

**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)

**ORDER (I) AUTHORIZING THE DEBTORS' ENTRY INTO, AND
PERFORMANCE UNDER, THE REVISED DEBT COMMITMENT LETTER,
(II) AUTHORIZING THE DEBTORS' ENTRY INTO, AND PERFORMANCE
UNDER, THE REVISED EQUITY COMMITMENT LETTER,
(III) AUTHORIZING THE DEBTORS' ENTRY INTO, AND PERFORMANCE
UNDER, THE SUBSCRIPTION AGREEMENT AND (IV) AUTHORIZING
INCURRENCE, PAYMENT, AND ALLOWANCE OF RELATED PREMIUMS,
FEES, COSTS, AND EXPENSES AS SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS**

Upon the motion (the “**Motion**”)² of Grupo Aeroméxico, S.A.B. de C.V. and its affiliates that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”), for entry of an order (this “**Order**”), pursuant to sections 105(a), 363(b), 503(b), and 507 of the Bankruptcy Code and Rules 6004(a) and 6004(h) of the Bankruptcy Rules, (i) authorizing the Debtors’ entry into, and performance under, the Revised Debt Commitment Letter, (ii) authorizing the Debtors’ entry into, and

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; 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.

² As used herein, the Motion shall mean, collectively, the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors’ Entry Into, and Performance Under, the Debt Financing Commitment Letter, (II) Authorizing the Debtors’ Entry Into, and Performance Under, the Equity Commitment Letter, (III) Authorizing the Debtors’ Entry Into, and Performance Under, the Subscription Agreement and (IV) Authorizing Incurrence, Payment, and Allowance of Related Premiums, Fees, Costs, and Expenses as Superpriority Administrative Expense Claims* [ECF No. 1860] (the “**Exit Financing Motion**”) and the *Supplement to Debtors’ Exit Financing Motion and Notice of Filing of Revised Equity and Debt Commitment Letters* [ECF No. 2168] (the “**Supplement**”). Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Exit Financing Motion and the Supplement, as applicable.

performance under, the Revised Equity Commitment Letter, (iii) authorizing the Debtors' entry into, and performance under, the Subscription Agreement, and (iv) authorizing the incurrence, payment and allowance of all related fees, indemnities, costs and expenses under the Revised Exit Financing Documents, including, without limitation, the Commitment Premiums, Alternative Commitment Premium, the Reimbursed Fees and Expenses and the indemnification provisions in the Revised Exit Financing Documents, as superpriority administrative expense claims, all as more fully provided in the Revised Exit Financing Documents, and as set forth 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 the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion, and it appearing that no other or further notice need be provided; and the Court having held a hearing to consider the relief requested in the Motion (the "**Hearing**"); and upon the record of the Hearing, the Parkhill Declaration, the Supplemental Parkhill Declaration, and upon all of the proceedings had before the Court; and after due deliberation the Court having determined that the legal and factual bases set forth in the Motion establish good and sufficient cause for the relief granted herein; and is in the best interests of the Debtors, their estates, their creditors, and all parties in interest, **IT IS HEREBY ORDERED THAT:**

1. The relief requested in the Motion is granted as set forth herein.

2. Any and all objections to the Motion are hereby resolved in all respects.
3. The Debtors are authorized to enter into the revised debt commitment letter attached hereto as **Exhibit A** (the “**Revised Debt Commitment Letter**”). The Revised Debt Commitment Letter is valid, binding, and enforceable against the Debtors, their estates, and the Exit Financing Parties party thereto.
4. The Debtors are authorized to enter into the revised equity commitment letter attached hereto as **Exhibit B** (the “**Revised Equity Commitment Letter**”); *provided, however*, that payment of the Alternative Commitment Premium (as defined in the Revised Equity Commitment Letter) to Delta or the Mexican Investors shall not occur prior to entry of a further order of this Court upon notice and a hearing. The Revised Equity Commitment Letter, as modified by this paragraph 4, is valid, binding, and enforceable against the Debtors, their estates, and the Exit Financing Parties party thereto.
5. The Debtors are authorized to enter into the Subscription Agreement (the Subscription Agreement, together with the Revised Debt Commitment Letter and the Revised Equity Commitment Letter, the “**Revised Exit Financing Documents**”), on terms substantially similar to the terms set forth in the Equity Exit Financing Term Sheet attached as Exhibit A of the Revised Equity Commitment Letter (the “**Equity Financing Term Sheet**”), as modified by paragraph 4 hereof. Upon entry, the Subscription Agreement shall be valid, binding, and enforceable against the Debtors, their estates, and the Exit Financing Parties party thereto, and shall be filed with the Plan Supplement.
6. The Debtors’ entry into the Revised Exit Financing Documents, including the Debtors’ agreement to incur and satisfy the Exit Financing Obligations, constitutes a

reasonable exercise of the Debtors' business judgment. The Debtors are authorized to perform under and implement the terms of the Revised Exit Financing Documents and the exhibits thereto, and to negotiate, prepare, execute, and deliver all documents, and to take any and all actions necessary and appropriate to implement the terms of the Revised Exit Financing Documents and to perform all obligations thereunder on the terms and conditions set forth therein, without further notice, hearing or order of this Court (subject to paragraph 4 hereof).

