

COELUM

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Proposed reforms to Mexican laws in order
to access to the International Registry.

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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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Proposed reforms to Mexican laws in order to access to the International Registry.

by Roberto Nájera.

The experience that we have lived with for the last five years with “The Cape Town Convention on International Interests in Mobile Equipment” and its Protocol held in 2001, which came into force in the Mexican territory on November 2007, tells us that subscribing to the Convention has been really positive for the aeronautic sector in Mexico. Nevertheless, our country is delayed in making reforms to its local laws to leverage and streamline the benefits of this international treaty. On this occasion we will talk about a specific but a very important topic, such as the regulations about the registration of aeronautic equipment before the International Registry of Mobile Assets and from our very particular point of view, which of our local laws and regulations we can reform in order to conform to and complement the details established in the Convention.

As established in the article 12.1 of the Regulation of the International Registry, the Contracting State may choose two options in order to designate an entry point under Article XIX (1)¹ of the Protocol which are as follows:

(a) which shall or may authorize the transmission of information required for registration under the Convention and the Protocol to the International Registry (“authorizing entry point”); or

(b) through which information required for registration under the Convention and the Protocol shall or may be directly transmitted to the International Registry (“direct entry point”).

México chose the “*authorizing entry point*” in its declarations of the Protocol, establishing that “*for the registration of aircraft or helicopters which are considered civil aircraft of the United Mexican States, the Mexican Aviation Registry (RAM) is the entry point to the Aviation International Registry, and for engines, may be the entry point to such International Registry*”.

“Upon choosing the RAM as the entry point to the Aviation International Registry, Mexico should have undertaken some reforms to its local laws.”

Upon choosing the RAM as the entry point to the Aviation International Registry, Mexico should have undertaken some reforms to its local laws or at least it should have established some agreements to regulate and establish the specific proceeding by which the users can get the access to the International Registry through the RAM.

During the last Presidential administration (2006-2012), Abogados Sierra y Vázquez (ASYV) in order to reap the maximum benefits of the Cape Town Convention and its Protocol, proposed the following reforms to conform to and complement the international registration regulations with our local laws.

1.- Article XIX — Designated entry points: Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

1) **Reforms to the Internal Regulation of the Secretary of Communication and Transport:**² We proposed to add two amendments to the article 21 of the Internal Regulation of the Secretary of Communications and Transport.

- i) The first proposed amendment was suggested to establish the faculty of delegation by the General Directorate of Civil Aviation to the RAM, on issues of national and international Registry;
- ii) The second proposal was an addition to the section IX of the article 21 of this Regulation that is shown in bold in the next paragraph:

ARTICLE 21. Corresponds to The General Directorate of Civil Aviation:

*IX. Issue certificates of registration and airworthiness for civil aircraft and take, organize, control and update the Mexican Aviation Registry, **and designate this authority as entry point whereby the necessary information for registration of mobile equipment would be forwarded to the International Registry under the international treaties of which Mexico is party.***

2) **Reform to the Regulation of the Mexican Aviation Registry:**³ ASYV proposed to add a second paragraph to the article 4 of this regulation, granting to the General Director of Civil Aviation the ability to designate the RAM as entry point, under which the necessary information to register permitted operations will be transmitted to the International Registry, and the RAM may delegate this faculty to people who offer enough capacities to take this responsibility.

3) **Creation of a new section in the Regulation of the Mexican Aviation Registry:** Under the above, it was also proposed to create a section named “Auxiliary People of the Registry” to establish the profile of the people that may be in charge of the inscriptions, rectifications, cancellations, extensions and certifications of mobile equipment. To become an “Auxiliary Person of the Registry” the candidates need to fulfill the requirement of being a lawyer and evidence expertise in the aeronautic sector (at least two years working in the sector). This section could also establish in detail the administrative rules that will dictate the proceedings of presentation and transmission of information for the inscription of the different operations.

To complete the changes to balance local laws with the International Registry Regulations, ASYV drafted a General Agreement with the intention that the Secretary of Communications and Transport, through its then director Luis Tellez Kuenzler, may issue the Agreement in order to give more juridical certainty to the proceedings of international registration.

This General Agreement contained two articles:

1) The first article established that under the Convention and the Cape Town Protocol, and under the Regulations of the International Registry of Mobile Assets, the RAM shall authorize to the approved user entities, to provide the information to the International Registry related with:

- i) Airframes, aircraft and helicopters with Mexican registration marks necessary to make:
 - a) The registration of an international guarantee, an international guarantee acquired by subrogation, a notice of a national guarantee or a non-contractual right or guarantee susceptible of being registered;

2.- *Internal Regulation of the Secretary of Communications and Transport: This regulation establishes the faculties and responsibilities of this Secretary and the different authorities on which its obligations are delegated.*

3.- *Regulation of the Mexican Aviation Registry: This regulation establishes the faculties and responsibilities of the Mexican Aviation Registry.*

- b) The registration of a purchase agreement;
- c) The registration of an assignment of international guarantee or the assignment of a non-contractual guarantee susceptible of being registered;
- d) The cancellation of a registration that is not a registration of a purchase agreement;
- e) The registration of a subordination of an international guarantee, a national guarantee or a non-contractual guarantee susceptible of being registered;
- f) The modification of a registration defined as a change of the information contained in the registration.

ii) Registration of the future international guarantees, future sales, or future assignments of international guarantees over an aircraft or helicopter under which Mexico has adopted measures of regulation to become the registration mark State.

The article two of this proposal of General Agreement established the following:

“ARTICLE TWO.- In order to obtain the necessary authorization to register the acts of the article one, the approved entity users shall evidence before the RAM the accomplishment of the following requirements:

1.-Be registered as approved entity user before the International Registry of Mobile Assets according to the regulations for the International Registry of Mobile Assets.

2. Fulfill the format issued by the RAM, containing the information related with the aeronautic object to be registered, and a detail description of the acts that are intended to be registered by such approved entity user.

3. Assume expressly before the RAM, the responsibility that could result from the misuse of the International Registry or from the breach of the regulations of the International Registry, from the misuse of the authorization granted by the RAM through the entry code, from the lack of truthfulness of the information transmitted for the registration, from the discrepancies that may exist between the information that is registered or should be registered or should be filed for its registration before the RAM according to the laws and applicable regulations, and from the information that was entered before the International Registry on behalf of an approved entity user that received the authorization for that effect, or well, from any illicit use of information that is transmitted to be registered or be available to be consulted in the International Registry of Mobile Assets.”

On fulfillment these requirements, the RAM shall provide the entry code that may permit the transmission of the necessary information to register any act in the International Registry.

As seen, the proposals are simple but very effective to improve the local laws and give a base to the international regulations. Otherwise without local rules that delimit the faculties of the authorities, the requirements to be fulfilled by the users and the establishment of a proceeding to access to the International Registry, we are in an uncertain stage which allows authorities to make many interpretations of the Convention and Protocol of Cape Town and of the regulations of the International Registry, and these different interpretations will result in changes of proceedings. Changes of requirements can produce wastage of money and time and ineffectiveness in handling a registration.

This is one of many examples that we can find when we are trying to execute any measure established in an international treaty. The government needs to understand that subscription to an international treaty will necessarily bring reforms, amendments and additions to our local laws, because without them the benefits of the treaties are at the discretion of an authority that can interpret for good, but if it does not have a delimited path can be interpreted many times in a bad way.

Airlines renew their interest in travel agencies.

The President of the Metropolitan Association of Travel Agencies, Cesar Romero, stated that the interest of airlines to work together with travel agencies has been growing over the past few months. "We have contacted national air carriers and most of them showed interest. We estimate that the boom of on-line ticket selling is decreasing and that travel agencies will again work together with airlines, although I cannot quantify what the billing might be at this stage". *Economista*. 05/February/13.

A Mexican based company will start producing combat aircraft.

MD Helicopters Monterrey will become the first OEM in Mexico to produce military grade fuselages; this after the corporate office in Mesa, Arizona signed a contract with Boeing in January. The head director of MD Helicopters in Monterrey, Teresa Galindo, stated that the first order is for 24 Apache helicopter fuselages and that these will be ready in six months which is faster than if the production took place in Boeing America. These helicopters will become the first to be made in Mexico and will be equipped with weapons. The previous ones were only made for training exercises. *Reforma*. 07/February/13.

Aeronautic Market, an Opportunity for Mexico.

The aeronautic industry in Mexico now has a huge opportunity to grow, and sales could reach 7500 million dollars, thanks to the manufacturing requests from great aviation companies such as Boeing and Airbus. In interview with Pauline Medori, General Manager of Monterrey Aerocluster, a group which includes the principal suppliers to the aeronautic sector of Nuevo Leon, Medori said that this is an opportunity which cannot be ignored by aviation manufacturing enterprises from the state and around the country. She also commented that around the world, there is a great demand for aircraft parts, and this market creates revenues of up to 450,000 million dollars which is something that Mexican enterprises can take advantage of. *Financiero*. 11/February/13.

10.5 % less air-cargo in Mexico.

The air-cargo business in Mexico has seen a contraction of 10.5% during 2012, moving from 560,000 to 501,000 tons, according information from the General Management of Civil Aeronautics (DGAC). Between the different classes of cargo, the one most affected was international cargo transported by Mexican airlines, which showed a reduction of 12.97%, representing about 30% of the air-cargo business in Mexico. The other two kinds of cargo: International cargo transported by foreign airlines and by domestic airlines, fell by 9.45% and 9.37% respectively. *Reforma*. 12/February/13.

Boeing Dreamliner in test flight.

After being grounded for three weeks, this past weekend, Boeing operated one of its Dreamliner 787 airplanes on a test flight, which departed from the Boeing Field in Seattle and flew for almost two and a half hours on round trip over the Columbia basin, and landing at the same airport around 3:00 pm. According information from the flights tracker FlightAware, the aircraft travelled 1131 miles, a little more than 919 miles planned. It should be noted that the Federal Aviation Agency (FAA) granted permission for test flights this past Thursday. *Excelsior*. 12/February/13.

In this month extract was prepared by Vera García, Raúl Barrios, Mauricio Castillo and Diego García.

Aeronautical Manufacturing takes-off.

The export of Mexican made aircraft parts increased by 5,428 million dollars in 2012, an increment of 20.5% over the prior year, said the Mexican Federation of Industrial Air (Femia). The export sales registered four years of continual growth, showing an increase of 73.6% over 2008, the year before the international financial crisis. In words of Carlos Bello, the General Manager of Femia "There are great opportunities for continued growth because we are working with a program of high technology innovation and with a future. *Economista. 13/February/13.*

OMA will increase their sales 10.9 %.

The good performance of national air passenger traffic will be one of the new factors that will ensure an increase in the 4th quarter results for OMA for 2012. The stock analyst V. Romo pointed out that in the period from October to December of 2012, the company will gain 10.9%, jumping revenue from the 774 million pesos to 858 million pesos. All of this thanks to the domestic air traffic increases. *Economista. 13/February/13.*

The Mexico City International Airport will be overflowing by 2015.

AICM, the Mexico City International Airport, will be at critical operational levels of saturation with over eighteen planes departing every twenty minutes. A. Herrera Garcia, one of the main researchers working for the Mexican Transport Institute pointed that the main challenge to the airport system and AICM is to attend to the demand generated by the millions of passengers per year. There are a number of possible solutions, but the construction of new runway will be unlikely because of the high cost and little demand. *El Universal. 19/February/13.*

The Mexico City International Airport is awarded with a certificated of environmental quality.

The Mexico City International Airport (AICM) has been rewarded with an environmental quality award after approval by the Attorney's Offices for Environment Protection. The director of the AICM said that the recognition by the federal attorney's office is great because of all the requirement's that are needed to get this award. He also mentioned that the AICM is very pleased to have improved its environmental performance. *Economista. 21/February/13.*

A new airport in Texco is essential.

As pointed out by experts, it has come to the authority's attention that a new airport in the Texcoco, State of Mexico area is much needed because of the high demand and high air traffic in the Mexico area. The authorities are now studying the possibility of the constructing a new airport. The director of the Engineers College just announced that the federal government is finishing studies, among others things, to specify the costs involved. *Reforma. 26/February/13.*

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