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Lessors in suspense as Avianca Brazil nears deadline

Lessors involved in Ocean Linhas Aereas S/A (Avianca Brazil) are sitting out a controversial stay on repossessions in disquiet as a February 1 deadline nears for the crippled Latin American carrier. The extension has raised concerns about whether Brazil may be acting against the principles of the Cape Town Convention – an international treaty designed to help airline creditors. Lawyers argue that the Brazilian courts appear to still be acting in accordance with the convention – for now. Even with an extension Avianca Brazil's future looks bleak under most scenarios.

Avianca Brazil's stay of execution

Avianca Brazil filed for bankruptcy protection on 10 December 2018 as three lessors planned on repossessing 14 aircraft or 30% of its fleet. On January 14, a court in Sao Paulo granted the airline a stay on repossessions until February 1 in agreement with most of the creditors to approve a debt repayment plan, with operations expected to continue until then. According to sources the 15-day extension to the stay on repossessions granted by a bankruptcy court in Sao Paulo on January 14 followed an agreement with most of the creditors. The decision allowed Avianca Brazil a small window of opportunity that extended the thirty calendar days permitted under Brazil's declaration of the convention to 45 days. However, the decision was criticised by some creditors. According to one source, not all creditors were present in that meeting nor happy with its outcome. A few days later, on January 18, a representative for Aircastle told Reuters the firm would file an appeal of the legal order that stayed repossession. "[The court's] decision is completely contrary to the Cape Town Convention," the representative said.

However, according to Felipe Bonsenso, a partner at CAL Lawyers in Sao Paulo, the decision, while controversial, does "not exactly deviate from Cape Town, as there was no discretionary extension and unilateral decision." He adds: "Cape Town in Brazil has no limitations on what creditors can mutually agree with the debtor or airline. It will be a different story if the judge orders a further extension." Others see it differently. **Tony Rivera, a partner for corporate recovery and insolvency at Vinhas e Redenschi Advogados** in Sao Paulo, said the Brazilian court is interpreting the law in the collective interest of all stakeholders and not directly in the individual interest of the creditors that have their aircraft under lease.

Bonsenso believes the course of events so far should reassure creditors exposed to Brazilian airlines. "It was the first time that a judge in Brazil clearly stated that Cape Town shall be applied," states Bonsenso. He stresses that, irrespective of the back-and-forths around the stay on repossessions, Brazil has, since 2005, been ahead of other jurisdictions in the protection of lessors. ANAC, Brazil's aviation authority has also appeared to be determined in applying the convention.

"They [ANAC] understand the issues that Brazil could face if Cape Town is not applied." Bonsenso does not expect an extension to the stay period ending on February 1, meaning lessors are likely to be able to enforce IDERAs, an irrevocable deregistration measure that prevents a debtor from flying an aircraft under any jurisdiction, and reclaim their aircraft. But as Adolpho Julio Camargo de Carvalho, a partner at Pinheiro Neto Advogados in Sao Paulo, points out if all the lessors enforce their right to repossess, "it's a given that the company will go bankrupt." Bonsenso argues that while the Brazilian government does not want Avianca Brazil to go bust, its influence over its future will be limited under the current government headed by the market-friendly President Jair Bolsonaro, who has made adherence to the law a central theme of his mandate.

Exposed lessors

Ishka was able to identify 52 aircraft on operating leases with Avianca Brazil. Of those, seven A318s have been parked or kept in storage in four Brazilian airports for more than three months. The remaining 45 aircraft remain operational, with the majority under lease from the following lessors:

Lessors with the largest exposures to Avianca Brazil as of January 28, 2019		
Manager	MSN	Aircraft
Airbus Asset Management	3030 3062 3214 3216 3371 3469 3509 3602 3606 3642	A318-100 (10)
Aircastle	6139 6173 6528 6536 6561 6598 6634 6800 6806 6813	A320-200 (10)
Aviation Capital Group	5193 4891 4913 4941 4942 5278 5299 5754 5841	A320-200 (8), A319-100
Avolon	1508	A330-200
CDB Leasing Company Ltd	1208	A330-200
GECAS	6050 7175 7323 7484 7514 7698 7799 8084	A320-200neo (7), A320-200
Jackson Square Aviation	4222	A319-100
MC Aviation Partners	6689 6712 6871 6876	A320-200 (4)

Source: ANAC, CAPA FLEETS and Ishka Research

No longer included in that chart are two A320-200neos from BOC Aviation, one A320-200ceo from Infinity Transportation and one A330-200 from Aircastle Ltd. All four aircraft were returned to the lessors under repossession orders in early December, according to Brazil's National Civil Aviation Agency (ANAC). ANAC's records suggest three A320-200neos returned by Avianca Brazil to GE Capital Aviation Services (GECAS) around the same time were handed back in mutual agreement between the lessor and the airline. GECAS' aircraft were flown to Teruel in Spain for storage, reducing GECAS' exposure to the eight aircraft listed above. BOC, which only had those two aircraft on lease to the airline and is reportedly owed \$100 million by the carrier, has remarketed the A320s to Azul SA – a path likely to be followed by other A320s leased by Avianca Brazil. According to Brazilian aviation news site Aeroflap, one of the planes (PR-OBR) flew from the US to Confins International Airport in Belo Horizonte on January 19 to join Azul's fleet as PR-YYA. The other aircraft joined Azul on January 23 as PR-YYB. Infinity Transportation's A320-200ceo went into storage at Ostrava in the Czech Republic and is due for easyJet, while Aircastle's A330-200 went into storage at San Bernardino International Airport in California on 16 December 2018. The three lessors mentioned in Avianca Brazil's initial bankruptcy filing are Aircastle, BOC Aviation and Infinity Transportation. Both BOC and Infinity have already successfully repossessed leaving Aircastle, GECAS and ACG among the carrier's exposed lessors.

The Ishka View

Lessors do not repossess aircraft lightly. The sheer cost of transitioning and remarketing an aircraft means aircraft lessors only repossess aircraft if strictly necessary. By insisting on recovering their aircraft Avianca Brazil's remaining lessors clearly do not believe the carrier has a credible restructuring plan. Indeed, Ishka understands that several of the lessors, including Aircastle, are already actively remarketing their aircraft. The good news for the lessors is that most of these aircraft are desirable narrowbodies which will easily find new homes.

So far, the Brazilian authorities have appeared to have acted in accordance with the principles of the Cape Town Convention. However, this depends on whether Judge Tiago Henriques Papaterra Limongi agrees to a further stay or not. The future for Avianca Brazil appears to be dismal under most scenarios. Even if it successfully reduces its operations, the airline still has a list of creditors. Lessors should receive their aircraft shortly, but this is likely to be a crippling blow to Avianca Brazil's operations.