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Airworthiness: A Certificate that is not
valid for the Operation of the Aircraft.

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COELUM Pronunciation: 'che-l&m, is Latin for airspace 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 Export Certificate of Airworthiness: A Certificate that is not valid for the Operation of the Aircraft.

by *Misael Arellano*.

In this publication, the author will analyze the subjects involved with an Export Certificate of Airworthiness issued by the Mexican Aviation Authority under the applicable rules declared on the Mandatory Circular CO AV-21.2/07-R1 –*Circular Obligatoria CO AV-21.2/07-R1*– issued by the General Directorate of Civil Aviation (DGAC) to become effective from January 1, 2010. (the “Circular”).

Legal Basis.

The Circular signed by the Deputy General Director of Transport in the absence of the General Director of the DGAC on December 22, 2009, states the Technical and Administrative Conditions for the Granting, Renewal and Replacement of the Certificate of Airworthiness, applicable to the possessors of civil and state aircraft, but not military aircraft, bearing Mexican registration marks.

Bearing in mind that the main objective of the Circular is to regulate the procedure and requirements that the Mexican aviation authority must verify for the issuing of a certificate of airworthiness to allows concessionaires, permit holders or air operators, to perform flights in Mexico with aircraft bearing Mexican registration marks; we will focus this analysis on the Export Certificate of Airworthiness “the Export CofA”; the Circular however lists five categories of Certificates of Airworthiness issued by the Mexican aviation authority, as required by Mexican law and applicable international aviation rules:

- ✓ Standard Certificate of Airworthiness.
- ✓ Special Certificate of Airworthiness.
 - ✦ Restricted Category.
 - ✦ Experimental Category.
 - ✦ Special Flight Permit Category.
- ✓ Ultra-light aircraft or rotorcraft.
- ✓ Balloon aircraft /Crewed aerostat
- ✓ Export Certificate of Airworthiness

Introduction

It is well known that the Mexican aviation authority and most of the Latin American aviation authorities are always following, adopting and creating their own aviation legislation and rules the based on the FAA’s directives and this is no exception. We may use as a starting point

for our analysis that Circular was issued by titular of the Deputy General Director of Transport on behalf of the DGAC's General Director. So here is where the first relevant question emerges: Why a regulation of the airworthiness certification, which involves by itself the security of the air transport in Mexico, is signed "on behalf of the General Director"? Why the hurry? Why the officer incharge of the aviation safety could not issue by himself, as provided by the regular procedure for such effects? What could be the reason to not properly coordinate, prepare and schedule the issuing of such an important regulation?

By the aforementioned, the Circular text is quite ambiguous, on occasions hard to analyze and impossible to clearly state its applicability, requirements and validity for the case of an Export CofA.

Requirements

The Mexican aviation authority must issue and delivery an Export CofA to the concession, permit holder or air operator that has proved that the aircraft fulfills with all requirements provided by the applicable Mexican Official Norms. For a new or used aircraft manufactured in Mexico and for aircraft not manufactured in Mexico, is required to demonstrate that a certificate of airworthiness have been previously issued for the aircraft; and for in cases, that the aircraft has been inspected every 100 hours or annually, according to its maintenance program, and has been approved for its maintenance release within 30 days prior to the date of the application for the Export C of A authorization.

In addition to the application format dully filled as required by the Circular, the concession, permit holder or air operator must to present a document issued by the civil aviation authority from the importer state, on which the authority details any special airworthiness requirements that the aircraft must comply with; enclosing a formal declaration stating that the authority will validate the approval of airworthiness for exportation: i) If the aircraft was not manufactured in Mexico and is being exported to a state with which the Mexican government has entered in a reciprocal agreement in respect with the authorizations of airworthiness for exportations, ii) If the aircraft does not comply with all of the special requirements from the importer state, or iii) If the aircraft does not meet with all of requirements stated in section "*Emision de la Aprobación de Aeronavegabilidad por Exportación*" from the Circular.

Among other relevant requirements that the Circulate lists for the authorization of the Export C of A are: A written declaration of the date or expected date on which the property will be transferred; the weight and balance report performed within no more than 36 months, or the time provided by the manufacturer, whichever occurs first; and documentation that verifies the fulfillment of all-applicable airworthiness directives and requirements from the Mexican aviation authority and the historical maintenance records, such as the logbooks and certificates of repairs and modifications.

If temporary equipment was installed in the aircraft, a written description with a declaration specifying that such equipment will be removed, and the aircraft will be returned to the approved configuration after the operation of the delivery flight. In case of aircraft that will not be delivered under its own power, the application for the Export CofA must clearly describe the methods used for its packaging and protection against possible damage that could occur during its transportation and the validity of such methods.

