



EOS Airlines

Background

EOS Airlines provided a single class premium airline service between JFK and Stansted operating 48 seat Boeing 757's on 31 weekly flights. As has been well publicised, the sharp rise in fuel costs combined with the onset of the economic downturn put all business class only airlines under enormous financial pressure. For EOS, by April 2008 this pressure had become intolerable and EOS filed for US Chapter 11 Bankruptcy Protection in the USA. The insolvency of the UK EOS establishment was inevitable but complicated by the need to ensure the application of the relevant law.



MCR Involvement

At the end of April, Geoff Bouchier and Andrew Stoneman were appointed as Administrators of the UK business, essentially a US company registered in Britain. Although the appointment of Administrators was approved in the High Court, the UK insolvency was 'ancillary' or 'concurrent' to the main proceedings in the USA. Many are already familiar with European cross border transactions and that the Centre of Main Interest (COMI) maybe in mainland Europe and thus subject to EU insolvency regulation. Cases where the COMI is in USA occur less frequently and, with EOS, MCR sought and won High Court approval that the UK proceedings should be subject to the UNICITRAL model law on Cross Border Insolvency.

As a rescue of the company was unlikely, MCR began the relatively straightforward task of realising assets including book debts and the sale of other equipment. Of the major creditors, the Bank providing the merchant acquirer service seized cash deposits and withheld sales payments to offset credit card charge backs from many thousands of customers who had forward booked.

MCR sought and won High Court approval that the UK proceedings should be subject to the UNICITRAL model law on Cross Border Insolvency



Outcome

MCR managed the Administration in accordance with the UNCITRAL requirements and achieved a good working relationship with their US counterparts responsible for the main US proceedings. MCR also continued to have a duty of care to the UK creditors but these had to be weighed against the requirements of the US controlling procedure. For example, MCR agreed to surrender the airplane (rotatable) spares back to the USA where the larger sale achieved a higher sale price. MCR quickly achieved the sale of the remaining UK assets. Preferential creditors (in the absence of fixed charge creditors) will ultimately be paid in full. Distributions to the substantial UK non-preferential (or unsecured) creditors, including IATA at £10.2m and ABTA at £4.7m, will be made from the USA. The need to balance competing laws is a difficult and at times complex but MCR achieved a successful outcome which was fully compliant with UNICITRAL requirements.

MCR quickly achieved the sale of the remaining UK assets

Client Testimonial

“MCR’s expertise in the UNICITRAL rules governing foreign insolvency proceedings was invaluable given the challenges associated with recognising the superior rights of the main proceedings in the USA. The resultant well ordered UK Administration was of great assistance in resolving this complex cross border insolvency.”

Grant Jones - Partner - Squires, Saunders and Dempsey

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FOR FURTHER ASSISTANCE, PLEASE CONTACT

MCR

43 - 45 Portman Square, London W1H 6LY t +44 (0)20 7487 7240 f +44 (0)20 7487 7299
11 St James Square, Manchester M2 6DN t +44 (0)161 827 9000 f +44 (0)161 827 9001

www.mcr.uk.com