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in Possession*

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21- _____ (____)

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING IAN F. REID
TO ACT AS FOREIGN REPRESENTATIVE AND (II) GRANTING RELATED RELIEF**

Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), hereby moves (the “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support of the Motion, the Debtor relies upon and incorporates by reference the *Declaration of Nilo Thaddeus Rodriguez in Support of First Day Motions and Applications* (the “**First Day Declaration**”), which was filed with the Court on the Petition Date (as defined herein). In further support of the Motion, the Debtor, by and through its undersigned proposed counsel, respectfully represents:

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.



Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are section 1505 of title 11 of the United States Code (the “**Bankruptcy Code**”).

Background

4. On September 3, 2021 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or statutory committee has been appointed in this chapter 11 case (the “**Chapter 11 Case**”).

5. The Debtor and its affiliates are the largest airline group in the Philippines, and the Debtor is the national flag carrier of the Philippines. Its principal activity is to provide air transportation for passengers and cargo within and outside the Philippines. The Debtor is among the oldest airlines in the Asia Pacific region, having been founded in February 1941. With

approximately 4,500 employees and over \$3 billion in annual gross revenue prior to the COVID-19 pandemic, the Debtor is the leading airline in the Philippines airline market.

6. In 2020, the Debtor was confronted with an extraordinary set of circumstances and flight disruptions induced by the COVID-19 pandemic. The COVID-19 crisis has had a catastrophic impact upon the aviation industry, causing major airlines to effectively halt many business operations. For major airlines such as PAL, the dramatic reduction in worldwide air travel caused significant balance sheet losses and created intractable challenges to meeting existing payment obligations.

7. In response to these unprecedented circumstances, PAL undertook a number of cost cutting measures and began discussions with key stakeholders in the hopes of mapping out a healthy future for the Airline. Those discussions, which spanned many months and involved all major stakeholders and their retained professionals, culminated in several restructuring support agreements (the “**RSAs**”) with substantially all of its aircraft lessors and lenders outlining the material terms for a proposed chapter 11 plan of reorganization (the “**Proposed Plan**”). The RSAs and the Proposed Plan contemplate (a) the reduction of the Debtor’s aircraft related obligations by approximately \$2.1 billion, (b) a \$505 million infusion of working capital to fund the Debtor’s ongoing operations during the Chapter 11 Case and upon emergence from its primary shareholder (the “**DIP Lender**”), (c) optimizing the Debtor’s fleet size, composition, and ownership costs as required by the new market, (d) maintaining and enhancing the Debtor’s key contracts and business partners to strengthen the Debtor’s viability during the pending COVID-19 pandemic and beyond, and (e) obtaining commitments for a \$150 million exit facility from new investors to ensure PAL has adequate liquidity and runway to complete its restructuring.

8. The Debtor likewise engaged in good faith negotiations with its other critical creditors, including its primary original equipment manufacturers (“**OEM**”) and maintenance, repair, and overhaul service providers (“**MRO**”), to ensure that the Debtor continues to obtain the benefit of such critical goods and services. In addition, the OEMs and MROs have agreed to support the Proposed Plan by entering into RSAs, thereby providing additional certainty and predictability to the Debtor’s restructuring and Chapter 11 Case.

9. Prior to the Debtor’s Chapter 11 Case, the Debtor also (a) engaged in numerous good faith negotiations with a large number of its ordinary course vendors and suppliers, resulting in agreements to extend payment terms to provide the Debtor with additional breathing room and runway to assist it through the COVID-19 pandemic and (b) undertook a resizing of its operations, including the reduction of its workforce by 32%, to meet expected post-COVID-19 operational needs.

10. Additional information regarding the events leading up to the Petition Date is set forth in the First Day Declaration and is incorporated herein by reference.

Relief Requested

11. Pursuant to section 1505 of the Bankruptcy Code, the Debtor requests that Ian F. Reid be authorized to act as foreign representative on behalf of the Debtor’s estate in any judicial or other proceedings in a foreign country, including the Philippines. The Debtor further requests that, as foreign representative, Mr. Reid be authorized, but not directed, to (a) seek recognition of this Chapter 11 Case (as well as any of the orders made by the Court in the Chapter 11 Case from time to time) in the Philippines and obtain provisional relief to protect the assets of the Debtor or the interests of the creditors,, and (b) upon recognition in the Philippines, seek any other appropriate relief that is just and proper in furtherance of the protection of the Debtor’s estate.

