

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

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In re: : Chapter 11

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AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)

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Debtors. : (Joint Administration Requested)

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**INTERIM ORDER (I) PURSUANT TO SECTIONS
105(a) AND 365 OF THE BANKRUPTCY CODE, AUTHORIZING DEBTORS TO
ASSUME CERTAIN AGREEMENTS; (II) PURSUANT TO SECTIONS 105(a) AND 363
OF THE BANKRUPTCY CODE AUTHORIZING BUT NOT DIRECTING THE
DEBTORS TO SATISFY (A) CERTAIN PREPETITION OBLIGATIONS PENDING
ASSUMPTION AND (B) CERTAIN OBLIGATIONS TO OTHER AIRLINES SETTLED
THROUGH AIRLINE CLEARINGHOUSES AND CERTAIN PREPETITION AIRLINE
ALLIANCE OBLIGATIONS; (III) MODIFYING THE AUTOMATIC STAY
PURSUANT TO SECTION 362 OF THE BANKRUPTCY CODE TO EFFECTUATE
FOREGOING; AND (IV) SCHEDULING FINAL HEARING**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (the “Debtors”), seeking entry of an order (this “Interim Order”) authorizing (but not directing) the Debtors to (a) pursuant to section 365 of the Bankruptcy Code, assume

¹ The Debtors in these chapter 11 cases, and each Debtor’s federal tax identification number (to the extent applicable), are as follows: Avianca Holdings S.A. (N/A); Aero Transporte de Carga Unión, S.A. de C.V. (N/A); Aeroinversiones de Honduras, S.A. (N/A); Aerovías del Continente Americano S.A. Avianca (N/A); Airlease Holdings One Ltd. (N/A); America Central (Canada) Corp. (00-1071563); America Central Corp. (65-0444665); AV International Holdco S.A. (N/A); AV International Holdings S.A. (N/A); AV International Investments S.A. (N/A); AV International Ventures S.A. (N/A); AV Investments One Colombia S.A.S. (N/A); AV Investments Two Colombia S.A.S. (N/A); AV Taca International Holdco S.A. (N/A); Avianca Costa Rica S.A. (N/A); Avianca Leasing, LLC (47-2628716); Avianca, Inc. (13-1868573); Avianca-Ecuador S.A. (N/A); Aviaservicios, S.A. (N/A); Aviateca, S.A. (N/A); Avifreight Holding Mexico, S.A.P.I. de C.V. (N/A); C.R. Int’l Enterprises, Inc. (59-2240957); Grupo Taca Holdings Limited (N/A); International Trade Marks Agency Inc. (N/A); Inversiones del Caribe, S.A. (N/A); Isleña de Inversiones, S.A. de C.V. (N/A); Latin Airways Corp. (N/A); Latin Logistics, LLC (41-2187926); Nicaraguense de Aviación, Sociedad Anónima (Nica, S.A.) (N/A); Regional Express Américas S.A.S. (N/A); Ronair N.V. (N/A); Servicio Terrestre, Aereo y Rampa S.A. (N/A); Servicios Aeroportuarios Integrados SAI S.A.S. (92-4006439); Taca de Honduras, S.A. de C.V. (N/A); Taca de México, S.A. (N/A); Taca International Airlines S.A. (N/A); Taca S.A. (N/A); Tampa Cargo S.A.S. (N/A); Technical and Training Services, S.A. de C.V. (N/A). The Debtors’ principal offices are located at Avenida Calle 26 # 59 – 15 Bogotá, Colombia.

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.



certain Interline Relationship Agreements; and (b) pursuant to sections 105(a) and 363 of the Bankruptcy Code, (i) satisfy certain prepetition obligations under Interline Relationship Agreements pending assumption; and (ii) satisfy certain prepetition obligations under the Airline Alliance Agreements and the LifeMiles Program Agreements; (b) modifying the automatic stay; and (c) scheduling the Final Hearing, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the Motion and the *Declaration of Adrian Neuhauser in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and all of the proceedings had before the Court; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED on an interim basis, as set forth herein.
2. The Final Hearing shall be held on June 11, 2020, at 2:00 p.m., prevailing Eastern Time. Any objections or responses to entry of the Propose Final Order shall be filed on or before 4:00 p.m., prevailing Eastern Time, on June 4, 2020, and shall be served on: (a) the Debtors; (b)

proposed counsel to the Debtors; (c) counsel to any statutory committee appointed in these cases; and (d) the Office of the United States Trustee for the Southern District of New York. In the event no objections to entry of the Proposed Final Order are timely received, this Court may enter the Final Order without need for the Final Hearing.

3. The Debtors are authorized (but not required) to assume those of the Interline Relationship Agreements as the Debtors deem, in their sole discretion, to be in the best interest of their estates, without the necessity of further hearing, upon the submission of an order to the Court approving the specific assumptions, on notice to the applicable counterparties (the “Counterparties”), which order shall provide that, pursuant to section 365(e) of the Bankruptcy Code, the Counterparties may not demand any deposit or other form of security from the Debtors, as requested and more fully described in the Motion; provided, however, that (i) the Debtors shall not submit an order seeking specific assumption of any agreement with the International Air Transport Association or the Airlines Reporting Corporation without the consent of such parties until the time of the Final Hearing; and (ii) the foregoing prohibition on demanding any deposit or other form of security from the Debtors is without prejudice to any objection to such relief filed in connection with the Final Hearing.

4. The Counterparties shall have twenty (20) days from the service of the Proposed Interim Order to object to the assumption of the applicable Interline Relationship Agreement. If an objection to the assumption of the applicable Interline Relationship Agreement by the Objection Deadline, and is not consensually resolved by the parties, a hearing shall be scheduled for the Court to resolve any issue identified in the objection.

5. The Debtors are authorized, but not directed, to pay or otherwise honor their prepetition obligations under the Interline Relationship Agreements, the Airline Alliance

Agreements and the LifeMiles Program Agreements in the ordinary course of the Debtors' business, provided that such authority shall not be deemed to be an assumption by the Debtors of any agreement or contract; provided, further, that during the period between entry of this Interim Order and entry of the Final Order, the Debtors' authority to pay in cash the undisputed prepetition amounts requested in the Motion is limited to an aggregate amount of \$1.5 million.

6. All applicable banks and other financial institutions are authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks and electronic funds transfer requests from the Debtors' accounts to the parties to the Interline Relationship Agreements, the Airline Alliance Agreements, and LifeMiles Programs Agreements, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is hereby modified solely to the extent necessary to enable the Debtors and the other counterparties to the Interline Relationship Agreements, the Airline Alliance Agreements, and the LifeMiles Program Agreements to participate, in the ordinary course of business, in routine billings, settlements, and adjustments with respect to settlements in accordance with the terms and conditions of such agreements, whether arising prior to the commencement of these chapter 11 cases or thereafter.

8. This Order shall not be construed to limit, or in any way affect, the Debtors' ability to contest any invoice or other charge or claim on any grounds.

9. Any payment made pursuant to this Order is not, and shall not be, deemed an admission to the validity of the underlying obligation or waiver of any rights the Debtors may have to subsequently dispute such obligation.

10. Notwithstanding entry of this Order, the Debtors' rights to enforce the automatic stay provisions of section 362(a) of the Bankruptcy Code with respect to any creditor who demands payment of their prepetition debts as a condition to doing business with the Debtors postpetition are preserved.

11. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any party.

12. The Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the other airlines on the condition that, by accepting payment, such airlines agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

13. Any counterparty's acceptance of payment hereunder shall be deemed to be acceptance of the terms of this Order, and if such counterparty thereafter does not provide the Debtors with, or otherwise complies with, the On-Going Obligations/Terms during the pendency of these cases, then any payments made to such airline after the Petition Date on accounts of its prepetition claims shall be deemed to be an unauthorized postpetition transfer and automatically recoverable by the Debtors in their discretion.

14. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the other airlines before issuing payment hereunder, provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

15. The Debtors did not seek in the Motion, and the relief herein does not authorize the Debtors, to assume obligations to third parties under the Airline Alliance Agreements and the LifeMiles Program Agreements.

16. This Order is effective from the date of entry through this Court's disposition of the Motion on a final basis; provided that the Court's ultimate disposition of the Motion on the final basis shall not impair or otherwise affect any action taken pursuant to this Order.

17. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. Notwithstanding any applicability of Bankruptcy Rule 6004, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief requested in this Order.

20. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

IT IS SO ORDERED.

Dated: May 12, 2020
New York, New York

/s/ Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge