

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**ORDER (A) PROHIBITING UTILITY PROVIDERS FROM ALTERING,
REFUSING OR DISCONTINUING UTILITY SERVICES, (B) DEEMING UTILITY
PROVIDERS ADEQUATELY ASSURED OF FUTURE PERFORMANCE, (C)
ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF
PAYMENT, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession in this case (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”) for entry of an order (this “**Order**”), as more fully described in the Motion, (a) prohibiting Utility Providers from altering, refusing or discontinuing services to the Debtor, except as set forth herein; (b) deeming the Utility Providers adequately assured of future performance; and (c) establishing procedures for resolving requests for additional adequate assurance of future payment and authorizing the Debtor to provide adequate assurance of future payment to the Utility Providers and Consenting Foreign Utility Providers, each as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference M-431*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the

¹ The Debtor in this chapter 11 case, along with its registration number in the Philippines, is Philippine Airlines, Inc., Philippine Securities and Exchange Commission Registration No. PW 37. The Debtor’s corporate headquarters is located at PNB Financial Center, President Diosdado Macapagal Avenue, CCP Complex, Pasay City 1300, Metro Manila, Philippines.

² Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.



requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and such notice having been adequate and appropriate under the circumstances, and no other or further notice needing be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the relief requested in the Motion being in the best interests of the Debtor, its estate, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent provided herein.
2. To the extent not otherwise already deposited, Debtor shall deposit within ten days of this Order the sum of \$5,000 (as may be modified from time to time, the “**Adequate Assurance Deposit**”) into a bank account established by the Debtor in New York, or a current dormant bank account that has been previously established (the “**Adequate Assurance Account**”), for the purpose of providing each Utility Provider and Consenting Foreign Utility Prover with adequate assurance of payment of its postpetition Utility Services to the Debtor. The Adequate Assurance Account may either be interest-bearing or non-interest-bearing at the Debtor’s election.
3. The Adequate Assurance Account shall be maintained with a minimum balance of \$5,000, which may be adjusted by the Debtor (a) to account for the addition or removal of a

Utility Provider from Utility Service List, as may be amended or modified in accordance with the procedures set forth herein regardless of any Additional Assurance Request (as defined below), (b) to account for any adequate assurance deposits for Consenting Foreign Utility Providers, and (c) in accordance with the terms of any agreement between the Debtor and the affected Utility Provider or Consenting Foreign Utility Provider.

4. The creation and maintenance of the Adequate Assurance Account, in conjunction with the Adequate Assurance Procedures (as defined below) and the Debtor's ability to pay for future utility services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**"), is deemed adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code. The Debtor is not required to provide any additional adequate assurance beyond what is stated in this Order.

5. The portion of the Adequate Assurance Deposit attributable to each Utility Provider and Consenting Foreign Utility Provider shall be returned to the Debtor, without further Court order, on the earlier of (a) the reconciliation and payment by the Debtor of the Utility Provider's or Consenting Foreign Utility Provider's final invoice in accordance with applicable non-bankruptcy law following the Debtor's termination of Utility Services from such Utility Provider or Consenting Foreign Utility Provider, as provided below, or (b) the effective date of the Prepackaged Plan; *provided* that there are no outstanding disputes related to postpetition payments due.

6. Except in accordance with the procedures set forth below, all Utility Providers and Consenting Foreign Utility Providers are prohibited from altering, refusing, or discontinuing services to, or discriminating against, the Debtor on account of the commencement of this

Chapter 11 Case, any unpaid prepetition charges or any objections to the adequacy of the Proposed Adequate Assurance.

7. The Debtor's Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures (the "**Adequate Assurance Procedures**"):

- a. Within three business days of the date of this Order, the Debtor will mail a copy of such Order to the Utility Providers on the Utility Service List.
- b. If any Utility Provider is not satisfied with the Proposed Adequate Assurance, it must serve a written request for additional adequate assurance (the "**Additional Assurance Request**") upon: (a) Debtor, (b) proposed counsel for the Debtor, and (c) counsel to any statutory committee appointed in this Chapter 11 Case (collectively, the "**Notice Parties**").
- c. Any Additional Assurance Request must set forth: (a) the location(s) for which Utility Services are provided and the relevant account number(s); (b) a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits and outstanding balances; and (c) an explanation of why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient assurance of future payment.
- d. Without further order of the Court, the Debtor may enter into agreements granting additional adequate assurance to a Utility Provider serving an Additional Assurance Request if the Debtor, in its sole discretion, determines that the Additional Assurance Request is reasonable or negotiate alternative consensual provisions with such Utility Provider, including payments on prepetition amounts owing, cash deposits, prepayments or other forms of security.
- e. If the Debtor, in its sole discretion, believes that an Additional Assurance Request is unreasonable and cannot negotiate alternative consensual provisions with the applicable Utility Provider, the Debtor shall promptly file a motion pursuant to section 366(c) of the Bankruptcy Code (a "**Determination Motion**"), which shall be calendared for the next regularly scheduled omnibus hearing and seek a determination from the Court that the Adequate Assurance Deposit, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment. Pending the hearing of the Determination Motion, the relevant Utility Company may not alter, refuse or discontinue services to the Debtor or recover or set off against a prepetition deposit.

8. The Debtor is authorized, but not directed, in its sole discretion, to pay on a timely basis, in accordance with its prepetition practices, all undisputed invoices for Utility Services

rendered by Utility Providers and Consenting Foreign Utility Providers to the Debtor after the Petition Date.

9. To the extent the Debtor subsequently identifies additional providers of Utility Services, the Debtor may, in its discretion, amend the Utility Service List to add any Utility Provider. The Debtor shall (a) promptly file a supplemental notice with the Court (the “**Supplemental Notice**”) and (b) promptly serve a copy of the Motion, the Supplemental Notice and this Order on each Utility Provider listed in such Supplemental Notice. Any subsequently added Utility Company that objects to the Proposed Adequate Assurance shall be subject to the Adequate Assurance Procedures. This Order shall be deemed to apply to any such Utility Provider regardless of when such Utility Provider may be added to the Utilities List.

10. In the event an additional Utility Provider is added to the Utilities List, the Debtor shall increase the amount of the Adequate Assurance Deposit by an amount equal to 50% of Utility Services provided by such additional Utility Provider, calculated using the Debtor’s historical average for such payments over the past 12 months.

11. The Debtor may terminate the services of any Utility Provider, and may amend the Utilities List to delete any such Utility Provider, only if the Debtor has provided two weeks’ advance written notice (a “**Termination Notice**”) to such Utility Provider and has not received any objection from such Utility Provider. If an objection is received, the Debtor may request a hearing before the Court at the next omnibus hearing date, or such other date that the Debtor and such Utility Provider may agree.

12. The Debtor may reduce the Adequate Assurance Deposit by the amount held on account of any such terminated Utility Service upon payment of any final bill; *provided* that there are no outstanding disputes related to postpetition payments due. To the extent the Debtor

issues a Termination Notice or the services provided by the Utility Provider are otherwise terminated, any deposit held by such Utility Provider shall be returned to the Debtor in accordance with the procedures of applicable non-bankruptcy law, and the Debtor may reduce the Adequate Assurance Deposit attributable to such Utility Provider accordingly.

13. The Debtor's Consenting Foreign Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures:

- a. Pursuant to section 366 of the Bankruptcy Code, a Foreign Utility Provider may receive adequate assurance by providing its irrevocable written consent to the jurisdiction of the Bankruptcy Court for the Southern District of New York and to the applicability of section 366 of the Bankruptcy Code (in form and substance acceptable to the Debtor). Within seven United States business days of the receipt of such consent or such other period as the Debtor and the relevant Consenting Foreign Utility Provider may agree, the Debtor will deposit into the Adequate Assurance Account a sum amounting to 50% of the Debtor's average monthly cost of the services provided by such Consenting Foreign Utility Provider over the preceding 12 months, or such other amount as agreed to by the Debtor and such Consenting Foreign Utility Provider. Such amount shall be returned to the Debtor upon the effective date of the Prepackaged Plan.
- b. If the Debtor terminates any of the Utility Services provided by such Consenting Foreign Utility Provider by delivery of a Termination Notice, the Debtor may immediately reduce the amount on deposit in the Adequate Assurance Account to reflect such termination upon payment of any final bill; *provided* that there are no outstanding disputes related to postpetition payments due.

14. Nothing in the Motion or this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtor and its estate with respect to the validity, priority or amount of any claim against the Debtor and its estate, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtor and its estate with respect to any and all claims or causes of action against any Utility Provider or Consenting Foreign Utility Provider,

(d) shall impair any Utility Provider's or Consenting Foreign Utility Provider's rights with regard to any claims, or (e) shall be construed as a promise to pay a claim.

15. Nothing in this Order or in the Utility Service List is intended or shall be deemed to constitute a finding that any entity is or is not a Utility Provider hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List or is served with a copy of the Motion or the Order, and shall not prejudice the rights and defenses of any party in interest with respect thereto.

16. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearinghouse transfers evidencing amounts paid by the Debtor under this Order whether presented prior to, on or after the Petition Date to the extent the Debtor has good funds standing to its credit with banks or other financial institutions. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtor's instructions.

17. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtor to dispute or contest the amount of or basis for any claims against the Debtor in connection with or relating to the Utility Services.

18. The contents of the Motion and the notice procedures set forth therein are good and sufficient notice and satisfy the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), and no other or further notice of the Motion or the entry of this Order shall be required.

19. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

20. The Debtor is authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

21. This Court shall retain exclusive jurisdiction to hear and determine all matter arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: September 30, 2021
New York, New York

/S/ Shelley C. Chapman
THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE