

ALLEN & OVERY



Defaults and repossessions : managing the risks and avoiding the pitfalls

Phil Seymour, James Partridge, Peter Watson, Helen Biggin

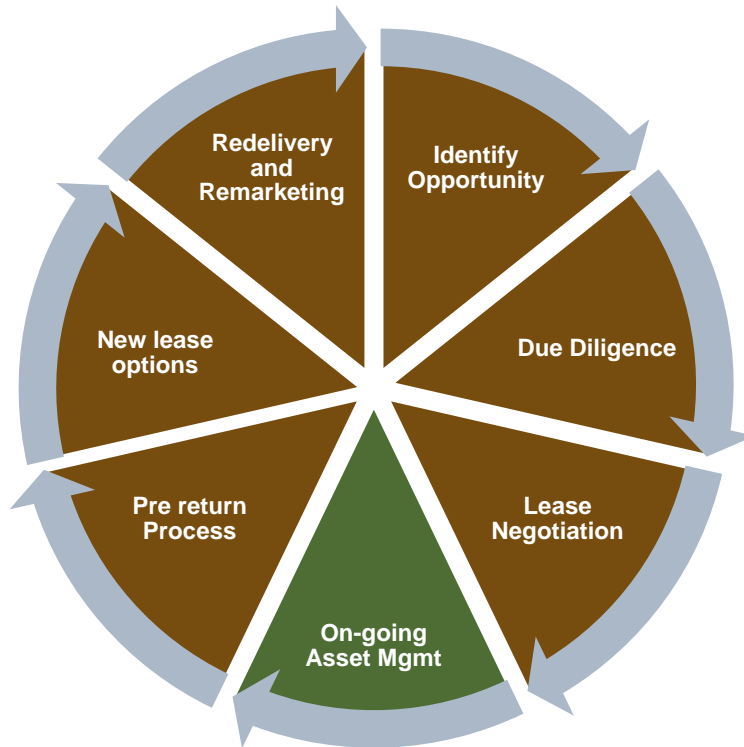
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Introduction

Overview of the talk

- Range of situations
- Case Study – Problems to look out for
- Points to consider when things start to go wrong
- Action to take

Which of the four represents the fleet you financed?



01

Lessor getting paid and the aircraft being looked after: clearly the ideal state and one that requires the least monitoring though one should remain alert for danger signs between regular inspection visits, such as falling utilisation, removal of serviceable engines, or shifting operator circumstances.

02

Lessor getting paid but aircraft maintenance ignored or grounded: When this is happening, send a team to monitor the fleet and records and consider putting an ongoing presence on the ground to monitor any attempt to create a “Christmas Tree”.

03

Lessor not getting paid but aircraft looked after: This happens when an operator has enough cash to fly and generate revenue, but is not paying you. Get on top of the issue; are there reserves? Might some short term arrangement on deferrals stabilise the situation? Keep a close eye on maintenance status as position may change rapidly

04

Lessor not getting paid and aircraft at technical risk: Red alerts all round. Implement some of the options above and also begin to explore the logistics of repossession. In an ideal world, push for a voluntary repossession.

Case study – Ghazal airlines

In February 2014, Aircraft Leasing Ltd (ALL), an operating lessor incorporated in Ireland, leases 2 A320s and 3 ATR 42's to Ghazal Airlines (Ghazal), a low cost airline based in the UAE on operating leases. The aircraft are now about 15 – 17 years old. The Airbuses fly mainly to Mumbai, Karachi and Ankara. The ATRs are employed around the UAE, Bahrain, Qatar and Oman

The finance package includes standard security comprising English law aircraft security agreements (but not local law mortgages), security assignments, charges over the shares in ALL and account charges. All relevant filings have been made under the Cape Town Convention

The aircraft are registered on the UAE register. IDERAs have been granted in favour of the security trustee and duly recorded by the applicable aviation authorities



ALL's purchase of the aircraft has been financed by a syndicate of international banks

The lease agreements are standard and provide for a 6 year term. The leases are governed by English law, with exclusive jurisdiction granted to the English courts. The leases are supported by an English law governed guarantee given by a prominent member of one of the Emirati ruling families

Case study – Ghazal airlines (cont'd)

In July 2016, reports start to circulate in the UAE aviation market that Ghazal is in financial distress. Ghazal denies this when asked by ALL.

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In November 2016, Ghazal fails to pay monthly rent on the ATRs. In December, Ghazal pays only 60% of the rental due on the A320s. At the end of January 2017, ALL defaults on the loan.

In March 2017, the leases on the ATRs are terminated but Ghazal continues to operate them.

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In April 2017, ALL complain to the UAE General Civil Aviation Authority.

