

**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 AUTHORIZING (A) DEBTOR TO MAINTAIN AND USE EXISTING
CASH MANAGEMENT SYSTEMS, BANK ACCOUNTS, AND BUSINESS FORMS; (B)
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND
TRANSFERS; AND (C) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtor for entry of a final order (this “**Final Order**”) authorizing (a) the Debtor to continue to use its existing cash management systems and maintain existing bank accounts and business forms and (b) financial institutions to honor and process related checks and transfers pursuant to sections 105(a), 345, 363(c)(1) and 364 of the Bankruptcy Code 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 on a final basis (the “**Hearing**”); and upon

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 defined herein shall have the meanings ascribed to them in the Motion.



the First Day Declaration and the record of the Hearing; and the Court having entered the *Interim Order Authorizing (A) Debtor to Maintain and Use Existing Cash Management Systems, Bank Accounts, and Business Forms; (B) Financial Institutions to Honor and Process Related Checks and Transfers; and (C) Granting Related Relief* [ECF No. 52] (the “**First Interim Order**”) and the *Second Interim Order Authorizing (A) Debtor to Maintain and Use Existing Cash Management Systems, Bank Accounts, and Business Forms; (B) Financial Institutions to Honor and Process Related Checks and Transfers; and (C) Granting Related Relief* [ECF No. 121] (the “**Second Interim Order**”); 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 the relief requested herein is in the best interests of the Debtor, its estate, its 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 on a final basis as set forth herein. Except as otherwise set forth herein, this Final Order shall supersede in all respects the First Interim Order and the Second Interim Order.

2. The Debtor is authorized and empowered, but not directed, pursuant to sections 105(a) and 363(c)(1) of the Bankruptcy Code, to continue to maintain, operate, and make transfers under its Cash Management System as described in the Motion (including the payment of Bank Charges and Merchant Services Obligations).

3. In accordance with its prepetition practices, the Debtor shall maintain records of all transfers within the Cash Management System to the same extent they were recorded by the Debtor before the commencement of this Chapter 11 Case so that all transactions may be readily ascertained, traced, and recorded properly.

4. Additionally, the Debtor is authorized and empowered to continue performing, at its discretion, all Intercompany Transactions in its ordinary course of business; *provided however*, absent Court order the Debtor shall not make any cash payments relating to prepetition Intercompany Transactions.

5. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, administrative expense status shall be granted for all postpetition Intercompany Claims arising from Intercompany Transactions provided by non-debtor affiliates to the Debtor. In accordance with its prepetition practices, the Debtor shall maintain records of all Intercompany Transactions to the same extent they were recorded by the Debtor before the commencement of this Chapter 11 Case so that all such transactions may be readily ascertained, traced, and recorded properly.

6. Pursuant to section 364(a) of the Bankruptcy Code, the Debtor is authorized, in connection with the ordinary course operation of its Cash Management System, to obtain unsecured credit and incur unsecured debt in the ordinary course of business without any further notice or hearing.

7. The Debtor is authorized to continue to maintain the Bank Accounts with the same account numbers following the commencement of this case.

8. The Debtor is authorized to continue to use its Cash Management System to fund non-debtor affiliates as it did prior to the Petition Date.

9. The Banks are authorized to continue to treat, service, and administer the Bank Accounts as accounts of the respective Debtor as a debtor in possession without interruption and in the usual and ordinary course and to receive, process, and honor and pay any and all postpetition checks, drafts, book transfers, wires, or automated clearing house transfers (“ACH

Transfers”) drawn on the Bank Accounts by the holders or makers thereof, as the case may be to the extent the Debtor has good funds standing to its credit with such Bank.

10. Notwithstanding anything to the contrary in any other order of this Court, the Banks (a) are authorized to accept and honor all representations from the Debtor as to which checks, drafts, book transfers, wires, or ACH Transfers should be honored or dishonored, consistent with any order of this Court and governing law, whether such checks, drafts, book transfers, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether the Banks believe the payment is or is not authorized by an order of this Court and (b) have no duty to inquire as to whether such payments are authorized by an order of this Court.

11. The Banks shall not be liable to any party on account of (a) following the Debtor’s instructions or representations as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) an innocent mistake made despite implementation of reasonable item handling procedures.

12. In accordance with current practice and the agreement governing the Bank Accounts, the Banks are authorized to “charge back” to the Debtor’s accounts any amounts incurred by the Banks resulting from returned checks or other returned items, and the Debtor is authorized to pay any fees and expenses owed to the Banks, in each case regardless of whether such items were deposited prepetition or postpetition or relate to prepetition or postpetition items.

13. Any payment from a Bank Account at the request of the Debtor made by a Bank prior to the Petition Date (including any ACH Transfer such Bank is or becomes obligated to

settle), or any instruments issued by such Bank on behalf of the Debtor pursuant to a “midnight deadline” or otherwise, shall be deemed to be paid prepetition, whether or not actually debited from the Bank Account prepetition.

