

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-11-039418-104

SUPERIOR COURT  
(Commercial Division)

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IN THE MATTER OF THE JUDICIAL  
REORGANIZATION PROCEEDINGS OF:

**COMPAÑIA MEXICANA DE AVIACION,  
S.A. DE C.V.,**

Insolvent Debtor

And

**MARU E. JOHANSEN,**

Foreign Representative / **Petitioner**

And

**SAMSON BELAIR DELOITTE &  
TOUCHE INC.**

Information Officer

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**ATTESTATION D'AUTHENTICITÉ  
SELON L'ART. 82.1 C.p.c.**

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Je, soussigné, Simon-Luc Dallaire, avocat, exerçant ma profession au 1000, de la Gauchetière ouest, suite 900, Montréal, Québec, H3B 5H4, district de Montréal, atteste ce qui suit :

1. En date du 13 novembre 2013, à 15h27, j'ai reçu par télécopieur de Madame Maru E. Johansen, un affidavit dûment signé par elle;
2. Madame Maru E. Johansen m'a transmis ledit affidavit de Los Angeles, de l'État de la Californie, États-Unis d'Amérique;
3. La copie dudit affidavit jointe à la présente attestation est conforme au fac-similé ainsi reçu par télécopieur de Madame Maru E. Johansen.

Montréal, le 13 novembre 2013



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Simon-Luc Dallaire

**BORDEN LADNER GERVAIS LLP**

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## AFFIDAVIT OF MARU E. JOHANSEN

I, the undersigned, **MARU E. JOHANSEN**, having my place of business at 9841 Airport Boulevard, Suite 400, Los Angeles, California, United States of America, solemnly declare as follows :

1. I am the Vice-President, Legal & Corporate Affairs, U.S., Canada & U.K. for Compañia Mexicana de Aviacion, S.A. de C.V. ("Mexicana");

### I. INTRODUCTION

2. On August 5<sup>th</sup>, 2010, this Honourable Court issued an Order on a Motion for Recognition of Foreign Proceedings (hereinafter the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* (hereinafter the "**CCAA**") to Compañia Mexicana de Aviacion S.A. de C.V. (hereinafter the "**Insolvent Debtor**" or "**Mexicana**");
3. Pursuant to the Initial Order, Samson Belair Deloitte & Touche Inc. was appointed as Information Officer of the Insolvent Debtor (hereinafter the "**Information Officer**") and a stay of proceedings was ordered until November 10<sup>th</sup>, 2010 (hereinafter the "**Stay Period**");

4. By successive orders of this Honorable Court rendered on November 16<sup>th</sup>, 2010, January 13<sup>th</sup>, 2011, April 14<sup>th</sup>, 2011, July 8<sup>th</sup>, 2011, September 20<sup>th</sup>, 2011, November 29<sup>th</sup>, 2011, February 27<sup>th</sup>, 2012, May 17<sup>th</sup>, 2012, August 23, 2012 and November 20, 2012 the Initial Order was extended until November 20, 2013, as appears from the court record herein;
5. By the present motion, Petitioner seeks an order granting an eleventh extension of the Stay Period for an indefinite period ending at the earliest of the following dates (i) in approximately ninety (90) days on January 15<sup>th</sup>, 2014, or (ii) ten (10) days following the new termination date to be established by the Mexican Court, the whole for the reasons more fully detailed hereinafter;

