A&L Goodbody

VOYAGER AVIATION HOLDINGS:
A CASE STUDY

# A cross-border solution to a cross-border restructuring challenge

Voyager Aviation Holdings, LLC (**Voyager**) is a privately held aircraft owner and lessor with approximately $2 billion in assets. Voyager is headquartered in Dublin and has offices in Stamford, Connecticut.

Earlier this year, A&L Goodbody LLP advised Voyager on the successful restructuring of its senior note obligations.[1] The restructuring was implemented by way of a US exchange offer that simultaneously solicited support for both a "plan B" Irish scheme of arrangement and a "plan C" prepack US Chapter 11.

While it is not unusual for the implementation of out-of-court restructurings to be facilitated by clearly communicated fall-back plans, this was the first time that an Irish scheme was used to facilitate the carrot-and-stick implementation of a US exchange offer.

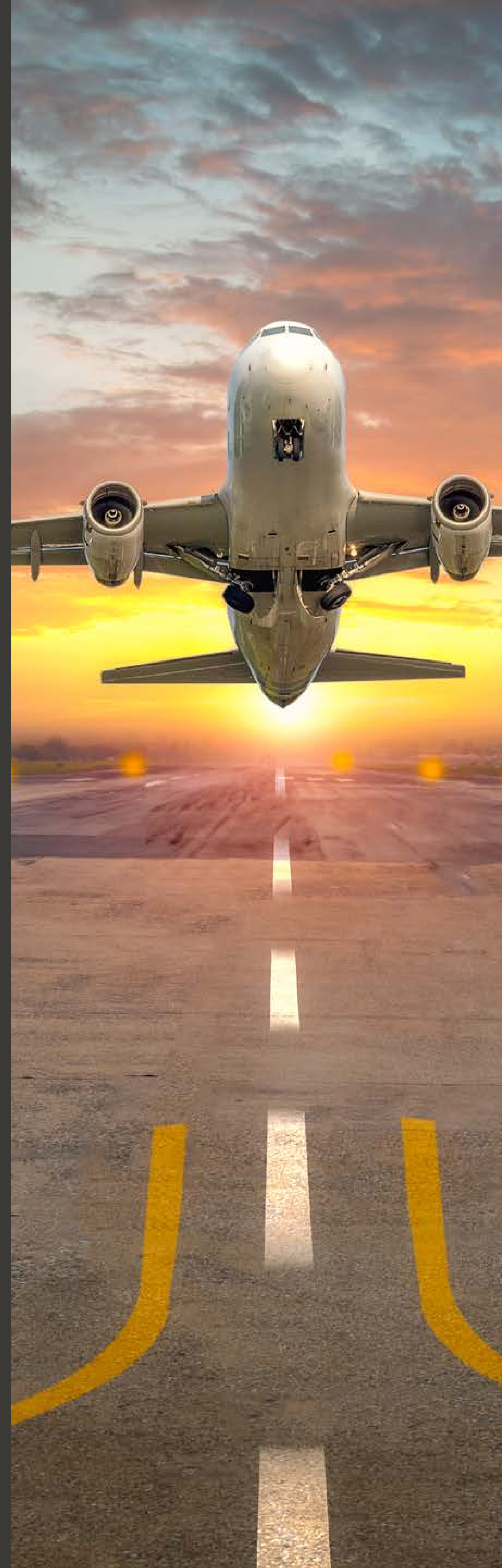
6 MIN READ

[1] *ALG advised as to matters of Irish law alongside Milbank LLP who advised as to matters of New York and English Law.*

## Out-of-court restructurings

***When they work well***

An in-court restructuring will invariably be required where a business needs a comprehensive operational restructuring. For example, Irish examinership and US Chapter 11 allow a company to restructure not only its obligations to financial creditors, but also liabilities associated with leases, trade creditors and pending or threatened litigation. However, where a more confined "balance-sheet" restructuring of financial debt obligations is what is required (and the company has sufficient liquidity and breathing space from creditors to allow it time to negotiate) an out-of-court restructuring is usually the preferred option for distressed debtors. An out-of-court restructuring typically benefits all stakeholders: negotiated terms tend to be kept private; the costs should be less; and often there is reduced risk of damage to a company's business operations and going concern value that might be caused by insolvency-related stigma.



***The hold-out problem***

An out-of-court restructuring will often feature some combination of an exchange of debt for new debt and/or equity, an extension of maturity dates, changes in interest rates and other accommodations to improve a company's financial condition. The obvious constraint is that such amendments will be subject to the existing contractual terms of the finance documents. For many amendments, unanimous or high creditor consent thresholds can significantly limit the debtor's ability to implement the desired amendments, particularly where creditors are disparate and operating outside of an organised committee.

