

Signature Litigation LLP
138 Fetter Lane
London, EC4A 1BT

T: +44 (0)20 3818 3500
F: +44 (0)20 3818 3501

20 April 2020

By email

easyJet Airline Company Limited
Hangar 89
London Luton Airport
Luton
Bedfordshire
LU2 9PF

Your ref
Our ref

SJB

For the attention of John Barton and Johan Lundgren

Dear Sirs/Madams

easyJet PLC (the "Company") Board of Directors (the "Directors")

Please ensure a copy of this letter is brought to the attention of each of the Directors of the Company.

We act for Sir Stelios Haji-Ioannou ("**SHI**") and easyGroup Holdings Limited (together, "**our clients**").

SHI is the founder of the Company and the Chairman of easyGroup, which represents approximately 34% of the shares in the Company. The shares are held through various nominees including UBS Private Banking Nominees Limited and Vidacos Nominees Limited. easyGroup and members of SHI's family together are by some distance the largest single shareholder block in the Company.

In summary:

1. The Board has failed to eliminate or even minimise the Company's obligations under a long-term contract with Airbus SE (the "**Airbus Contract**") and have failed to take recognise the severity of the crisis facing the Company or the need for decisive action to resolve it.
2. In particular, the Board should (i) have terminated the Airbus Contract; (ii) or at the very least should have reduced to the greatest possible extent those obligations by negotiation, and (iii) should not have affirmed the Airbus Contract by its recent actions. The context is the unprecedented crisis in global aviation caused by the Covid-19 pandemic (the "**Crisis**").
3. As a result, the Board are in breach of their duties under Chapter 2 of Part 10 of the Companies Act 2006, and in particular:
 - (a) Section 172, which requires directors to act in a way which "[the Director] *considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole*".
 - (b) Section 174, which requires the directors to exercise reasonable care, skill and diligence.

www.signaturelitigation.com



4. Pending your response to this letter, our clients reserve their rights, including to seek urgent injunctive relief against the Board to prevent those breaches.

Background

In 2013, shareholder approval was sought to enable the Company to enter into the Airbus Contract because it was a Class 1 transaction under the Listing Rules. A Circular was provided to shareholders (the "**Circular**"). The Circular stated that the list price of each aircraft was US\$92.3m. That price would rise under an inflation formula, and will have risen substantially in the last 7 years. The Company currently operates a fleet of 337 aircraft.

Pursuant to the Airbus Contract the Company has agreed to purchase a staggering 107 new aircraft from Airbus. That envisages roughly a one-third increase in the Company's aircraft capacity over the life of the Airbus Contract. The effect of the Airbus Contract is to require enormous growth in the Company's business and passenger numbers. In light of the Crisis, such growth appears to be wholly implausible and unachievable.

The Crisis and Impact on Airline Financial Performance and Outlook

The airline industry has been and will continue to be severely disrupted by the Crisis. Most European airlines, including the Company, are grounded. Several airlines have entered insolvency processes, or are at the brink of insolvency. There is no immediate prospect of a resumption in flying by the Company, nor any clarity (as yet) from government on the likely social distancing restrictions when flying does resume.

The reality is that admitted by competitor airlines such as IAG. On 28 April 2020, IAG said "*recovery to the level of passenger demand in 2019 is expected to take several years, necessitating Group-wide restructuring measures*" including the potential redundancy of a quarter of British Airways staff. Guillaume Faury, the CEO of Airbus, is reported in the *Times* on 30 April as saying that a recovery to 2019 levels of demand will take five years and this is "*the gravest crisis the aerospace industry has ever known*".

In contrast, the Company is working from the basis of wildly over-optimistic plans, the consequence of which will be a lengthy burning of cash, followed by insolvency.

In its 16 April 2020 trading update (the "**Update**"), the Company produced projections of cash burn for a 3, 6 and 9 month shutdown, subject to various (highly optimistic) assumptions, including that customers do not increasingly demand their money back for cancelled flights. These scenarios also assume an instantaneous return to 2019 demand levels after 3, 6 or 9 months, with planes flying as full and as a regularly as they were pre-pandemic. This is a wholly unreal series of assumptions, not shared by any other airline or manufacturer.

