

# COELUM

COELUM Pronunciation: 'che-l&#228;m, 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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# The Mexican Aviation Registry. It is a Public Registry?

| Antonio Vázquez \*

In past editions of Coelum we have been analyzing some relevant aspects of the aeronautic registration system in Mexico. In this edition we will discuss an important legal aspect that in our point of view has to be clarified in order that the Mexican regulations correspond to actual practices: The Mexican aviation provisions must specify that the Mexican Aviation Registry is a public registry and specify the effects of this public nature, or on the other hand, specify the reverse, because in practice the Mexican aviation authorities act in both ways: Sometimes the authorities act as a public Registry, but in most of the cases the access to the information of the Registry is restricted, which is contrary to the public nature of it.

Sometimes the authorities act as a Public Registry, but in most of the cases the access to the information of the Registry is restricted, which is contrary to the public nature of it.

First of all, we should remember that article 47 of the Civil Aviation Law defines the Mexican Aviation Registry as a public registry and lists the documents that must be registered. These are:

- a) The documents that evidence the acquisition, transfer, modification or loss of the property, including possession and any other rights over Mexican civil aircraft, and the leasing of Mexican or International aircraft.
- b) The registration and airworthiness certificates.
- c) The resolutions of the aviation authority in connection with the abandonment, loss, destruction or disassembly of aircraft.
- d) The concessions and permits for provision of air transport services and any kind of resolutions that modify or terminate the same.
- e) The insurance policies.<sup>1</sup>

As we can see, the legal provisions already state the public nature of this Registry. But, does it mean that the Aviation Registry is in fact an entity to which the public can have unrestricted access? There are two main characteristics that may respond this question:

1.- One of the most important characteristics of considering a Registry as of public access is the ability of any interested person to consult the registered information and the registered documents.

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\* IN COLABORATION WITH ALEJANDRA LLOPIS.

1.-Article 47 of Civil Aviation Law provides that the law will specify all the requisites that must be complied with for the registration, cancellation and certification to be issued.

2.- Another relevant aspect is the ability of any individual to obtain copies or certifications of the information held within the registry?

We can conclude therefore that because of the nature of a public registry, the general public should have free access to the registrations and documents related to them. In practice however, the Mexican Aviation Registry does not act as a public registry because the registered information may only be reviewed if the interested party proves to the registry to have a “legal interest” to access this information. This “legal interest” however, is not defined in the Civil Aviation Law, so in practice the criteria of the authority in every single case is the only one that decides if a specific registration or registered information is available to the petitioner. This unilateral and extra-legal criteria is therefore not consistent with the supposed public nature of the Aviation Registry.

3.- Another important characteristic that is common to any Public Registry, is the publicity of any details of acts that are registered therein. What does this mean?

The main effect of making a registration entry with a Public Registry is to make publicly available to any person, any act that is required to be registered in order to be opposed against third parties. This provision is applicable to the Mexican Aviation Registry. However, in our point of view is it questionable that due to the considerations mentioned above, third parties can in fact have the required access to the registered information, in a form in which this

principle of public information may be effective in order to be exceptionable against third parties.

In our point of view the applicable law should be modified in order to (i) detail the access parameters to the information contained in the Mexican Aviation Registry, (ii) specify the information and requisites to obtain a registration of an act in the mentioned registry and (iii) the effects against third parties of obtaining a registration. These specifications would help to avoid in practice the abuse of the discretionary capacity of the authorities resultant from the lack of appropriate regulations.

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2.- *The Public Registry of Property is a public registry. Article 3001 of Federal Civil Code states: “The Registry is public. The officers responsible of the registry are obliged to permit access to the persons that request such access to review the registrations of the Public Registry and the documents related with them. There is also an obligation to issue certified copies of the registrations and certifications; and certifications of existence or non existence of registrations related to requested goods”.*

# Mexican Aviation Registry Procedure for document Registration | Misael Arellano \*

In our COELUM of March 2008, we presented a brief introduction to the Mexican Aviation Registry (hereinafter Registry) briefly analyzing its history and current regulations. Furthermore, we presented the problems with the entry, verification, discharge and certification process, as well as the question regarding the Public Nature Principle applicable to registrations filed in the Registry under the Mexican Aviation Registry Regulation (hereinafter Regulation).

In this issue, we will outline the document registration process and will provide an analysis of the turnaround times established by the Regulation, focusing firstly on which registrations are enforceable, in compliance with one of the main objectives of the Registry which is to safeguard the rights and obligations agreed to by the parties under private agreements, as well as the rights that any third party may have on the subject of these agreements.

## 1. Registration Procedure

The Regulation clearly states the requirements and procedures for the registration of documents in its Third Title "Inscriptions before the Registry", which includes articles 14 through 21. The Regulation defines the formalities that the documents must comply with as well as the turnaround times in which the registrars must respond to the registration requests. Once the formal requirements under article 14 of the Regulations are complied with, the registration request is assigned to a registrar who is then in charge of analyzing and qualifying the documents filed for registration.

