

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.*,<sup>1</sup> : Case No. 20-11133 (MG)
  
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Debtors. : (Jointly Administered)
  
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**AMENDED FINAL ORDER PURSUANT TO SECTIONS 105(a), 345, 363, AND 364 OF THE BANKRUPTCY CODE (I) AUTHORIZING DEBTORS TO (A) MAINTAIN AND USE EXISTING CASH MANAGEMENT SYSTEMS, BANK ACCOUNTS AND BUSINESS FORMS; (B) CONTINUE TO ENGAGE IN INTERCOMPANY TRANSACTIONS AND AFFORD ADMINISTRATIVE EXPENSE PRIORITY TO INTERCOMPANY CLAIMS; (C) CONTINUE PAYMENT OF SERVICE CHARGES; (II) WAIVING COMPLIANCE WITH SECTION 345 OF BANKRUPTCY CODE; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), seeking entry of a final order (this “Final Order”) pursuant to sections 105(a), 345, 363, and 364 of the Bankruptcy Code authorizing (i) the Debtors’ continued use of the existing Cash Management System, Bank Accounts, and Business

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.



Forms; (ii) the Debtors' continued performance of ordinary course Intercompany Transactions and the grant of administrative expense priority for Intercompany Claims; (iii) waiver or an extension of the time to comply with the investment and deposit restrictions imposed by section 345 of the Bankruptcy Code; and (iv) related relief, including authority for the Debtors to pay any Service Fees, 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 Orders*, dated as of the Petition Date; and upon the statements of counsel in support of the relief requested in the Motion at the Final Hearing; 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 GRANTED on a final basis to the extent set forth herein.
2. Subject to the other terms of this Final Order, the Debtors are authorized, but not directed, to (i) designate, maintain, and continue to use their existing prepetition Bank Accounts, in the names and with the account numbers existing immediately prior to the commencement of the Chapter 11 Cases; provided, however, that the Debtors shall have the right to close some or all

of their prepetition Bank Accounts and open new debtor in possession accounts; (ii) deposit funds in and withdraw funds from such accounts by all usual means, including, without limitation, checks, wire transfers, and other debits; (iii) pay any ordinary course bank fees incurred postpetition in connection with the Bank Accounts; (iv) treat the Bank Accounts for all purposes as debtor in possession accounts.

3. All Banks in which the Debtors maintain the Bank Accounts as of the Petition Date are authorized and directed to continue to maintain, service, and administer such Bank Accounts; provided, however, that nothing contained herein shall authorize any such Bank to honor any check issued or dated prior to the commencement of the Chapter 11 Cases, except as otherwise provided by separate order(s) of this Court.

4. Each of the Bank Accounts at institutions listed as “Authorized Depositories” on Exhibit C to the Motion (the “Authorized Banks”) is in compliance with section 345(b) of the Bankruptcy Code and the Operating Guidelines. Subject to the Debtors’ ability to request further extensions, the Debtors are hereby granted a thirty (30) day extension of time from the date of this order to come into compliance with the requirements of section 345(b) of the Bankruptcy Code and the Operating Guidelines, during which time the Debtors and their advisors shall work in good faith with the U.S. Trustee and the Committee to resolve any concerns relating to their Cash Management System or this Order; provided, that the Debtors and the U.S. Trustee and/or the Committee may resolve such concerns by seeking approval from this Court of revisions to this Order. To the extent such concerns are not resolved, the U.S. Trustee and/or the Committee must file a written objection with the Court on or before the expiration of such 30-day period (unless such deadline is mutually extended in writing by the Debtors, the Committee, and/or and the U.S. Trustee (as applicable), which extension may be effectuated without further order of the Court).

5. With respect to any Bank Accounts at JPMorgan Chase Bank, N.A. and its affiliates (collectively, “JPM”), during the pendency of the Debtors’ chapter 11 cases, JPM shall not be permitted to assert or effectuate any rights or remedies, including any setoff right (if any), with respect to any prepetition or postpetition claim (other than in connection with any bank fees), or to impose an administrative freeze on any Bank Account, in each case without the prior written consent of the Debtors and their counsel and an order from the Court granting relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code; provided, however, that solely to the extent any JPM letters of credit for the benefit of the Debtors are drawn, JPM may seek relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code with or without the Debtors’ consent as it relates to the funds held in the Debtors’ Bank Account ending \*8356 with JPM.

6. Subject to the other provisions of this Final Order, pursuant to section 503(b)(1) of the Bankruptcy Code, all Intercompany Claims arising on or after the Petition Date as a result of Intercompany Transactions through the Cash Management System shall be accorded administrative expense status (except for transfers from one Debtor to another Debtor of cash held in trust). As a result, each entity utilizing funds in the system will continue to bear its own obligations with respect to the underlying transactions.

7. The Debtors are authorized, but not directed, to maintain and continue to use any and all Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to their status as debtors in possession.

