

MILBANK AVIATION LEGAL AND INDUSTRY UPDATE

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UPDATE – AIR TRANSPORT ASSOCIATION ACTION AGAINST EX-IM BANK

As previously reported in November 2011, the Air Transport Association of America, Inc. (the “ATA”), the principal trade association representing U.S. airlines, filed a complaint against the Export-Import Bank of the United States (“Ex-Im Bank”) and several of Ex-Im Bank’s senior officers alleging that Ex-Im Bank’s recent approval of \$1.3 billion in loan guarantees and \$2.1 billion in preliminary commitments to Air India violated certain provisions of the Export-Import Bank Act of 1945 and the Administrative Procedure Act.

On January 16, 2011, Judge James Boasberg of the U.S. District Court for the District of Columbia denied a motion for preliminary injunction filed by the ATA in connection with the suit. The ATA’s motion alleged that allowing the Air India financing to move forward during the ongoing litigation would cause irreparable harm to U.S. airlines, specifically noting that one aircraft was scheduled for delivery during the month of January, and another during the month of March.

In denying the motion, Judge Boasberg wrote that one of the criteria the ATA must establish is that its member airlines participating in the litigation will “suffer irreparable harm in the absence of preliminary relief.” Noting that none of those participating in the litigation offer direct service to India, Judge Boasberg opined that “any injury to Plaintiffs that may be caused by the delivery of one or two planes to Air India is, at this stage, wholly speculative.”

The judge also rejected the ATA’s further argument that any newly acquired aircraft put into international service by Air India would have an adverse effect on U.S. carriers’ ability

CAPE TOWN

On November 30, 2011, Brazil deposited its Letter of Accession to the Convention on International Interests in Mobile Equipment (the “Convention”) and the associated Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (together with the Convention, the “Cape Town Convention”), completing the final step in the country’s approval process, which began in late May 2011. In its Letter of Accession, Brazil made the necessary qualifying declarations under the Sector Understanding on Export Credits for Civil Aircraft (“ASU”) so that Brazilian airlines will be entitled to the benefit of certain discounts on the price of export credit agency financing provided to ASU participants who have made the qualifying declarations under the Cape Town Convention. Brazil has elected to apply Alternative A to all insolvency proceedings. However, unlike many other contracting states, it has designated a 30-day waiting period, rather than the more common 60-day period. The Brazilian Aeronautical Registry (the “RAB”) has been designated as the entry point for International Registry registrations, and Brazil will require that all RAB requirements be fully complied with prior to the transmission of any information from the RAB to the International Registry. The Cape Town Convention will enter into force in Brazil on March 1, 2012.

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to maintain their own international routes. Citing figures provided by Delta, a carrier participating in the litigation, Judge Boasberg noted that Delta's annual revenue on international routes where it competes with Ex-Im backed carriers accounts for less than 7% of the airline's total revenue, a figure that, were it to be adversely affected by the new deliveries at all, "hardly seems ruinous."

Ex-Im Bank spokesman Phil Cogan commented, "Today's ruling ensures that America's exporters will remain competitive and have a level playing field in the global marketplace".

The parties were scheduled to meet with Judge Boasberg during the month of January to discuss the next steps of the litigation. ATA Members United Continental, American, Atlas Air, Federal Express and United Parcel Service did not join the suit.

DEAL ROUNDUP

On December 9, **Aircastle** priced \$150M of unsecured senior notes at 9.75% due in 2018. These notes are in addition to Aircastle's issuance of \$300M notes in July 2010. Proceeds were used for general corporate purposes and the purchase of aircraft.

On December 13, **Jackson Square Aviation** closed a \$435M secured term loan for the purchase of 11 aircraft.

On December 19, **International Lease Finance Corporation** priced \$650M of 10-year unsecured notes at 8.625%. The bond is rated B1 by Moody's and BBB- by Standard & Poor's. Proceeds were used for general corporate purposes including paying outstanding debt maturities and purchasing new aircraft.

On December 22, **United Continental Holdings, Inc.** closed a \$500M variable rate revolving credit facility secured by aircraft and Newark and LaGuardia slots. This is the first financing for the combined United/Continental.

On January 11, **Egypt Air** secured a \$370M export credit loan to finance three Airbus A330-300s.

On January 11, **Etihad Airways** announced it had closed on a sale/leaseback deal for 23 engines with Sanad Aero Solutions and Engine Lease Finance Company. The deal is valued at \$367M and has a 10-year operating lease term.

On January 16, a consortium comprising **Sumitomo Mitsui Banking Corporation**, **Sumitomo Mitsui Financial Group** and **Sumitomo Corporation** agreed to acquire **RBS Aviation Capital** for \$7.3B in the largest ever sale of an aircraft leasing company. RBS Aviation Capital owns 206 aircraft and has commitments to purchase another 87.

On January 20, **Federal Express** priced pass through certificates worth \$250.1M at 2.625% and maturing in 2018. Proceeds from the certificates will be used to refinance a three-tranche EETC issued in 1997.



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