The Debtor reserves the right to commence ancillary proceedings in the Philippines and/or in other jurisdictions should the facts warrant.

12. To facilitate the Debtor's need for recognition or other appropriate relief in a non-U.S. court, and to avoid any doubt as to who has appropriate authority to seek recognition of this Chapter 11 Case (as well as any of the orders made by the Court in the Chapter 11 Case from time to time) in a jurisdiction outside the U.S., including the Philippines, the Debtor respectfully requests that this Court enter the Proposed Order expressly authorizing Mr. Reid to act as the foreign representative for the Debtor.

13. Mr. Reid is, and has been for many years, the Senior Financial Advisor of the Debtor. As such, he discharges important functions and responsibilities, including providing overall strategic financial advice; managing negotiations and execution of purchase agreements with aircraft and engine manufacturers; providing advice on fleet planning and procurement (including the evaluation and selection of aircraft types and engine options); creating and implementing financial plans for aircraft financings; managing investor relationships with banks, lessors, export credit agencies, and other financiers; and performing such other functions and responsibilities which may be necessary, desirable, or incidental to the attainment of the business objectives of the Debtor. Accordingly, Mr. Reid has the necessary background and familiarity with the Debtor's operations and counterparties to serve as foreign representative. In addition, in light of Mr. Reid being a current employee of the Debtor, the Debtor will not incur additional fees to a third party.

Basis for Relief

14. Section 1505 of the Bankruptcy Code allows a debtor in possession to obtain a court order recognizing the debtor in possession as the foreign representative of the debtor's

estate, in order to submit a petition to a foreign court requesting recognition of this Chapter 11 Case. Specifically, section 1505 of the Bankruptcy Code provides:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505. Section 1505 only applies to cases filed under chapters other than chapter 15 of the Bankruptcy Code because a chapter 15 case does not create an estate under section 541 of the Bankruptcy Code.

15. The purpose of section 1505 is to allow a debtor to petition a foreign court for recognition of its chapter 11 case, and to request that the foreign court cooperate with and lend assistance to the debtor and the United States Bankruptcy Court in meeting the objectives of both chapter 15 of the Bankruptcy Code and the Model Law on Cross-Border Insolvency (the “**Model Law**”), adopted by the United Nations Commission on International Trade Law (“**UNCITRAL**”) in 1997, on which chapter 15 is based.

16. In addition, section 1107(a) of the Bankruptcy Code provides, in relevant part, that “a debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter.” 11 U.S.C. § 1107(a).

17. While the Debtor respectfully submits that Mr. Reid may act as the foreign representative on the basis of the rights and powers conferred upon the Debtor as a debtor in possession under section 1107 of the Bankruptcy Code, the Debtor requests entry of the Proposed Order, pursuant to section 1505 of the Bankruptcy Code, to explicitly authorize Mr. Reid to act as the foreign representative in a foreign proceeding in order to comply with any local legislation and/or foreign law. Such an order would avoid any possible confusion or doubt

regarding this authority and compliance with the requirements of Philippine and any other foreign law.

18. More specifically, clear evidence of a chapter 11 debtor's authority to act in a foreign country is necessary because a chapter 11 case commences immediately upon the filing of a petition, with no order signed by the court that explicitly appoints the debtor as the fiduciary or trustee of the debtor's estate. The fact that a chapter 11 debtor has this authority by virtue of being a debtor in possession may not be persuasive to a foreign court. Moreover, absent a court order, a chapter 11 debtor may find it difficult to satisfy the requirements of a petition for recognition in foreign jurisdictions. In particular, a Petition for Recognition with the Philippine Regional Trial Court requires a foreign representative to file either (a) a certified true copy of the order of the foreign court commencing the foreign proceeding and appointing the foreign representative; or (b) a certificate from the foreign court affirming the existence of the foreign proceeding and appointment of the foreign representative.² Accordingly, granting the Proposed Order would assist the Debtor to obtain the necessary relief in the foreign jurisdiction.

