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*COELUM is Latin for air space or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.*

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## IMPORTATION OF AIRCRAFT INTO MEXICAN TERRITORY

[Andrea Valencia](#)

One of the essential factors in an aircraft lease transaction or the acquisition of an aircraft is the actual delivery of the aircraft. There are always a series of indispensable details that have to be properly arranged for the delivery to be successful, satisfactory and least expensive for the parties involved in the transaction. One of these details is to determine the applicable customs regulations that must be complied with when an aircraft is to be delivered into Mexican territory.

The Mexican Customs Law determines there are two kinds of importation covered under Mexican legislation:

**a)** Definitive Importation.- Foreign aircraft and/or equipment that will stay in Mexico for an indefinite period of time.

**b)** Temporary Importation.- Foreign aircraft and/or equipment that will stay in Mexico for a restricted period of time and with a specific purpose, and only if it returns to its origin in the same conditions in which it first entered into Mexico.

We can initially determine that if the transaction consists in the acquisition of an aircraft, the correct customs mechanism would be to make a "Definitive Importation" of the aircraft in order for it to be authorized to stay in Mexico for an indefinite period of time.

If on the other hand, the transaction consists in the Lease of an aircraft, due to the characteristics of a lease transaction it will always be restricted to a specific period of time, consequently the correct customs mechanism would be "Temporary Importation."



The Mexican Customs Law specifies a list of merchandise that can be given Temporary Imported into Mexican territory. The article 106, V, b) of the law allows for the possibility of making a Temporary Importation of airplanes and helicopters, that are to be used by airlines that have been granted a permit to operate in Mexico, and to those airlines that have been granted a public passenger permit but only if (in this last case), they provide each February to their correspondent local tax authority, information regarding their flights with details of passengers and operations carried out in the prior year.

In the Temporary Importation mechanism the Mexican Customs Law establishes two different aspects that provide benefits to both lessee and lessor and that add positive elements for both parties involved in a lease transaction.

The Customs Law grants an important incentive to the party that imports the aircraft into Mexico which consists of an exemption to the obligation of paying importation taxes and compensatory fees applicable to the aircraft, allowing the aircraft to remain in Mexican territory for a maximum period of 10 years under the same customs regime. This exemption benefits the Lessee in that it eliminates important costs for lessee in the execution of the transaction.

Article 105 of the Mexican Customs Law grants a benefit to lessor as well, while imposing however, a property or usage limitation to lessee that introduced the aircraft into Mexican territory under the regime of "Temporary Importation". It states that as the aircraft was introduced into Mexico under

the rules of "Temporary Importation", that the aircraft may not be subject of transference or transmission, which means that the lessee will not be able to sub lease, sell or in any way transfer its rights over the said aircraft to any other person as long as the aircraft remains in Mexico under the Temporary Importation regime.

Even though this represents a limitation to lessee, it gives some security to lessor allowing him to know who has the legitimate rights of use or property rights over the aircraft, thus facilitating its location while in Mexico.

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# THE RANKING OF THE INTERNATIONAL TREATIES IN MEXICAN LAW

Mario Molina

For the last decade, lawyers in Mexican law schools have been taught that in Mexican legal system, the rank of the various regulations, laws and treaties is as follows: Firstly the Constitution and International Treaties; secondly, Federal and Local Laws. This concept could change this year.

With the growing integration of Mexico in the world market, several discussions have emerged about the interpretation of the top law of the country. Litigations with international corporation claimants have required the Supreme Court to rule about the validity of powers of attorney and contracts granted and signed in accordance to the International treaties signed by the Federal Government. The rules followed in the integration of these documents constantly conflicts with some federal and local laws.

Mexico's Federal Constitution in a general establishes that all the above mentioned laws will be the primary regulating laws within Mexico, but since the Constitution fails to provide the order of precedence for their application,

the Federal Courts in Amparo procedures have settled criteria in a number of different directions:

1) Federal Constitution and International Treaties are in the same level and above Federal and Local Laws;

2) International Treaties are under the Federal Constitution but above the Federal and Local Laws;

3) International Treaties are at the same level that Federal Laws, but under the Federal Constitution.

This crucial discrepancy has been noted by the Supreme Court and it is scheduled to decide in a plenary session, which criteria should prevail. The

result of this session could be Jurisprudence and if so, it would be of obligatory observance as if it was written into the Federal Constitution. This due to the fact that in Mexico, the Constitution establishes whatever the Supreme Court says it establishes. Therefore, this resolution could provide uniform criteria that would end the debate about the relevance of the International Treaties signed by Mexico.

