

# COELUM

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Aircraft Mortgage vs Aircraft Pledge in Mexico. *Second Chapter II. – Which is better in Mexico? : The “Aircraft Mortgage” or the “Aircraft Pledge”*

by Gerardo Reyes  
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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.

# Aircraft Mortgage vs Aircraft Pledge in Mexico.

by Gerardo Reyes.

## II. – Which is better in Mexico? : The “Aircraft Mortgage” or the “Aircraft Pledge”.

Second Chapter

In the last COELUM edition we showed the viability of an Aircraft Mortgage in Mexico, arguing that there is no article prohibiting this special kind of Mortgage. Also on the first chapter we recognized some examples of Mortgages on Real Property.

*“The special Aircraft Mortgage was established for the first time in international law in 1948, during the “Convention on the International Recognition of Rights in Aircraft” ...”*

The special Aircraft Mortgage was established for the first time in international law in 1948, during the “Convention on the International Recognition of Rights in Aircraft” in Geneva in which they decided to add in its first article<sup>1</sup>, Aircraft Mortgage, a legal figure that today is not fully understood, due to its complexity.

*“... Article 1º. - The Contracting States undertake to recognize:*

*d) The mortgage, and similar rights in aircraft, created as security for payment of a debt ...”*

The two Aircraft Mortgage conditions for it to become legally effective according to the mentioned treaty are:

*“... 1) aircraft registration; and*

*2) The Aircraft Mortgage registered in the public registry office of each state...”*

When Mexico signed Geneva Treaty, only reserve rights on tax obligations and labor laws. The country admits and recognizes all the guarantees established by the Geneva Convention and was also obligated to regulate the Aircraft Mortgage, under its jurisdiction.

The procedure of this legal figure has been regulated through the General Communication Routes Law<sup>2</sup>, in book 4: “Aeronautical Communications” up until 1995; when the rules following the Aircraft Mortgage were derogated. Despite that fact the aeronautic industry in Mexico is still using the Aircraft Hypothecation while the figure does not have a procedure to follow, it is still in full force and effects.

In 2001, the Cape Town Convention, which Mexico signed years after, the safeguards were expanded and instead of making a list like Geneva, the seventh article of Cape Town Document declared that to

1.- Article 1, “Convention on the International Recognition of Rights in Aircraft”, Geneva, 1948. (Convenio Relativo al Reconocimiento Internacional de Derechos Sobre Aero naves.)

2.- Articles 306 to 370, 372 and 373, “General Communication Routes Law”. Articles 306 to 370, 372 and 373, “General Communication Routes Law”. (Ley de Vías Generales de Comunicación).

constitute an international guarantee agreement<sup>3</sup>, there are only four necessary requirements:

- a) Granted by a chargor under a security agreement.
- b) Vested in a person who is a conditional seller under a title reservation agreement.
- c) Vested in a person who is a lessor under a leasing agreement.

As a result of the exposed, the aircraft industry can elaborate Aircraft Mortgages Agreements, Aircraft Pledge Agreements and all kind of security interest agreements that accomplish the amenities the Cape Town Convention.

To determine which figure is better to constitute a security interest between Mortgage and the Commercial Pledge<sup>4</sup> we have to compare the formalities and the procedural facts of each one.

According with the articles 1414 bis, section II and 1414 bis 7 of the Commercial Code (CC), the Mercantile Pledge Agreement as like the Mortgage, has to be written<sup>5</sup>, but in the Pledge with no transferred possession; it is necessary for the pledgee and the pledgor to designate a person responsible for appraise<sup>6</sup> the aircraft at the time of the agreement or at least establish bases to designate a valuating expert.

At first sight, both judicial procedures are special procedures with brief terms that have the objective to summarize the security interest execution lawsuit. The summary proceeding of the Pledge is founded at the V Book "Commercial Trials", Title III and III Bis "Execution Procedure of Pledge With No Transfer Possession", and the special Mortgage judicial process is regulated by Book V Title VII "Special Procedures", Chapter III "Mortgage Procedure".

The extinction of the legal action due to prescription is the same in Mortgage and in the Pledge with no transfer possession, the legal timeline expire ten years after that the security interest could be required.<sup>7</sup>

Also the first hearing of Mortgage and Commercial Pledge is a proceeding which start requiring with the requirement of debt payment. In the Mortgage<sup>8</sup>, the debtor is designated as a depositary, but in the Commercial Pledge<sup>9</sup> the creditor has the right to directly claim the aircraft's possession.

3.- "Convention on International Interests on Mobile Equipment", Cape Town, 2001. (Convenio Relativo a Garantías Internacionales Sobre Elementos de Equipo Movil).

