

# COELUM

Monthly Digital Publication by  
ABOGADOS SIERRA Y VAZQUEZ

January 15, 2015 year 09 | No. 09

Aircraft Mortgage vs Aircraft  
Pledge in Mexico.

by Gerardo Reyes  
P. 01-02

DECEMBER NEWS on  
Mexican Aviation  
P. 03

Contributors  
P. 04

ABOGADOS  
SIERRA Y  
VAZQUEZ

## 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.

## I.- Is The Mortgage on Mobile Property Possible in Mexico?

First Chapter

The Aircraft Mortgage and the Aircraft Pledge are legal figures that have been used in Mexico as a form to constitute a security interest. Nowadays there are some specialized aviation lawyers who ponder if the Aircraft Mortgage is still in full force and effect. It is necessary to analyze the following study to clarify that both legal figures are valid.

*“There is no clause on the federal compilation of civil laws which specifies that the Mortgage is a legal concept exclusive to Real Property...”<sup>1</sup>*

Before approaching the special aircraft figures these forms of guarantee debts have, we must to describe the natural form of each security agreement mentioned has in Mexico.

The Mortgage is defined by the Mexican Federal Civil Code (MFCC) as “...a security constituted on goods that are not delivered to the creditor, but entitles the creditor in case of default on the secured obligation, to be paid with the value of the Property...”<sup>1</sup>

There is no clause on the federal compilation of civil laws which specifies that the Mortgage is a legal concept exclusive to Real Property, however customarily Mexican lawyers use, in most cases, the Mortgage exclusively on real property. The Civil Code in its clause 2898 eliminates the presumption that a Mortgage may only be constituted on Real Property thus the main difference between them is not if it's a security interest on Mobile or Real Property, as many people think.

On the other hand, the Pledge is little more complicated because there are two types of Pledges foreseen in the Mexican Law: in the first place the Pledge with a transfer of possession and also, the Commercial Code recognizes in article 32 Bis1, Section A, Fraction I the Pledge with no transfer of possession.

Despite the previous paragraph, the Mexican Federal Civil Code says: “... the pledge is a right *in rem* constituted on disposed Mobile Property, to ensure the fulfillment of an obligation”, it is necessary to remark that the Pledge with no transferred possession is a commercial legal figure, not a civil one, therefore it is regulated in the mercantile laws.

1.- Clause 2893 of the Mexican Federal Civil Code (MFCC).

The Mercantile Pledge<sup>2</sup> seems to be similar with an Aircraft Mortgage because in both cases the debtor has possession of the object that secured the loan, fact that sparked controversy and confusion within the guild of specialized aviation lawyers.

The confusion on this topic continues as a result of the Commercial Pledge, better known as Pledge with no transfer of possession executed which is founded on local laws this kind of laws are better known and used by Mexican lawyers (legal advisors and judges) rather than in International laws, unlike the Aircraft Mortgage that was first set upon by international regulations.

*“The Mercantile Pledge seems to be similar with an Aircraft Mortgage because in both cases the debtor has possession of the object that secured the loan, fact that sparked controversy and confusion...”*

Few law specialist mistakenly argue that the Mortgage is reserved only to be used in Real Property<sup>3</sup> as Fausto Rico in his book titled “About Civil Contracts” states. This is not accurate; for example there are other specialists like Rojina Villegas who affirmed that “... according to article 2896 of the Federal Civil Code in full force and effect, the Mortgage can lie in Mobile Properties...”<sup>4</sup>

One example to reaffirm the argument is the Naval Mortgage , in the Law of Navigation and Maritime Trade a Mortgage on Mobile Property is regulated, which in this case is on a ship. To answer the main question, the present study proves that the Mortgage on Mobile Property is possible according to the Mexican norms and the examples given.

If an aircraft is a Mobile Property and some Mobile Properties are subject to Mortgages<sup>5</sup>, the aircraft that are not considered an exception to article 2898 of the MFCC can be subject to Mortgage. This is only the first section of the analysis to demonstrate the viability of the Aircraft Mortgage in Mexico, fact that we will explore and further detail on the next month’s COELUM publication of the second chapter of this section.

2.- 32 Bis1, Section A, Fraction I of the Mexican Commercial Code.