“...the Circular text is quite ambiguous, on occasions hard to analyze and impossible to clearly state its applicability, requirements and validity for the case of the Export CofA.”

Responsibilities

The Circular states that the holder of the Export CofA is responsible for delivery to the new possessor/operator all documents and information required for the aircraft operation. If the aircraft is exported dismantled, the importer state must provide the civil aviation authority with a verification list for the operation of test flights authorized by the Mexican aviation authority with the complete instructions for the aircraft assembly issued by the responsible entity for the aircraft's type design.

As the main responsibility of the holder of the Export CofA, the Circular states that the aircraft deregistration document granted by the Mexican aviation authority must be filed before the aviation authority of the importer state.

The Export Certificate of Airworthiness

The Export CofA does not authorize the operation of the aircraft for which it was granted. The Circular does not state a specific validity for the Export CofA but just declare that it must be recorded in the Mexican Aviation Registry and that the holder must pay the duties caused for its issuing.

An Export CofA is just a formal document issued by the Mexican aviation authority to declare that an aircraft was duly operated and maintained during its operation bearing Mexican registration marks and such specifications are in coordination and meet the minimum airworthiness requirements from the importer state.

A personal conclusion by this author: After the analysis of the Circular and the Export CofA and its authorization procedures, it would appear that the DGAC was prepared with a very poor analysis of the specific requirements of the entities involved; and without the participation of different entities related to the process of the exportation of an aircraft.

Creditor's rights in the Credit Recognition Process.

by *Alejandro Lavat*

In this article we will cover a subject of great importance, due to recent events that have occurred over last couple of years with Mexican airlines entering into Bankruptcy proceeding or “*Concurso Mercantil*”.

As is well known, Mexican airlines ceased flight operations because of a world economic recession, fuel cost increases, labor strikes, strong competition by low-cost airlines and the poor financial situation, all factors that resulted in the insolvency and bankruptcy of numerous a few Mexican airlines. These proceedings are currently developing and the District Courts have issued the Credit Recognition and Priority Order Sentence, based on the final list of recognized creditors, and after considering all objections and appeals filed by creditors to such judgments, to be recognized for the full amounts owed to them.

A Recognized Creditor is defined as “a person or entity that is granted the characteristic of a creditor, by virtue of its recognition as such within the Credit Recognition process and Ranking Sentence¹.”

“The creditors shall also have the authority to veto the agreement by a simple majority of creditors recognized by any number of these, whose Recognized Credits collectively represent at least fifty percent of the total amount of such creditors.”

Once a person or an entity is recognized as a creditor, it shall have the following rights, depending on each particular case. Some of the most important rights are listed as follows:

- ✓ Request the judge for the designation of a Bankruptcy overseer², when creditor represents at least 10 percent of the amount of all credits owed by the insolvent company³.
- ✓ Tax creditors may continue the steps necessary for identifying and securing tax credits at the stage of insolvency, but not in the conciliation stage.⁴

1.- Insolvency Law article 4

2.- The Bankruptcy overseer is the person or persons collectively appointed by the creditors in a bankruptcy proceeding to represent the creditors in supervising the acts of the Bankruptcy trustee and the administration of the state in bankruptcy.

3.- Idem article 63

4.- Idem article 69

- ✓ Request the Federal Institute Specialists of Insolvency Proceedings (Instituto Federal de Especialistas en Concursos Mercantiles, “IFECOM”) through the judge, for the replacement of the conciliator or the bankruptcy trustee (when the creditor represent at least half of the total recognized credits and together with the insolvency company) by one that they propose, who is registered at the IFECOM, or where the insolvency company and a group of recognized creditors representing at least 75 percent of the total credits, by common agreement may designate an individual or entity that is not listed and/or registered upon the IFECOM and who will serve as a conciliator⁵.
- ✓ Execute the agreement proposed by the conciliator⁶.
- ✓ A creditor who represents at least two thirds of the total amount of credits shall be permitted to request the judge for an extension of up to 90 calendar days after the first 185 days, for the conciliation stage⁷.
- ✓ Where it is possible to determine precisely the amount that corresponds to a recognized creditor as arising from a sale, the creditor may be allowed to offer that amount, equating to a cash payment⁸.
- ✓ Receive payment for their claims in terms of the executed agreement or the sale of assets in the insolvency stage according to the Credit Recognition and Ranking Sentence⁹.
- ✓ Once the Bankruptcy proceeding is finish the creditors who had not received full payment individually retain their rights and actions for the balance against the insolvency company¹⁰.

Just as there are rights, there are also obligations that come with compliance of the agreement approved by the court, which shall be mandatory for the insolvent company and all type of recognized creditors, if executed by more than fifty percent of the creditors.