## II. MEXICANA'S OPERATIONS AND ACTIVITIES

6. Mexicana and its affiliates operate Mexicana Airlines, historically Mexico's largest airline. Mexicana and its affiliates carry passengers and cargo to destinations worldwide;
7. To effectuate a restructuring of its business and financial affairs, on August 2<sup>nd</sup>, 2010 Mexicana voluntarily filed a petition for commencement of a corporate reorganization proceeding (hereinafter the "**Mexican Proceedings**") before Mexico's "*Juzgado Décimo Primero de Distrito en Materia Civil en el Distrito Federal*" (hereinafter the "**Mexican Court**") under Mexico's *Ley de Concursos Mercantiles* (hereinafter the "**Concurso Law**"), the whole as appears from a certified copy of the said petition, bearing the Seal of the Federal District Court for Civil Matters of the Federal District of Mexico, already communicated as Exhibit R-1 in support of the Motion for Recognition of Foreign Proceedings;
8. In connection with the commencement of the Concurso Proceedings, Mexicana's Board of Directors authorized the filing of the Concurso proceedings and appointed Petitioner herein Maru E. Johansen, as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before US Courts under Chapter 15 of the U.S. Bankruptcy Code, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated July 30<sup>th</sup>, 2010 and of the official English translation of same resolution, communicated of the resolution of the Board of Directors already communicated *en liasse* as Exhibit R-2 in support of the Motion for Recognition of Foreign Proceedings;
9. Similarly, Mexicana's Board of Directors appointed Petitioner herein Maru E. Johansen as its Foreign Representative and specifically authorized the Foreign Representative to seek relief before Canadian Courts under the CCAA, the whole as appears from copies of the original Spanish version of a Resolution of the Board of Directors of Mexicana dated August 4<sup>th</sup>, 2010 and of the official English translation of same resolution, already communicated *en liasse* as Exhibit R-3 in support of the Motion for Recognition of Foreign Proceedings;
10. Following the filing of the petition commencing the Concurso Proceedings, an examination of Mexicana's books and records was conducted by a Court-appointed individual and consequently, on September 6<sup>th</sup>, 2010, the Mexican Court

issued a "business reorganization judgment," whereby a stay of seizures, foreclosures and execution of judgments was put in place, and Mexicana began the process of reorganization, the whole as appears from a copy of the said judgment in its original Spanish version as well as a copy of the official English translation thereof, already communicated as Exhibits R-1-A and R-1-B in support of the First Motion to Extend;

11. On August 28<sup>th</sup>, 2010, Mexicana announced the suspension of its flights;

### III. RECENT RESTRUCTURING DEVELOPMENTS

12. Since the Tenth Extension Order, Mexicana had continued to resolve important business and legal issues relevant to its restructuring efforts, the whole as more fully detailed hereinafter;

#### A. MEXICAN EXTENSION ORDER RENDERED UNDER THE CONCURSO LAW

13. On November 14<sup>th</sup>, 2011, the Mexican Court issued an order advising the new computation of the delays, which ultimately results in a deadline of February 10<sup>th</sup>, 2012 for the conciliation period, the whole as appears from a copy of the said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**November 14<sup>th</sup> Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibit R-2A and Exhibit R-2B;
14. On February 8<sup>th</sup>, 2012, the Mexican Court issued an order suspending indefinitely the deadline of February 10<sup>th</sup>, 2012 for the conciliation period, the whole as appears from a copy of said Order in its original Spanish version as well as a copy of the official English translation thereof (hereinafter the "**February 8<sup>th</sup> Order**"), which were already communicated in support of the Sixth Motion to Extend as Exhibit R-1A and Exhibit R-1B;
15. As mentioned in the Information Officer's 14<sup>th</sup> report, on or about June 4, 2013, Mexicana filed a creditors' agreement (the "**Creditors' Agreement**") with the Mexican Court, the whole as appears from a copy of the Spanish original of said agreement and from a copy of the unofficial English translation thereof, respectively communicated as Exhibits R-1-A and R-1-B of the *Eleventh Motion for the extension of the Stay Period*;
16. The Creditors' Agreement provides for a 97% debt reduction for the unsecured creditors (i.e. a 3% dividend of their recognized claims) that have not agreed on a different percentage with Mexicana. The payment would be made in seven annual equal instalments, with interest on the outstanding balance at a rate of 7% per annum, beginning 180 days after the approval by the Mexican Court of the Creditors' Agreement;
17. The Creditors' Agreement remains subject to approval by the Mexican Court, which approval is conditional however upon the recapitalization of Mexicana by an investor;

18. Although Justice Alarcon has yet to rule on the approval of the Creditors' Agreement, she has indicated that she would not issue such ruling until either i) an Investor had been secured to acquire the assets or shares of Mexicana and fund the Creditors' Agreement and the operations of the emerging airline or ii) it became obvious that such an investor would not be secured;
19. In the event the Court comes to the conclusion that an investor will not be secured, it is likely the Mexican Court will refuse the approval of the Creditors' Agreement and will commence liquidation proceedings with respect to Mexicana, the whole as mentioned in paragraphs 18 to 21 of the affidavit of Sr. Jaime René Guerra Gonzalez, filed as Exhibit R-4 in support of the *Motion for Recognition of Foreign Proceedings* in the present matter;
20. To date, no further order has been rendered by the Mexican Court with respect to the approval of the Creditors Agreement;

**B. PARTIAL OPERATIONS OF MEXICANA AND ITS AFFILIATES**

21. Since the Tenth Extension Order, Mexicana, through one of its affiliates, Mexicana MRO, S.A. de C.V. (hereinafter the "MRO") has continued to operate a portion of the group's business, namely maintenance services including major services to other airlines in its maintenance bases located at Mexico City International Airport and at Guadalajara International Airport;
22. For the purposes of the operations, Mexicana provides the MRO with all of the necessary administrative and technical staff, IT and approximately half of the clerical staff and mechanics, the other half being provided by an unrelated company, Imagen y Productividad en Negocios;
23. Mexicana therefore invoices the MRO for the services provided, which generates income for Mexicana and allows for the continued, although severely diminished, operation of Mexicana's management staff in order to keep Mexicana afloat until the restructuring is complete;
24. Moreover, Mexicana continues its efforts at collection of its accounts receivables, which also generates much needed cash to support the head office operations, which are critical to Mexicana's restructuring efforts;
25. The MRO continues to be the principal source of revenue of Mexicana pending its restructuring;

**C. DEVELOPMENTS WITH IATA**

26. On or about October 1<sup>st</sup>, 2012, IATA and Mexicana executed a letter agreement with respect to the start date of the Approved Process and regarding notices to be provided, the whole as appears from a copy of the said letter agreement, already communicated as Exhibit R-12 of the Tenth Motion for the Extension of the Stay Period;

27. The Approved Process is almost completed. The parties are currently in discussions to complete the final steps which will lead to a final payment by IATA to Mexicana, in accordance with the June 4<sup>th</sup>, 2013 order rendered by this Honorable Court;

**D. RECENT RESTRUCTURING DEVELOPMENTS**

28. Although Mexicana has moved forward with development of its business plan and its negotiations with suppliers and creditors, certain judicial development outside of Mexicana's control occurred, which created additional delays in the completion of Mexicana's restructuring, as more fully detailed in paragraphs 17 to 25 of the *Tenth Motion for the Extension of the Stay Period*;
29. In the days prior to the Tenth extension order and after the failure of the negotiations between Tenedora K and Group Med Atlantica, who was the preferred investor at the time, Justice Alarcon declared Ivan Barona (hereinafter "**Barona**") and BF International Mining Traders (hereinafter "**BF International**") as "sole and potential" investors in Mexicana;
30. On October 30<sup>th</sup>, 2012, Justice Alarcon ordered that Barona and BF International's due diligence process with respect to Mexicana would start no later than November 6, 2012, and would need to be completed within 44 business days, namely no later than approximately January 11, 2013 (depending on Christmas holidays), the whole as appears from original Spanish version of the October 15 Order already communicated as Exhibit R-11 of the Tenth Motion to Extend the Stay Period;
31. It appears from the Thirteenth Information Officer's Report, BF International was not able to conclude a transaction with Mexicana;
32. Given the unsuccessful negotiations with BF International to conclude a transaction, the Mexican Court decided to start a bidding process;
33. Notwithstanding that the Mexican Court has not rendered a specific order with respect to the result of the bidding process, it appears that none of the bidders have been able to demonstrate the financial ability to recapitalize Mexicana, which would allow it to emerge from the restructuring process;
34. The inability to secure a new investor has prompted Mexicana's principal secured creditors, namely, Mexican governmental institutions and banks, to take steps towards an orderly liquidation of Nuevo Grupo Aeronàutico's airline subsidiaries, assets, including the shares and assets of Mexicana, in order to secure severance payment to the airlines' employees as priority creditors under the Concurso Law;
35. Among the most valuable assets of Nuevo Grupo Aeronàutico, are the shares of the MRO, which as mentioned previously, and contrary to Mexicana, MexicanaClick (formerly Aerocaribe) and MexicanaLink, continues to operate and generate positive cash flow;
36. As such, it appears that a transaction for the sale of the MRO as a going concern is possible;

37. The MRO has also filed for Court protection under the Concurso Law and Justice Alarcon also presides over the MRO's restructuring process in Mexico;
38. Within this context, the Mexican Court has encouraged the MRO's principal stakeholders to come to an agreement by no later than October 2<sup>nd</sup>, 2013 with respect to the recapitalisation and/or sale of the shares and/or assets of the MRO and with respect to the distribution of the proceeds thereof;
39. Although Mexicana is not a party to these negotiations, it appears that the shareholders and secured creditors of Mexicana, the MRO, MexicanaClick (formerly Aerocaribe) and MexicanaLink (hereinafter, together, the «**Mexicana Group**») have come to an agreement whereby the proceeds of sale of the share and/or assets of the MRO would be used in priority to pay the claims of the employees of the Mexicana Group;
40. Pursuant to such agreement, Nuevo Grupo Aeronáutico, the majority shareholder of the members of the Mexicana Group, would deliver the shares of the MRO to the Mexican Court so that it may assign them to a trust to be created, for the purpose mentioned above;
41. In light of the foregoing, on October 8<sup>th</sup>, 2013, Justice Alarcon extended the delay to complete the MRO's restructuring pursuant to the Concurso Law for an additional 90 days in order to allow the MRO and its stakeholder to finalize and implement such agreement;
42. However, Justice Alarcon ordered that within the first 30 days of this extended delay, the MRO's stakeholders had to agree on the mechanism to either recapitalize or liquidate the assets of the MRO, and that failing such an agreement within the aforementioned 30 day delay, she reserved the right to terminate or further modify the delay granted to the MRO to complete its restructuring pursuant to the Concurso Law;
43. Although the 30 day delay is expired and the MRO's stakeholders have not yet reached an agreement, Justice Alarcon has not, to date, rendered any subsequent order in this respect within the context of the MRO's restructuring;
44. As Mexicana is not a party to these discussions and negotiations, Mexicana's management is not aware of the developments in respect of such agreement. However, it appears that Justice Alarcon has not, to date, rendered any order rescinding the 90 day extension granted to the MRO or affecting the restructuring delay granted to Mexicana;
45. It now appears that the fate of Mexicana and its restructuring efforts are intrinsically tied to the results of the restructuring and/or sale of the shares and/or assets of the MRO;
46. As such, it is highly unlikely that the restructuring efforts of Mexicana under the Concurso Law will continue beyond the 90 day delay granted by Justice Alarcon in the context of the MRO's restructuring, which expires on or about January 6<sup>th</sup>, 2014, unless an investor can satisfy Justice Alarcon of its ability to recapitalize Mexicana, which appears doubtful at best, at this point in time;

47. During a hearing before the Mexican Court which took place during the week of November 4<sup>th</sup>, 2013, it was suggested that the shares of the other companies forming part of the Mexicana Group also be assigned to the trust in order to facilitate the payment of the claims of the employees of Mexicana, MexicanaClick and MexicanaLink;
48. However, the consent of the shareholder of Nuevo Grupo Aeronàutico, Tenedora K and the secured creditors is required, although to date no party has indicated its consent;
49. If such consent was granted, the stakeholders of the Mexicana Group will need to agree on a liquidation plan with respect to the various assets of Mexicana, MexicanaClick and MexicanaLink, as well as the distribution of the proceeds of such liquidation;
50. It is anticipated that depending on the position of Tenedora K with respect to the shares of Mexicana, MexicanaClick and MexicanaLink, the stakeholders of the Mexicana Group, including Tenedora K, will use the remainder of the 90 day delay granted by Justice Alarcon in the context of the MRO's restructuring to negotiate such liquidation plan and distribution of proceeds;

#### IV. EXTENSION OF THE STAY PERIOD

51. In light of the foregoing, because the Stay Period expires on November 20<sup>th</sup>, 2013, the extension of such Stay Period sought through the present Motion is necessary in order to maintain the judicial protection of Mexicana while the restructuring of Mexicana and the MRO pursuant to the Concurso Law are brought to a close;
52. Given the uncertainty related to the approval or refusal of the Creditors' Agreement by the Mexican Court, as well as the most recent developments, Petitioner respectfully submits that this Honourable Court should render an Order extending the Stay Period for a period ending on the earlier of the following dates, namely (i) January 15<sup>th</sup>, 2014, or (ii) ten (10) days following the termination of the Concurso Proceedings by the Mexican Court;
53. In this respect, Petitioner Maru E. Johansen undertakes to immediately advise the Information Officer, this Honorable Court and the members of the service list of the new termination date of the conciliation period to be established by the Mexican Court,
54. Petitioner and the Insolvent Debtor are of the view that extending the Stay Period for such a period is appropriate in the present circumstances;
55. The Information Officer has indicated that it will be filing with the Court a report informing the Court and Mexicana's stakeholders of the various steps taken by Mexicana since the Tenth Extension Order;
56. Since the Tenth Extension Order, the Insolvent Debtor has acted and continues to act in good faith and with due diligence;



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57. Based on the foregoing, Petitioner respectfully asks this Court to extend the Stay Period (as defined in the Order on a Motion for Recognition of Foreign Proceedings rendered by this Court in this matter on August 5<sup>th</sup>, 2010) until the earliest of the following dates:
- (i) January 15<sup>th</sup>, 2014 or;
  - (ii) Ten (10) days following the service by Petitioner or the Information Officer to the members of the service list of a Notice advising of the termination of the Concurso Proceedings by the Mexican Court;
58. All of the facts alleged in the present affidavit are true;

Sworn before me at Los Angeles,  
California, this 13<sup>th</sup> day of November 2013

  
MARU E. JOHANSEN

**JURAT**

State of California )  
County of Los Angeles ) SS.

Subscribed and sworn to (or affirmed) before me on this 13th day  
of November, 20 13, by  
MARU E. JOHANSEN

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before  
me.

Signature *Maru E. Johansen*



**OPTIONAL INFORMATION**

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

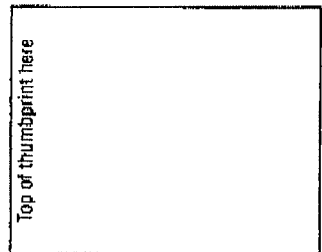
- INDIVIDUAL
- CORPORATE OFFICER  
Vice President, Legal &  
Corporate Affairs  
TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- SUBSCRIBING WITNESS
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

AFFIDAVIT OF MARU E. JOHANSEN  
TITLE OR TYPE OF DOCUMENT  
Eight (8)  
NUMBER OF PAGES  
November 13, 2013  
DATE OF DOCUMENT  
OTHER \_\_\_\_\_

**ABSENT SIGNER (PRINCIPAL) IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT  
OF  
SIGNER



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**AFFIDAVIT OF MARU E. JOHANSEN**

**O R I G I N A L**

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