



Colombian Superintendency of Companies (insolvency judge) issues ruling relating to Cape Town Convention in Viva Air's insolvency proceedings

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The Colombian Superintendency of Companies decided to recognize creditors' claims arising out of international interests registered with the International Registry before the commencement of Viva Air's insolvency proceedings as second-class credits, subordinated only to labor and fiscal debts.

This decision marks a milestone for all lessors and financiers of aircraft objects in Colombia, providing them with the assurance that in the event of insolvency of a debtor, their claims (associated rights) arising out of international interests may be classified as preferential.

Legal background

Colombia adopted the 2001 Cape Town Convention on International Interests in Mobile Equipment ("CTC") and its Protocol on Matters Specific to Aircraft Equipment ("Aircraft Protocol") pursuant to Law 967 of 2007.

In accordance with the declaration made by Colombia under article 39(1)(a) of the CTC, only (i) employee rights and (ii) fiscal debts have priority over an international interest in insolvency proceedings.

As per article 30 of the CTC, an international interest such as an aircraft lease agreement is effective in insolvency proceedings against a debtor if prior to the commencement of the insolvency proceedings that interest was registered with the International Registry ("IR") in conformity with the CTC.

In addition, Article 21 of the CTC states that an international interest remains effective if it has not expired or has not been discharged from the IR.

This being so, any creditor claims in insolvency proceedings in Colombia arising out of international interests registered with the IR before the commencement of such proceedings should be paid after labour and fiscal debts and recognized as second-class credits.



Viva Air's insolvency

As a result of Covid-19 pandemic, the Colombian low-cost carrier Viva Air voluntarily entered a Business Recovery Process (BRP) in February 2023. This was an out-of-court proceeding aimed to help the company maintain operations and stay in business. Despite this effort, the BRP was unsuccessful, and Viva Air was later admitted into reorganization proceedings before the Superintendency of Companies.

Due to Viva Air's inability to establish a feasible business plan to restart its operations, the company was admitted into liquidation proceedings on 21 June 2023.

Several aircraft lessors filed claims before the Superintendency of Companies arising out of international interests registered with the IR. These claims included mainly unpaid rents under international aircraft lease agreements signed with Viva Air.

Superintendency of Companies decision

In a recent hearing, the Superintendency of Companies decided to recognize Viva Air's creditors' claims arising out of international interests registered with the IR before 21 June 2023 as second-class credits, subordinated only to labor and fiscal debts.

This is the first time that the Superintendency of Companies recognizes credits arising from aircraft lease agreements as second-class credits. This precedent marks a milestone for lessors and financiers of aircraft in Colombia, providing them with the assurance that in the event of a debtor's insolvency in Colombia, their claims and associated rights with an international interest may be classified as preferential.

This classification is contingent upon the international interest being registered with the IR prior to the commencement of insolvency proceedings. The international interest must also remain registered with the IR at least until the approval of the credits ranking and qualification project of the debtor by the insolvency judge.