted, there is a need to ensure that there is clarity for consumers and a level playing field for companies who are in the business of making available flight seats in whatever capacity.

4.2 Preventing market distortions between competing businesses

ABTA has repeatedly called for a more level playing field concerning the provision of consumer protection between businesses operating in the travel marketplace. As such, we welcome the Review's commitment to the minimisation of market distortions.

ABTA would highlight, however, that the market in protection is currently highly distorted, which increases consumer confusion. Businesses selling the same service to consumers have completely different obligations and costs. For example, an airline provides no consumer protection in relation to the sale of an aircraft seat. However, a holiday company selling packages provides full financial protection, with other liabilities. Meanwhile, a linked travel arranger under the new PTD will provide limited and generally transitory protection, and a flight only sale by a travel agent may be ATOL protected or exempt (depending on sales method). All of these passengers may sit side by side on the same aircraft, but will likely be completely unaware of the different levels of protection they each enjoy.

Elsewhere, non-UK travel businesses may provide very different levels of protection, even within Europe, under the PTD regime. The case of lowcostholidays.com illustrates the difficulties faced by consumers and the lack of arrangements for organised repatriation.

As a principle, ABTA believes the Review should seek to provide a consistent approach to consumer protection for businesses competing in the same marketplace. ABTA also strongly supports the notion that any solution should not disadvantage UK businesses vis-à-vis their non-UK competitors. For this reason, we do not believe a workable solution can be one that only applies to UK registered companies, and agree that this might logically favour a position of protecting the consumer based on the UK being the point of departure.

4.3 Avoiding duplication of protection costs, and additional cost burdens for businesses currently providing protection

ABTA has continually advocated for a single set of regulatory arrangements, which would provide a more straightforward and easily accessible environment in terms of costs and operations – for both businesses and the consumers. This would make it easier for businesses to comply with all consumer protection regimes (PTD and any new airline insolvency protection obligations) and for consumers to better understand the type of protection, if any, available to them based on the type of bookings made. To ensure regulatory effectiveness, a single organisation should have responsibility for and oversight of the business's regulation.

Furthermore, any fundamental review of consumer financial protection in the travel industry should seek to address the issues of duplication on protection costs that exists currently within the industry, including overlaps between ATOL costs, Section 75 protection under the Consumer Credit Act and the cost of insurance and bonding. ABTA believes it is important that further duplication, and further imposition of cost, be avoided for those travel companies that are already providing consumer protection for their flight sales. It is vitally important that any new regime works alongside, and does not create an additional layer of protection in addition to, existing regimes.

The Monarch Airlines failure, as with the XL Airways failure before it, demonstrate the dangers of reinforcing consumer misinformation in relation to the nature and extent of protection. In the case of Monarch, around 10% of Monarch Airlines passengers were protected by the ATOL held by Monarch Holidays. Yet, when the group failed, all passengers were repatriated and no consumer has been asked to contribute directly to the taxpayers' costs. As the liability has fallen on taxpayers, all families in the UK, many of whom may never travel on holiday overseas, have contributed to the cost of protecting those who decided to participate in a voluntary leisure activity and to book to travel unprotected.

These behaviours will, over time, continue to undermine the ATOL scheme and other systems, and encourage consumers to disregard protection considerations when booking travel arrangements.

4.4 Providing all purchasers of airline seats with equality of protection – consumers, business travellers, travel agents/intermediaries and organisers

In the event that a scheme of financial protection and/or repatriation protection is introduced to protect those purchasing flight only arrangements from airlines, ABTA considers that an important design principle should be that all purchasers (consumers, business travellers, corporates, travel agencies and tour operators) should receive protection on equal terms. All users of airline seats carry similar risks and regulated travel companies have additional obligations under the PTR and/or ATOL regimes. It is an important principle that they do not, through the supply chain, carry both sets of costs without the benefit of equal protection under any future airline system, whether that is organised repatriation through a managed administration at the end of an airline's life or through the benefits of a scheme providing an insurance of other financial indemnity.

4.5 Providing adequate liquidity for any solution

If 'organised repatriation' is to be part of a future regime, whichever method of execution is selected, then there must be sufficient liquidity immediately available to the responsible authority – including the necessary resources and competence - to organise such arrangements, whether working with an airline's administrators or otherwise.

For an organised repatriation operation to be managed in an optimum window to mitigate costs and consumer detriment, it will be necessary for the regulator to have adequate powers to be able to manage the end of life of an airline licence. As the existing regulator of airline licensing within the UK, as well as management of the ATOL regime, the CAA would seem to be the most appropriate regulator for any new airline insolvency regime.

Any new regime would have to take adequate account of the different risk profiles of airlines, as well as the different scales and risks of individual carriers. In addition, ABTA would not support the automatic assumption that delivery of a new regime would be best achieved through extension of the existing ATOL mechanism, which would require detailed consideration, and we would be

strongly opposed to any proposal to fund future airline insolvencies through funds collected by the existing Air Travel Trust Fund (ATTF).

It is important to be clear that ABTA does not believe that consumer-level insurance or other arrangements can efficiently or cost effectively 'rescue' consumers. The more economically able consumer may be able to afford to 'self-rescue' and then to reclaim costs from an insurance scheme at a later date, but such arrangements will not address the absence of capacity in a major failure or assist the many regular consumers without the necessary resources.

Consumer-level insurance schemes may also, naturally, withdraw cover from any airline, which is assessed to be in difficulties, thus amplifying the airline's problems and making any refinancing or recovery plan more difficult, as consumer concerns follow credit market signals. That effect has been seen in the past as the credit market withdraws cover from suppliers to airlines.

Next Steps

ABTA is keen to work constructively with the Review over the coming months to ensure thorough consideration of the issues around airline insolvency, as examined in this paper. We are keen to participate in any stakeholder workshops or roundtables that are organised, and will be happy to facilitate engagement opportunities with our Members as required. We are also happy to have conversations at any point about our experience of operating financial protection schemes over many years, should that be of help to the Review.

More information: For more information please contact [redacted]