As result of a judicial or administrative order the Director of the Registry is not qualified to decide on the legality of the order or to deny registration.

Article 15 of the Regulation establishes that the registrar shall be in charge of integrally reviewing and qualifying the documents. Once the analysis and qualification of the documents has been met, the registrar must issue and notify his decision in a term not to exceed 10 business days after the day in which the fully compliant request was filed before the Registry. Together with his decision, the registrar must notify the registration fees that must be paid. The users must pay the registration fees within 5 business days from the day following the reception of the notice, and must deliver a receipt of payment to the Registry. The registrar will then proceed with the registration, sealing and returning the documents to the users with the registration information duly printed on these registered documents. (See schedule A)

If a registration request does not comply with article 14 of the Regulation, the Registry's Director must notify the users in writing within 5 business days following the filing of the registration request. If deficiencies may be corrected the procedure is suspended until such correction is made, but if not, the notice will inform the applicant of the impossibility to

conduct the registration of the documents filed. Once the requesting party has been notified, it will have 15 business days to correct such deficiencies or appeal the decision that refused the registration under the terms the Federal Law of Administrative Procedure. (See schedule B)

Furthermore, it is important to mention that there are cases in which an immediate obligation for the Registry to make the registration exists, which are when such come as a result of a judicial or administrative order. This is used to safeguard a third party's right on the subject of the registered documents – for example in case of a lien –. In this case, the Director of the Registry is not qualified to decide on the legality of the order or to deny registration and it will be enforceable from the date established in the order. <sup>1</sup> (See schedule A)

The following sample calendars illustrate the turnaround times in which Registry must proceed after every registration request:

**In Schedule A:**

**Green** color shows us how a regular inscription process must be resolved with a fully compliant request and **Blue** color establishes the registration as a result of a judicial or administrative order.

SCHEDULE A

MON	TUE	WED	THU	FRI	SAT	SUN
Filing of request before the DGAC <sup>1</sup>	2	3	4	Judicial registry order may establish a previous date for the enforceability. <sup>5</sup>	6	7
Judicial registry order. Registry and enforceability of documents. <sup>8</sup>	9	10	11	12	13	14
15	16	17	18	19	20	21
Notification of proceeding <sup>22</sup>	23	24	25	26	27	28
Payment of rights. Registry and enforceability of documents. <sup>29</sup>	30	31				

SCHEDULE B

MON	TUE	WED	THU	FRI	SAT	SUN
Filing of request before the DGAC <sup>1</sup>	2	3	4	5	6	7
Notification of defects/request for corrections. NOTIFICATION OF IMPOSSIBILITY. The users can proceed with an appeal <sup>8</sup>	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
Filing of the corrections <sup>29</sup>	30	31	1	Payment of rights. Registry and enforceability of documents. <sup>2</sup>		

**In Schedule B:**

**Yellow** color illustrates how the applicable turnaround times should apply if a registration request does not comply with article 14 of the Regulation and its deficiencies can be corrected and finally, the **Red** color shows a sample of a refused request turnaround by the impossibility to conduct the registration.

1.- Article 19 of the Mexican Aviation Registry Regulation.

## 2. When would the documents filed before the registry become enforceable against third parties?

As we have explained, a judicial or administrative order for registration clearly states the moment from which it is enforceable; but in all other cases, interested parties are unsure of the date from which such requested registrations are enforceable, or will be enforceable against third parties because, although the date on which the filed operative documents are executed is clear, article 21 of the Regulation establishes that: "The registered documents will be enforceable from the day and time in which registration or preventive note is made by the Registry ...".

Article 21 of the Regulation, together with the non-compliance by the Registry with what is established in articles 15, 16 and 17, creates legal uncertainty due to the fact that the procedure as laid down, should take a maximum of 20 business days – in case the requesting party needs to correct any deficiencies –. In practice, because of the Registry's lack of efficiency and due to their non-compliance with what is established in the Regulation, no one can be sure of the moment when the documents will be enforceable to third parties.

As consequence of the above and as an example of the Registry's poor performance, we have seen requests that are pending for over 6 months and, also registration requests for documents executed in late 2007, which, because of the lack of response from the Registry, are still to this date unenforceable against third parties which have a legal interest on the subject matter of these documents comments or rejections well beyond the statutory period.

"The registered documents will be enforceable from the day and time in which registration or preventive note is made by the Registry ...".

## News | April

### Extract of Mexican Aviation News

#### The raise in the, price that somebody shall pay.

The airlines are at the expectative of the raise in the fuel price. The fuel represents, for the Mexican airlines, the 70% of the operation cost. Rodrigo Vazquez Colmenares, Corporative Commercial Manager of Avolar states "As the cost of the increase it's necessary an adjustment in the prices in a short term". The current prices were established by a study made 12 months ago, in this time lapse they had been stable, so a new study its needed to determine how much can the prices rise, with a lower effect to the passengers. Jose Calderoni, Manager of Marketing and Public Relations of Volaris, explain that Volaris is considering an extra charge to the rate. The general opinion and tendency in the Mexican Airlines is a increase in the rates to get round the raise in the fuel cost.

