

COELUM

COELUM Pronunciation: 'che-läm, 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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Foreword: Cape Town in Mexico. Present and Future

This number of our publication has been dedicated once again to the Convention on International Interests in Mobile Equipment and to its Protocol on Matters Specific to Aircraft Equipment, both signed at Cape Town, South Africa on November 16, 2001. In the two articles that will conform this delivery we shall approach the Convention and its Protocol in two forms.

Antonio Vazquez will address the still untested enforcement of remedies contemplated by the Convention and Protocol by going beyond the fact that based on the declaration made by Mexico pursuant to Article 54 of the Convention a resolution from a Mexican court will be required in order for such remedies to be exercised, attempting to discuss whether our current legislation would allow such court to resolve in accordance with these instruments to permit the enforcement of such remedies, given the fact that certain of such actions are new to our laws and that no modifications have been made to the local legislation in order to contemplate these remedies at least from a procedural standpoint.

On my part, I will attempt to describe the efforts that are currently being made hand in hand with the Mexican Civil Aviation authorities to implement the access to the International Registry of Mobile Assets in adequate form and to achieve this within the required timeframes.

The Director General of Civil Aviation, Capt. Gilberto Lopez Meyer and the head of the Mexican Aeronautic Registry, Mr. Enrique Mora, among other civil aviation officials have been actively coordinating these efforts in which our firm, together with a very heterogeneous group of capable legal professionals from airlines and from other firms, has taken a leading role in assisting the DGAC with the successful implementation of the role that the Mexican Registry will play as point of access to the International Registry. We are highly honored for the opportunity we have been given to serve our industry in this process.

We are confident that the procedures that will allow access to Mexican authorized user entities to the International Registry will be implemented successfully and on time to become effective on November 1st of this year

Based on the described efforts we are confident that the procedures that will allow access to Mexican authorized user entities to the International Registry will be implemented successfully and on time to become effective on November 1st of this year. In spite of the above however, in the long term, we believe that the discussion of these topics has only commenced at this point and we are convinced that it shall continue in respect to how these treaties have been ratified by Mexico.

It is no secret that the ratification of these instruments by Mexico, with the declarations that it was made, without any implementing legislation and without substantial changes to our local laws will not serve its intended purposes and will not change certain realities that will continue to affect the leasing and financing of aircraft in this country.

Changes to local legislation must be made to cause these instruments to integrate more adequately into Mexico's civil legal system and to be consistent with the same, allowing the state to make more adequate declarations in some cases or to change the existing ones in others, all in all to procure the adequate application of the Convention and Protocol as part of Mexican law in protection of the interests of both sides of a transaction involving aircraft objects.

By invitation of the International Registry Advisory Board, which the undersigned has been honored to receive, we will attempt to re-open the discussion of these topics, to involve the right parties from the legislative, judicial and administrative branches of the Mexican State and to thoroughly discuss the point of view of all participants involved.

We will attempt for Mexico to be at the forefront of the successful implementation of Cape Town and not at the back, allowing it to be favored by the leasing and finance community for the placement of high value aircraft objects in what should be considered a safe and legally certain environment for debtors and creditors alike.

Carlos Sierra

Remedies in the Cape Town convention: Incompatibilities with Mexican law | Antonio Vázquez

As we have been analysing in past numbers of Coelum, Mexico adopted recently the Convention on International Interests in Mobile Equipment (Cape Town Convention) and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (the Protocol). One of the most relevant aspects of the Convention and its Protocol are the remedies that may be exercised by the creditor when there is an event of default.

Article 13 of the Cape Town Convention states a list of speedy relief that the creditor may obtain from a Court when there is an event of default. Such reliefs are the following:

- a) Preservation of the object and its value.
- b) Possession, control or custody of the object.
- c) Immobilisation of the object; and
- d) Lease or, except where covered by subparagraphs a) to c), management of the object and the income there from.

According to article 14 of the Cape Town Convention any remedy shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

As we know, The Cape Town Convention was adopted by Mexico and according to the article 133 of our Constitution it will be part of our legal system.

According to this and if we make a superficial analysis, we may assume that as long as the Cape Town and its Protocol are part of our legal system, the creditors may exercise before the Mexican courts the remedies included in article 13, but the reality is not as clear as it seems.

Any remedy of the listed in article 13 may only be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised

As we have said, any remedy of the listed in article 13 may only be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised, in our case, the Mexican law.

In Mexico, the Commercial Code establishes the rules for the commercial procedures applicable in Mexico. This commercial procedure will be applicable if, for example, there is an event of default in a lease agreement of an aircraft and the creditor exercises a rescissory action before a Mexican Court.