14. The Debtor is authorized to implement changes to the Cash Management System in the ordinary course of business, including opening any additional bank accounts, or closing any existing Bank Account as the Debtor may deem necessary and appropriate; *provided* that the Debtor shall, as soon as practicable, provide notice to the relevant Bank and the Office of the U.S. Trustee of any opening or closing of any Bank Accounts or other bank accounts.

15. The Banks are authorized to honor the Debtor’s requests to open or close, as the case may be, such bank accounts or additional bank accounts; *provided however*, that, unless otherwise ordered by this Court, any new bank account shall be with (a) a bank insured by the FDIC and that is organized under the laws of the United States or any State therein, (b) a bank designated as an Authorized Depository under the U.S. Trustee Guidelines, or (c) any other bank, as the Debtor may determine upon consultation with the U.S. Trustee.

16. Nothing contained herein shall prevent Banks from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services.

17. The Debtor is authorized to continue to use its correspondence and business forms, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and checks (collectively, the “**Business Forms**”) substantially in the forms existing immediately before the Petition Date, without reference to its status as debtor in possession; *provided however*, that as soon as reasonably practicable, the Debtor will update its electronically produced checks to reflect its status as debtor in possession.

18. To the extent any of the Debtor's Bank Accounts do not comply with section 345 of the Bankruptcy Code or any other requirements of the U.S. Trustee as of the Petition Date, the Debtor is granted until January 31, 2022, without prejudice to seek an additional extension, to come into compliance with section 345(b) of the Bankruptcy Code and any of the U.S. Trustee's requirements or guidelines or to make such other arrangements as agreed to by the U.S. Trustee.

19. All applicable banks and other financial institutions are hereby authorized to receive, process, honor and pay any and all checks, drafts, book transfers, wires, check transfer requests or ACH Transfers evidencing amounts paid by the Debtor under this Final 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 Final Order without any duty of further inquiry and without liability for following the Debtor's instructions.

20. The Debtor is authorized but not directed to continue to operate under the Merchant Services Agreements (including, without limitation, that certain Merchant Services Bankcard Agreement between Debtor Philippine Airlines, Inc. and First Data Merchant Services LLC ("**First Data**"), that certain Master Terms of Service between Debtor Philippine Airlines, Inc. and Elavon Financial Services DAC (U.K. Branch) ("**Elavon**"), and that certain processing agreement between Debtor Philippine Airlines, Inc. and American Express Travel Related Services Company, Inc. ("**American Express**" and, together with First Data and Elavon, the "**Primary Servicers**")) in the ordinary course and in a manner consistent with past practices. The Debtor is authorized to pay or reimburse the credit card processors for

obligations provided under the Merchant Service Agreements (including fees, charges, refunds, chargebacks, reserves and other amounts due and owing from the Debtor to credit card processors) (“**Merchant Services Obligations**”), whether such obligations are incurred prepetition or postpetition, and the credit card processors are authorized to receive or obtain payment for such Merchant Services Obligations, as provided under, and in the manner set forth in, the Merchant Services Agreements, including by way of recoupment or setoff without further order of the Court. The automatic stay in effect in these cases pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary to permit credit card processors to follow their normal recoupment, setoff, reserve, and processing procedures in respect of claims and the netting of fees, chargebacks and other amounts, in accordance with their applicable agreements with the Debtor, in each case, in the ordinary course as if no bankruptcy filing had occurred.

21. The Debtor, on one hand, and each of the Primary Servicers, on the other hand, are authorized to enter into modifications to their respective Merchant Service Agreements, including any addenda and schedules thereto, without further approval of the Court; provided that prior to entry into any such modifications, the Debtor shall provide five business days’ notice to the U.S. Trustee and, if the U.S. Trustee objects to such modifications, then the Debtor shall not enter into such modifications without further order of the Court. All undisputed amounts due under the Merchant Services Agreements, as may be modified in accordance with this Final Order, arising on or after the Petition Date shall be allowed as administrative expense claims in the Chapter 11 Case.

22. All applicable banks and other financial institutions are hereby restricted to collect, retain, or in any other form restrain the Debtor of using any and all amounts currently

available or to be available postpetition, in the Debtor's Bank Accounts, unless specific security/guarantees have been placed before the Petition Date, in which case, said guarantees shall follow the specific ruling of this Court regarding secured creditors, if any.

23. Nothing in this Final 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.

24. 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.

25. Nothing in this Final 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 Cash Management System.

26. Nothing in this Final Order nor the Debtor's payment of claims pursuant to this Final 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 Final Order.

27. 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, and no other or further notice of the Motion or the entry of this Final Order shall be required.

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

29. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Final Order is hereby waived, and the terms and conditions of this Final Order shall be effective immediately and enforceable upon its entry.

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

Dated: December 17, 2021
New York, New York

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