

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

July 15, 2014 year 09 | No. 03

Risks of Passive Owners of Aircraft.

by Jessi Saba
P. 01-02

JUNE NEWS on
Mexican Aviation
P. 03-04

Contributors
P. 05

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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.

Risks of Passive Owners of Aircraft.

by Jessi Saba.

The Aviation sector is one of the fastest growing in the world's economy. For example, in 2014 the industry is projected to deliver around 112 billion dollars-worth of passenger jets, mostly between Boeing and Airbus¹. It is expected that the majority of the deliveries will be covered by different financing methods, such as capital markets, bank debt, and export credit, among others.

"...in 2014 the industry is projected to deliver around 112 billion dollars-worth of passenger jets..."

Given that most deliveries have been and will be part of a financing scheme, it is of pivotal importance to understand the responsibilities of each of the parties, in light of the FAA Policy Clarification on Non-Citizen Trusts, with special focus on regulatory and insurance issues.

First, we must distinguish between the financing parties and other passive – non operating – owners of aircraft, and the responsibilities these hold against each other. For example, an owner and an owner trustee are not considered by the industry as being the same, though the FAA has stated in their Policy Clarification on Non-Citizen Trusts that being an owner trustee is no different than being an owner of a U.S. registered aircraft, therefore, they must comply with regulatory responsibilities in the same way, which includes for example providing the FAA with the same operational and maintenance information. The policy does not distinguish between types of owners.

Every owner of a U.S. registered aircraft must comply with the obligations imposed by the FAA, and in order to provide the FAA with all the information required, they must have current information about the operator of an aircraft, as well as the location of such and its operation. Even though, the FAA recognizes that obtaining this information would be much easier from the operator directly, yet it reserves the right to request information from owners or trustees.

"Recent events suggest that owners and trustees might not be completely aware and informed of where the aircraft is located and its operation..."

Recent events suggest that owners and trustees might not be completely aware and informed of where the aircraft is located and its operation, as an US registered aircraft was

1.- Current Aircraft Finance Market Outlook (Issued December 2013) <http://www.boeingcapital.com/cafmo/2013/brochure.pdf>

photographed in Theran, Iran in April of this year², and this situation is of great risk to the owners and trustees, especially given the U.S. Export and Embargo Laws and insurance.

Anyone flying a U.S. registered aircraft is subject to U.S. jurisdiction, therefore the Export and Embargo laws apply. In that sense, the U.S. Department of State has a list of country policies and embargoes³. The aforementioned set of laws regulates sales, leases, and operations, among others, to the embargoed countries. For a U.S. registered aircraft it is necessary to obtain a prior authorization in order to fly to some of the countries mentioned, therefore, owners, trustees, and lessors must be fully aware of the operations of their aircraft in order to avoid any sanctions.

Another important point of vital importance, is that financiers and lessors get adequate insurance against the risk of loss of the asset and liability to passengers or third parties. Some policies have some exclusion in coverage when it comes to certain countries, therefore, having the financiers, lessors, and owners not knowing the location and operation of their aircraft can signify potential danger.

Common law of the U.S. imposes liability on the operator of an aircraft, not on the owner/lessor/financier, as passive owners are in no position to control risks, nor should they. There is a separation between ownership and control of a leased or financed aircraft and aircraft equipment. Regardless of this, some states consider that the registered owner is also the operator of an aircraft, and this is definitely a dangerous presumption. There are international treaties⁴ that address this point, providing an exoneration of lessor and financiers.

Passive owners of an aircraft must be up to date with the operation of the aircraft, knowing exactly the location of the aircraft to avoid any sanctions or any insurance issues in case the aircraft is flown to a country with insurance exclusion. The separation between owner/financier/lessor and operator is clear, though given recent events these industry players must pay more attention to the operation aspect and be in total knowledge of the operations of their aircraft.

2.- http://www.nytimes.com/2014/04/18/world/middleeast/mystery-shrouds-american-plane-at-tehran-airport.html?_r=0

3.- http://pmddtc.state.gov/embargoed_countries/index.html

4.- *The Convention on Compensation for Damage Caused by Aircraft to Third Parties and the Convention on Compensation for Damage to Third Parties, Resulting from Acts of Unlawful Interference Involving Aircraft.*

Governments urged to back aviation crackdown on unruly behavior.

The International Air Transport Association 70th Annual General Meeting has unanimously adopted a resolution that calls on governments and industry to work together on a balanced package of measures to effectively deter and manage the significant problem of unruly air passenger behavior. Such behavior includes committing physical assault, disturbing good order on board or failing to follow lawful crew instructions. "This resolution confirms the determination of airlines to defend the rights of their passengers and crew." "Everybody on board is entitled to enjoy a journey free from abusive or other unacceptable behavior. *Breaking Travel News. June 02, 2014.*

Bright financial prospects for aviation.

The International Air Transport Association has launched the Economic Performance of the Airline Industry report outlining how air transport is adding value for consumers, the wider economy, governments, and investors. The report illustrates how the airline industry continues to improve profitability through efficiency gains while connecting more cities, lowering transport costs, supporting jobs, and making major investments. *Breaking Travel News. June 02, 2014.*

Aviation in Mexico will transport 100 million passengers in 3 years.

Commercial aviation in Mexico has enough capacity to transport up to 100 million passengers in the next 3 years, generating more business and tourism for the country. Mexico is a growing market, and it is forecasted to continue to grow in the following years. Last year was a record year with 60 million passengers transported. *Aerolatin News. June 19, 2014.*

Mexico City to Build New Airport to Keep Up with Demand.

Frequent travelers to Mexico City know about the headache that is Benito Juárez International Airport, an overstretched hub that is the second busiest in Latin America after Sao Paulo's Guarulhos. Benito Juárez exceeded maximum operating capacity more than 50 times in 2012. But it seems relief could be on the horizon. Mexico is reviewing design plans for a new \$9.23 billion Mexico City airport, which will eventually have six runways and should begin operating by 2018. It would be built on the area of the Texcoco lake bed nearby. *EIN News. June 24, 2014.*

Mexico determined to become one of the world's top 10 aviation suppliers.

In 2005 Bombardier was the first firm to build a \$200 million factory in Mexico. Since then it has spent over 300 million. Today Mexico with its Querétaro Aerospace Park is attracting major aviation industry companies to settle in Mexico. However, the state of Querétaro is not the only entity linked with aviation investments and production, with the state of Chihuahua now opening its fourth aviation facility. Carlos Bello Rocha, head of Mexico's Aerospace Industry Federation has stated: "Our country is attracting the biggest share of aerospace investment worldwide". Such rapid growth in the sector evidences Mexico's major advancements within the industry. *The Guardian. June 25, 2014.*

Plans to reduce airplane noise in Mexico City by 50%.

The Secretary of Communications and Transport announced their plans to reduce by up to 50% the noise caused by airplanes flying through Mexico City to land in the city's airport. In order to do so airplanes will continue to fly at the same altitude but the route has been modified in order for aircraft to use less power and for the engines to generate less noise. It will be a gradual process and the purpose is to cause the least disturbance to the neighbors surrounding the airport. *Televisa. June 26, 2014.*

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