According to the Cape Town Convention, the creditor may, pending final determination of its claim, obtain from the Mexican Court a speedy relief from the ones stated in article 13. However, nowadays the Commercial Code does not include any of those reliefs and moreover, this statute only contemplates two limited cautionary provisions which are: (i) the attachment of assets from the debtor or (ii) the restriction of an individual to remain within a certain geographical location during the procedure. The Commercial Code expressly limits the cautionary provisions to these two orders. No other is available.

In practice, when a creditor shall attempt to exercise the relief contemplated under the Cape Town Convention and Protocol before a Mexican Court, it is possible that the court can deny the relief arguing that these remedies are not included in the Commercial Code, and as long as article 14 of the Cape Town Convention expressly states that any remedy shall be exercised pursuant to the procedure prescribed by the law of the place where the remedy is to be exercised, the referred remedies may no be enforced.

In accordance with the above, and this is only a specific example, we consider that the adoption of the Cape Town Convention must be complemented with modifications to the Mexican procedural rules, in order to permit that the remedies or actions that according to these instruments Convention may be exercised by the creditors can be consistent with our existing legal system.

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Implementation of access to the International Registry of Mobile Assets | Carlos Sierra

For the past few weeks our firm, together with other highly capable legal counsel representing a very heterogeneous group of industry participants, with which we have conformed a working group, has been involved, in coordination with the General Directorate of Civil Aviation (DGAC), with the Mexican Aeronautic Registry and with the International Registry of Mobile Assets in Dublin, in the implementation of the required procedures for the role that the Mexican Registry must assume commencing November 1, 2007 as point of access to the International Registry.

Through declaration No 3, made by the United Mexican States in accordance with Article XIX of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (Protocol), Mexico has determined that:

“3. For the inscription of certificates of aircraft or helicopters of the United Mexican States or of aircraft that are considered as civil aircraft of the United Mexican States, the Mexican Aeronautic Registry shall be the entry point to the International Aeronautic Registry, and in respect to aircraft engines, it may be considered the point of access to such Registry.”

In accordance with this declaration, Mexico becomes the only other state among those which to this date have ratified the Convention on International Interests in Mobile Equipment (Convention) to make this declaration, in addition to the United States and thus to cause its local registrar to become the point of access to the International Registry.

By virtue of this declaration, the authorized user entities that would become involved in any particular transaction would not be able to access the International Registry to conduct filings or to discharge interests without the intervention of the Mexican Registry as the designated access point.

The Mexican Aeronautic Registry, in consequence and in accordance with the provisions of Article 12.3 of the Regulations and Procedures of the International Registry, will need to determine, and inform accordingly to UNIDROIT as Depositary and to ICAO as Supervising Authority how it shall implement this role in order to become either a Direct Access Point or an Authorizing Access Point, as such are described in accordance with Article 12.1 of such Regulations. This selection shall be made, in the understanding that under the former alternative the Mexican Registry as designated access point would have to serve as the entity through which all registrations at the International Registry would need to be made, while, under the latter it would become able to authorize other user entities to conduct such registrations.

In Mexico the Direct Access Point scenario sounds unrealistic and excessively cumbersome as all filings would need to be made through the Mexican Registry which in turn would need to access the International Registry on its own on each occasion to conduct the necessary entries, for which based on the work conducted with the DGAC and with the Mexican Registry for this purpose, such authorities have accepted the recommendation of the working group and it has been determined that it will be more convenient for the Mexican Registry to become an Authorizing Access Point.

Through this the Mexican Registry will only need to determine the requirements that the users will need to comply in order to receive an access code for each transaction that will be registered in the International Registers.

The access code will be granted to each applicant user upon compliance with such requirements. The user in turn will use the assigned code to access the International Registry upon compliance with the following three requirements:

- a) That it be previously registered as an authorized user entity with the International Registry;
- b) That it shall have obtained the corresponding transaction access code to be provided by the Mexican Registry;
- c) That the parties to the relevant transaction shall have provided their consent in order for such user entity to enter information or to modify the registration of the aircraft object involved, as applicable.

In the case of c) the International Registry will require the parties involved as transacting user entities, or through their authorized professional user entities, to consent to the access required by the applicant in question.

Once the above requirements are met the applicant user will be able to conduct the transmission of the corresponding information for registration or discharge as applicable in accordance with the terms of the Convention and the Protocol.

In accordance with the procedures described above, a key element of this process will be to determine which are the requirements that the Mexican Registry will be asking to users to provide in order to release the code that shall correspond to each transaction. It is important that such requirements be sufficient to make sure that the user will assume responsibility for the adequate utilization of the information available at the International Registry's database and for the pertinent determination of which interests shall be registered in each case based on the nature of the transaction and on the identity of the debtor. This determination shall be made by each user in accordance with the applicable terms of the Convention and the Protocol, which, given their complexity, will require the user to be capable of making such assessment for the benefit of the party that it shall represent.

