

WATSON FARLEY
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AIRLINE RESTRUCTURING
CZECH REPUBLIC



“IMPRESSIVE ASSET
FINANCE PRACTICE.”

CHAMBERS EUROPE 2020

On 26 August 2020, members of the Smartwings Group including Smartwings, a.s. (**Smartwings**) and České Aerolinie, a.s. (**CSA**) sought protection under an extraordinary moratorium pursuant to emergency legislation to alleviate the impact of the coronavirus pandemic.

On 26 February 2021, CSA filed in a Prague court for a Czech Reorganisation. There is currently no suggestion that Smartwings will follow suit.

“WFW UNDOUBTEDLY
HAS ONE OF THE
LARGEST ASSETS AND
STRUCTURED
FINANCE PRACTICES.”

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While there are no restrictions on Czech companies preventing them from pursuing a restructuring in another jurisdiction (for example, a UK Restructuring Plan or a US Chapter 11), the Czech courts have been reluctant to enforce foreign restructuring judgements. While this may not dissuade a Czech company, it is generally expected that airlines in the Czech Republic that pursue a restructuring are most likely to follow a Czech insolvency process.

Insolvency proceedings in the Czech Republic are always judicial proceedings, in which the court makes decisions and oversees the entire procedure. Upon petition, the court decides whether the debtor is insolvent (i.e. suffering either from illiquidity or over-indebtedness) and, if so, which process it should follow, either Bankruptcy (i.e. liquidation) or Reorganisation (i.e. restructuring).

“HUGE DEPTH OF
EXPERTISE IN AVIATION
FINANCING.”

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“ONE OF THE MOST
ACTIVE PLAYERS IN
THE MARKET.”

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TIER 1 IN TRANSPORT FINANCE AND LEASING

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As an introduction to a Czech Reorganisation, we set out below a table comparing some of the principal differences between a UK Restructuring Plan, a US Chapter 11 and a Czech Reorganisation.

	UK Restructuring Plan (CIGA)	US Chapter 11 Bankruptcy	Czech Reorganisation
Availability to foreign entities	Yes, provided the company has a “sufficient connection” to the UK. Debt and/or leases governed by English law would typically be sufficient.	Yes, provided the company has assets in the US (very low threshold).	No, only available if the company’s centre of main interests (COMI) is in the Czech Republic.
Debtor in possession regime	Yes (low level of court supervision).	Yes (high level of court supervision).	Yes (high level of court supervision).
Moratorium terms	No moratorium applicable under the UK Restructuring Plan* *CIGA includes a separate moratorium regime which may become relevant but which is much more limited in scope than the Chapter 11 worldwide stay. It is not yet clear how this will be used in practice.	Imposes worldwide stay on enforcement until confirmation of plan. Section 1110 gives mortgagees and lessors the right to recover ‘aircraft equipment’ after 60 days from a domestic US airline, if defaults are not remedied.	Yes, debts before filing are stayed but any failure to pay future debts will mean that the court will move the company to a Bankruptcy.
Are creditors’ rights under the CTC triggered by virtue of an ‘insolvency proceeding’ in relation to the company?	Untested by the courts.	Yes.	N/A
Ability to hand back leased aircraft	Only as part of the final restructuring plan, if approved.	Yes – “executory contracts” can be affirmed or disclaimed by the company. Gives company power to “cherry pick” leases and contracts.	Only as part of a Reorganisation Plan, if approved.
Creditor classes	Classes should include creditors whose interests are “not so dissimilar as to make it impossible for them to consult together with a view to their common interest”.	Generally grouped on basis of the creditors’ claims in one class being substantially similar. Unsecured creditors typically constitute one class, but classes can be split on basis of different treatment under the restructuring plan.	Before voting on a Reorganisation Plan, creditors are bifurcated into secured creditors and unsecured creditors. In voting for a Reorganisation Plan, the secured creditors are each considered a separate class with usually a single class for all unsecured creditors.

	UK Restructuring Plan (CIGA)	US Chapter 11 Bankruptcy	Czech Reorganisation
Consent threshold required to approve restructuring plan	Approval of 75%, by value, of each creditor class for automatic approval by court.	Approval of 2/3rd by value and a simple majority by number of each class. Dissenting minority is bound, provided they would receive at least that which they would in a liquidation.	Approval of 50%, by both value and number of those attending meeting, for each creditor class (i.e. de facto 100% approval for secured creditor classes).
Cross-class cramdown	Available at the discretion of the court, provided that: <ol style="list-style-type: none"> One class of creditor votes in favour. No member of a dissenting class would be worse off than in the "relevant alternative". 	Available at the discretion of the court, provided that, amongst other things: <ol style="list-style-type: none"> At least one class of "impaired" creditors votes in favour. The plan is "fair and equitable" to dissenting and junior classes. The plan provides each creditor at least what it would have received in liquidation. 	Available at the discretion of the court, provided that: <ol style="list-style-type: none"> At least one class of creditors votes in favour. The plan is "fair" to each dissenting class and ensures equal treatment. Each creditor receives at least what it would have received in Bankruptcy (expert opinion is decisive).
Timing	Uncontested process can be completed within 6 to 8 weeks. If contested, process may take longer.	Pre-confirmation stage is typically 6 to 12 months. Post-confirmation implementation stage is typically a number of years (3 to 5 is common).	120 days to present a Reorganisation Plan. The approval process typically takes 6 to 24 months. Implementation depends on restructuring methods, but typically takes 1 to 3 years.
Costs	Limited by relatively short process.	Relatively high due to length of process. Often in the millions of dollars pcm.	Relatively high due to length of process.
Forum for winding-up	No. If restructuring fails, a separate insolvency process would be required under domestic laws.	If restructuring fails, Chapter 11 process can be turned into a Chapter 7 winding-up.	If Reorganisation fails, process will move to Bankruptcy (i.e. liquidation).

The above has been prepared with Czech law input from **BBH, advokátní kancelář, s.r.o.** Please contact us if you require further information.

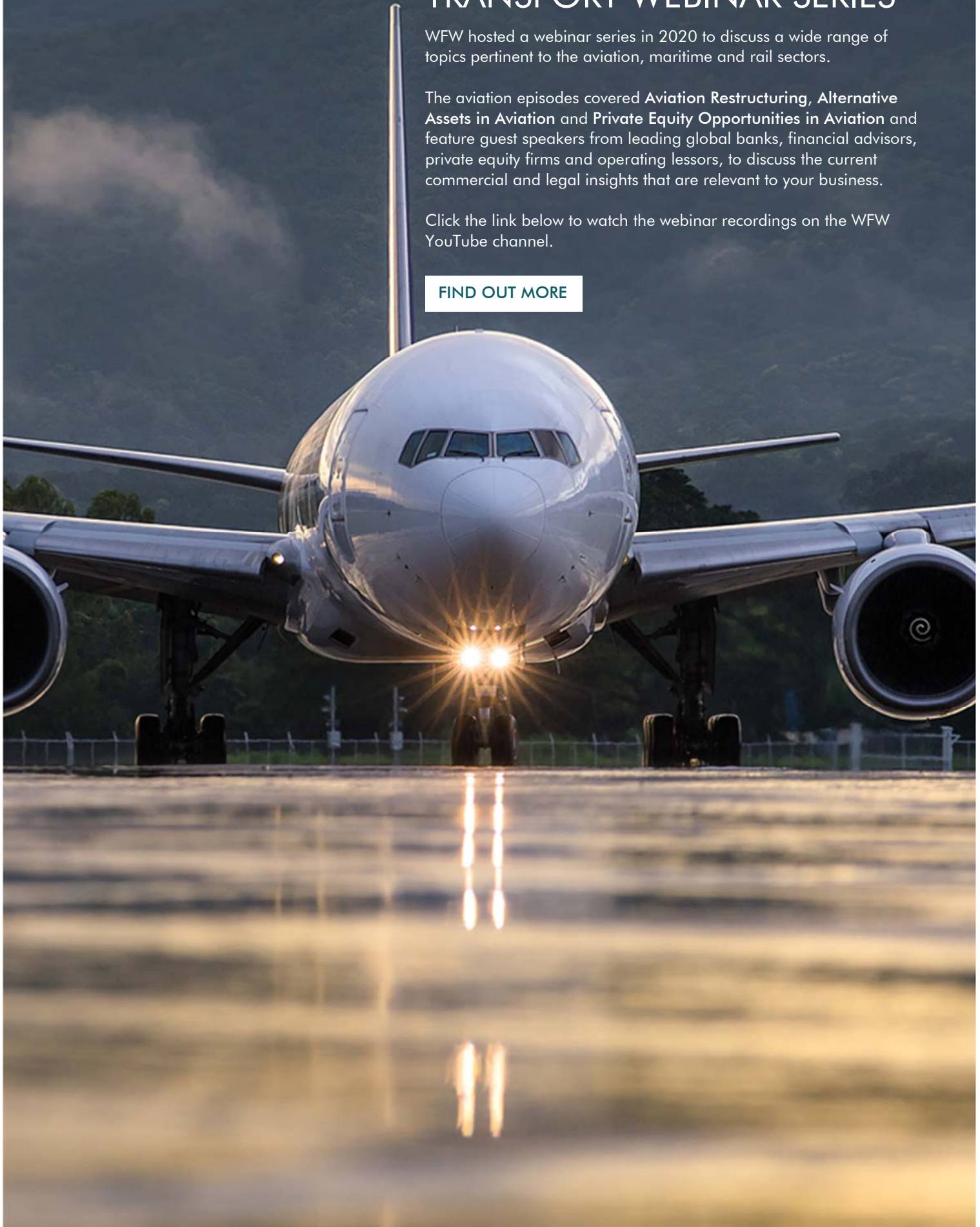
TRANSPORT WEBINAR SERIES

WFW hosted a webinar series in 2020 to discuss a wide range of topics pertinent to the aviation, maritime and rail sectors.