Later in April, Ghazal commences proceedings in the UAE courts in Ras Al Khaimah claiming that ALL is interfering with its property rights in both the A320s and ATRs.

10

Risk monitoring, easy in hindsight

Look at operator and macro environment as well as the asset itself.

Desktop:

Trade press, business press, Stats like these to my right

Key ratios, financials, business plans

Fleet info and exposure

Data: utilisation, routes and usage

Political, economic and regulatory changes

Other sources:

Route changes and cancellations

Records and maintenance issues

Key staff moves

Order deferrals

Staff and suppliers not getting paid

Spotter networks.

Operator Country	% of fleet leased	TI CPI Rank	Ease of Doing Business (EODB) Rank	EODB Enforcing Contracts	EODB Resolving Insolvency	% GDP Growth 2014	% GDP Growth 2015	% GDP Growth 2016
Ethiopia	37.3	103	146	84	114	10.3	9.6	8.0
India	73.7	76	130	178	136	7.2	7.6	6.8
Philippines	37.6	95	103	140	53	6.1	5.8	6.8
China	31.9	83	84	7	55	7.3	6.9	6.7
Vietnam	67.1	112	90	74	123	6.0	6.7	6.4
Kenya	55.2	139	108	102	144	5.3	5.6	6.0
Ireland	22.6	18	17	93	20	5.2	7.8	5.2
Indonesia	69.1	88	109	170	77	5.0	4.8	5.0
Pakistan	67.0	117	138	151	94	4.7	5.5	4.7
Egypt	27.8	88	131	155	119	2.2	4.2	4.3
Malaysia	38.8	54	18	44	45	6.0	5.0	4.2
Sweden	81.0	3	8	24	19	2.3	4.1	3.3
Spain	66.7	36	33	39	25	1.4	3.2	3.2
Turkey	42.0	66	55	36	124	3.0	4.0	2.9
UAE	34.9	23	31	18	91	4.6	3.2	2.7

Crisis or Disaster?

Issues for Lenders

- Whose running this problem?
- Manage expectations internally – this may cost money
- What do you expect from ALL?
- What external resources do you need? Technical? Legal?
- Where is the real value to cover the debt?

Issues for ALL

- Clear lines of communication
- Does Ghazal understand the problem? Do the banks? Do you?
- What's your style? Aggressive? Passive? Collaborative?
- Who is helping you on the ground in the UAE?

What should you be doing?

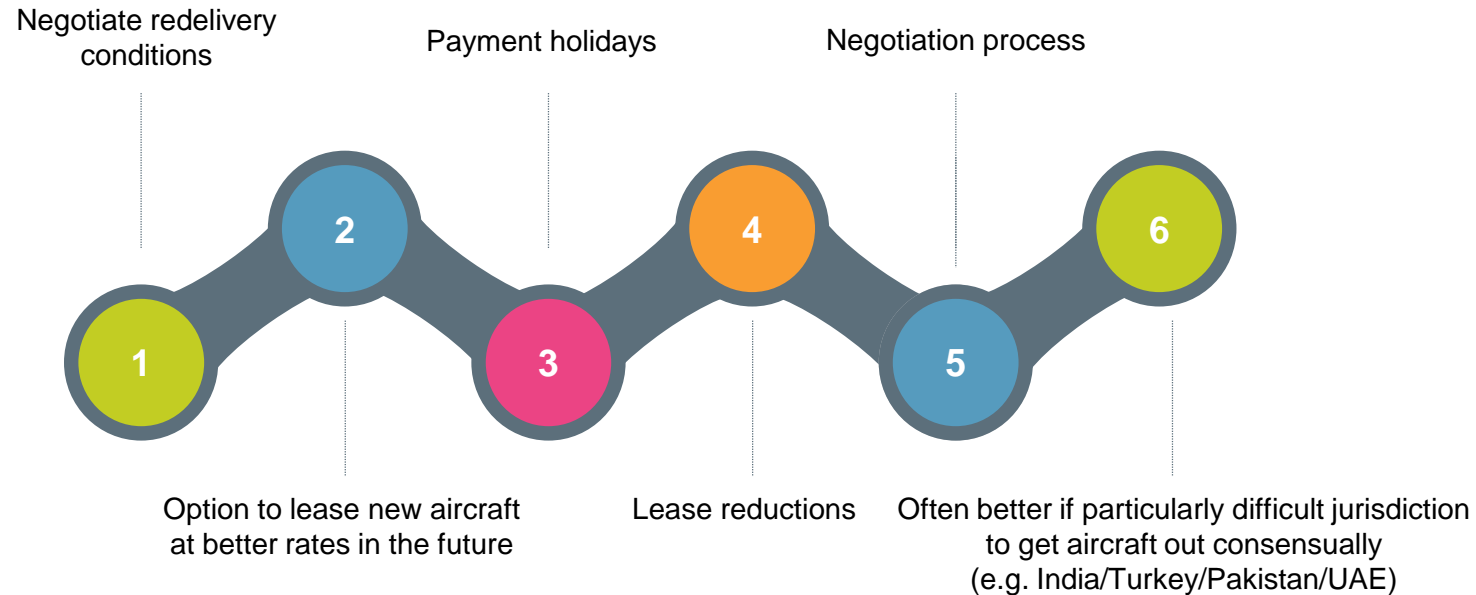
Regular utilisation monitoring, records scanning and physical inspections – need to balance oversight with right to quiet enjoyment of the aircraft

