

Hearing Date and Time: October 21, 2021 at 9:00 a.m. (Prevailing Eastern Time)
Objection Date and Time: October 18, 2021 at 12:00 p.m. (Prevailing Eastern Time)

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

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et al.,
Debtors.¹**

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING DEBTOR AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ENTER INTO
TRANSACTIONS WITH TOTAL ENGINE ASSET MANAGEMENT PTE. LTD.**

PLEASE TAKE NOTICE that, on October 7, 2021, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of an Order Authorizing Debtor Aerovías de México, S.A. de C.V. To Enter into Transactions with Total Engine Asset Management Pte. Ltd.* (the “**Motion**”). A hearing on the Motion is scheduled to be held on **October 21, 2021 at 9:00 a.m. (prevailing Eastern Time)** (the “**Hearing**”) before the Honorable

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

Judge Shelley C. Chapman, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”), or at such other time as the Court may determine.

PLEASE TAKE FURTHER NOTICE that, in accordance with General Order M-543, dated March 20, 2020 (Morris, C.J.) (“**General Order M-543**”),² the Hearing will be conducted telephonically. Any parties wishing to participate must do so telephonically by making arrangements through CourtSolutions, LLC (www.court-solutions.com). Instructions to register for CourtSolutions, LLC are attached to General Order M-543.

PLEASE TAKE FURTHER NOTICE that copies of the Motion may be obtained free of charge by visiting the website of Epiq Corporate Restructuring, LLC at <https://dm.epiq11.com/aeromexico>. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Hearing may be continued or adjourned from time to time by an announcement of the adjourned date or dates at the Hearing or a later hearing or by filing a notice with the Court. The Debtors will file an agenda before the Hearing, which may modify or supplement the motion(s) to be heard at the Hearing.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion shall be in writing, shall comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall be filed with the Court

² A copy of the General Order M-543 can be obtained by visiting <http://www.nysb.uscourts.gov/news/general-order-m-543-court-operations-under-exigent-circumstances-created-covid-19>.

by (a) attorneys practicing in the Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) and (b) all other parties in interest, in accordance with the customary practices of the Court and General Order M-399, to the extent applicable, and shall be served in accordance with General Order M-399 and the *Order Establishing Certain Notice, Case Management, and Administrative Procedures*, entered on July 8, 2020 [ECF No. 79], so as to be filed and received no later than **October 18, 2021 at 12:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”).

PLEASE TAKE FURTHER NOTICE that all objecting parties are required to telephonically attend the Hearing, and failure to appear may result in relief being granted upon default.

PLEASE TAKE FURTHER NOTICE that, if no responses or objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form of the proposed order attached to the Motion, under certification of counsel or certification of no objection, which order may be entered by the Court without further notice or opportunity to be heard.

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Dated: October 7, 2021
New York, New York

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

In re:

**GRUPO AEROMÉXICO, S.A.B. de C.V., et
al.,**

Debtors.¹

Chapter 11

Case No. 20-11563 (SCC)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTOR
AEROVÍAS DE MÉXICO, S.A. DE C.V. TO ENTER INTO TRANSACTIONS WITH
TOTAL ENGINE ASSET MANAGEMENT PTE. LTD.**

Grupo Aeroméxico, S.A.B. de C.V. (“**Grupo Aeroméxico**”) and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this motion (this “**Motion**”) seeking the entry of an order authorizing, but not directing, Debtor Aerovías de México, S.A. de C.V. (the “**Debtor Lessee**”) to enter into one or more agreements with Total Engine Asset Management Pte. Ltd. (together with its subsidiaries and partner companies, “**TEAM**”) or such

¹ The Debtors in these cases, along with each Debtor’s registration number in the applicable jurisdiction, are as follows: Grupo Aeroméxico, S.A.B. de C.V. 286676; Aerovías de México, S.A. de C.V. 108984; Aerolitoral, S.A. de C.V. 217315; and Aerovías Empresa de Cargo, S.A. de C.V. 437094-1. The Debtors’ corporate headquarters is located at Paseo de la Reforma No. 243, piso 25 Colonia Cuauhtémoc, Mexico City, C.P. 06500.