3.- RICO, Fausto and GARZA, Patricio, “About Civil Contracts”, Cap. Mortgage Contract, page 419, First Edition, Porrúa Editors, 2009.

4.- ROJINA VILLEGAS, Rafael, “Civil Law Compendium”, Chapter II Goods that can be assessed by Mortgage, page 399, 27 edition, Porrúa Editors, 2001.

5.- Law of Navigation and Maritime Trade Chapter VI “Naval Mortgage”.

**The Miscellaneous Tax Resolution for 2015 was published by the Secretariat of Finance and Public Credit “Secretaría de Hacienda y Crédito Público”, in the Official Gazette on December 30, 2014.**

The yearly Miscellaneous Tax Resolution “Resolución Miscelánea Fiscal” is published by the Secretariat of Finance and Public Credit “Secretaría de Hacienda y Crédito Público” in the Federation Official Gazette in order to group and facilitate the understanding of the general rules stated by tax authorities in regards to taxes, contributions and federal duties, excluding foreign trade duties.

For the aforesaid purposes, the Annex 19 to the Miscellaneous Tax Resolution for 2015 “Anexo 19 de la Resolución Miscelánea Fiscal para 2015” states the updated amounts of duties referred in the Federal Law of Duties; in which, among others, the SENEAM and Immigration duties applicable to air carriers are stated.

As the main concepts applicable to air carriers, please find below the new fares for immigration and SENEAM duties which must be applied from January 1st 2015:

**DNR** (Article 8 section I of the Federal Law of Duties).

**\$ 332 MxP** per passenger.

**DSM** (Article 12 of the Federal Law of Duties).

**\$ 66 MxP** per passenger.

**SENEAM duties caused by the use of Mexican air space** (Section I of the Article 291 of the Federal Law of Duties).

| Classification based on the aircraft wingspan              | Quote per each kilometer flown: |
|--|---------------------------------|
| LARGE<br>(With more than 38.0 meters)                      | \$ 7.83 MxP                     |
| MEDIUM<br>(With more than 25 meters and up to 38.0 meters) | \$ 5.23 MxP                     |
| SMALL TYPE B<br>(From 16.7 to 25.0 meters)                 | \$ 1.81 MxP                     |
| SMALL TYPE A<br>(With up to 16.7 meters and helicopters)   | \$ 0.23 MxP                     |

As referred, these are the main classifications of duties used by scheduled carriers; if you need to receive a complete report of updates fares in regards to other services provided by the National Immigration Institute and/or SENEAM (e.g. Time extension services, SENEAM duties paid under calculation method stated in Sections II and II of the Federal Law of Duties, DSME, etc.); please contact: [marellano@asyv.com](mailto:marellano@asyv.com)

**Prospective Airport is close to becoming a reality.**

Of the coast of Jalisco State on the Pacific Ocean, a state on the western side of Mexico a 21 million dollar investment is set to begin. The Costalegre region of the Jalisco State is planning to develop a new touristic rendezvous for the world and Mexican elite. As the development of Costalegre begins to take shape, the construction of the Chalacatepec Airport is a must. Alfonso Espinoza Estrada head of the Secretary of Tourism of the State of Jalisco stated that all the necessary construction and standards in order to receive authorization from the Civil Aviation Authority are being met in order to start operating. The new airport is projected to be operating at the end of the local administration’s term by 2018. *Mural Newspaper. January 05, 2014.*

*In this month extract was prepared by Misael Arellano and Miguel Ruelas.*

# COELUM

Monthly Digital Publication by  
ABOGADOS SIERRA Y VÁZQUEZ

## CONTRIBUTORS

### Gerardo Reyes

Attorney at Law: Admitted to practice law in 2014. Mr. Reyes, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Occidente (ITESO), in Guadalajara, Jalisco, and he is attending a Master Degree in Human Rights and Guarantees by Instituto Tecnológico Autónomo de México, Mexico City.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Commercial Litigation, Administrative Litigation and Constitutional Litigation.

e-mail: [greyes@asyv.com](mailto:greyes@asyv.com)

ABOGADOS  
SIERRA Y  
VAZQUEZ

Prol. Reforma No. 1190 25th Floor  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)

The articles appearing on this and on all other issues of Coelum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra y Vazquez SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.