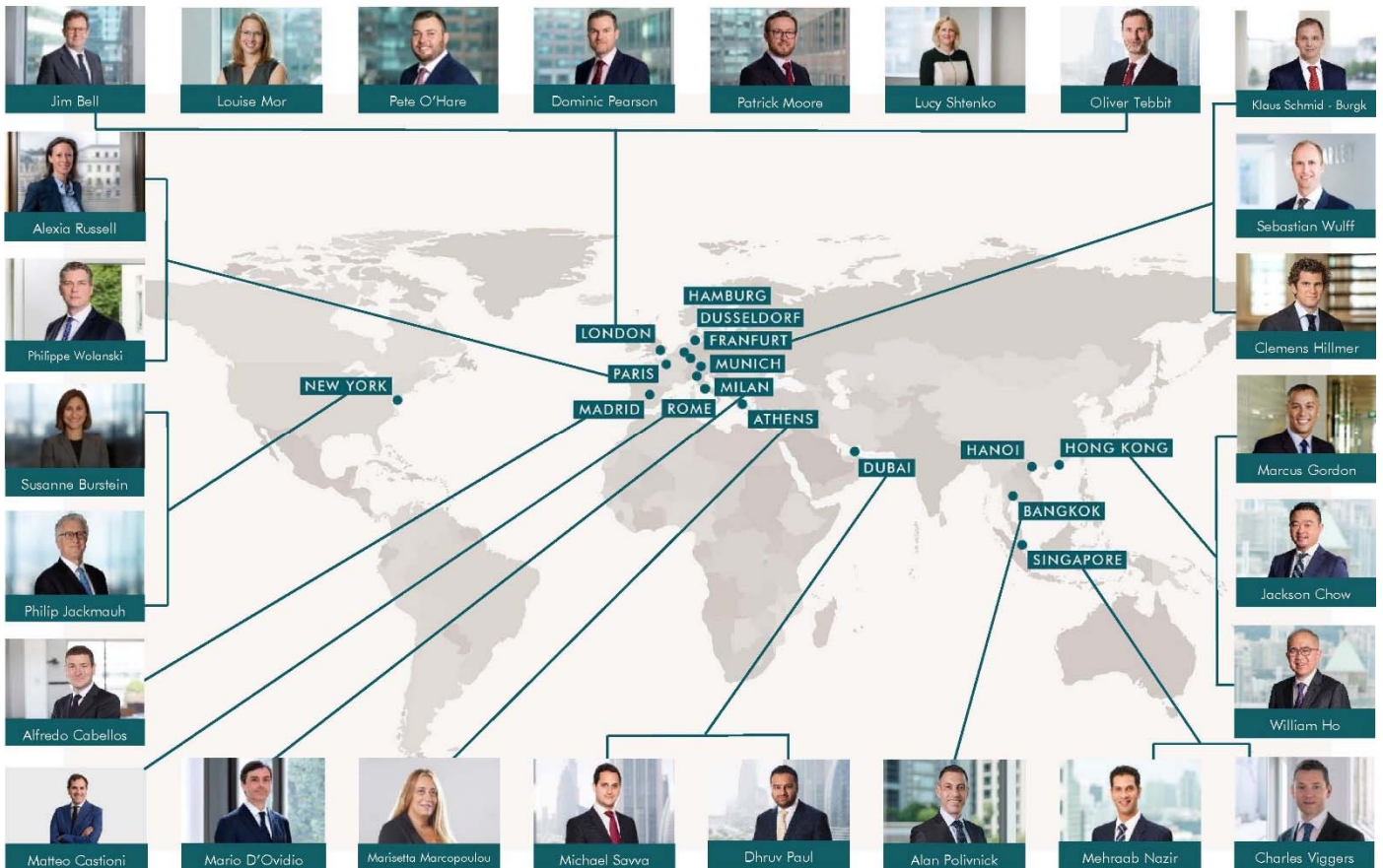
The aviation episodes covered **Aviation Restructuring**, **Alternative Assets in Aviation** and **Private Equity Opportunities in Aviation** and feature guest speakers from leading global banks, financial advisors, private equity firms and operating lessors, to discuss the current commercial and legal insights that are relevant to your business.

Click the link below to watch the webinar recordings on the WFW YouTube channel.

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COVID-19 AVIATION RESTRUCTURING REPORT

Airlines across the globe are dealing with the impact of COVID-19. In this report, we examine the challenges to the aviation industry and consider the options available.

It is essential reading for all aviation market participants, from airlines and lessors, to banks, financial institutions and investors.

[VIEW THE REPORT HERE](#)

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