other entity or trust designated by TEAM for transactions relating to two engines (the “**Transactions**”) containing terms substantially consistent with those set forth in the letter of intent attached to the Proposed Order as Exhibit 1 (the “**Letter of Intent**”). A summary of the material terms of the Letter of Intent is attached hereto as Exhibit B. This Motion is supported by the *Declaration of Matthew Landess in Support of (A) Debtors’ Motion for Entry of an Order Authorizing Debtor Aerovías de México, S.A. de C.V. To Enter into Transactions with Total Engine Asset Management Pte. Ltd. and (B) Related Sealing Motion* (the “**Landess Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of New York (the “**Court**”) has jurisdiction over this Motion 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.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their 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 a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

3. By this Motion, and pursuant to sections 363(b) and 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Bankruptcy Rules 6004 and 9013, the

Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**” and, if entered, the “**Order**”), authorizing (but not directing) the Debtor Lessee to enter into the Transactions, in accordance with the terms and conditions set forth in the Letter of Intent attached to the Proposed Order as Exhibit 1, as further detailed herein and in the Proposed Order.

Background

A. General Background

4. On June 30, 2020 (the “**Petition Date**”), each of the Debtors filed in this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued to operate and manage their businesses and have continued to possess their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 30] entered by the Court on July 1, 2020 in Grupo Aeroméxico’s Chapter 11 Case.²

6. On July 13, 2020, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an Official Committee of Unsecured Creditors (the “**Committee**”) pursuant to section 1102 of the Bankruptcy Code. *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF No. 92]. No trustee or examiner has been appointed in the Chapter 11 Cases.

² On July 2, 2020, the Court entered similar orders for the other Debtors on their respective Court dockets. *See In re Aerovías de México, S.A. de C.V.*, No. 20-11561, ECF No. 4; *In re Aerolitoral, S.A. de C.V.*, No. 20-11565, ECF No. 4; *In re Aerovías Empresa de Cargo, S.A. de C.V.*, No. 20-11566, ECF No. 4.

7. Detailed information regarding the Debtors' businesses and affairs, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the *Declaration of Ricardo Javier Sánchez Baker in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [ECF No. 20], which is incorporated herein by reference.

B. The Debtors' Fleet Optimization Process

8. Over the last several months, the Debtors have been engaged in a multi-step process to (a) analyze their anticipated, long-term fleet and equipment needs, (b) make corresponding adjustments to the size and composition of their current operating fleet, and (c) obtain the most favorable terms for agreements relating to aircraft and equipment. In doing so, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft and equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases (the "**Operating Fleet Plan**").

9. On September 15, 2020, the Debtors filed their *Motion for Approval of Stipulations and Orders Between Debtors and Counterparties Concerning Certain Aircraft and Engines* [ECF No. 373] (the "**Equipment Stipulation Motion**"), pursuant to which the Debtors sought approval of certain stipulations (the "**Equipment Stipulations**") between certain Debtors and certain counterparties concerning leases of Equipment (as defined in the Equipment Stipulation Motion). The Equipment Stipulations enabled the Debtors to continue to utilize the Equipment on their operating routes and to maintain the Equipment when not being operated. Broadly speaking, the Equipment Stipulations provide, with limited variation, for payment of rent calculated based on actual usage of the Equipment (called a "power by the hour" or "PBH" arrangement), rather than a fixed monthly amount. The Court entered an order approving the Equipment Stipulation Motion

[ECF No. 396] and so ordered the underlying Equipment Stipulations. [ECF Nos. 399–429, 475, 491, 502].

