

AIR TRANSPORT LICENSING AUTHORITY  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION

---

Re: Oasis Hong Kong Airlines Limited  
(Provisional Liquidators appointed)  
ATLA Licences

---

DECISION

Background

1. Oasis Hong Kong Airlines Limited (‘Oasis’) has applied for and has been granted thirteen licences by the Air Transport Licensing authority (‘ATLA’) to carry passengers, freight and mail upon a number of scheduled journeys, namely, ATLA Licences Nos. 16/2005, 17/2005, 18/2005, 6/2007, 18/2007, 19/2007, 20/2007, 21/2007, 22/2007, 23/2007, 24/2007, 27/2007 and 1/2008.
2. Up to 9 April 2008, Oasis operated two routes, namely, between Hong Kong and London Gatwick, and between Hong Kong and Vancouver.
3. On 9 April 2008, Oasis presented a petition to the High Court of the Hong Kong Special Administrative Region for its own compulsory winding up, relying on sections 177(1)(d) and/or (f) of the Companies Ordinance (Cap.32) in that the company is unable to pay its debts and/or it is just and equitable that the company should be wound up. On the same day, the Court appointed Messrs. Edward Simon Middleton and Patrick Cowley as joint and several provisional liquidators with restricted specific powers. Also on the same day, the operation of Oasis’s air services ceased except for two flights returning from Vancouver and Gatwick. The petition is scheduled to be heard on 11 June 2008.
4. Consequent upon the presentation of petition and the appointment of provisional liquidators, ATLA gave notice to Oasis on 9 April 2008 that it would hold an inquiry to consider the revocation or suspension of the above licences by reason of Condition (h) attached to each of the licences which provides: ‘This licence shall lapse should the holder of the licence go into receivership, winding up or liquidation, or enter into any composition with its creditors’. The inquiry was scheduled to be held on 30 April 2008.
5. On 19 April 2008, the provisional liquidators terminated the employment of the majority of Oasis’s staff including the aircrew. Only a small number of staff was retained to assist the provisional liquidators in the exercise of their duties.

6. By a letter dated 22 April 2008 to ATLA, solicitors acting for the provisional liquidators (Tanner De Witt) contend that the appointment of provisional liquidators is not synonymous with liquidation, and that as Oasis has not actually entered into receivership, winding up or liquidation condition (h) has not been satisfied.
7. By a further letter dated 25 April 2008 to ATLA, Tanner De Witt contend that Oasis is not in breach of condition (h) because until the making of a winding up order it has not been wound up, nor is it in liquidation as well as the petition may be dismissed at the hearing, asking for an adjournment of the hearing of the inquiry to a date after the hearing of the petition on 11 June 2008.
8. On 30 April 2008, Mr. Middleton and Mr. Ian De Witt of Tanner De Witt attended before ATLA. They contended that the above licences had not lapsed by reason of condition (h) in that Oasis had not gone into receivership, winding up or liquidation and had not entered into any composition with its creditors. They indicated that it was not necessary to proceed with the inquiry to consider revocation or suspension as the licences would have automatically lapsed if, contrary to their contention, Oasis had gone into receivership, winding up or liquidation or had entered into composition with its creditors. At their request and to afford them a fair opportunity to address ATLA fully and properly, ATLA agreed to give them time to file written submissions. The written submissions were filed by Tanner De Witt on behalf of Oasis on 9 May 2008.

#### Submissions for Oasis

9. By their written submissions, Tanner De Witt contend that Oasis has not gone into winding up or liquidation. In support of this contention they argue that a company is only in winding up or liquidation when a winding up order is made by the Court. In ATLA's view, this argument ignores section 184(2) of the Companies Ordinance (Cap.32) which provides that the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up. The making of a winding up order does not signify the commencement of the winding up process. In any event, the words used in Condition (h) of the licences, namely, "go into" (winding up or liquidation) are different from the word "in" (winding up or liquidation) employed in the above argument.
10. (a) The thrust of Tanner De Witt's argument is based on distinctions drawn between provisional liquidation and liquidation/winding up, and between provisional liquidators and liquidators. Referring to the role of the provisional liquidators of Oasis to maintain the status quo, to preserve the company's assets, and to seek potential buyers to rescue the company, Tanner De Witt argue that the role of the provisional liquidators to preserve the assets of the company is distinct from that of a liquidator to distribute the assets of a company. They argue that provisional liquidators are often appointed with a

view to a company being restructured out of provisional liquidation, and that the appointment of a provisional liquidator is not necessarily followed by a winding up order or liquidation.