5.- Idem article 147 and 174

6.- Idem article 156

7.- Idem article 145

8.- Idem article 201

9.- Idem article 229

10.- Idem article 235

The creditors shall also have the authority to veto the agreement by a simple majority of creditors recognized by any number of these, whose Recognized Credits collectively represent at least fifty percent of the total amount of such creditors. Recognized creditors may not exercise the veto if they have not executed the agreement that provides for the payment of their claims¹¹.

In accordance with article 206 of the Insolvency Law¹² (“*Ley de Concursos Mercantiles*”), after the Bankruptcy trustee has submitted to the court the application for disposition of any property, the insolvent company, recognized creditors and the Bankruptcy oversee above all, will have 10 days to express their disagreement to court.

Request the judge to terminate the insolvency proceeding, and if necessary the re-opening of the same within the two years following its termination, if the existence is proved of at least sufficient assets to cover credits.¹³

As conclusion we can say that the Bankruptcy proceeding protect both parts, the insolvency company promoting its recovery and resumption of operations, as well as the payment of debts to creditors. In many cases the agreement becomes obligatory. It is however important to know how the terms work and how to apply them in your best interest.

11.- Concursos Mercantiles Rodolfo Bucio Estrada, Aldo Casasa Araujo, editorial Porrúa, Mexico 2009

12.- Idem article 206

13.- Idem article 262 and 263

AICM will transfer half of the slots assigned to Mexicana.

This process can only take place upon completion of the insolvency). The International Airport of Mexico City (AICM) will transfer to other airlines half of the slots (spaces at times of takeoff and landing) that Mexicana Airlines had before suspending operations. The reason why the airline carried out this action is because the operation with which Mexicana will return will be much smaller and will not require the 270 daily spaces that it previously had, the terminal considered. *Milenio. 10/January/11.*

SCT trusts that Aviacsa will resume flights; restructuring debt and certifying crew and airplanes.

The Sub-Secretary of Transportation of the Ministry of Communications and Transports, Humberto Treviño, mentioned that Aviacsa readies its return, after more than 18 months when it ceased operations; it is already working on the restructuring of its liabilities and recertification of aircraft and crew. However, the company has debts with the treasury, but the interested investors of Grupo Madero are pending the insolvency of the airline.

La Crónica. 12/January/11.

Financial statements of airlines will be required.

The SCT seeks to generate alerts in time for when the firms have problems such as Mexicana and Aviacsa. Humberto Treviño, sub-Secretary of Transportation explained that currently airlines already present financial results to the General Direction of Civil Aeronautics (DGAC), but each does it differently and therefore incomparable. The main objective is to unify the financial statements. *Reforma. 14/January/11.*

The Ministry of Communications and Transport started a consult in order to elaborate a new aeronautical policy.

Security, competence and certainty, are the basic principles that an aeronautical policy should have, according to the Ministry of Communication and Transport. This public consult, started last year, with the objective to recognize basic and actual aviation conflicts and to create a solution. This new policy is looking for congruence with the national infrastructure and development plans. *El Economista. 20/January/11.*

In this month extract was prepared by Jessi Saba and Vera Garcia.

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Extract of Mexican Aviation News

Aviacsa gets out of Concurso Mercantil.

The Judge of the Third District for Civil Matters and Labor from Nuevo Leon, publicized the sentence which approves Aviacsa's Concurso Mercantil. The total debt is calculated on \$1,734 million pesos, but there have been reductions of credit of up to 72%. After the sentence, businessman Ramón Madero is owner of the 99.49% of the airline actions. On January 11, 2011 recertification flights of the first three aircraft were made. *El Economista*. 25/January/11.

Support fund for airlines will be created.

The Secretary of the Ministry of Tourism, Gloria Guevara, announced that as part of the initiatives to incentivize the aviation sector, a fund will be created integrating federal and the private sector resources in order to support both national and foreign airlines. This fund will start to function this year. *El Economista*. 26/January/11.

Mexicana coordinates first certification flight to U.S.A.

General Secretary of the Pilots Union (ASPA) Fernando Perfecto, informed that the first certification flight to U.S.A will be taking place next week. The flight destination will be San Antonio, Texas, and the main objective is that the FAA grants the operation certificate to Mexicana de Aviación. *Milenio*. 28/January/11.

Transparency requested on Mexicana's rescue.

The National Tourism Confederation (CNT) requested to the authorities to clarify who are the investors that participate on the airline rescue. Miguel Torruco, president of the CNT, expressed how great it is for the authorities to help rescue Mexicana de Aviación, but they should provide information with full transparency, in respect to the investors and the rescue plan. *El Universal*. 28/January/11.

In this month extract was prepared by Jessi Saba and Vera Garcia.

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