10. On April 22, 2021, the Debtors filed their Motion for (I) Approval of Compromises with Boeing and Other Counterparties, (II) Authorization To (A) Enter Into Amended Aircraft Purchase Agreement with Boeing and (B) Enter into Agreements with Other Counterparties related to the Boeing Transaction, (III) Approval of the Assumption of Such Amended Agreements, as Applicable, and (IV) Approval To Settle Certain Prepetition Claims of Counterparties [ECF No. 1108] (the “**Boeing Motion**”) and their Motion for (I) Authorization To (A) Enter Into New Aircraft Lease Agreements and (B) Amend and Assume Certain Existing Aircraft Lease Agreements, and (II) Approval of Compromise Regarding Prepetition Claims with Air Lease Corporation [ECF No. 1113] (the “**Air Lease Motion**”). The Court approved both the Boeing Motion and the Air Lease Motion at a hearing on April 30, 2021³ and, subsequently, entered each of the orders related thereto.⁴ Pursuant to such orders, the Debtors (a) added 28 new aircraft to their fleet, including 20 new Boeing 737MAX aircraft, (b) assumed agreements relating to 18 existing aircraft, and (c) settled the allowed amounts of unsecured claims of certain counterparties with respect to such equipment.

11. The Court has also entered additional orders authorizing the Debtors to either enter into new aircraft leases and/or assume existing aircraft and equipment leases on an amended basis. *See* ECF Nos. 984, 1100, 1544, 1572–73, 1579, 1659, 1693, 1759.

³ *See* Hr’g Tr. (April 30, 2021), 29:17–23 and 37:13–16.

⁴ *See* ECF Nos. 1141–42, 1145, 1154, 1156–57, 1160–62.

C. The Transactions

12. Over the last several months, the Debtors have continued negotiating with existing lessors and potential lessors of additional aircraft and equipment to obtain the best terms available for the aircraft and equipment that will be necessary for the Debtors to pursue their long-term business plan and to optimize their anticipated fleet upon emergence from the Chapter 11 Cases.

13. In conjunction with the entry of the orders approving the relief requested under the Boeing Motion and the Air Lease Motion, the Court also entered the *Order Authorizing the Debtors To Enter into Amended Engine Maintenance Agreements with GE Engine Services, LLC And CFM International, Inc. and Granting Related Relief* (the “**Engine Maintenance Order**”) [ECF No. 1142]. In entering the Engine Maintenance Order, the Court approved the Debtors’ entry into certain amended agreements, which, among other things, obligated the Debtors to purchase five engines from CFM International, Inc. (“**CFM**”). This Motion addresses two of these engines.

14. As a result of arm’s length and good faith negotiations, the Debtors have reached agreements with TEAM to enter into the Transactions, pursuant to which the Debtor Lessee will either (a) acquire two CFM engines (collectively, with the related parts, equipment, and appurtenances, the “**Engines**”) from CFM, sell the Engines to TEAM (or such other entity or trust designated by TEAM), and subsequently lease such Engines back from TEAM (or such other entity or trust designated by TEAM), or (b) transfer its obligation to purchase the Engines to TEAM (or such other entity or trust designated by TEAM), who will subsequently purchase the Engines from CFM and lease such Engines to the Debtor Lessee.

15. The Letter of Intent sets forth the commercial terms between TEAM and the Debtor Lessee, and a summary of the principal terms and conditions of the Letter of Intent is attached

hereto as **Exhibit B**. The Transactions provide attractive and competitive financing for the Engines, which the Debtor Lessee is obligated to purchase.

16. In determining to enter into the Letter of Intent, the Debtors consulted with advisors to each of the DIP Lenders,⁵ the Ad Hoc Group of Senior Noteholders,⁶ the Ad Hoc Group of Unsecured Claimholders,⁷ and the Committee, none of which expressed opposition to the relief requested herein.

Basis for Relief

17. The Debtors believe that the Transactions contemplated by the Letter of Intent constitute ordinary course transactions because (a) they are commonplace in the airline industry and (b) the Debtors have frequently engaged in similar transactions in the past. As a result, the Debtors believe that entry into the Transactions, as contemplated by the Letter of Intent, would be permitted under section 363(c) of that Bankruptcy Code, which authorizes a debtor to “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing” 11 U.S.C. § 363(c)(1). Moreover, the Debtors submit that the Transactions contemplated by the Letter of Intent merely implement the transactions previously approved by the Court in the Engine Maintenance Order. Nevertheless, out of an abundance of caution (and to the extent that such authorization is required under section 363(b) of the

⁵ As used in this Motion, “DIP Lenders” refers to those parties identified in this Court’s *Final Order Granting Debtors’ Motion to (I) Authorize Certain Debtors in Possession to Obtain Post-Petition Financing; (II) Grant Liens and Superpriority Administrative Expense Claims to DIP Lenders; (III) Modify Automatic Stay; and (IV) Grant Related Relief* [ECF No. 527].

⁶ As used in this Motion, “Ad Hoc Group of Senior Noteholders” refers to the group identified in the *Third Amended Verified Statement of the Ad Hoc Group of Senior Noteholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1731].

⁷ As used in this Motion, “Ad Hoc Group of Unsecured Claimholders” refers to the group identified in the *First Amended Verified Statement of the Ad Hoc Group of Unsecured Claimholders Pursuant to Bankruptcy Rule 2019* [ECF No. 1733].

Bankruptcy Code) the Debtors seek entry of an order authorizing the Debtor Lessee to enter into the Transactions.

18. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that “a judge determining a § 363(b) application [must] expressly find from the evidence presented before him . . . a good business reason to grant such an application”); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a motion under section 363(b) of the Bankruptcy Code is “good business reason”).

19. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986);

see also In re Integrated Res., Inc.), 147 B.R. at 656 (holding that a party opposing a debtor's exercise of its business judgment has the burden of rebutting the presumption of validity). Indeed, courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence and will uphold a board's decisions as long as they are attributable to any "rational business purpose." *Id.*

20. Moreover, section 105(a) of the Bankruptcy Code confers the Court with broad equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

21. The Debtors respectfully submit that the relief requested herein is fair, equitable, reasonable, the product of the Debtors exercising their sound business judgment, and in the best interests of the Debtors' estates and, thus, is justified under sections 363(b) and 105(a) of the Bankruptcy Code. As described above and in the Landess Declaration, the Debtors are seeking to reset their fleet and attendant costs to a market level. As part of this process, the Debtors are evaluating their fleet of aircraft and equipment, negotiating acquisitions of additional new or used aircraft and equipment, reviewing the underlying leases and agreements for the aircraft and equipment currently in their fleet, and, to the extent prudent, negotiating amendments to such leases and agreements for aircraft and equipment that the Debtors desire to maintain. In doing so, the Debtors compared the Transactions and the Engines to available alternatives and ultimately negotiated (at arm's length, in good faith, and in consultation with their key stakeholders) economically favorable terms for the Transactions, as memorialized in the Letter of Intent, that are in line with the Operating Fleet Plan. The Transactions also will create operational flexibility for the Debtors, as they will allow the Debtors to engage in attractive lease financing on two engines. Finally, the Debtors have determined (based on the exercise of their sound business judgment) that

the terms of the Transactions, including the payment and delivery schedules thereunder, represent the best available transactions under the circumstances (*i.e.*, the Chapter 11 Cases), but also would be commercially beneficial transactions irrespective of such circumstances. The terms of the Transactions are even superior to some of the Debtors' existing leases.

22. In light of the foregoing, and for the reasons provided above and detailed in the Landess Declaration, the Debtors respectfully submit that the entry into the Transactions, in accordance with the terms and conditions set forth the in the Letter of Intent, (a) would be the result of the Debtors exercising their sound business judgment in accordance with their fiduciary duties, (b) would be in the best interests of their estates and economic stakeholders, and (c) would further serve to maximize value for the benefit of all creditors. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtor Lessee to enter into the Transactions in accordance with the terms and conditions set forth in the Letter of Intent.

Notice

23. Notice of this Motion will be provided to the following parties: (a) the entities on the Master Service List (as defined in the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 79], which is available on the Debtors' case website at <https://dm.epiq11.com/case/aeromexico/info>); (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to Apollo Management Holdings, L.P.; (e) counsel to the Ad Hoc Group of Senior Noteholders; and (f) any person or entity with a particularized interest in the subject matter of this Motion. The Debtors respectfully submit that no other or further notice is required.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: October 7, 2021
New York, New York

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