8. Subject to the other provisions of this Final Order, the Debtors are authorized, but not directed, to (a) continue to manage their cash pursuant to the Cash Management System maintained by the Debtors prior to the commencement of the Chapter 11 Cases, (b) transfer funds

by and among the Debtors and their affiliates as and when needed and in the amounts necessary or appropriate to maintain their operations and facilitate the orderly operation of their estates or businesses, and (c) make ordinary course changes to their Cash Management System without further order of the Court; provided, that unless the Debtors and the Official Committee of Unsecured Creditors (the “Committee”) otherwise agree, the Debtors shall provide the Committee with at least five (5) business days’ (or as much notice as is reasonably practicable under the circumstances) prior notice of (x) any material transfer (cash or accrual) by a Debtor to (or on behalf of) any non-Debtor affiliate that is outside of the ordinary course of business or any material changes to the Cash Management System, and (y) before making a transfer (cash or accrual) by a Debtor to (or on behalf of) any non-Debtor affiliate (other than a transfer related to payment of employee salaries or benefits) that is in excess of \$2,500,000; provided, further, that the Committee’s right to object to any such transfers or changes shall not be prejudiced by entry of the Interim Order or this Final Order. The Debtors (x) are prohibited from paying or settling prepetition Intercompany Claims or entering into additional intercompany loans or capital contributions with non-Debtors absent further order of the Court, and (y) shall make a “good faith” effort to avoid transferring funds to bank accounts (including accounts of their non-Debtor affiliates) that are subject to being seized or frozen by the applicable bank or a governmental entity.

9. The Debtors are authorized to open new or close bank accounts in the ordinary course; provided, that all accounts opened by any of the Debtors on or after the Petition Date at any bank shall, for purposes of this Order, be deemed a Bank Account as if it had originally been listed on **Exhibit A** to the Motion; provided further, that such opening shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee, the Committee, and any other statutory committee appointed in these cases;

provided further, that any new bank account that the Debtors open will be (i) designated a “Debtor in Possession” account by the relevant bank, and (ii) with a bank that agrees to be bound by the terms of this Order.

10. The Debtors shall maintain records in a manner consistent with their prepetition practices, of transfers within the Cash Management System so that postpetition transfers and transactions shall be adequately documented in, and readily ascertainable from, their books and records, to the same extent maintained by the Debtors prior to the commencement of the Chapter 11 Cases. The Debtors shall provide the Committee’s professionals with timely access to such records upon request. Furthermore, within 15 days of the entry of this Final Order, the Debtors shall provide the Committee and the U.S. Trustee with the balances for all of the Debtors’ and their non-Debtor affiliates’ bank accounts (to the extent available to the Debtors) as of the Petition Date.

11. Pursuant to section 105(a) of the Bankruptcy Code, each of the Banks are authorized to continue to honor transfers, as directed by the Debtors, of funds among the Bank Accounts. In the course of providing cash management services to the Debtors, each of the Banks is authorized, without further order of this Court, to deduct the applicable fees and expenses, including Bank Fees, associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge-back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

12. Each of the Banks is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of: (a) all checks drawn on the Debtors' accounts that have been cashed at such Banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with all bank fees and costs in connection with any checks or other items deposited in one of the Debtors' accounts with such bank prior to the Petition Date, which have been dishonored or returned unpaid for any reason, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as to service charges for the maintenance of the Cash Management System.

13. The Banks shall not be liable to any party on account of (a) following the Debtors' representations, instructions, or presentations as to any order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition checks, drafts, wires or ACH Payments in a good faith belief or upon a representation by the Debtors that the Court has authorized such prepetition check, draft, wire or ACH Payments; or (c) an innocent mistake made despite implementation of reasonable handling procedures.

14. Nothing contained herein shall prevent the Debtors from closing any Bank Account(s) as they may deem necessary and appropriate, any relevant bank is authorized to honor the Debtors' requests to close such Bank Accounts, and the Debtors shall give notice of the closure of any account to the U.S. Trustee and the Committee.

15. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any interim or

final order entered by the Court approving the Debtors' entry into any post-petition debtor in possession financing facility, and any budget or cash flow forecasts in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith (in either case, the "DIP Order"). To the extent that there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control. Nothing contained in this Order shall constitute an approval or grant of authority to use cash collateral.

16. Nothing contained in this Final Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors in possession, of any executory contract or unexpired lease by virtue of reference of any such contract or lease in the Motion.

17. 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.

18. The Debtors shall maintain a matrix summarizing all cash and non-cash Intercompany Transactions, the amount paid on account of such Intercompany Transactions, the parties to such Intercompany Transactions, and the month-end intercompany gross receivable and gross payable balances between and among Debtors and non-Debtor affiliates, and shall provide such matrix on a monthly basis to the Committee's professionals and the U.S. Trustee. Such matrix shall reflect the changes in the intercompany balances between affiliates as of the Petition Date. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of specific Intercompany Transactions, and (b) to avoid and recover any payment made by the Debtors on account of any prepetition Intercompany Claim,



respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order.

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

20. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

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

Dated: July 6, 2020  
New York, New York

/s/ Martin Glenn  
MARTIN GLENN  
United States Bankruptcy Judge