

Client Alert

UK government's new Corporate Insolvency and Governance Bill – as amended: an update on implications for the aviation industry

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On 3 June 2020, the Corporate Insolvency and Governance Bill was debated by the Committee of the Whole House of Commons. This follows on from the first reading in the House of Commons on 20 May 2020. This is the bill which enacts many of the measures referenced in the government's announcements earlier this year. Alongside some temporary Covid-19 response measures, the Bill had introduced a number of intended changes which, if enacted, would have had a significant impact on the range of options available to creditors and debtors in distressed situations in particular with regards to the aviation industry which we summarised in our Client Alert here.

In this note, we summarise certain amendments to the Bill which have now been made and are of specific relevance to the aviation industry.

Schemes & Restructuring Plan – “aircraft-related interests”

An unexpected novelty introduced by the Bill was that the proposed new restructuring plan and the existing scheme of arrangement framework contained in Part 26 of the Companies Act 2006, would not be available in respect of creditors with “aircraft-related interests”. An aircraft-related interest is a registered interest within the meaning of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (S.I. 2015/912) (the “Regulations”). The net effect of these provisions, if enacted, would have been to deprive companies with aircraft assets in financial distress of a valuable tool to restructure outside of a formal insolvency process.

From a debtor's perspective and from the perspective of creditors whose claims do not have the benefit of the protection of the Cape Town Convention this was a concerning development, as it threatened to have a significant impact on the way restructurings of UK airlines and aircraft leasing companies could be effected now and in the future. We considered therefore that there was a material possibility that, given the current issues and market conditions affecting the aviation industry and airlines, these provisions in the Bill were likely to be reconsidered as the Bill made its way through the various readings in Parliament.

Ahead of the 3 June session, the Government tabled an amendment to the Bill removing the provisions which would have excluded creditors with “aircraft-related interests” from the new restructuring plan and the existing scheme of arrangement framework. This amendment was passed, one of the few amendments to the Bill to have been adopted.

A point of interpretation

The exclusion of “aircraft-related interests” in the original Bill may have been intended to reflect certain language contained in the Regulations which some have argued prevents a cram down of “aircraft-related interests”. Regulation 37(9) provides that “No obligations of the debtor under the agreement may be modified without the consent of the creditor”.

We believe the better interpretation is that Regulation 37(9) is not a stand-alone provision and rather pertains to and is specific to the position of a creditor after an “insolvency related event” (as defined) has occurred with respect to the debtor. Whilst potentially open to debate, it is likely that a scheme of arrangement initiated by the debtor company would not fall within the definition of an “insolvency related event”. This is on the basis that a scheme is unlikely to meet the test of being an “insolvency proceeding” for the purposes of the Regulations because the Court does not in practice control or supervise the assets or the affairs of the debtor company; rather, it facilitates a statutory process for an arrangement to be reached, and then sanctions the arrangement so reached. Furthermore, a scheme of arrangement does not create a moratorium or similar stay “where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Cape Town Convention is prevented or suspended by law or State action”.

The consequence of the amendments made to the Bill on 3 June 2020 is that it will now be possible to include creditors with “aircraft-related interests” in schemes of arrangement and, when it becomes law, the new restructuring plan. Based on our interpretation of the Regulations we consider this to be consistent with how such creditors could be treated prior to the introduction of the Bill and will be welcomed by the restructuring community.

For additional insights into the business and legal implications of the COVID-19 pandemic, please visit our [Knowledge Center](#).

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