7. Subject to paragraph 4 hereof, the Exit Financing Obligations, including, without limitation, the Commitment Premiums and the Alternative Commitment Premium, as applicable, the Reimbursed Fees and Expenses and the indemnification provisions contemplated by the Equity Financing Term Sheet and to be included in the Revised Exit Financing Documents consistent therewith, are actual, necessary and reasonable costs and expenses of preserving the Debtors' estates and as such, shall be treated as allowed superpriority administrative expenses in these Chapter 11 Cases, having priority over all administrative expenses of the kind specified in sections 503(b) and 507 of the Bankruptcy Code, junior only to the DIP Loans. Subject to paragraph 4 hereof, the Exit Financing Obligations shall not be discharged, modified or otherwise affected by any chapter 11 plan proposed by the Debtors, dismissal of these Chapter 11 Cases or conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. Subject to paragraph 4 hereof, neither the Exit Financing Obligations nor any portion thereof shall be subject to disgorgement, setoff, disallowance, impairment, challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of

action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise absent a final, non-appealable finding of gross negligence, willful misconduct, criminal conduct, or fraud by an Exit Financing Party in connection with the Revised Exit Financing Documents and, in any such case, solely with respect to such Exit Financing Party.

8. Subject to paragraph 4 hereof, the Commitment Premiums and the Alternative Commitment Premium, as applicable, shall be fully earned, nonrefundable and non-avoidable upon (i) entry by the Debtors and the Commitment Parties into the Revised Equity Commitment Letter and (ii) entry of an order of the Bankruptcy Court approving the Debtors' entry into the DIP Credit Agreement Amendment.³

9. Subject to paragraph 4 hereof, the Commitment Premiums, including the Commitment Party Creditor Election (as defined below), and the Alternative Commitment Premium are hereby approved as reasonable, and are an essential and appropriate means for the Debtors to obtain the Exit Financing Commitments, and shall not be subject to disgorgement, setoff, disallowance, impairment, challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise absent a final, non-appealable finding of gross negligence, willful misconduct, criminal conduct, or fraud by an Exit Financing Party in connection with the Revised Exit Financing Documents and, in any such case, solely with respect to such Exit Financing

³ For the avoidance of doubt, the Equity Commitment Premium shall only be payable upon the Effective Date (as defined in the Revised Equity Commitment Letter), in which case no Alternative Commitment Premium shall be payable.

Party. For the avoidance of doubt, the Equity Commitment Premium⁴ includes the right of Exit Financing Parties that hold (whether directly, indirectly, via participation, or otherwise) (a) Notes claims against Grupo Aeroméxico and Aerovías or (b) other allowed claims against Aerovías with enforceable guarantees against Grupo Aeroméxico, as consideration for their Exit Equity Commitments and other obligations set forth in the Equity Financing Term Sheet and the Subscription Agreement, to elect to receive their distribution on account of all such claims in all New Shares, all cash, or a combination of New Shares and cash (such election, the “**Commitment Party Creditor Election**”).

10. The Debtors are authorized to pay the Reimbursed Fees and Expenses pursuant to and as contemplated by the Equity Financing Term Sheet and to be included in the in the Revised Exit Financing Documents in accordance with the procedures set forth below in this Order, without further notice, hearing, or order of this Court, as, when, and to the extent they become due and payable under the terms of the Revised Exit Financing Documents, which Reimbursed Fees and Expenses shall not be subject to any disgorgement, setoff, disallowance, impairment, challenge, contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, without cause.

