

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

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 In re: : Chapter 11
 :
 AVIANCA HOLDINGS S.A., *et al.*,¹ : Case No. 20-11133 (MG)
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 Debtors. : (Jointly Administered)
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**FINAL ORDER ON THE DEBTORS’ MOTION FOR INTERIM AND FINAL ORDERS
 (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; AND (III) MODIFYING AUTOMATIC STAY
PURSUANT TO SECTION 362 OF BANKRUPTCY CODE**

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 “Final Order”) (a) pursuant to section 365 of the Bankruptcy Code authorizing the Debtors to assume certain Interline

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.

Relationship Agreements; and (b) pursuant to sections 105(a) and 363 of the Bankruptcy Code (i) immediately authorizing, but not directing, the Debtors to satisfy certain prepetition obligations under Interline Relationship Agreements pending assumption; (ii) immediately authorizing, but not directing, the Debtors to satisfy certain prepetition obligations under the Airline Alliance Agreements and the LifeMiles Program Agreements; and (iii) modifying the automatic stay, 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 having considered all objections (formal or informal) asserted as to the relief requested in the Motion; 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 a final basis to the extent set forth herein.

2. Subject to the other provisions of this Final Order, 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”) and the Official Committee of Unsecured Creditors (the “Committee”), 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 are authorized to assume any Interline Relationship Agreements to which IATA or Airlines Reporting Corporation is party only upon compliance with all of the terms and conditions of such agreements, the terms of which are reaffirmed and approved hereby; and (ii) nothing in this Order shall alter, amend, or abrogate any right that the Airlines Reporting Corporation may have under any Interline Relationship Agreement to which it is party, including any right to demand required collateral, security or an additional deposit, so long as the exercise of such right (a) is made the ordinary course consistent with the terms of the subject agreement; (b) is not attributable to the filing of the Chapter 11 Cases; and (c) does not otherwise violate the stay applicable under section 362 of the Bankruptcy Code. For the avoidance of doubt, no Airline Alliance Agreement is an Interline Relationship Agreement for the purposes of this paragraph.

3. The Counterparties shall have twenty (20) days from the service of this Final 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.

4. Subject to the other provisions of this Final Order, the Debtors are authorized, but not directed, to pay or honor 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.

5. 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 the LifeMiles Program Agreements, whether those checks were presented or funds transfer requests initiated prior to or after the Petition Date, and make other transfers provided that sufficient funds are available in the applicable accounts to make the payments.

6. 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.

7. 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.

8. Subject to the other provisions of this Final Order, 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 airline 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 such settlements in

accordance with the terms and conditions of such agreements, whether arising prior to the commencement of Debtors' chapter 11 cases or thereafter.

9. 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.

10. 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.

11. Subject to the other provisions of this Final Order, the Debtors are authorized, in their discretion and in the exercise of their business judgment, to make payment to the parties to under the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements on the condition that by accepting payment, such parties agree to maintain, reinstate or otherwise comply with the On-Going Obligations/Terms during the pendency of these cases.

12. The acceptance by the parties to the Interline Relationship Agreements, the Airline Alliance Agreements and the LifeMiles Program Agreements of payment is deemed to be acceptance of the terms of this Order, and if such parties thereafter do not provide the Debtors with, or otherwise comply with, the On-Going Obligations/Terms during the pendency of these cases, then any payments of prepetition claims made after the Petition Date will be deemed to be avoidable postpetition transfers and shall be recoverable by the Debtors in their discretion.

13. The Debtors are authorized, but not required, to obtain written verification of the On-Going Obligations/Terms from the parties to the Interline Relationship Agreements, the

Airline Alliance Agreements and the LifeMiles Program Agreements before issuing payment hereunder, provided however that the absence of such written verification shall not limit the Debtors' rights hereunder.

14. Other than with respect to the Interline Relationship Agreements, nothing contained in this Order 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.

15. The Debtors did not seek in the Motion, and the relief herein does not authorize the Debtors, to assume obligations to third parties that are settled through the Clearinghouses.

16. The Debtors shall maintain a matrix summarizing the estimated aggregate payout amount owed prepetition pursuant to the Airline Alliance Agreements and the LifeMiles Program Agreements (the "Agreements"), the payments made pursuant to the Agreements, and shall provide such matrix on a monthly basis to the Committee's professionals. The rights of the Committee to seek (a) additional disclosures from the Debtors, including disclosures regarding the terms of any payment under any of the Agreements, and (b) to avoid and recover any payment made by the Debtors under any of the Agreements, respectively, are expressly reserved and shall not be prejudiced by entry of the Interim Order or this Final Order. In addition, the Debtors shall provide the Committee with five (5) business days' notice (or as much notice as is reasonably practicable under the circumstances) before entering into any material amendment or modification to any Agreement.

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

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

19. 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: June 9, 2020
New York, New York

Martin Glenn

MARTIN GLENN
United States Bankruptcy Judge