Even where high consent thresholds do not exist, the debtor, and supporting creditors, may insist upon a minimum participation threshold across the creditor group generally. For example, in the context of an out-of-court exchange offer, the issuer and supporting noteholders will be wary of hold-out noteholders who sit on their hands in an effort to retain their old notes with the same payment terms. In doing so, the hold-outs will benefit from the participation of exchanging noteholders, often leaving hold-outs in a better position than the exchanging noteholders (who have accepted new notes on terms inferior to the old notes). Such minimum participation thresholds (often in excess of 90% in value of outstanding debt) can be difficult for issuers to reach.

A dual approach is often pursued whereby creditors are presented with an out-of-court deal along with a roadmap of how the deal can otherwise be implemented through a prepack process if creditor support for the out-of-court deal is insufficient. In the case of an exchange offer, the dual approach can be streamlined whereby the issuer simultaneously solicits exchanges of old notes for new notes and acceptances of a prepackaged process which, in the case of Voyager, included both a Chapter 11 plan and an Irish scheme of arrangement. In other words, a vote for the exchange offer is a vote for the backup prepackaged plan and scheme.

## The Voyager restructuring

### *The exchange offer*

Due to the global nature of the COVID-19 pandemic and the consequent reduction in demand for commercial aviation, Voyager received requests from many of its airline customers for accommodations, such as the deferral of rent payments. Because of the material fall in lease revenues, Voyager and its co-issuer, Voyager Finance Co, (the **Issuers**) anticipated that they would be unable to refinance or repay their outstanding $415,337,000, 8.500% senior notes due in August 2021.

On 30 March 2021, Voyager commenced an exchange offer and issued an Offering Memorandum and Disclosure Statement to its senior noteholders. The key features of the exchange offer were as follows:

- Noteholders were invited to tender their notes in exchange for a pro rata share of: new equity in Voyager; new notes issued by the Issuers; and liquidation preference of preferred units in a subsidiary of Voyager.
- Consummation of the out-of-court restructuring was conditioned upon at least 95% of the aggregate principal amount of senior notes outstanding being validly tendered (which minimum tender condition may be lowered by Voyager at its sole discretion to equal to or greater than 92%).
- The Offering Memorandum made it clear that by tendering their notes as part of the exchange offer, senior noteholders were deemed to have provided an irrevocable instruction to an appointed voting agent to vote in favour of the scheme of arrangement and a prepack Chapter 11. Should the minimum tender threshold not be reached, this would allow Voyager to implement the exchange (on substantially similar terms to the out-of-court exchange) by way of a scheme or prepack Chapter 11 if requisite votes were otherwise in hand for approval of a scheme in the Irish court (75% in value) or a prepack Chapter 11 in the US (two-thirds in value).

In circumstances where, just prior to launch of the exchange offer, Voyager had entered into a restructuring support agreement whereby holders of 84.85% of the principal amount of the outstanding senior notes agreed to tender their notes, it already had sufficient support to satisfy the statutory majorities required for approval of a scheme and prepack Chapter 11.

As a result of this two-pronged approach, by the closing of the exchange offer on 10 May 2021, Voyager had obtained support from 98.49% of noteholders for the out-of-court exchange. This allowed Voyager to implement the out-of-court exchange, thereby significantly deleveraging its balance sheet and returning the group to financial stability.

*The proposed scheme*

Voyager is a US company but the group has a presence in Ireland. For that reason, Voyager was able to include the Irish scheme as a second fall-back option that would achieve the same outcome as a prepack Chapter 11. The scheme would be implemented on a shorter timeline[2] and at lower cost than the prepack Chapter 11. The key features of the back-up scheme were as follows:

- Unlike Chapter 11 (where a single filing of multiple group debtors can be made) schemes of arrangement involve a single debtor applicant, albeit there is an ability for schemes to release liabilities of third parties where the claims involved are significantly interrelated. Relying on the third party release mechanism, a "single point of entry" structure was designed whereby, through the scheme of an Irish subsidiary (Voyager Leasing Ireland Limited (**VLIL**)), the obligations of the Issuers under the senior notes could be released. A similar structure was used in the scheme of arrangement of Nordic Aviation Capital DAC[3], recently sanctioned by the Irish High Court.
- The absence of a contractual nexus between VLIL and the senior noteholders was an initial obstacle. To overcome this, the senior notes indenture was amended to allow VLIL to enter into a voluntary guarantee in favour of the senior noteholders in respect of the obligations of the Issuers under the senior notes. The guarantee would establish the senior noteholders as creditors of VLIL for the purpose of the scheme, thereby allowing a third party release to be granted through the scheme in favour of the Issuers under the senior notes.
- The scheme would be recognised in the US under Chapter 15 of the US Bankruptcy Code.

**Conclusion**

The tying together of exchange offers, tender offers and other out-of-court restructurings with a ready-to-go prepack Chapter 11 back-up is commonplace. The generous jurisdiction assumed by the US Courts under Chapter 11, as well as general familiarity with Chapter 11, makes the process an attractive contingency option for stakeholders.

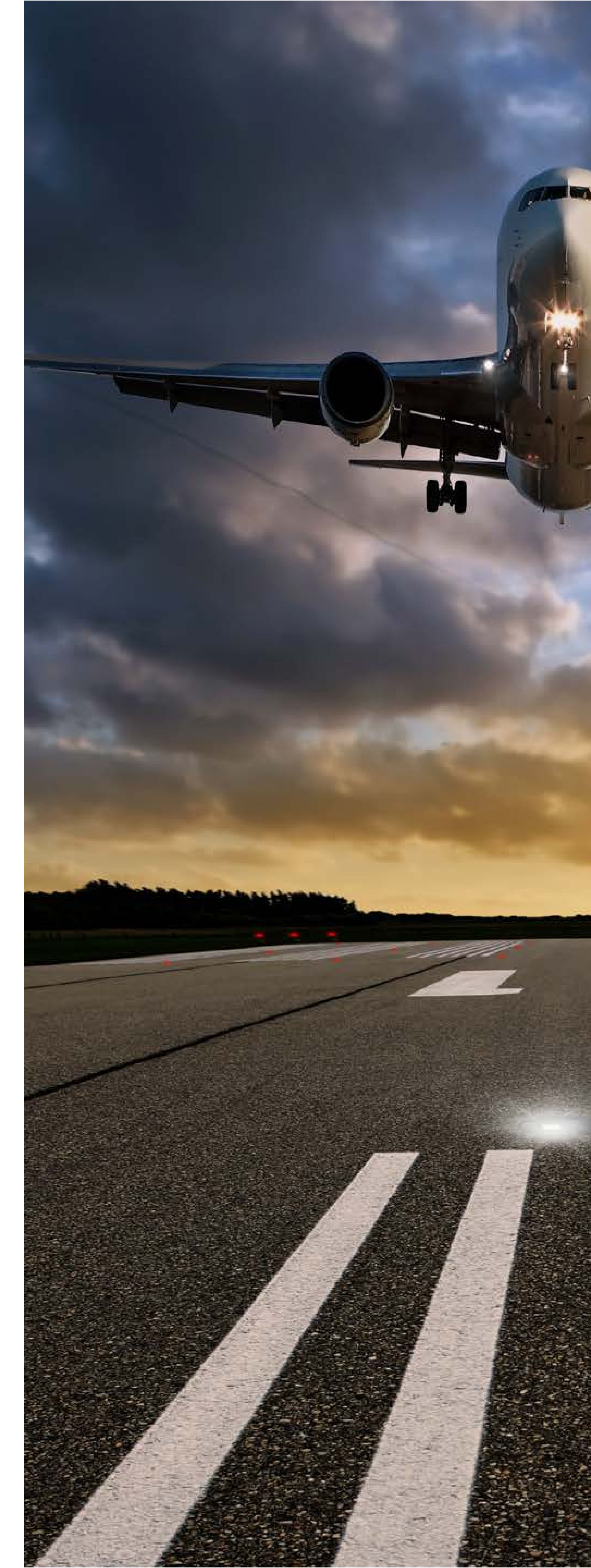
However, where a jurisdictional connection can be established with Ireland, the Irish scheme can provide an effective and predictable alternative back-up in such restructurings. Indeed, where there are jurisdictional or other obstacles that may call into question the feasibility of a scheme, the Irish courts have demonstrated a willingness to sanction schemes even where the scheme company has taken steps precisely for the purpose of overcoming those obstacles, prior to scheme launch.

As was the case in Voyager, well-advised debtors should explore whether steps can be taken to put an Irish scheme on the menu as a further option to implement, or encourage the implementation of, a restructuring.

*"The restructuring was likely the most important transaction Voyager and its Stakeholders has ever engaged in. Working with A&L Goodbody, we were quite comfortable with their strong understanding of cross-border restructuring processes. They also made it a point to make sure that our team remained well-informed as we moved simultaneously down two different paths of restructuring. We ultimately achieved as good of an outcome as we could have hoped."*
**- Mike Lungariello, President & Chief Executive Officer, Voyager**

[2] *In three recent Irish schemes, Re Ballantyne Re plc ([2019] IEHC 407), Nordic Aviation Capital DAC ([2020] IEHC 445) and Re Celtic Roads (Waterford) DAC (unreported), the period between the initial Convening Hearing and ultimate Sanction Hearing was just 37 days, 42 days and 23 days, respectively.*

[3] *Nordic Aviation Capital Designated Activity Company v The Companies Act 2014 to 2018 [2020] IEHC 445*



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