11. Each professional or party seeking payment from the Debtors shall provide copies of applicable invoices (which invoices may be redacted or summarized for protection of an applicable privilege or the work product doctrine) (the fees thereunder, the “**Invoiced Fees**”) to the extent not already provided, to counsel to the Debtors,

⁴ The “Equity Commitment Premium” shall mean the Commitment Premium (as defined in the Revised Equity Commitment Letter).

counsel to the Creditors' Committee and the U.S. Trustee.⁵ Any objections raised by the Debtors, the U.S. Trustee or the Creditors' Committee challenging the reasonableness of any portion of the Invoiced Fees (such portion, the "**Disputed Invoiced Fees**") must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional or party within 10 business days of receipt (the "**Review Period**") and, if after the Review Period an objection remains unresolved, such objection will be subject to resolution by the Court. After the Review Period, the undisputed portion of Invoiced Fees will be paid promptly by the Debtors, without the necessity of filing formal fee applications or any further approval of this Court, regardless of whether such amounts arose or were incurred before or after the Petition Date. The Debtors shall pay any Disputed Invoiced Fees promptly upon resolution of the objection, including to the extent resolved through approval by the Court, to the extent of such approval. In no event shall any invoice or other statement submitted by any Exit Financing Party to any Debtor, the Creditors' Committee, the U.S. Trustee or any other interested person (or any of their respective Professionals) with respect to fees or expenses incurred by any professional retained by such Exit Financing Party operate to waive the attorney/client privilege, the work-product doctrine or any other evidentiary privilege or protection recognized under applicable law.

⁵ For the avoidance of doubt, the fees provided for in this Order must be reasonable. Although the U.S. Trustee fee guidelines do not apply, professionals shall submit unredacted time and expense detail entries to the U.S. Trustee, as well as any further information or backup documentation requested by the U.S. Trustee to determine the reasonableness of the invoiced amount. Invoices for such fees and expenses provided to any other party shall not be required to include any information subject to the attorney-client privilege, joint defense privilege, bank examiner privilege, or any information constituting attorney work product, and time and expense detail entries and other information provided solely to the U.S. Trustee shall be returned or destroyed after the U.S. Trustee has reviewed such material and any objections to the applicable fees and expenses have been resolved upon request of the applicable professional. Furthermore, the provision of invoices, time entries or other information pursuant to the terms hereof shall in no event constitute a waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine.

12. For the avoidance of doubt, nothing in this Order waives, modifies, impacts, nullifies or amends the Debtors' obligations under the Final DIP Order to pay the fees and expenses of the Ad Hoc Group of Senior Noteholders as set forth therein.

13. The terms and provisions of this Order shall be binding in all respects upon all parties in the Chapter 11 Cases, the Debtors, their estates, and all successors and assigns thereof, including any chapter 7 trustee or chapter 11 trustee appointed in any of these cases or after conversion of any of these cases to cases under chapter 7 of the Bankruptcy Code.

14. Nothing in this Order shall be deemed a determination whether the Chapter 11 Plan (as defined in the Revised Equity Commitment Letter) or any chapter 11 plan proposed by the Debtors satisfies the Bankruptcy Code's confirmation requirements, including section 1129, and/or limit or otherwise prejudice the right of any party in interest to object to the confirmation of any chapter 11 plan proposed by the Debtors, including the Chapter 11 Plan.

15. The Revised Exit Financing Documents shall be solely for the benefit of the parties thereto, and no other person or entity shall be a third party beneficiary thereof or hereof, except in accordance with the terms of the Revised Exit Financing Documents. Without limiting the generality of the foregoing, no person or entity shall have any right to seek or enforce specific performance of the Revised Exit Financing Documents except the parties thereto in accordance with their terms.

16. Subject to the terms and conditions of the Revised Exit Financing Documents, the Debtors and the Exit Financing Parties may enter into any amendment, modification, supplement or waiver to any provision of the Revised Exit Financing

Documents, and the Debtors are authorized to enter into any such amendment, modification, supplement or waiver (and to pay the reasonable and documented fees and other expenses, amounts, costs, indemnities and other obligations in connection therewith, all of which shall be subject to the procedures in this Order and consistent with the Equity Financing Term Sheet), other than any amendment, modification, supplement or waiver that has a material adverse impact on the Debtors' estates, without further notice, hearing or order of this Court, provided that any such amendment, modification, supplement or waiver shall comply with paragraph 4 of this Order.

17. To the extent applicable, the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified solely to the extent necessary to effectuate all terms and provisions of the Revised Exit Financing Documents and this Order, including to permit the delivery of any notices contemplated by the Revised Exit Financing Documents or to exercise any rights set forth under such documents with respect to termination, in each case, without further order of the Court.

18. The failure to describe specifically or include any particular provision of the Revised Exit Financing Documents in the Motion or this Order shall not diminish or impair the effectiveness of such provision.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: December 10, 2021
New York, New York

/S/ Shelley C. Chapman

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE