AIRLINE INSOLVENCY REVIEW: CALL FOR EVIDENCE
RESPONSE OF DLA PIPER UK LLP

Introduction

DLA Piper is a Global Law Firm, operating in over 40 jurisdictions, with specialist UK and global expertise in aviation finance, aviation regulation and litigation and restructuring. Our Aviation Team advises key stakeholders in the sector including airports, banks and funders, manufacturers, airlines, aircraft lessors and regulators, whilst the Restructuring Team, one of the largest in the World, has acted in a number of distressed aviation matters including, most recently, Monarch, Air Berlin and Alitalia.

The Airline Insolvency Review

Our response to the consultation proposals focusses on two principal challenges:

- Practical arrangements to repatriate passengers in the event of airline insolvency - particularly having regard to potential market capacity limitations in the event of a large fleet airline insolvency; and

- Mitigating costs for passengers and the public purse (particularly repatriation costs) when an airline becomes insolvent.

Summary

The key challenges identified in the Call for Evidence present complex considerations for UK regulators in a highly competitive global industry which faces a number of commercial challenges.

In order to consider the potential impact of each proposal, noting, in particular, the risk that proposed solutions may create barriers to entry in the industry or, themselves, precipitate financial distress, we have addressed the proposals by providing our views on an "advantages" / "challenges" basis in the table below.

Call for Evidence: Response

Challenge	Proposition	Advantages / Potential means of implementation	Challenges
Repatriation - funding	Mandatory levy on all airline passenger tickets for flights departing the UK Used to create fund to a determined level to be deployed to repatriate passengers in the event of an airline insolvency Levy flexible in amount tiered to build fund to appropriate level	• Creates fund to meet costs of airline failure and mitigates taxpayer exposure. • Applied as a standard amount on each ticket mitigating risk of competitive disparity between airlines. • Flexible so that once fund established to appropriate level over time, the levy can be reduced or suspended and can be re-implemented if/when fund depleted. • Potential that if applied to all passenger tickets the level of levy per passenger could be low / minimal. • Scope for discretion and flexibility for how the fund is deployed to achieve repatriation in specific circumstances (third party wet lease market / supporting interim funding of insolvent fleet's operations / other). • Industry consensus could be sought as to the administration / implementation of such a repatriation protection fund / regime. • For debate as to whether such fund would be intended to pay costs beyond repatriation (e.g. financial reimbursement of passenger who do not require repatriation).	• Would require appropriate framework for administration of the fund through regulatory bodies. • Adds up-front cost to passengers (albeit level of levy would need to be determined from analysis and assessment of target fund level). • Would take time for fund to be established. With that mechanism in place, if there was an insolvency in the short term it may be possible for a structure to be in place for taxpayer funds advanced initially to be repaid from the fund subsequently once established from the levy. • Consideration would be required for the position of passengers with separate protection (travel insurance or otherwise). Potential that such a fund would in practice effectively mitigate/replace (in part) insurers' exposure. • If the fund was intended for use beyond repatriation costs (i.e. also for reimbursement of passengers' financial loss), the level required may be significantly increased and the position of passengers with other protection for their financial exposure would need to be considered.

Challenge	Proposition	Advantages / Potential means of implementation	Challenges
Repatriation - capacity in the event of large carrier insolvency	Access to Airframes (and other resources) of the insolvent entity's fleet	• If the market cannot meet the capacity to cover repatriation of the insolvent airline's passengers, continuing to fly part of the insolvent fleet may be the only means of meeting capacity. • Continued operation of the insolvent airline for repatriation purposes via an administration regime is a possible option. • Potential area for consideration as to whether the scope of powers required for the CAA / Government to access the insolvent aircraft fleet to meet capacity requirements for repatriation effectively.	• Funding the continued operations is a key challenge. • Stakeholder / counterparty co-operation is required. Airports / other stakeholders are needed to maintain services (there is essential supplier protection in UK insolvency legislation but still presents substantial challenges in practice) particularly on a diverse and large-scale supply chain operating in multiple jurisdictions. • Continued operation (and costs of doing so) may be contrary to the body of creditors' interests in the current UK insolvency / administration legislative regime. • At least 50% of all aircraft (operating globally) are owned by third party lessors and leased to airlines / operators. Continued operation / temporary requisition of the fleet therefore is likely to impact the rights of third party lessors and any provision would therefore need to have regard to those third party ownership interests.

Challenge	Proposition	Advantages / Potential means of implementation	Challenges
Regulatory Management of Airlines subject to financial distress	Regulatory Role: the CAA and the Air Operator's Certificate Expansion / strengthening of financial robustness requirements for an AOC Powers to require protection of passenger fares in certain circumstances of financial distress	• Powers for CAA to impart increased requirement on operator to demonstrate financial position. • Power to require level of funds to be protected to meet costs of failure and/or to protect passenger advance fares.	• Potential barrier to new entrants. • An airline in financial difficulty is least likely to be able to provide financial support to demonstrate its solvency at the time that it is required (i.e. a demand on resources at the time it can least afford it). • Requiring an airline which is in financial distress to ring fence funds which it requires for its operational cash flow may precipitate an insolvency. • The regulatory approach in this area also is a factor in potential restructuring / rescue deals for an airline facing financial distress. Imposing higher obligations could therefore result in potential impediment to implementing a restructuring solution an airline in financial distress.
Repatriation - funding	Requirement for airlines to maintain insurance to cover passenger repatriation costs in the event of their insolvency	• Would protect the taxpayer from the costs of repatriation. • Would need to be a condition of the airline's operation.	• Potential for significant increase in costs for airlines. • Likely that the smaller airlines / those with less financial strength would face substantial premiums / lack of access to insurance. • In the event of financial distress, could serve to precipitate an insolvency by insurers refusing to offer cover. • Risk of insurers repudiating in reliance on other breaches, leaving passengers without a remedy.

Challenge	Proposition	Advantages / Potential means of implementation	Challenges
Repatriation / Passenger Financial Exposure	Requirement for passengers to have insurance to cover repatriation costs in the event of the airline's insolvency	• Mitigation of taxpayer exposure to the cost of airline insolvency.	• Logistically, likely that on a large insolvency, regulatory and governmental input would be required to organise prompt and effective repatriation in any event. • Costs may be recoverable from the insurers but likely that initial immediate costs and arrangements would require regulator and government intervention. • Issues of monitoring compliance - substantial regulatory change to require proof of travel insurance as basis to fly. • Issue for passengers unable to obtain / refused insurance.

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