CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-039418-104

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE JUDICIAL REORGANIZATION PROCEEDINGS OF:

COMPAÑIA MEXICANA DE AVIACION, S.A. DE C.V.,

Insolvent Debtor

And

MARU E. JOHANSEN,

Foreign Representative / **Petitioner**

And

SAMSON BELAIR DELOITTE & TOUCHE INC.

Information Officer

THIRD MOTION FOR THE EXTENSION OF THE STAY PERIOD

(Sections 46 and following of the Companies' Creditors Arrangement Act, R.C.S. 1985 c. C-36)

TO THE HONOURABLE BRIAN RIORDAN J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONER RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. On August 5th, 2010, this Honourable Court issued an Order on a Motion for Recognition of Foreign Proceedings (hereinafter the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (hereinafter the "**CCAA**") to Compania Mexicana de Aviacion S.A. de C.V. (hereinafter the "**Insolvent Debtor**" or "**Mexicana**");

2. Pursuant to the Initial Order, Samson Belair Deloitte & Touche Inc. was appointed as Information Officer of the Insolvent Debtor (hereinafter the "**Information Officer**") and a stay of proceedings was ordered until November 10, 2010 (hereinafter the "**Stay Period**");

3. By Order of this Honorable Court rendered on November 16, 2010, Petitioner's first *Motion for the extension of the Stay Period* (hereinafter the "**First Motion to Extend**")

was granted and the Stay Period was extended until January 14, 2011 (hereinafter the "**First Extension Order**");

4. By Order of this Honorable Court rendered on January 13, 2011, Petitioner's second *Motion for the extension of the Stay Period* (hereinafter the "**Second Motion to Extend**") was granted and the Stay Period was extended until April 15, 2011 (hereinafter the "**Second Extension Order**");

5. By way of the present motion, Petitioner seeks an order granting a third extension of the Stay Period for a period of approximately three (3) months, namely until July 15, 2011;

II. MEXICANA'S OPERATIONS AND ACTIVITIES

6. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;

7. To effectuate a restructuring of its business and financial affairs, on August 2, 2010 Mexicana voluntarily filed a petition for commencement of a corporate reorganization proceeding (hereinafter the "**Mexican Proceedings**") before Mexico's "*Juzgado Décimo Primero de Distrito en Materia Civil en el Distrito Federal*" (hereinafter the "**Mexican Court**") under Mexico's *Ley de Concursos Mercantiles* (hereinafter the "**Concurso Law**"), the whole as appears from a certified copy of the said petition, bearing the Seal of the Federal District Court for Civil Matters of the Federal District of Mexico, filed as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;

8. In connection with commencement of the Concurso Proceedings, Mexicana's Board of Directors authorized the filing of the Concurso proceedings and appointed Petitioner herein Maru E. Johansen, as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before US Courts under Chapter 15 of the U.S. Bankruptcy Code, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated July 30, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors filed *en liasse* as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;

9. Similarly, Mexicana's Board of Directors appointed Petitioner herein Maru E. Johansen as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before Canadian Courts under the CCAA, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated August 4th, 2010 and of the official English translation of same resolution, filed *en liasse* as Exhibit R-3 in support of the Motion for Recognition of Foreign Proceedings;

10. Following filing of the petition commencing the Concurso Proceedings, an examination of Mexicana's books and records was conducted by a Court-appointed individual and consequently, on September 6, 2010, the Mexican Court issued a "business reorganization judgment," whereby a stay of seizures, foreclosures and execution of judgments was put in place, and Mexicana began the process of reorganization, the whole as appears from a copy of the said judgment in its original Spanish version as well as a copy of the official English translation thereof, communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;

11. On August 28, 2010, Mexicana announced the suspension of its flights;

III. RESTRUCTURING DEVELOPMENTS SINCE THE FIRST EXTENSION ORDER

12. As mentioned in the Second Motion to Extend, since the First Extension Order, Mexicana had continued to resolve important business and legal issues relevant to its restructuring efforts, the whole as more fully detailed hereinafter;

