

Insights

PREPARING FOR THE BAND-AID COMING OFF FOR THE AIRLINE INDUSTRY

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Covid-19 hit the aviation industry at speed with its immediate and almost global impact requiring urgent responses from airlines, lessors, financiers and industry suppliers to apply emergency measures to, in some cases, ensure the survival of industry participants through the initial stages of Covid-19. As the weeks pass it is clear that suppliers, financiers and lessors will not only need to revisit any “Band-Aid” fixes granted in the early stages of the crisis, but that some of their airline customers may not survive should the crisis continue to materially affect air travel. As the industry prepares for more insolvencies, counterparties should consider taking some or all of the following steps to prepare for the “Band-Aid” coming off and to preserve their positions.

1. **Aircraft** – Lessors and financiers should ascertain where their aircraft are located. If an aircraft is still being flown it should be established if any of the jurisdictions it is flying to allow for a quick creditor friendly repossession.
2. **Engines** – Lessors and financiers should ascertain on which aircraft their engines are installed. If an engine is not on wing, parties will need to find out where it is located. If an engine is not on that creditor’s aircraft they will need to establish who owns the aircraft and if there is a recognition of rights agreement (“**RORA**”) in place. If the engines are in storage, or with a workshop for maintenance, information will need to be gathered regarding the level of maintenance while the engine is off-wing, the condition of the engine, whether money is owed for maintenance work and, if so, whether any liens exist as a result of such work.
3. **Parts & Aircraft Documents** – Lessors and financiers should also ascertain whether any parts have been removed from the aircraft and, if so their condition and where they are kept. Similar enquiries should be made regarding the aircraft documents. If the parts are installed on other aircraft there may be certain retention of title challenges as title to the parts may have passed to the owner of the aircraft.
4. **Storage Arrangements** – Where the aircraft, engines, parts or documents are stored with a third party storage provider it should be established what would be required to access those locations in an insolvency and whether any storage fees are owed which may give rise to liens.

5. **Jurisdictional Questionnaires** – Any jurisdictional questionnaires that were obtained at the time the transaction was entered into should be refreshed by local counsel to take into account any recent change of law. This will be particularly important if the Cape Town Convention has been implemented in that jurisdiction.
6. **Rights under Documents** – All contractual documentation (including security documents, letters of credit, warranty agreements) should be reviewed carefully so that the creditor has a clear appreciation of its rights under the documents, the scope of any retention of title provisions and any notice requirements or grace periods which may impede its ability to take immediate action. The review should consider whether there are any existing defaults which have not been waived as care should be taken to reserve rights in relation to such defaults. Creditors should also review the documents in respect of these cash deposits/reserves. It is often the case that these monies are the property of the lessor/financier and, upon a default, the creditor will be able to take control of those funds directly to mitigate its losses.
7. **Security Filings, International Interests and Priority of Liens** – Creditors should confirm that all appropriate security filings have been made in the relevant jurisdictions and renewed where appropriate. If applicable, creditors should also check that all International Interests have been registered. In some jurisdictions statutory detention rights and possessory liens will have priority over security interests. If that is a relevant consideration creditors should make enquiries as to whether any such detention rights or liens have arisen.
8. **Insolvency Process** – Creditors should take the time to understand the insolvency process in the jurisdiction where the aircraft, engines, parts and aircraft documents are located and in particular the timing of moratoriums, administration orders and how these time limits may impact on the attachment of liens. Understanding these limitations will allow creditors to plan for a worst case scenario.
9. **Insurances** – If the creditor has a contractual right to receive insurance proceeds resulting from damage to the aircraft enquiries should be made as to whether any such outstanding unpaid claims exist. An understanding of the insurance provisions in the documents is important and creditors (who are named in a policy as loss payee /contract parties) should consider getting in touch with the insurer to ensure any due insurance proceeds are paid to creditor and kept out of a potentially insolvent estate.
10. **Other Creditors** – It is often helpful to ascertain who the other creditors of the airline are as this could prove beneficial in terms of coordinating efforts to get air traffic control or airport charges discharged. Direct discussions with other creditors could also facilitate the return of off wing engines installed on their respective aircraft (especially where those creditors have not already granted RORAs in favour of one another).

RELATED PRACTICE AREAS

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MEET THE TEAM



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