



**GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 42 OF 2023 ( DDJ )**

**PETITIONER OF THE COMPANIES ACT (2023 REVISION)**

**AND IN THE MATTER OF AMOUDI AVIATION LIMITED**

**WINDING UP PETITION**

**PRESENTED TO THE GRAND COURT**

The humble petition of Deutsche Bank Luxembourg S.A. of 2, Boulevard Konrad Adenauer, 115 Luxembourg (the "**Petitioner**") shows that:

**INTRODUCTION**

1. The Petitioner presents this petition for the winding up of Amoudi Aviation Limited (the "**Company**") and seeks the appointment of joint official liquidators over the Company.
2. The Petitioner is a creditor of the Company and seeks the winding up of the Company pursuant to Section 92(d) of the Companies Act (2023 Revision) (the "**Companies Act**") on the grounds that the Company is unable to pay its debts.
3. The Company was incorporated as an exempted limited company in the Cayman Islands on 30 September 2013, with registration number 281492.
4. The Company's registered office is located at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

**THE PETITIONER**

5. The Petitioner is subsidiary of Deutsche Bank AG and is a financial institution incorporated under the laws of Luxembourg and is a leading financial services provider in the Grand Duchy of Luxembourg.

**PARTICULARS OF THE DEBT**

6. The Petitioner, as lender, entered into an English law governed loan agreement with the Company, as borrower, on 23 April 2015 to finance the purchase of one (1) Airbus A318-100 Elite manufacturer's serial number 4211 ("**Aircraft 1**"), one (1) Airbus A330-243 manufacturer's serial number 1053 ("**Aircraft 2**"), one (1) Boeing 737-800 BBJ2 manufacturer's serial number 32971 ("**Aircraft 3**") and one (1) Bombardier Global Express BD700-1A12 manufacturer's serial number 9030 ("**Aircraft 4**") (together, the "**Aircrafts**") (the "**Loan Agreement**").
7. The principal terms of the Loan Agreement were:
- (a) to make available to the Company a secured financing facility (the "**Facility**") in an aggregate amount no greater than the total commitment of US\$170,400,000 (the "**Total Commitments**") and in respect of each Aircraft:
- (i) in relation to Aircraft 1, US\$36.4 million;
- (ii) in relation to Aircraft 2, US\$100,500,000;
- (iii) in relation to Aircraft 3, US\$23,500,000; and
- (iv) in relation to Aircraft 4, US\$10,000,000,
- (each a "**Loan**" and together, the "**Loans**");
- (b) the Loans would be used by the Company for:
- (i) on-lending to the Aircraft Owners (as that term is defined in the Loan Agreement), being special purpose vehicles ("**SPVs**") wholly owned by the Company and incorporated in the Cayman Islands and Bermuda, in order to refinance all amounts outstanding under an existing facility dated 13 October 2011 between Credit Suisse AG, as lender, and Constellation Aviation Finance Limited, as borrower;
- (ii) any costs and expenses associated with such refinancing; and
- (iii) if there was any surplus, the Company's general corporate purposes.

- (c) the Loans would be drawn down by the Company on a single draw down date, which was 23 April 2015 and any undrawn commitments would be automatically cancelled;
  - (d) the Company agreed to repay each Loan in quarterly instalments in accordance with the scheduled repayments set out in the Repayment Schedules in Schedule 1 to the Loan Agreement, ending with a balloon repayment in respect of each Loan and all other outstanding indebtedness in relation to each Loan on the Final Repayment Date;
  - (e) the Company agreed to pay interest on the outstanding amount of the Loans on each Interest Payment Date at the percentage rate of 2.2% per annum, plus LIBOR;
  - (f) the intragroup loans made available by the Company to the Aircraft Owners (the "**Intragroup Loans**") were postponed and subordinated to, and ranked in right of priority of payment behind, all monies owed to the Petitioner by the Obligors and the Operators under the Finance Documents (as those terms are defined in the Loan Agreement);
  - (g) the financing made available to the Company by the Petitioner is secured by various security instruments, including by mortgages granted over each of the Aircraft (the "**Mortgages**") and share charges granted over the shares held by the Company in each of the Aircraft Owners.
8. The Company has been in default of its payment obligations under the Loan Agreement since the Repayment Date of 23 April 2017.
9. As at 2 February 2023, the Company was indebted to the Petitioner in the amount of US\$108,025,690.30 in respect of unpaid principal, interest and expenses pursuant to the Loan Agreement (the "**Unpaid Principal, Interest and Expenses**").
10. By a letter dated 2 February 2023, the Petitioner declared pursuant to clause 11.20 of the Loan Agreement that the Loans and all Outstanding Indebtedness under the Loan Agreement were due and payable such that an Enforcement Event (as that term is defined in the Loan, the Share Charges (defined below), and the Mortgages) had occurred.

11. As at the date of this Petition, the Company has failed to repay the Unpaid Principal, Interest and Expenses, in part or at all. In addition, based on third party valuations provided to the Petitioner, it appears that the realisable value of the Aircraft indirectly owned by the Company will be insufficient to repay the Unpaid Principal, Interest and Expenses in full.
12. Further, following the Petitioner's declaration of an Enforcement Event, it sought to exercise its rights under two share charges, granted over the entire issued share capital of two wholly owned subsidiaries of the Company, Bournemouth Air Limited ("**Bournemouth**") and Boston Air Limited ("**Boston**") (the "**Share Charges**"). The Petitioner relied upon the voting rights and powers of attorney and proxy granted by the Share Charges to reconstitute the boards of Bournemouth and Boston in order that a sales process for the Aircraft could proceed, with a view to repaying the monies owed to the Petitioner under the Loan Agreement. The Company has actively obstructed the Petitioner's attempts to enforce its security in accordance with its rights in the Share Charges, necessitating the need for the Petitioner to issue this Petition.
13. The Company is therefore unable to pay its debts and is insolvent.

#### **RELIEF SOUGHT**

14. In the premises:
  - (a) the Petitioner is a creditor of the Company and has standing to present this petition under Section 94(1)(b) of the Companies Act; and
  - (b) the Company is unable to pay its debts pursuant to Section 92(d) of the Companies Act and is therefore insolvent and should be wound up.
15. The Petitioner nominates Sandipan Bhowmik and Margot MacInnis both of Grant Thornton Specialist Services (Cayman) Limited, 2<sup>nd</sup> floor Century Yard, Cricket Square, Grand Cayman, KY1-1102, Cayman Islands, to act as joint official liquidators of the Company.

#### **Your Petitioner therefore humbly prays that:**

1. The Company be wound up pursuant to Part V of the Companies Act.
2. Sandipan Bhowmik and Margot MacInnis both of Grant Thornton Specialist Services (Cayman) Limited, 2<sup>nd</sup> floor Century Yard, Cricket Square, Grand Cayman, KY1-1102,

Cayman Islands, be appointed to act, jointly and severally, as joint official liquidators (the "JOLs") of the Company.

3. The JOLs shall not be required to give security for their appointment.
4. The JOLs be authorised to exercise to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
5. In addition to the powers prescribed in Part II of the Third Schedule of the Companies Act, which are exercisable without sanction of the Court, the JOLs be sanctioned to exercise the following powers set out in Part I of the Third Schedule of the Companies Act:
  - (a) the power to pay any class of creditors in full.
  - (b) the power to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.
  - (c) the power to sell any of the company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
  - (d) the power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
  - (e) the JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules (2023 Consolidation) and to remunerate them out of the assets of the Company,

in each case without further sanction of the Court, and for the avoidance of doubt the powers conferred on the JOLs may be exercised by them within and outside the Cayman Islands.

6. Without prejudice to the generality of the foregoing, the JOLs be authorised and be granted leave to take all such actions as may be necessary to:

- (a) investigate the affairs of the Company and its direct and indirect subsidiaries (the "**Group**"), including, without limitation, the subsidiaries which are established in the Cayman Islands, Bermuda and elsewhere (the "**Subsidiaries**");
- (b) to exercise the rights to which a registered holder of any shares or other securities registered in the name of the Company, or to which an owner of any shares or securities held by or on behalf of the Company (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities; the right to attend meetings and to exercise any voting power pertaining to such shares or other securities and to direct nominees of the Company in whose names shares or other securities beneficially owned by the Company are registered to exercise all or any such rights as the JOLs shall direct;
- (c) take control of such of the Subsidiaries, and/or joint ventures, investments, associated companies, businesses or other entities (together the "**Associated Companies**") in which the Company holds an interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Company), in each case wherever located, as the JOLs shall think fit; and/or to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to and communication with appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies to give effect to the changes of the boards of directors, legal representatives, officers, and/or managers of such companies or entities, including (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the assets of the Company and managing the

- affairs of the Company (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies);
- (d) take steps to locate, demand and secure cash held by all Group companies in bank accounts in the Cayman Islands and elsewhere;
  - (e) enter upon or take possession of the property of the Company including, without limitation, any premises of the Company, or any office where the JOLs have reason to believe that there are assets, property or books and records of the Company and if necessary by force, to change locks and open safes and other strongboxes;
  - (f) ascertain, take possession of, collect, give valid receipt for, and protect all books, documents, records, trading data, properties, things in action, securities and other assets of the Company, whether in hard copy, electronic form or otherwise, and whether within or outside the jurisdiction of this Court; and
  - (g) be granted unrestricted access by the Company and its directors forthwith to all books, records, and documents of the Company (whether in hard copy form or stored electronically).
7. No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Act.
  8. Payment of the Company's reasonable legal fees incurred in connection with the Petition shall not be voided by virtue of section 99 of the Companies Act.
  9. The JOLs and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners' Regulations 2023 (as amended) and Section 109(1) of the Companies Act.
  10. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
  11. No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Act and subject to such terms as the Court may impose.

12. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company as an expense of the liquidation, such costs to be taxed on the indemnity basis, if not agreed with the JOLs.
13. The JOLs be at liberty to apply generally.
14. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will every pray etc.

**DATED** the 21<sup>ST</sup> day of February 2023

**FILED** the        day of February 2023

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioner

**NOTE:** This petition is intended to be served on the Company.

This **WINDING UP PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, for the Petitioner whose address for service is care of its Attorneys at Law.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on *21<sup>st</sup> March 2023* at *10* ~~am~~ *pm*.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone no. 349 949 4296.