

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD <sup>106</sup> OF 2020 (IKJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)  
AND IN THE MATTER OF PEUCO FINANCE LIMITED



WINDING UP PETITION



TO THE GRAND COURT

1. The humble petition of Peuco Finance Limited (the "**Company**" and the "**Petitioner**", as applicable), an exempted limited company incorporated under the Companies Law (as amended) (the "**Companies Law**") and having its registered office at Maples Corporate Services Limited, PO Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands, shows that:

**Preamble**

2. The Company seeks a winding up order in respect of the Company pursuant to section 92(a) of the Companies Law on the ground that the sole shareholder of the Company has passed a special resolution requiring the Company to be wound up by this Honourable Court.

**Background to the Company**

3. The Company is constituted pursuant to its memorandum and articles of association registered on 4 November 2015 (the "**Articles**") with registration number 305410.
4. The entire issued share capital of the Company is held by LATAM Airlines Group S.A. (the "**LATAM Parent**").
5. The Company forms part of a group of companies ("**LATAM**") and acts as an entity through which cash flows between LATAM's finance and operating entities to finance the operation of LATAM's business and the repayment of LATAM's external indebtedness.

6. Upon the issuance of certain external financial indebtedness, LATAM Finance Limited (one of LATAM's finance vehicles, which is also a Cayman Islands exempted limited company) advanced the proceeds to the Company in the total amount of approximately US\$1,456,657,117.04 by way of the following intercompany loan agreements:
- (a) Loan Agreement dated 27 December 2017 in respect of which the sum of \$608,191,331.89 was advanced;
  - (b) Loan Agreement dated 27 February 2019 in respect of which the sum of \$470,303,833.89 was advanced;
  - (c) Loan Agreement dated 25 March 2019 in respect of which the sum of \$104,392,112.13 was advanced; and
  - (d) Loan Agreement dated 19 October 2019 in respect of which the sum of \$273,769,839.13 was advanced.
7. In return, the Company had a corresponding liability owing to LATAM Finance Limited in the total amount of US\$1,456,657,117.04, the balance of which as at 30 April 2020 stood at US\$1,307,721,003.05<sup>1</sup> (the "**Intercompany Liability**") which LATAM Finance Limited will require to be repaid in order to meet its financial obligations under its external indebtedness.
8. The Company on-lent these proceeds to certain of LATAM's operating entities to finance LATAM's operations and in return has the benefit of intercompany receivables owing from these entities (the "**Intercompany Receivables**").
9. Aside from its function as a pass through vehicle (i.e. its obligations under the Intercompany Liability and the benefit of the Intercompany Receivables), the Company and has no other operations, liabilities or assets. As such, The Company's only source of liquidity to meet the Intercompany Liability is repayment of the Intercompany Receivables, the prospects and quantum of

<sup>1</sup> Certain prepayments of the Intercompany Liability were made by the Company to provide LATAM Finance Limited with capital to meet interest payments then owing to its external creditors.

which depend upon the financial condition of LATAM as a whole and the proceeds generated from its operations.

10. LATAM is Latin America's leading airline group, with a history extending back 90 years, and boasting one of the largest route networks in the world. Prior to flight disruptions occasioned by the COVID-19 pandemic, LATAM offered flights to 145 different destinations in twenty-six countries, including domestic flights in Argentina, Brazil, Chile, Colombia, Ecuador and Peru and international services within Latin America as well as to Europe, the United States, the Caribbean, Oceania, Asia and Africa. The difficulties posed to the aviation industry by the COVID-19 pandemic have had a significant impact on the operations of LATAM, such that the Company is presently unable to pay its debts (being the Intercompany Liability).

#### **Grounds for winding up**

11. Section 92(a) of the Companies Law provides that the Company may be wound up by the Grand Court of the Cayman Islands (the "**Court**") if the Company has passed a special resolution requiring the Company to be wound up by the Court.
12. On 25 May 2020, the LATAM Parent, in its capacity as the Company's sole shareholder, passed special resolutions (the "**Special Resolutions**") whereby it resolved, *inter alia*, the following:

*"the Shareholder hereby requires the Company to be wound up by the Grand Court of the Cayman Islands (the "Court") under section 92(a) of the Companies Law (2020 Revision) of the Cayman Islands (the "Law") and authorises the board of Directors to present a winding up petition (the "Petition") to the Court seeking a winding up order in respect of the Company under section 94(1) of the Law and relief under the provisions of chapter 11 of title 11 of the United States Bankruptcy Code"*

13. In view of the Special Resolutions and having regard to the fact that the Company is presently unable to pay its debts as defined in section 93(a) of the Companies Law, on 25 May 2020 the directors of the Company passed various directors' resolutions pursuant to which they resolved to take all such steps to

give effect to the Special Resolutions, including by causing the Company to present this Petition to the Court.

