

# Thai government reduces stake in Thai Airways

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The Thai government is no longer a majority shareholder in Thai Airways after the country's finance ministry reduced its stake to 47.86% from 51.03%.

"After the reduction of shareholding percentage held by the Ministry of Finance in the company, the company shall cease to be a state enterprise under the relevant laws," Thai Airways says in a filing to the Stock Exchange of Thailand.

The finance ministry disposed of the shares to Vayupak Fund 1. According to the US State Department, that fund was created in 2003 under the authority of the finance ministry. Krungthai Asset Management manages the fund.

The disposal of the shares is part of the carrier's restructuring plan.

"I believe the government, as well as other stakeholders, hope that by no longer being a state-owned enterprise, Thai Airways can operate with greater flexibility and more in accordance with market demands," says John Frangos, a partner at law firm Tilleke & Gibbins in Bangkok.

"A state-owned enterprise is essentially a quasi-government agency, which means political issues may often be considered just as much as business concerns. Without being a state-owned enterprise, the hope is, I think, Thai Airways will operate more like a private sector company listed on the stock exchange.

"In other words: more of an emphasis on the market and market demands, and less of an emphasis on politics and political considerations. And in the long run, the idea is this would result in greater profitability for Thai Airways, where the government does not have to come to its rescue."

On 19 May, the Thai government said it had given approval for the airline to reorganise under supervision by the local bankruptcy court. In the meantime, the airline is able to operate flights and run its business as usual.

*This article has been updated with comments from John Frangos of Tilleke & Gibbins*

# ANALYSIS: Lessors to share the pain of Thai's stint in rehab

By Michael Allen | 25 May 2020 - 09:39:53 GMT

The fate of more than three dozen leased aircraft hangs in the balance as Thailand's moribund flag carrier looks finally set to get the help it needs.

Exposed lessors would be wise to make preparations now for what experts say could be a drawn-out rehabilitation process.

On 19 May, the Thai government gave its approval for Thai Airways International to reorganise under supervision by the local bankruptcy court in a process known as business rehabilitation. In the meantime, the carrier can operate and run its business as usual – what is left of it, at least, amid the mass groundings driven by coronavirus-related travel restrictions.

The biggest development in the rehabilitation so far came on 22 May, when the Thai government said it had sold off a 3.2% stake in the carrier, a move that had been expected by observers of the rehab process. While this figure alone does not sound like a lot, it is significant because it reduces the government's stake – held by the finance ministry – below 50%, and thus Thai Airways ceases to be a state-controlled enterprise.

Once the bankruptcy court approves the application for Thai's rehabilitation – and this is almost certain to happen – an automatic "stay" comes into effect, according to a briefing document by law firm Chandler MHM and legal experts to whom Cirium spoke.

That stay will restrict the ability of creditors to enforce any security or start any other litigation proceedings against Thai Airways. It also imposes a moratorium on creditors' rights, including – crucially for lessors – the right to pursue action to repossess property that is the subject of lease or hire-purchase arrangements.

"For lessors, the automatic stay means they cannot commence legal action to repossess their assets or seek a judgment for unpaid rental amounts or maintenance reserves," says John Frangos, a partner at law firm Tilleke & Gibbins in Bangkok. "It also means, for practical purposes, Thai Airways may not pay rental to lessors unless the court approves.

"Depending on the lessor's creditor status, the lessor may have to submit a 'debt repayment application' and join all of Thai Airways' other creditors to be repaid its debt."

Frangos, whose professional interests range from helping lessors seize jets from airlines in the Kingdom to working on white-collar crime cases, points out that the flag carrier's restructuring is such a big story in Thailand that coverage of it displaced part of *The Bangkok Post's* daily front-page coronavirus coverage.

"Thai Airways is an iconic airline for Thailand, and the airline entering bankruptcy court is a major event in the country. This would be one of most high-profile and important restructuring cases in Thai history," he says.

"On the one hand, no one wants to see a company enter bankruptcy court, but on the other hand, sometimes it is necessary. It has been well publicised that Thai Airways has had financial difficulties for many years, due to a variety of factors, and the Thai government has been backing them up through these difficulties.

"However, I think Covid-19 has changed everything. The government likely has so many other financial and economic priorities right now with regard to the overall Thai economy. They made the decision that this is the time for Thai Airways to restructure."

## **PATIENCE IS A VIRTUE**

Lessors and other stakeholders will need to be patient as the rehabilitation of Thai Airways is likely to be a protracted process.

While one lessor with exposure to Thai Airways has told Cirium that the airline informed him last week that the rehabilitation would take an estimated three to four months, a lawyer with expertise in the notoriously bureaucratic Southeast Asian jurisdiction says that such a short timeframe would be "impossible" and that "extremely contentious" business rehabilitations have taken seven years or longer.

Furthermore, while business rehabilitation has been available since 1998 following the Asian financial crisis, up until now no airline in Thailand has been granted rehabilitation protection.

Alan Polivnick, a partner at Watson Farley & Williams (WFW) in Bangkok, agrees that the situation is unprecedented.

"The problem we have here is we've never had an airline go into this kind of bankruptcy rehabilitation and we've definitely not had the flag carrier do this, so in some ways it's uncharted waters for everybody," he says.

The next step that lessors should be watching for is who gets appointed to the roles of "plan preparer" and "plan administrator".

Once the rehabilitation order is made, those two positions need to be filled, according to Chandler MHM. Both roles can be held by one person, or they can be split between two.