When the problems we have just discussed start and rumours start to circulate be proactive:

- 1 Put together crisis team internally so ready to move quickly if necessary
- 2 Check with ALL – what are they doing?
- 3 If ALL are not acting/are insolvent, may need to step into their shoes
- 4 Liaise closely with ALL to ensure they are acting appropriately
- 5 Ask for detailed information regarding finances for both Ghazal and ALL
- 6 Ask to see/have access to aircraft records and take copies
- 7 If going to need external lawyers get them relevant documents early (eg. key contractual documents)
- 8 Consider other potential liens (eg navigation charges/maintenance providers)
- 9 Consider if/when defaults will be triggered and have a plan ready
- 10 Check notice provisions
- 11 Be careful not to unwittingly waive defaults or vary the terms of the lease
- 12 Scenario planning for repossession

Explore the options

If ALL is fronting the negotiations/re-delivery efforts ensure there is agreement between bank and ALL as to the compromises/actions that can be taken



Many examples of a more conciliatory tone being better for the lessor. Redeliveries are tricky enough when planned for a year in advance. Extractions are always expensive and frequently result in a hit on residuals as assets are in need of maintenance, grounded, mistreated or damaged.

Getting the job done. First mover advantage

When a repo is the best solution, there's a lot to think about

1

Aircraft tracking and physical state – where and when to arrest

2

Titled engines - are they on? If not where are they?

3

Capetown, legalities and liens, robustness of legal system

4

Records and Manuals – withheld, ransomed or damaged. This point should never be the first time you've scanned them

5

Insurance and Ferry

6

Parking and Storage

7

Deregistration/registration issues

8

Corruption - getting the job done but not at any cost. Who is doing things in your name?

9

Remarketing

Litigation Issues – things to consider

1

May want to start action for damages claim

2

If litigation is in contemplation, retain all emails and documents. Make sure repossession team is aware of this.

3

Where to start action? In case of Ghazal, UAE or England?

4

Sue under both guarantee and lease? Consider if lessee and/or guarantor have any assets

5

Consider issues of enforcement of judgments

6


Consider commercial issues – will commencing litigation derail a voluntary repossession?

7

Sue ALL if in breach of terms of remarketing agreement/ loan agreement

These are rarely the cleanest of processes

No two are alike. It's not every day that you find yourself:

- 
- Negotiating with Unions ransoming records
 - Jumping over fences to avoid access issues (not advisable if the gate guards have AK-47s)
 - Finding planes being moved from hangar to hangar to avoid service of papers
 - Arguing with crew refusing to get off the aircraft
 - Having the technical team being refused access to records as these are kept airside and they don't have "necessary" permits
 - Arriving at an open empty aircraft at LHR with court order, to receive call from lawyers to say that faxed notice of termination not served as all lessee fax lines down
 - Finding the aircraft has been hijacked just before a planned repossession was to be carried out
 - Sitting next to aircraft in an SAS APC at a UK airport and hearing a bomb threat alert on radio – quick exit!
 - Having another lessor come after "their" landing gear on the aircraft you just repossessed, because their aircraft was sitting on bricks

Summary and questions

01 Implement an appropriate asset management programme

02 Base the level of oversight on the specific transaction and the risk/reward profile, BUT continuously reassess and stay pro-active and flexible

03 Obtain all the data you can, analyse it and ask the lessee questions about it. Always be looking over the horizon

04 Always have a contingency and remarketing plan in place, but understand the costs involved with transition and remember that a repossession will not always give the best outcome

05 Be proactive....if a potential problem arises the best place to be is on the ground with the lessee

06 Be prepared to play the long game, and sometimes to think and act creatively to get to where you need to be

07 Relationships you build in country and with the lessee's key personnel will pay off. Get the best advice in country

08 Consider what legal steps you want to take post repossession to claim for damages or unpaid rent.

Measures for reducing risk

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Questions?

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