19. Moreover, allowing Mr. Reid to serve as foreign representative will allow coordination of this Chapter 11 Case and any other proceedings that may be commenced and provide an effective mechanism to protect and maximize the value of the Debtor's assets and estate. *See* 11 U.S.C. § 1501(a) (stating that "objectives" of chapter 15 include "protection and maximization of the value of the debtor's assets" and "cooperation between . . . the courts and other competent authorities of foreign countries involved in cross-border insolvency cases" and, *inter alia*, "courts of the United States" and United States "debtors in possession"). Similarly, because the Debtor has significant assets in the Philippines, it is critical that a stay similar to the

² The Debtor understands that other jurisdictions that have adopted the Model Law contain similar requirements.

automatic stay imposed pursuant to section 362 of the Bankruptcy Code be expressly granted in the Philippines, and that this Court's various orders also be recognized in the Philippines.

20. Accordingly, the Debtor submits that the relief requested herein is necessary and appropriate, is in the best interests of its estate and its creditors, and should be granted in all respects.

Notice

21. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel (the "**Notice Parties**"): (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the thirty largest unsecured claims against the Debtor; (c) the parties to the RSAs; (d) the DIP Lender; (e) the United States Attorney's Office for the Southern District of New York; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the Federal Aviation Administration; and (i) any party that has requested service pursuant to Bankruptcy Rule 2002. A copy of this Motion and any order approving it will also be made available on the Debtor's Case Information Website located at www.kccllc.net/PAL. In light of the nature of the relief requested in this Motion, the Debtor respectfully submits that no further notice is necessary.

No Previous Request

22. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

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WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed Order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: September 3, 2021
New York, New York

DEBEVOISE & PLIMPTON LLP

By: /s/ Jasmine Ball

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*Proposed Counsel to the Debtor and Debtor
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Exhibit A

Proposed Order

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-____ (____)

**ORDER (I) AUTHORIZING IAN F. REID TO ACT AS FOREIGN
REPRESENTATIVE AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Philippine Airlines, Inc., the above-captioned debtor and debtor in possession (the “**Debtor**” or “**PAL**,” and collectively with the Debtor’s non-debtor affiliates, the “**Airline**”), for entry of an order (this “**Order**”) authorizing, but not directing, Ian F. Reid (“**Mr. Reid**”) to seek recognition of this Chapter 11 Case in the Philippines and, upon recognition, authorizing Mr. Reid to seek any other appropriate relief that is just and proper in furtherance of the protection of the Debtor’s estate, all as set forth more fully 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 relief requested therein being a core proceeding under 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 no other or further notice need be provided; and the Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion (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.

“**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 and at the Hearing establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003(b) and is in the best interests of the Debtor, its estate, the 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 relief requested in the Motion is hereby GRANTED as set forth herein.
2. The Debtor’s filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code and the related Chapter 11 Case constitutes “foreign proceedings” as that term is used in Article II(a) of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law. The Chapter 11 Case has been commenced by the filing of the Debtor’s petition for relief with this Court on September 3, 2021.
3. Pursuant to section 1505 of the Bankruptcy Code, Mr. Reid is hereby authorized to act as the “foreign representative” on behalf of the Debtor’s estate. As foreign representative, Mr. Reid shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including seeking recognition of this Chapter 11 Case in the Philippines and provisional relief to protect the assets of the Debtor or the interests of the creditors.
4. The Philippine Regional Trial Court as well as any other court, tribunal, regulatory body, or administrative body having jurisdiction in the Philippines are hereby respectfully requested (a) to grant representative status to Mr. Reid in any foreign proceeding, (b) to issue such orders and to provide such assistance to Mr. Reid as the foreign representative of the Debtor, and an officer of this Court, as may be necessary or desirable to give effect to this

Order and all applicable provisions of the Bankruptcy Code, and (c) to assist the Debtor, Mr. Reid (in his capacity as the foreign representative), and their respective agents in carrying out the terms of (i) this Order, (ii) any other order of this Court, and (iii) the provisions of the Bankruptcy Code, including, for the avoidance of doubt, the automatic stay pursuant to Section 362 of the Bankruptcy Code that was imposed upon the commencement of the Chapter 11 Case.

5. 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.

6. 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.

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

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

Dated: _____, 2021
New York, New York

THE HONORABLE [●]
UNITED STATES BANKRUPTCY JUDGE