The Company is failing to be honest with the market. The Board of Directors have taken a wholly implausible view of the medium term prospects for the recovery of the business of the Company in light of the Crisis. As every day passes, airline companies are announcing redundancies, aircraft purchase cancellations, requests for bail-out loans, and making gloomy predictions for passenger numbers. The Company must now reassess its assessments and projections in light of the enormous cost of maintaining its fleet as against, higher eventual operational costs, and for lower demand for many years to come.

The Airbus Contract

The critical commercial terms of the Airbus Contract are unclear. Indeed, the Company has failed to properly keep the market informed as to the extent of these obligations.

The Update provides limited and inadequate information. It also carefully obscures the true amount of cash being transferred to Airbus pursuant to the Airbus Contract. From the Update we understand the position to be as follows:



1. The Company has affirmed (or is in the process of affirming) the Airbus Contract. It is unclear to our clients what form the new agreement with Airbus takes (if it is in fact in contractual form), and if so, whether it has already been concluded, and whether it has been made conditional on shareholder approval, as required by the Listing Rules.
2. The Company considers that its cash burn over the next 9 months will be £3 billion.
3. Weekly operating costs are £40 million per week (taking into account cost cutting measures), but over 40 weeks that comes to only £1.6 billion.
4. The remaining £1.4 billion must therefore (by deduction) be in large part to be paid to Airbus *in the next 9 months*.
5. The total number of aircraft purchased under the Airbus Contract in the current financial year is 14.

It is extraordinary that the Company made the actual figures public, so that shareholders can understand the position accurately. Instead, there has been a vague suggestion in the documents circulated to shareholders ahead of the EGM, that the majority of this capex over several years is leasing payments, leaving entirely open the point being made by our clients. How much money is being paid to Airbus in this financial year, which is critical for the Company's survival?

Breaches of duty

Under s.172, a director's duty to promote the success of the company requires him or her to have regard to, amongst other things, (1) the likely consequences of any decision in the long term; (ii) the interests of the company's employees, and (iii) the need to act fairly as between members of the company.

Under s.174, a director must exercise reasonable care, skill and diligence in performance of their duties.

The Directors have breached these duties. At the heart of the breaches is a failure to recognise the severity of the problems facing the Company, and over-optimistic estimations of the likely time to return to anything approaching normality.

In reality, (i) there is no prospect of the Company's fleet being operation again soon; (ii) even when restrictions on travel are eventually lifted, they are likely to be lifted progressively, and (iii) global economic circumstances, and the undesirability and risks of travel in particular, mean that revenue is likely to be very considerably decreased thereafter.

The Company has indicated that, notwithstanding the minimal revenue likely to be generated, it will nevertheless spend approximately £3 billion in the next 9 months (a large proportion of which is for the payment to Airbus for new aircraft (not including these already paid for earlier this year). The expenditure under the Airbus Contract is the overwhelming contributor to the losses the Company will sustain over that period.

Those losses have already caused the Company to take a £600m loan from HM Treasury under the Covid Corporate Financing Facility, and substantially increase the drawdowns on its RCF by £407m.

As a result, it would plainly be in the Company's interests to eliminate or minimise its expenditure under the Airbus Contract.

The Company has previously suggested that it cannot terminate the contract because to do so would result in retroactive price increases on aircraft already delivered, and because cancellation would threaten ongoing services provided by Airbus in relation to aircraft already supplied. These purported justifications do not withstand scrutiny. In the circumstances there is no reason why the contract cannot be advantageously renegotiated to cancel future deliveries, or at least secure a large price reduction, rather than briefly postponing deliveries at the same price. This is what other airlines have been doing with their



suppliers. And Airbus has not threatened to withdraw ongoing servicing and parts services. Indeed, it could not lawfully do so consistent with its obligations under competition law.

Nor is there any good reason why termination of the Airbus Contract has not been pursued on the basis of force majeure or a fundamental change amounting to frustration.

We do not know if the deferral referred to in the Update is pursuant to the existing terms of the Airbus Contract, or the result of a renegotiation or the result of the enforcement of existing legal rights as a result of the force majeure or frustration event. However, our present understanding is that the Company has concluded a new agreement varying and affirming the Airbus Contract (the "**2020 Amendment**").