The Mexican Registry and the working group are taking steps towards the implementation of the form in which the above described process will also be determined from a formal standpoint in order to be effective under applicable law, this shall still be determined within the following weeks.

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Extract of Mexican Aviation News

Union of Flight Attendants' incomes bring down 40%

Flight Attendants of Mexicana will have to comply with the new clauses of the Flight Attendants Collective Bargaining Agreement which it was authorized by the Conciliation and Arbitration Federal Organization. More than 1,450 flight attendants of Mexicana de Aviación will receive 40 per cent less of income from this month.

Reforma, 04/ September / 2007

<http://www.reforma.com/negocios/articulo/403/805147/>

Low-cost airlines lead the market

In one year, the low-cost airlines in Mexico earned 15 points of market share in the Mexican industry. While in the first semester of 2006 they had 7.8 per cent of the market, in the first six months of this year they had 22.9 per cent. The new competitors have an advantage of 30% or 50 % over Mexicana and Aeromexico in its costs.

Milenio, 05/ September / 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=545577&sec=5>

Aernnova Aerospace will invest 134 million dollars in Mexico

Aernnova Aerospace, the Spanish company specialized in aeronautical structures and components design and manufacture, will invest 134 million dollars in Mexico. Economy Ministry emphasizes that the project will bring an important transfer of technology in the engineering and manufacturing processes of structures areas.

El Financiero, 06/ September / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=77898&docTipo=1&orderby=docid&sortby=ASC>

Transportation Ministry keeps Azteca Airlines suspension

Aztec Airlines has not demonstrated its financial standing to start operations, for which the Headquarter of Civil Aeronautics of the Secretaría de Comunicaciones y Transportes (Transportation Ministry) decided to keep Azteca Airlines suspension

Milenio, 10/ September / 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=547267&sec=5>

New offer for Aeromexico

A group of investors advised by Banamex Financial Group and led by Jose Luis Barraza Gonzalez, demonstrated their interest to acquire 100 per cent of Aeromexico's shares, with an offer 7.27 per cent higher to the other competitors.

El Economista, 13/ September / 2007

<http://www.economista.com.mx/articulos/2007-09-12-44473>

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Extract of Mexican Aviation News

[Mexicana is interested of buying Aeromexico](#)

Mexicana de Aviación notified the Competition Federal Commission (CFC) its interest of buying the Aeromexico Consortium. This one is the third offer for the airline, which debt rise to 1,000 million dollars. Aeromexico' shares rose in the Mexican stock market by the investors' interest.

El Economista, 17/ September / 2007

<http://www.eleconomista.com.mx/articulos/2007-09-14-44626>

[Abertis buys Pacific Airport Group](#)

The Spanish company Abertis informed that they reached an agreement with ACS for the Pacific Airport Group (GAP) acquisition, across the purchase of the Desarrollo de Concesiones Aeroportuarias (DCA), a holding company with interests in a whole of 15 airports in Mexico, Jamaica, Chile and Colombia.

Excélsior, 20/ September / 2007

http://www.nuevoexcelsior.com.mx/27_2306.htm

[It will be difficult to execute the insurance strategy for passengers' protection](#)

The Headquarter of Civil Aeronautics of the Secretaria de Comunicaciones y Transportes (Transportation Ministry) said that the insurance strategy for passengers' protection proposed by the Asociación Mexicana de Agencias y Viajes (Mexican Association of Travel Agencies (AMAV) to apply on the price of the tickets will be very difficult of executing.

El Financiero, 24/ September / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=80922&docTipo=1&orderby=docid&sortby=ASC>

[Banco Invex is interested in acquiring Aeromexico](#)

Banco Invex turned into the fourth formal interested party in acquiring the Aeromexico Consortium (CAM). On September 12 Invex requested the Competition Federal Commission (CFC) authorization to make a public offer for CAM.

El Financiero, 27/ September/ 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=81580&docTipo=1&orderby=docid&sortby=ASC>

[CFC authorizes the Modelo and Banamex offer for Aeromexico](#)

The Competition Federal Commission (CFC) authorized Modelo and Banamex offer of 151 million dollars for Aeromexico. On the other hand, Saba's family increased their offer to 160 million dollars. Maria Teresa Fernandez, Secretary of the Institute for the Protection of Bank Savings (IPAB), highlighted the importance of conclude Aeromexico's sale to avoid detrimental situations for the workers.

La Crónica, 27/ September/ 2007

http://www.cronica.com.mx/nota.php?id_notas=324899

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