A. U.S. CHAPTER 15 RECOGNITION

13. On November 8th, 2010, the United States Bankruptcy Court, Southern District of New York, issued an Order recognizing Petitioner herein as foreign representative and recognizing the Mexican Proceedings as "foreign main proceedings" within the meaning of Chapter 15 of the *US Bankruptcy Code* (hereinafter the "**US Recognition Order**") extending the protection of the *US Bankruptcy Code* to the Insolvent Debtor, the whole as appears from a copy of the US Recognition Order, already communicated in support of the Second Motion to Extend *as* Exhibit R-1;

B. CLAIMS PROCESS AND NEGOTIATIONS WITH SUPPLIERS

14. In October 2010, the Insolvent Debtor obtained the approval from the Mexican Court authorizing a process for creditors to prove their claims. In order for its claim to be recognized in the context of the Mexican Proceedings, each creditor was required to fill out the form provided in the Information Officer's Notice to creditors and forward same to the *Conciliador* appointed by the Mexican Court (hereinafter the "**Conciliador**"), the whole by no later than 5:00 P.M. (Mexico City time) on December 3, 2010;

15. Since the First Extension Order and subsequent to receipt by the Conciliador of Mexicana's creditors' claims, the Conciliador has had extensive discussions and negotiations with its main suppliers in Mexico, incidentally its most important creditors in that country, in order to obtain the required support for Mexicana's restructuring plan;

16. In addition, over the last months, the Conciliador has had scheduled meetings to meet with Mexicana's US creditors and some of its largest Canadian creditors, the whole with the view of ironing out an agreement with such creditors to obtain their support for Mexicana's restructuring plan;

C. SETTLEMENT OF UNION DISPUTES

17. Moreover, since the First Extension Order, Mexicana has been successful in reaching final agreements with the three (3) labor unions representing Mexicana's pilots, flight attendants and ground personnel, allowing Mexicana to move forward with its restructuring efforts with certainty as to the terms and conditions of employment of its unionized staff and personnel on a going forward basis;

IV. RESTRUCTURING DEVELOPMENTS SINCE THE SECOND EXTENSION ORDER

18. Since the Second Extension Order, Mexicana has continued to resolve important business and legal issues relevant to its restructuring efforts, the whole as more fully detailed hereinafter;

A. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

19. The Concurso Law allows companies 185 days to enter and exit bankruptcy protection from creditors, with a possibility of a 90 business days extension if there are clear signs of progress toward restructuring;

20. The Insolvent Debtor was granted bankruptcy protection from its creditors under the Concurso Law on September 28, 2011 and therefore, said protection would normally have expired on April 1st, 2011;

21. However, on March 28, 2011, the Mexican Court issued an Order extending the protection of the Concurso Law to the Insolvent Debtor for an additional period of ninety (90) business days, as provided for under Section 145 of the Concurso Law (hereinafter the "**Mexican Extension Order**"), the whole as appears from a copy of the Spanish version of the application for a 90 business day extension (hereinafter the "**Mexican Extension Motion**"), as well as a copy of the English version thereof, communicated herewith *en liasse* as Petitioner's **Exhibit R-1** and from a copy of the Spanish version of the Mexican Extension Order, communicated herewith as Petitioner's **Exhibit R-2**;

22. As a result of the Mexican Extension Order, Mexicana's bankruptcy protection under the Concurso Law has been extended to August 10th, 2011;

23. As appears from the Mexican Extension Motion, the extension delay provided for under Section 145 of the Concurso Law was granted notably in consideration of the fact that

> "*negotiations have been performed with several investments groups, which have the intention to re-start the [Insolvent Debtor]*",

and that

> "*several creditors [...] have shown interesting the conditions proposed for the execution of a bankruptcy agreement, [...] so said bankruptcy agreement can be reached and thus this bankruptcy proceedings is successfully ended*";

