

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

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In re:	: Chapter 11
AVIANCA HOLDINGS S.A., <i>et al.</i> , ¹	: Case No. 20-11133 (MG)
Debtors.	: (Jointly Administered)
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FINAL ORDER AUTHORIZING (A) DEBTORS TO PAY PREPETITION CLAIMS OF FOREIGN CREDITORS; AND (B) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

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 “Order”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of interim and final orders (a) authorizing the Debtors to pay the prepetition claims of foreign creditors (the “Foreign Creditors”); (b) authorizing banks and other financial institutions to receive, process, honor, and pay checks and transfers issued in relation to the foregoing and to rely on the representations of the Debtors as to which checks and transfers are authorized to be paid in accordance with this Motion; and (c)

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.



to the extent necessary, authorizing the Debtors to issue replacements for any dishonored check or transfer related to the foregoing; and upon the First Day Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on a final basis.
2. Subject to the terms of this Final Order, the Debtors are authorized to pay in the ordinary course of the Debtors' businesses some or all of the prepetition claims that are due and owing to the Foreign Creditors (the "Foreign Creditor Claims"), in an aggregate amount not to exceed \$23 million (the "Payment Cap"); provided, that the Debtors shall provide the Official Committee of Unsecured Creditors (the "Committee") with at least five (5) business days' prior notice (or as much notice as is reasonably practicable under the circumstances) prior to making one or more related payments that are in excess of \$200,000 in the aggregate to any single Foreign Creditor on account of prepetition Foreign Creditor Claims.

3. This Order is entered without prejudice to the Debtors' right to request further authority from this Court, after notice and a hearing, to pay any amounts owed to Foreign Creditors in excess of the Payment Cap.

4. In exchange for payment of the Foreign Creditor Claims, unless otherwise waived by the Debtors in their sole discretion, the Foreign Creditors shall be required to continue to provide goods and services to the Debtors on the most favorable terms in effect between such Foreign Creditor and the Debtors in the twelve (12) month period preceding the Petition Date or on such other terms as the Foreign Creditor and the Debtors may otherwise agree (the "Customary Trade Terms"). The Customary Trade Terms shall apply for the remaining term of the Foreign Creditor's agreement with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement.

5. The Debtors are hereby authorized, but not directed, to obtain written verification, before issuing payment to a Foreign Creditor, that such Foreign Creditor will, if applicable, continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Creditor's agreement with the Debtors; provided, however, that the absence of such written verification shall not limit the Debtors' rights hereunder.

6. If any Foreign Creditor is paid with respect to its Foreign Creditor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any payments made to the Foreign Creditor shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Creditor Claim shall be reinstated as a prepetition claim in the amount recovered.

7. 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 of any Foreign Creditor.

8. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfers regarding amounts authorized to be paid by the Debtors under this Order, without regard to whether any check or transfer was issued before or after the Petition Date. Such banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued by the Debtors before the Petition Date should be honored pursuant to this Order, and shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

9. The Debtors are authorized, in their sole discretion and to the extent necessary, to issue checks and transfers postpetition to replace any checks or transfers in respect of the Foreign Creditors' claims that are dishonored or rejected.

10. Nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtors to make any of the payments authorized herein.

11. 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.

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

13. 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.

14. The Debtors shall maintain a matrix summarizing the aggregate estimated payout amount related to the Foreign Creditor Claims, the amount paid on account of each Foreign Creditor Claim, and shall provide such matrix on a monthly basis to the professionals retained by the Committee. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of payments made on account of any Foreign Creditor Claim, and (b) to avoid and recover any payment made by the Debtors on account of any Foreign Creditor Claim, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

15. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The notice requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

IT IS SO ORDERED.

Dated: June 9, 2020
New York, New York

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge