

# **Flying Too Low – Oasis and the Airline Industry**

**Ian De Witt, Partner, Tanner De Witt**

In the wake of what turned out to be only the first ripples of the financial crisis, April 2008 saw the demise of Oasis, Hong Kong's first so-called low-cost carrier.

The founders of Oasis wanted to create a quality airline with more leg room and top-notch in-flight service, with fares at reasonable prices. As a man with slightly longer legs and (it has been said) a wider girth than most, I have to admire the intention. Oasis was voted the "World's Leading New Airline" in 2007. It sounded too good to be true. It was.

When the seemingly insurmountable financial problems of Oasis came to the fore, my firm was instructed to do whatever was necessary in the circumstances, which ultimately meant appointing and then assisting provisional liquidators, and later the liquidators, which was a somewhat demanding assignment given the unique regulatory and commercial complexities of the aviation industry, and the fact that this was the first Asian airline of its kind.

The morning that provisional liquidators were appointed, the company's Chairman announced that all operations had been suspended. Unfortunately, at that moment three of the four most valuable assets of the company still happened to be in the air, or out of Hong Kong. One was en route to Vancouver, a second en route to London, and a third (you may be surprised to learn) was on the ground in Namibia. The provisional liquidators had to act quickly. Things were made more difficult by the fact that there were also almost 25,000 passenger tickets issued, call centres being inundated with angry customers. The immediate needs of passengers due to fly also had to be addressed, and alternative arrangements with other airlines made.

Getting the aircraft back was not easy. There was no fuel, no in-flight service, airport and airspace charges were due, and there was no money. The Hong Kong Government had to be persuaded that the appointment of provisional liquidators had no impact on passenger safety. Any one unresolved issue could have caused the aircraft to be impounded. However, thanks to some sterling work by the professionals and, to their credit, Oasis personnel, all aircraft were recovered.

This has been a challenging and interesting assignment. It has involved all manner of legal, business and insolvency issues. In the early days we had to deal with potential investors from all over the world, both mad and sane, who were interested in everything, from the airline itself to aircraft parts. Ultimately however the industry's regulatory requirements, combined with other issues

(not least the extent of the liabilities) made it impossible to achieve a rescue, the hurdles were simply too great and the economic climate was hardly conducive.

There have been all manner of claims in many jurisdictions, including of course the aircraft financiers. There have been liens flying all over the place. There have been all manner of court applications we have had to make, from the recovery of vital documents using the section 221 procedure, to regulating orders. There have been employment issues (the staff of Oasis should be commended on their attitude, conduct and support throughout), and we have had to deal with many Hong Kong Government and regulatory bodies (both helpful and unhelpful), including attending hearings. Dealing with a high-profile business with over a billion dollars of debt and 25,000 creditors was in itself always going to be a challenge.

The provisional liquidators (and their advisors, of course) continue to work hard, with the committee of inspections, to maximize value, even successfully realising value from Oasis' option to purchase a fifth aeroplane for which a deposit had already been paid. As far as this firm's involvement in this assignment, we have found the high-profile multi-jurisdictional assignment interesting and challenging. The only downside would be the costs regime by which insolvency practitioners in Hong Kong are handicapped.

On a personal level, as challenging as it has been, as a firm believer in the free market economy, and strongly against the threatened competition laws in Hong Kong, I have undertaken the task with a tinge of sadness, having been an integral part of the downfall of what we all thought, and hoped, was a Hong Kong success story.