4.- It wouldn't make sense to realize an Aircraft Pledge with transfer possession because in the most cases, the aircrafts are being leased at the same time of the security interest constitution.

5.- Article 1414 Bis 7 of the Commercial Code (Mexican Federal Law, Código de Comercio).

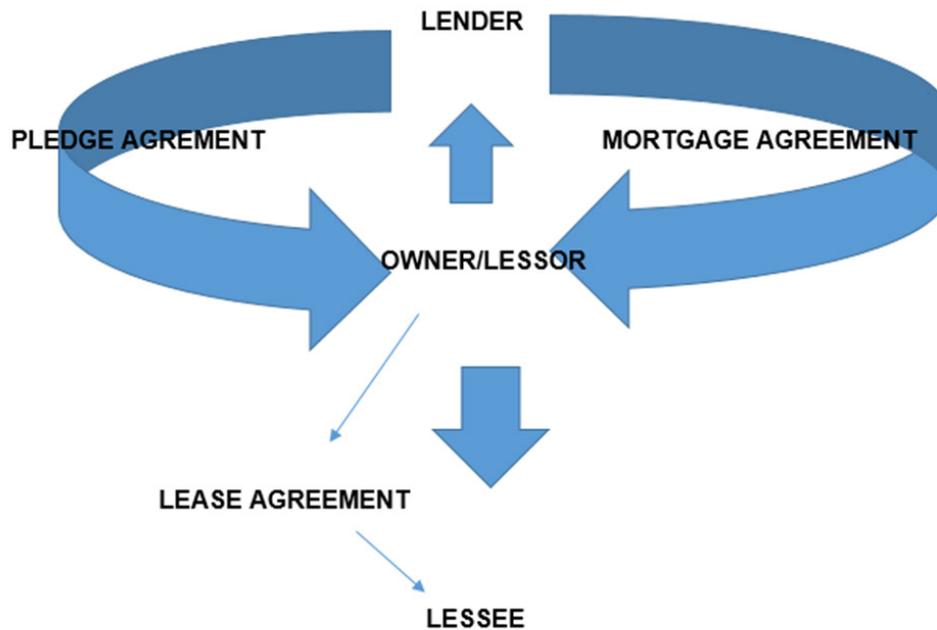
6.- Article 1414 Bis II of the Commercial Code (Mexican Federal Law, Código de Comercio).

7.- Article 1047 of the Commercial Code (Mexican Federal Law, Código de Comercio) and Article 2918 Civil Code of D.F. (Código Civil del D.F.).

8.- Article 481 Civil Procedures Code of D.F. (Código de Procedimientos Civiles del D.F.)

9.- Article 1414 Bis 8 and 1414 bis 9 of the Commercial Code (Mexican Federal Law, Código de Comercio).

The diagram below was taken from Carlos Sierra (Partner in the Abogados Sierra y Vázquez law firm).



Another coincidence between the judicial procedures of the two figures studied is that the aircraft claimed in trial must be registered<sup>10</sup> at the Public Registries for Property and Commerce at the moment of the seizing of property.

One benefit for the debtor at the Commercial Pledge is that it allows to him to present proof when he is in a trial absentia<sup>11</sup>, which translates into a huge advantage for the obliged.

One fact that make the Pledge with no transfer of possession faster than the Mortgage is founded in the articles 1414 bis 16 and 1414 bis 20 of the CC, the rule states that all kind of incidents procedures are prohibited and also not all of the appeals recognized in the Mexican Judicial System are allowed.<sup>12</sup> It is important to note that in the present publication emphasis was placed on procedural speed. The procedure rules in Mexico of Mortgage and Pledge indicates that the Aircraft Pledge in most cases would be the most expeditious process to execute the security interest although this might not always the case.

10.- Article 1395 of the Commercial Code (Mexican Federal Law, Código de Comercio) and 484 Civil Procedures Code of D.F. (Código de Procedimientos Civiles del D.F.).

11.- Article 1414 Bis 11 of the Commercial Code (Mexican Federal Law, Código de Comercio). Action pursued as a result of a default of appearance by the defendant.

12.- Articles 1414 Bis 16 and 1414 Bis 20 of the Commercial Code (Mexican Federal Law, Código de Comercio).

### **AeroExpo dates and participant confirmed.**

The 12th AeroExpo International Convention on Aviation dated have finally gone public. The AeroExpo Convention will take place on March 19, 20 and 21 in Toluca's International Airport. The Conference is a unique exposition and conference that promotes and foments Aeronautical business in Mexico. Major airlines as well as important aeronautical business have confirmed their appearance in the conference and exhibition, which promises to be the best AeroExpo the aeronautical business have yet seen. *AeroExpo*.

### **Indonesia's aviation sector crackdown questioned.**

Aviation experts have warned that Indonesia's crackdown on the sector following the crash of AirAsia flight QZ8501 risks undermining the industry while doing little to improve the country's poor safety standards. The transport ministry said it would increase government-regulated minimum ticket prices by 10 percentage points to ensure that airlines "have enough financial space to maintain flight safety standards". The government has already revoked AirAsia's right to operate the Surabaya-Singapore route flown by QZ8501, and suspended several aviation officials after it claimed the airline did not have the correct permit. *Financial Times*. January 07, 2015.

### **The OECD sets eyes on Mexico City's New Airport Finances.**

Mexico City's new airport is the most important infrastructure plan for the current administration, and preventing fraud and corruption in the bid, construction and development of the project is a must, said the Secretary General of the Organization for Economic Co-operation and Development. The organization, at light of recent corruption scandals in Mexico, has set its eyes on such transcendent project, which can demonstrate that in Mexico biddings can be done properly. Given the stress of the situation the Secretary of Communications and Transport has invited the OECD to participate in other bidding processes such as the Mexico-Queretaro Train, in order to assure that corruption will no longer be a problem. *El Informador*. January 09, 2015.

### **Lockheed's F-35 jet on track to meet Marine Corps target –Navy.**

Lockheed Martin Corp's F-35 fighter jet is on track to meet the Marine Corps's July target to declare the jet ready for combat use, Navy Secretary Ray Mabus said Thursday. The F-35 B-model, which can take off from shorter runways and land like a helicopter, was making good progress, Mabus told reporters after a speech at the annual conference of the Surface Navy Association. He said he expected it to meet the Marine Corps's target date. He said the Navy still expected to declare the F-35 C-model, which is designed for use on aircraft carriers, ready for combat use by the end of the decade, as planned. The Navy tested the F-35C on board a ship for the first time last November. *Reuters*. January 15, 2015.

### **Mexico City's new Airport begins construction in February.**

The construction of Mexico City's new airport will begin on February with an initial investment of 360 million dollars Raul González Apaolaza, corporate director of Infrastructure for Grupo Aeroportuario. The new terminal the executive said, is set to be finished by October 2018, but will not operate until 2020. However, it is imperative for the land and ground correction to begin as soon as possible and February will be the start line. *El Informador*. January 22, 2015.

### **Falling Oil Prices, a Boom to Airlines, Pose a Challenge for Airbus and Boeing.**

The current drop in oil prices could prompt airlines to delay orders, after nearly a decade in which the aircraft makers have benefited from a boom in orders. The main factors behind the drop in oil prices, economists said, are a sharp increase in production by non-OPEC producers like the United States and other new sources, and slowing economic growth in some parts of the world. *New York Times. January 25, 2015.*

### **Jet Fuel Shuffles in Line with Crude's Price Drop.**

With the price of crude oil in retreat and autogas falling below \$2 a gallon in many parts of the U.S. for the first time in years, motorists have been cheering at the gasoline pump for the past several weeks. The retail price of jet-A has come down too, but perhaps not as quickly as end users would wish. So why has the average posted price of jet-A at FBOs fallen by only 10 percent (approximately) if the price of crude oil has plunged by 55 percent? The aviation fuel suppliers offer several reasons, the most important being volume. Given the much higher level of production, demand and competition for gasoline, the local gas station will turn over its supply of gas more quickly than most FBOs and therefore has more flexibility to keep its prices in line with falling costs. *AInonline. January 25, 2015.*

### **New laws for Airports and Railways.**

The Secretary of Communications and transportation has issued reforms and several additions to diverse dispositions to the Railway Service bylaw, the Civil Aviation Bylaw and the Airport Bylaw. The Secretary of Communications and Transportations has issued the decrees in order to better regulate the construction, operation, exploitation of the Railway service in order to provide major interconnectivity in the nation. The Civil Aviation new bylaws, readjust timetables for the permits and licenses. *El Economista. January 26, 2015.*

### **FAA: E-Cigs In Checked Bags Are Fire Risk.**

As the popularity of e-cigarettes increases, the FAA wants airlines to ensure passengers don't put their e-cigarettes in checked baggage, when they can pose a fire hazard in the cargo compartment. The FAA has released a Safety Alert for Operators (SAFO) making U.S. air carriers aware of a recent bulletin from the International Civil Aviation Organization (ICAO) that described several incidents associated with e-cigarettes, as well as ICAO's recommendation to ban the devices in checked baggage. ICAO is the arm of the United Nations that develops and disseminates suggested standards for the international aviation community. *AERONEWS. January 26, 2015.*

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