The plan preparer, who is appointed first and generally nominated by the debtor (though creditors can object), is responsible for formulating and preparing the business rehabilitation plan. The plan preparer then must place the creditors into four main groups. Chandler MHM lists these as:

- (1) each secured creditor with secured debt equal to or in excess of 15% of the total debts claimable in the business rehabilitation process;
- (2) secured creditors other than those referred to above;
- (3) unsecured creditors (who may be further divided into different subcategories); and
- (4) subordinated creditors.

The plan preparer's rehabilitation plan must then be approved by two-thirds of the outstanding debt value and 50% of the creditors from each class of creditors. Alternatively, it can be approved by two-thirds of the outstanding debt value and 50% of the creditors from one class of creditors, and 50% of the outstanding value of all creditors.

"Theoretically, creditors can oppose the planner, but they need to get a pretty high percentage of creditors to object in order to appoint their own planner and, quite frankly, is there a homogeneous enough body to do that? I don't think so," says the Asia-based lawyer with experience acting for creditors in Thailand.

After approval, a plan administrator is appointed to implement the plan preparer's rehabilitation plan.

*The Bangkok Post* on 25 May published a report that named five "leading businessmen" the newspaper expects to be nominated as administrators.

Whoever is finally chosen as the plan preparer and the plan administrator, one thing is certain: that person or persons will be taking on a huge challenge and have responsibility for the survival of one of Thailand's most high-profile businesses.

"In our experience," writes Chandler MHM, "the rehabilitation process can potentially be a protracted and acrimonious process. The proceedings entail various steps under the supervision of the [bankruptcy] court and will involve input from many stakeholders... whose respective interests may not necessarily be aligned. It is therefore unclear how Thai will emerge from this process."

## **FIRST STEPS FOR LESSORS**

Lessors are inundated with work amid the coronavirus pandemic, and Thai's entry into rehabilitation will be yet one more thing to keep them busy.

The Asia-based law-firm partner says one of the best first steps lessors can take at this point is to contact local Thai lawyers to file the relevant forms on their behalf, as they need to be written in Thai.

"There are various painful things that need to be done dealing with the Thai court system, one of which is that power of attorney and the accompanying documents... All need to be notarised and legalised, so they need to be signed in front of a public notary and then that needs to be legalised by the Thai consulate or embassy in the relevant country," he says.

"Given Covid, are embassies even open in various countries around the world? So it's tricky."

As for working out how much rentals lessors are due from Thai, he adds that it will be more straightforward to calculate the amounts owed on some types of lease than on others. Finance leases are easier, he says, because the outstanding amount is the currently outstanding amount owing under the finance lease – but operating leases are slightly trickier.

"Is it the net present value of the remaining rentals? How do you calculate that? I guess the thing is to put in as big a number as possible. I mean, it might get beaten down, other creditors might challenge it, or the plan preparer or the plan administrator may challenge the actual amount," he says.

Fortunately, unlike in the case of Colombian carrier Avianca's recent US Chapter 11 filing where JOLCO investors were exposed, Thai Airways does not have any JOLCO aircraft, according to two sources and Cirium fleets data.

"Thailand had a withholding tax problem, so you would have had to have done a double head-lease sub-lease structure, Japan-Ireland-Thailand, and Thai didn't want to take credit risk and tax risk on the intermediate SPV [special-purpose vehicle]," the Asia-based lawyer says, explaining why JOLCOs are difficult in Thailand.

There are JOL structures in which the aircraft have Japanese owners but with intermediate Irish entities. However, the lawyer expects these to be treated in the same way as operating leases. For example, Tokyo Century Leasing has a seven-year-old Airbus A320 with Thai Smile.

"They are operating leases; they just happen to be owned by Japanese investors," he says.

Troubling for lessors who also lease to other Thai carriers will be the fact that leases renegotiated by Thai may have a knock-on effect on lease rates to other Thai carriers.

"Lessors to Thailand's other airlines may come under pressure to provide further lease-rate reductions and payment suspensions to match or exceed those negotiated by TG [Thai Airways]," writes WFW's Polivnick in a 22 May article.

"This is where TG is able to negotiate significant discounts and suspensions. Some of Thailand's other airlines may be able to achieve greater lease discounts and suspensions than TG through their market position, fleet size and relationships with lessors."

## **REGIONAL UNIT'S LESSORS CAN CRACK A SMILE**

Happily for those lessors whose aircraft are operated by Thai's regional subsidiary Thai Smile, these narrowbodies are likely to be among those that are used to lead the airline's operational recovery once the coronavirus further recedes in Asia, and so the rehabilitation plan is more likely to seek to retain these aircraft.

One lessor with exposure to Thai tells Cirium he is not too worried because his aircraft are A320s and these will be viewed as "key" by the airline. The airline has a fleet of 20 A320s, 15 of which are leased, Cirium fleets data shows.

"They definitely need our aircraft to do regional and domestic services," he says, adding he would be more worried if he had some of the carrier's older Boeing 777s in his portfolio.

WFW's Polivnick says: "I think the issue of course is without the aircraft the airline cannot operate its business, and as soon as they can get those planes in the sky again and earn some money I guess that's what the plan administrator's focus is going to be on."

While some lessors may fare better than others, all will have to share to some extent the burden of Thai's stint in rehab.

"Thai Airways cares deeply about its reputation and, from what I understand, have paid many of their debts up until now," says Tilleke & Gibbins' Frangos.

"These are all things which lessors have in their favour, but there is definitely going to be a period of time where lessors are not going to get paid."