B. NEW BUSINESS PLAN DEVELOPPED THROUGH THE COURSE OF NEGOTIATIONS WITH PC CAPITAL

24. As alleged in the Second Motion to Extend, substantial efforts were made during the fall of 2010 by the Insolvent Debtor and the Mexican Government in order to find new investors who would ensure the future operations of Mexicana;

25. As a result of those efforts, during the months of November and December 2010, Mexicana selected PC Capital Partners, a Mexican investment banking firm (hereinafter "**PC Capital**"), to conduct the restructuring process; PC Capital offered that they would identify and obtain a group of investors that would purchase the shares of Mexicana's holding company from its present owner ("Tenedora K") and thereafter invest the necessary funds to capitalize Mexicana's restructuring plan and continued operations;

26. Mexicana and PC Capital underwent intensive work to integrate a business plan and to formalize a refinancing process that would be offered to potential investors interested in the purchase of the shares and the capitalization of the company;

27. Through the course of said works, the Insolvent Debtor and PC Capital developed a new business plan, which was sanctioned by government authorities and the Conciliador, ensuring Mexicana's viability and sustainability, as well as the success of the restructuring process (hereinafter the "**New Business Plan**");

28. The New Business Plan provided for specific conditions under which the Insolvent Debtor could re-start its operations, including mainting and preserving its traffic rights and permits, number of planes to be operated, a new route schedule, liquidation of all employees as well as percentage of workforce to be rehired under the new labor agreements that had been previously negotiated and that provides great advantages in efficiencies;

29. Moreover, the New Business Plan rendered the Insolvent Debtor much more attractive to any prospective purchasers, as said Plan is based on a thorough evaluation of Mexicana's current legal, administrative, financial and operation situation, and seeks to capitalize on the competitive edge it had carved out for itself over years and its brand value. Therefore, the New Business Plan represents a complete analysis of the business opportunity to invest in Mexicana;

30. As mentioned previously, Mexicana had been successful in reaching final agreements with the three (3) labor unions representing Mexicana's pilots, flight attendants and ground personnel (hereinafter the "**Labor Agreements**");

31. As such, the New Business Plan provides for the inclusion of the Labor Agreements reached with Mexicana's unions;

32. Moreover, during the course of the works with PC Capital, various agreements with creditors were reached in support of Mexicana's restructuring, which agreements exceed the minimum required conditions under the Concurso Law, whereas substantial headway was accomplished to resume the Insolvent Debtor's operations, such as the recertification of aircraft and different airports, and securing the corresponding licenses required to begin commercial implementation;

33. Earlier on during the negotiation process and development of the New Business Plan, a tentative date was established for the restart of operations and implicitly a deadline for PC Capital to secure an investor for the purchase of the company's shares and the provision of the required funds to proceed with the capitalization of the Insolvent Debtor;

34. Unfortunately, on March 1st, 2011, PC Capital was unable to secure the investor for the financing necessary to complete the transaction. PC Capital advised that it was withdrawing due to the inability to secure the necessary funds;

35. As a result, the Conciliador immediately decided to open the opportunity to submit bids to acquire the shares of the parent company and to capitalize the Insolvent Debtor to all other interested parties, but would also include PC Capital, which would be on an equal foot with all other prospective investors;

C. NEGOTIATIONS WITH OTHER PROSPECTIVE INVESTORS

36. A few days after the bidding process was opened to all parties, six (6) offers had already been received from prospective purchasers of the shares (corporations or individuals), namely: TG Group, BMC, Avanza Capital, Ivan Barona, Ahcore Int'l and Logistica Internacional, the whole as appears from a copy of a press release dated March 9, 2011, communicated herewith as Petitioner's **Exhibit R-3** details cannot be supplied at this stage due to confidentiality obligations and commitments agreed with interested parties;

37. Given the interest shown by the new prospective purchasers, the Insolvent Debtor decided to extend deadlines for the submission of offers by interested parties;

38. Ultimately, nine (9) groups of investors are participating in the bidding process;

39. Considering all of the work and efforts that had been expanded in order to elaborate the New Business Plan, the Insolvent Debtor and the Conciliador foresee that the choice of successful prospective purchaser will be predicated upon the latter's financial strength and viability and its ability to adopt to the New Business Plan, which includes meeting the obligations arising from the Labor Agreements and from the agreements that Mexicana has negotiated with its suppliers;