El Universal. 7/April/2008

#### EU authorizes the use of mobiles on aircraft.

The European Union approved a norm, whereby the use of mobile telephones on airplanes during the flights is authorized, and also reported that these services of telecommunications will be offered by the satellite antenna of the airship. But they may only be used at a three thousand meters height, so they will be disabled during the takeoff and the landing of the aircraft. Also, it was indicated that the power of broadcast will be maintained at a low level in order for the mobiles to be utilized without affecting the airplane or the normal operation of the terrestrial mobile networks.

El Financiero. 08/April/2008

#### Mexican airlines reported a 600 million dollars loss in 2007.

The competition was forced to raise prices to maintain competitiveness. "This year will be complicated for the air market mainly due to the high price of fuel," assured Manuel Borja, CEO of Mexican a Airlines. He indicated that the industry in Mexico lost around 600 million dollars last year, per operating profit, and considered that this year could be slightly "worse" due to the cost of the fuel. There is nobody in Mexico who is making money, and explained the difficulties being experienced by the Mexican market (with the participation of 14 airlines).

Milenio. 10/April/2008

#### Foreign Airlines win on passenger transport.

In 2007, the foreign airlines transported 10.9 million passengers from Mexico, more than the domestic airlines on foreign routes. Last year, Alaska Airlines, American Airlines, Delta, United, Northwest, Iberia and Lufthansa, among others, transported 17.8 million passengers, meanwhile Aeroméxico, Mexicana, Aviacsa and Aeromar transported only 6.9 million passengers. Jorge Sunderland, aviation consultant, says that Mexicana is facing a problem by not increasing its fleet in order to capitalize the opportunities to operate at an international level in a more efficient way, as seen in markets such as Peru, South Africa, Colombia and Chile.

Reforma. 14/April/2008

## News | April

### Extract of Mexican Aviation News

#### [Useless and dangerous, the new terminal at the airport.](#)

After the opening of the 2nd terminal at Mexico city's Intl. Airport, a month ago, the Air Controllers Union warned that the \$8,595 million pesos were "useless" as the dangerous saturation of air traffic as well as accidents could increase. Gustavo Alcalá Estrada, Regional Secretary of the Air Traffic Controllers Union (SINACTA) stated that the new terminal was only good for business concessions and hotels. He declared: "The serious traffic problem did not improve; instead it increased air traffic and not its functionality."

Milenio. 16/April/2008

#### [Air Traffic Controllers are worn out.](#)

Due to excessive workload, the safety airport operations in the country may result at risk. "The air traffic controllers in Mexico work on extreme conditions during continuous working periods without enough breaks that could increase the working absences, and this in turn, may derive in safety risks for the airports operations," stated Gustavo Alcalá Estrada, Regional Secretary of the Air Traffic Controllers Union (SINACTA). The air traffic controllers are supposed to have a working period not exceeding 7 hours, but the actual working periods have been of about 14 hours. Alcalá also commented that CIAAC, the International Civil Aviation Training Center, trained the air traffic controllers with government scholarships, but this center is no longer in operation, and the SENEAM is currently in charge of this process, but it charges \$6,000.00 pesos as a monthly rate.

El Universal. 17/April/2008

#### [Necessary an increase of the 6% in the air rates: CANAERO.](#)

The chamber points that the increase would help to resist the raise in the cost of the fuel in the past months. An increase of the 6% in the rates would be "hardly fair". The president of the chamber, Javier Christlieb, explains that this sector is facing to a bigger financial pressure, due to the market strategy of low cost rates and the constant rise in the price of fuel. He also explained that the CANAERO would propose certain points for the public knowledge of how PEMEX manages the costs of fuel.

El Financiero. 21/April/2008

#### [Airlines reduce incentives to travel agents.](#)

For effects of offsetting the increase in its operating costs caused by the hike in the price of turbosine, Aeroméxico and Mexicana, will suspend the payment of the incentives they grant to travel agents according to their level of productivity. The President of the National Confederation of Associations of Travel Agents in Mexico (CONAAV), Gregorio Belfer, said that the cancellation of the incentive program could mean the bankruptcy of over 40% of the travel agents.

El Financiero. 28/April/2008

#### [The Aeroméxico-Mexicana merger is deemed as a serious proposal.](#)

The possibility of looking for an alliance between Aeroméxico, presided by José Luis Barraza and directed by Andrés Conesa, and Mexicana of Gastón Azcárraga and directed by Manuel Borja Chico, will be tested once again. The Minister of Communication and Transportation would be in favor, but the main obstacle would be the Federal Competition Commission, for which the issue consists in submitting a plan of attractive disinvestments.

El Universal. 28/April/2008

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