Our clients cannot see how any right-minded director would not look to cancel or renegotiate such onerous obligations. It follows that the entry into the 2020 Amendment constitutes a breach of the directors' duties to the Company.

As you know, our clients have long been concerned about the unethical business methods of Airbus and its propensity to bribe. Our clients have asked the Company to submit to an independent investigation to expose any potential wrongdoing which may have unlawfully influenced the basis upon which the Airbus Contract was concluded, and more recently affirmed (if that is indeed what has taken place). Given both the high risk of such conduct, and the desirability of bringing the Airbus Contract to an end, it is a further breach of duty not to commence such an investigation.

Further, as you are aware, our clients consider that the new arrangement with Airbus is a Class 1 transaction requiring the approval of shareholders. It is notable that the Company has still not confirmed whether it consulted its sponsor prior to concluding the new arrangement (as required under the Listing Rules), and nor has it responded at all to our clients' contention. If our clients are correct, then these breaches of the Listing Rules will also be a breach of directors' duties, because the Company is foreseeably likely to be subject to penalties from the FCA as a result.

The Way Forward

The 2020 Amendment is a Class 1 transaction and requires a shareholder vote. Even if the new arrangement has been concluded, that does not mean that shareholders cannot express their displeasure, or indeed that further renegotiation can take place if that is the direction in which shareholders wish the Company to go.

Our clients have also requisitioned a shareholder meeting to vote on the removal of four of the Company's directors (including those with immediate day to day control of the Company).

If they are successful then new Executive Directors will be in a position to determine whether the matters complained of in this letter should be pursued by the Company directly other than by way of derivative action (as currently contemplated). However, given the uncertainty about the steps to be taken under the Airbus Contract in the interim, it may be necessary to seek injunctive relief.

Our clients would prefer to avoid the commencement of proceedings, and for this matter to be dealt with in an orderly fashion. However, in order to achieve that outcome, our clients require the following information to be disclosed to them as soon as practicable and in any event by no later than close of business on Tuesday 5 May 2020:

1. A copy of the Airbus Contract and any related documents (including schedules, appendices thereto etc).
2. A copy of any amendment to the Airbus Contract and specifically the 2020 Amendment, in so far as it is a written document.
3. All recent correspondence with Airbus concerning the Airbus Contract and the 2020 Amendment.



4. All legal advice received by the Company in connection with the Company's ability to terminate the Airbus Contract or otherwise materially re-negotiate its terms, including in light of the Crisis
5. The names of all the Company's key executives, and their counterparts at Airbus, involved in the negotiation of the Airbus Contract, the placing of purchase orders pursuant to it, and the deferral arrangement throughout the period 2013 to date.

We further require confirmation of the following matters, in order to understand both what breaches have occurred, and whether they are continuing and/or at risk of being committed in the near future:

1. Confirmation as to the exact legal status of the recently announced deferral arrangement (including the 2020 Amendment).
2. In particular, confirmation of whether the Company is due to execute or complete any contractual arrangement with Airbus prior to the General Meeting or other meeting at which Class 1 approval will be obtained.
3. A schedule of payments due to Airbus, containing both the relevant amounts and due dates.

Early and swift confirmation of these matters, together with appropriate disclosure, will ensure the swift and orderly determination of any dispute, and is therefore within all parties' interests.

In the absence of a satisfactory reply, our clients reserve the right to commence proceedings, on a derivative basis on behalf of the Company against each member of the current Board, and to seek interim injunctive relief to prevent any further steps being taken in relation to the Airbus Contract.

We would remind you that it is not appropriate for funds of the Company to be spent on legal advice for the directors in relation to this intended claim on behalf of the Company.

False Market

Finally, our clients insist that the Directors must act immediately to avoid creating a false market in the stock. The directors must take steps to provide the shareholders, house brokers and their analysts with reasoned revenue guidance for FY2021 thereby correcting the wildly optimistic revenue assumptions adopted by the Company's two advisers (Credit Suisse and BNP) who put their names to the recent shareholder circular.

In the meantime, all our clients' rights are reserved.

Yours faithfully

Signature Litigation LLP