Such matters can not be taken lightly, as Mexico has a very strict legal system that is based upon the absolute supremacy of the Federal Constitution. Therefore an innovative decision of the Supreme Court could generate a new wave of legal modernity that would support a huge list of internationally accepted laws that have yet to be consolidated in our country; areas such as dispute resolution; alternatives like Mediation and Arbitration; for example. Therefore, once again our Supreme Court is called to determine which path our legal framework should take, the categorical supremacy of the Federal Constitution or the world trend on international matters.



## THIS MONTH'S EXTRACT OF MEXICAN AVIATION NEWS

### o Interjet offers "Shopping" fares to El Paso

Interjet is taking advantage of its route Toluca-Juárez to promote business traffic to the US. Interjet also offers new Air and Hotel packages to El Paso, Texas. With prices from 3699 to 7600 Pesos, these packages will encourage "shopping" trips.

Diario de Chihuahua. 08/ Jan / 2007

<http://www.diario.com.mx/semanales/economia/nota.asp?notaid=effbd380518feffdf42b41dd3423f96f>

### o Judicial proceedings start on the largest fraud in Switzerland's History

The biggest white-collar criminal trial in Switzerland's history began in Zurich with the initial declarations of the case in which 19 ex managers, ex directors and ex advisers are accused in the collapse of Swissair in 2001 with obligations that were around 13-Million Dollars.

Reforma. 16 / Jan / 2007

<http://www.reforma.com/negocios/articulo/728121/>

### o Merger of state aviation companies reported in India

The Government of India reported that the two principal state airlines, Indian Airlines Ltd and Air India Ltd, will be merged in order to compete in an effective way with that sector's private companies. The Civil Aviation Minister, Praful Patel, said that with this merger, the new enterprise will become one of the 20 largest Airlines in the world.

El Financiero. 16 / Jan / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=38333&docTipo=1&orderby=docid&sortby=ASC>

### o Aeromar announces new routes

Aeromar Airlines opens new routes: Mexico-Campeche, Monterrey-Querétaro-Celaya-Querétaro-Mexico and Monterrey-Celaya-Querétaro-Monterrey, and offers promotional and attractive tariffs for the business or tourist traveller. They also offer packages that include the air fare and hotel.

El Financiero. 16 / Jan / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=38331&docTipo=1&orderby=docid&sortby=ASC>

### o Boeing's "takeoff" leaves Airbus behind.

The European company Airbus received 790 orders in 2006, giving up its world leadership position in aircraft orders that it has held since 2000, to its American competitor Boeing. Boeing announced 1,044 orders. Louis Gallois, Airbus President, responded that Airbus took the first position with 434 aircraft deliveries, that represented 26-million Euros.

Reforma. 17 / Jan / 2007

<http://www.reforma.com/negocios/articulo/728473/>



#### o Air Plus Comet takes over Air Madrid routes in Latin America

Air Plus Comet Airlines will fly to seven countries in Latin America. These are routes that in prior months were flown by Air Madrid. The routes to be operated by Air Plus Comet are: Argentina, Peru, Colombia, Chile, Ecuador, Panama and Costa Rica.

El Financiero. 17 / Jan / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=38687&docTipo=1&orderby=docid&sortby=ASC>

#### o Sanctions against Air Madrid to be handled through international channels.

The economic sanctions that will be imposed on Air Madrid, because it stopped operations in Mexico without the proper notice, will be exercised through international channels, reported the STC. All of the Spanish airline's representatives in Mexico already denied any responsibility in the matter, so that in this moment there is no representative of the carrier to work with the government.

El Financiero. 24 / Jan / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=39704&docTipo=1&orderby=docid&sortby=ASC>

#### o Mexicana negotiations rejected

The *Asociación Sindical de Sobrecargos de Aviación* (Association of Flight Attendants) will not negotiate even one more clause of the collective work agreement to cut to Mexicana's costs, because the agreed reduction is similar to the reductions agreed with the ground-handlers and unionized pilots, who agreed a bigger reduction because their cost to Mexicana is 3.5 times larger.

Reforma. 29 / Jan / 2007

<http://www.reforma.com/negocios/articulo/732574/>

#### o British Airways crew members suspend strike call.

The strike called by the British Airways crew members for January 30 and 31 was suspended. After 120 hours of negotiation, British Airways and the worker's association finally came to an agreement. According to analysts, the strike would have effected 1,300 flights with direct losses to BA of 200-million Euros,

El Financiero. 29 / Jan / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=40514&docTipo=1&orderby=docid&sortby=ASC>

#### o World air transport grows 5.9% during 2006

The worldwide air passenger traffic registered during 2006 a growth of 5.9%. This growth is lower than 2005, when an increase of 7.6% was achieved according to the IATA. The growth generated a profit about 10-million 200-thousand Dollars.

El Universal. 30 / Jan / 2007

<http://www.eluniversal.com.mx/notas/403545.html>

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# COELUM

NEWSLETTER



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