

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

In re:

PHILIPPINE AIRLINES, INC.,¹

Debtor.

Chapter 11

Case No. 21-11569 (SCC)

**FINAL ORDER (A) AUTHORIZING, BUT NOT DIRECTING, THE DEBTOR TO PAY
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS AND FOREIGN
VENDORS AND (B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for entry of a final order (this “**Order**”) authorizing, but not directing, the Debtor to pay in the ordinary course of business prepetition claims of critical vendors³ (the “**Critical Vendors**”) and foreign vendors (the “**Foreign Vendors**”), 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

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 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

³ Certain parties may receive payment on account of their prepetition claims pursuant to other motions that have been or may be filed by the Debtor. To the extent that a party receives payment on account of its prepetition claims pursuant to an order approving such motions, this Order shall not apply to such prepetition claims.



Court having reviewed the Motion and held a hearing to consider the relief requested in the Motion on a final basis (the “**Final Hearing**”); and upon the First Day Declaration and the record of the Final Hearing; and the Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and the Court having determined that the relief granted herein is in the best interests of the Debtor, its estate, its creditors, and all parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; 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 on a final basis as set forth herein.

2. Pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, the Debtor is authorized, but not directed, in the reasonable exercise of its business judgment, to pay some or all of the prepetition claims of the Critical Vendors and Foreign Vendors (the “**Vendor Claims**”) in an aggregate amount not to exceed \$73 million (the “**Final Vendor Cap**”); *provided* that all payments to Critical Vendors and Foreign Vendors on account of Vendor Claims shall be applied first in satisfaction of such Critical Vendors and Foreign Vendors’ Twenty-Day Administrative Claims, if any; *provided further* that payments on account of Vendor Claims that are not Twenty-Day Administrative Claims shall not, in the aggregate, exceed the Final Vendor Cap.

3. The Debtor will not pay any Vendor Claim prior to the applicable due date or otherwise accelerate such payments.

4. The Debtor is authorized, but not directed, in its sole discretion, to condition payment of any Vendor Claims upon agreement by the Critical Vendor or Foreign Vendor to continue to supply goods or services to the Debtor on such Critical Vendor's or Foreign Vendor's Customary Trade Terms (as defined below) for a period following the date of the agreement or on other such terms and conditions as are acceptable to the Debtor, including, in the case of Foreign Vendors, consent to the jurisdiction of this Court. As used herein, "**Customary Trade Terms**" means, with respect to a Critical Vendor or Foreign Vendor, (a) the normal and customary trade terms, practices, and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, and availability, and other applicable terms and programs), that were most favorable to the Debtor and in effect between such Critical Vendor or Foreign Vendor and the Debtor prior to the Petition Date or (b) such other trade terms as agreed by the Debtor and such Critical Vendor or Foreign Vendor.

5. As a further condition of receiving payment on a Vendor Claim, the Debtor is authorized, but not directed, in its sole discretion, to require that such Critical Vendor or Foreign Vendor agree to take whatever action is necessary to remove any existing trade liens at such Critical Vendor's or Foreign Vendor's sole cost and expense and waive any right to assert a trade lien on account of the paid Vendor Claim.

6. After the date hereof, the Debtor shall determine, in the ordinary course of business, which entities are Critical Vendors and Foreign Vendors by considering, among other things, (a) which suppliers are sole-source or limited-source suppliers, without which the Debtor could not continue to operate without disruption, (b) which suppliers would be prohibitively expensive to replace, (c) which suppliers present an unacceptable risk should they cease the provision of truly essential services or supplies, (d) the extent to which suppliers may be able to

obtain or have obtained trade liens on assets of the Debtor or administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code, and (e) the extent to which suppliers are beyond the jurisdiction of this Court and can thus, notwithstanding the automatic stay, exercise remedies that would disrupt the Debtor's operations and business.

7. The Debtor shall maintain a matrix summarizing (a) the name of each Critical Vendor and Foreign Vendor paid on account of Vendor Claims, (b) the amount paid to each Critical Vendor and Foreign Vendor on account of its Vendor Claim, and (c) the goods or services provided by such Critical Vendor and Foreign Vendor. This matrix will be provided (x) biweekly until a final order granting the relief requested herein is entered and (y) monthly thereafter to the U.S. Trustee and the retained professionals of any Committee, which Committee professionals shall keep the matrix confidential on a professionals-only basis and shall not disclose any of the information in the matrix to anyone, including any member of the Committee, without prior written consent from the Debtor or further order of this Court.

8. The Debtor is authorized, but not directed, in its sole discretion, to require Critical Vendors and Foreign Vendors to enter into a Vendor Agreement when the Debtor determines that it is appropriate to do so in connection with making payments to Critical Vendors and Foreign Vendors.

9. If the Debtor, in its sole discretion, determines that a Critical Vendor or a Foreign Vendor has not complied with the terms and provisions of any Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of such agreement, or on such terms as were individually agreed to between the Debtor and such Critical Vendor or Foreign Vendor, the Debtor may terminate a Vendor Agreement, together with the other benefits to the Critical Vendor or Foreign Vendor as contained in this Order; *provided however*, that any such

Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the Critical Vendor or Foreign Vendor, (b) the underlying default under the Vendor Agreement is fully cured by the Critical Vendor or Foreign Vendor not later than five business days after the date the initial default occurred, or (c) the Debtor, in its sole discretion, reaches a subsequent agreement with the Critical Vendor or Foreign Vendor.

10. If a Vendor Agreement is terminated as set forth above, or if a Critical Vendor or Foreign Vendor that has received payment of a prepetition claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then (a) the Debtor may, in its sole discretion, declare that the payment of the creditor's Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtor may recover in cash or in goods from such Critical Vendor or Foreign Vendor, (b) the creditor shall immediately return such payments in respect of a Vendor Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) the creditor's Vendor Claim shall be reinstated in such an amount so as to restore the Debtor and the Critical Vendor or Foreign Vendor to their original positions as if the Vendor Agreement had never been entered into and no payment of such Vendor Claim had been made.

11. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Critical Vendors and Foreign Vendors as contained in this Order, upon entry of an order converting the Debtor's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

12. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.

13. 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.

14. Nothing in this Order or any action taken by the Debtor in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtor's rights with respect to such matters are expressly reserved.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

16. 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 Critical Vendors and Foreign Vendors or the goods and services provided thereby.

17. Nothing in this Order nor the Debtor's payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtor as to the validity or priority of any claim on any grounds, (b) a waiver or impairment of any of the Debtor's rights to dispute any claims on any grounds, (c) a promise by the Debtor to pay any claim, or (d) an implication or admission by the Debtor that such claim is payable pursuant to this Order.

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 matters arising from or related to the implementation, interpretation, and 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