**Conclusion**

14. Given the LATAM Parent has passed the Special Resolutions requiring the Company to be wound up by the Court, and the Company has been deemed to be unable to pay its debts, the Company is therefore liable to be wound up.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS:**

1. That the Company be wound up in accordance with section 92(a) of the Companies Law.
2. That the Company seek relief under the provisions of chapter 11 of title 11 of the United States Bankruptcy Code.
3. That Kris Beighton and Jeffrey Stower of KPMG, SIX Cricket Square, P.O. Box 493, Grand Cayman KY1-1106, Cayman Islands be appointed as Joint Official Liquidators of the Company (the "JOLs").
4. That the JOLs shall not be required to give security for their appointment.
5. That the JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company.
6. The JOLs are hereby authorised jointly and severally to exercise any of the following powers without further sanction of the Court:
  - (a) the power to bring or defend or continue any action or other legal proceeding in the name and on behalf of the Company;
  - (b) the power to carry on the business of the Company so far as may be necessary for the presentation of a compromise or arrangement to its creditors and/or for its beneficial winding up;
  - (c) the power to compromise, on such terms as may be agreed, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages)

subsisting, or supposed to subsist between the Company and any debtor or person apprehending liability to the Company;

(d) the power to sell any of the Company's property by public auction or private contract with the power to transfer the whole of it to any person or to sell the same in parcels;

~~(e) the power to raise or borrow money and grant securities therefore over the property of the Company;~~

(f) the power to engage staff (whether or not as employees of the Company) to assist the JOLs in the performance of their functions;

(g) the power to engage attorneys and other professionally qualified persons to assist the JOLs in the performance of their functions, whether in the Cayman Islands or elsewhere;

(h) the power to take such action as may be necessary or desirable to obtain recognition of the JOLs' appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose;

(i) the power to:

(i) take control of the ownership interests of the Company in its direct subsidiaries and/or joint ventures, investment, associated companies, business or other entities (as applicable) ("**Subsidiaries**") of the Company in which the Company holds an interest, in each case wherever located, as the JOLs shall think fit;

(ii) call or cause to be called such meetings of such Subsidiaries and/or to sign such resolutions (in each case in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries, and in each case take such steps as are necessary

to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries to give effect to the changes to the boards of directors, legal representatives, officers, and/or managers of such Subsidiaries, including (without limitation) effecting changes to the company registers of such Subsidiaries as may be deemed appropriate by the JOLs; and/or

(iii) to take such other action in relation to all such Subsidiaries as the JOLs shall think fit for the purpose of protecting the assets of the Company and managing the affairs of the Company;

(j) the power to communicate with and carry out any necessary filings with regulatory bodies as appropriate, including, without limitation, the ~~Gayman Islands Registrar of Companies in the name and on behalf of the~~ Company;

(k) the power to enter into amendments to existing agreements between the Company and its creditors (where applicable); and

(l) the power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents in connection with the exercise of their powers and, for that purpose, use the Company's seal (if any) when necessary.

7. There shall be constituted a liquidation committee ("**Liquidation Committee**") consisting of no more than five members who are creditors of the Company.

8. To the fullest extent permitted by law, the Liquidation Committee and its members shall have no duty, whether fiduciary or otherwise, to any other creditor, the Company, the JOLs or any other person by reason of, or in connection with, their membership of or participation in the Liquidation Committee

9. Pursuant to Section 97 of the Companies Law, no suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

10. Pursuant to Section 99 of the Companies Law, no disposition of the Company's property by or with the authority of the JOLs in either case in the carrying out of their duties and functions and the exercise of their powers shall be avoided and any payments made into or out of the bank accounts(s) of the Company in the ordinary course of business of the Company between the date of the presentation of the Petition herein and the date of the appointments of the JOLs shall not be avoided by virtue of the provisions of section 99 of the Companies Law in the event of an order for the winding up of the Company being made on the Petition.
11. Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
12. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
13. The JOLs be at liberty to apply generally.
14. The costs of and incidental to the Petition be paid forthwith out of the assets of the Company.
15. Such further or other relief be granted as this Honourable Court deems appropriate.

**AND** your Petitioner will ever pray etc.

**DATED** the 26 day of May 2020.

*Walkers*

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**WALKERS**

Attorneys at Law for the Company

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts,  
George Town, Grand Cayman on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

Any correspondence or communication with the Court relating to the hearing of this  
Petition should be addressed to the Registrar of the Financial Services Division of the  
Grand Court at PO Box 495, Grand Cayman, KY1-1106, Telephone 345 949 4296.