40. On March 14, 2011, Mexicana issued a press release in order to inform the general public that a meeting was held with the Insolvent Debtor's unions representatives in order to ratify the terms of the new Labor Agreements as negotiated. Also, the Conciliador confirmed that all parties involved continued to deploy efforts in order to save Mexicana's operations, and that *"[...] government, employees and management [were] working closely together to get this emblematic company off the ground again"*, the whole as appears from a copy of a press release dated March 14, 2011, communicated herewith as Petitioner's **Exhibit R-4**;

41. Of the nine (9) groups of prospective investors that are participating in the bidding process, three (3) of them remain as the most viable contenders (hereinafter the "**Final Potential Investors**"). It is important to note that each of the Final Potential Investors have demonstrated, to varying degrees, their ability to conclude the refinancing / purchase transaction, their financial strength and viability as well as their compliance with the requirements set forth by the Conciliador;

42. Indeed, during the last week of March, 2011, TG Group, one of the Final Potential Investors, made a good faith deposit of $1M and declared that it had completed its due diligence and was satisfied with same;

43. However, the other two Final Potential Investors have yet to make similar good faith deposits and to confirm that they have completed their due diligence and are satisfied with same;

44. As such, on April 3, 2011, Mexicana issued a press release in order to confirm that it was still gathering information and documents from the three (3) Final Potential Investors, that they had complied with the financial and other requirements set forth by the Insolvent Debtor to varying degrees. The press release also indicated that once the Final Potential Investors did meet with these requirements, Mexicana's management would be in a position to determine which bid offers the greatest long-term viability and

sustainability. The successful Final Potential Investor would then be presented in order to obtain the approval of the Mexican Government so that an agreement could be reached to enable the purchase of the shares and the capitalization of the airline to begin operating immediately thereafter, the whole as appears from a copy of a press release dated April 3, 2011, communicated herewith as Petitioner's **Exhibit R-5**;

45. Thereafter, the Mexican Government will have to confirm that they approve one of the successful Final Potential Investor as the purchaser of the shares and the investor in Mexicana; the successful Final Potential Acquirer will then be able to finalize a binding agreement to conclude the purchase and formalize the internal corporate acts for the capitalization;

46. In view of the aforementioned, the Insolvent Debtor is confident that a transaction will be consummated with one of the Final Potential Investors, which will allow the restructuring process to be successfully completed;

IV. EXTENSION OF THE STAY PERIOD

47. Notwithstanding the progress made by the Insolvent Debtor since the Second Extension Order, the extension of the Stay Period sought through the present Motion is necessary in order to provide the Insolvent Debtor an adequate time period to, notably, complete the "new" bidding process initiated on March 1st, 2011, finalize negotiations with the Final Potential Investors in order to draft and execute a binding agreement that will provide the funding of Mexicana's restructuring plan and continued operations;

48. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period to July 15, 2011, is appropriate in the present circumstances;

49. Since the Second Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;

50. The Information Officer has indicated that it will be filing with the Court a report apprising the Court and Mexicana's stakeholders of events since the Second Extension Order;

51. Based on the foregoing, Petitioner prays this Court to extend the Stay Period up to and including July 15, 2011, which date shall be the new stay termination date, the whole subject to all the other terms of the Initial Order, as amended;

52. The present Motion is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THIS COURT:

[1] **GRANT** the present Motion;

[2] **EXTEND** the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5th, 2010) until July 15, 2011, the whole subject to all the other terms thereof;

[3] **DECLARE** that the notice of presentation hereof is proper and sufficient;

[4] **ORDER** that the order to be rendered on the present motion shall be executory notwithstanding appeal;

[5] **THE WHOLE WITHOUT COSTS**, save and except in the event of contestation.

Montreal, April 7, 2011

Borden Ladner Gervais L.L.P.
Attorneys for Petitioner

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