- (b) In ATLA's view, such distinctions and arguments do not support the contention that Oasis has not gone into winding up or liquidation. The Court may empower or appoint a provisional liquidator to carry out a corporate rescue role so long as the petitioner intends to seek a winding up order if the rescue attempt should fail: *Re Kevview Technology* para.19; *Re Luen Cheong Tai International Holdings Ltd.* para.31; *Re I-China Holdings Ltd.* para.26 (cases referred to in paras.19-20 of Tanner De Witt's written submissions). Consequently, the fact that the provisional liquidators are empowered by their appointment to carry out a corporate rescue role which may or may not be successful ultimately should not lend support to the contention that Oasis has not gone into winding up or liquidation. Provisional liquidators and liquidators are both appointed for the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose: sections 192-194, Companies Ordinance (Cap.32). The fact that they perform different roles or functions should not lend support to the contention that Oasis has not gone into the winding up process.

#### Reasons for decision

11. Having considered these submissions, ATLA is of the view that Oasis has gone into winding up or liquidation on and as from 9 April 2008 for the following reasons.
12. Firstly, the words "go into winding up or liquidation" in Condition (h) of the licences should be given their ordinary and natural meaning. So understood, the words should refer to the winding up or liquidation process as from its commencement. In the present case, these words should be understood to refer to Oasis's presentation of the petition for its own winding up due to insolvency on and as from 9 April 2008 when provisional liquidators were appointed, and when the operation of Oasis's air services ceased. For compulsory winding up by the Court, the process is deemed to commence at the time of the presentation of the petition: section 184(2), Companies Ordinance (Cap.32).
13. Secondly, Condition (h) was attached by ATLA to the licences in the discharge of its statutory function. In granting these licences with Condition (h) attached, ATLA had regard to the financial resources of Oasis as well as the extent to which it was probable that Oasis would be able to provide a satisfactory service in respect of safety, continuity, regularity of operation, frequency etc. as required under Regulation 11 of the Air Transport (Licensing of Air Services) Regulations Cap.448 (the Regulations). The licences were granted upon the basis that Oasis had the financial resources and was able to provide the air services. It can

thus be appreciated that Condition (h) was attached to ensure that these licences were effective only as long as Oasis continued to be financially viable and able to provide the air services. When so understood, it should be clear that Oasis has gone into winding up or liquidation on and as from 9 April 2008 when it presented the petition for its own winding up due to insolvency, when provisional liquidators were appointed, and when the operation of Oasis's air services ceased. The above underlying considerations for the grant of these licences were then gone.

14. Thirdly, the licences were personal to Oasis, not capable of being transferred or assigned. As from 9 April 2008, the provisional liquidators instead of Oasis's directors have the powers to carry on the business of the company or to close or cease to operate all or any part of the company's business operations, all for preserving or protecting the assets of the company. In fact, on 9 April 2008 the provisional liquidators decided to cease the operation of Oasis's air services. Thus, the persons who could carry on the business of the holder of the licences have been changed upon the appointment of the provisional liquidators. Upon this analysis, ATLA is again of the view that Oasis has gone into winding up or liquidation on and as from 9 April 2008.

#### Decision

15. It is ATLA's view that Oasis has gone into winding up or liquidation on and as from 9 April 2008. It follows that, as agreed by the provisional liquidators and those representing them, the above licences have automatically lapsed in accordance with Condition (h), it being not necessary for ATLA to revoke or suspend them and hence to proceed with the inquiry.

Dated this 6<sup>th</sup> day of June, 2008.

Andrew LIAO Cheung-sing, Chairman  
Albert AU Siu-cheung, Member  
Vivien CHAN, Member  
Michael FUNG Ka-yiu, Member  
Elizabeth LAW, Member  
MA Ho-fai, Member  
Philco WONG Nai-keung, Member

AIR TRANSPORT LICENSING AUTHORITY