

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

March 15, 2015 year 09 | No. 11

Registration of Rights *In Rem*
on Foreign Aircraft in Mexico.

by Misael Arellano
P. 01-03

FEBRUARY NEWS on
Mexican Aviation
P. 04-05

Contributors
P. 06

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.

Registration of Rights *In Rem* on Foreign Aircraft in Mexico.

by Misael Arellano*

Departing from the fact that Rights *In Rem* on any aircraft must be registered before the authority of the state of its registration marks, and taking into account that any interest in an aircraft asset can be registered before the International Registry of Mobile Assets; in this edition we will make a short analysis of the legal frame, regulations and figures stated in Mexican legislation for the registration of rights *in rem* over foreign civil aircraft and engines; aiming to define where it must be registered and to confirm if it ensures publicity, enforceability and preferential rights.

“...the Mexican Aviation Registry, a public entity that amongst other attributions, is entitled to register all rights in rem over Mexican civil aircraft and engines; as well as the lease of Mexican and foreign aircraft”

Article 47 of the Civil Aviation Law states the obligation for the registration of all documents that entail the acquisition, transmission, amendment, encumbrance or cancellation of property, possession and any other right *in rem* over Mexican civil aircraft and engines; as well as the lease of national and foreign aircraft before the Mexican Aviation Registry (*Registro Aeronáutico Mexicano*).

Thus bringing up the fact that under the Civil Aviation Law the registration of rights, aside from leases, in regards to foreign aircraft is not a legal requirement; the first step is to define if, additionally to leases, other rights *in rem* over foreign aircraft can be registered before the Mexican Aviation Registry (RAM).

Mexican Aviation Registry (RAM) and rights *in rem* over foreign aircraft.

The Civil Aviation Law in its Chapter X “About Mexican Aviation Registry”, article 47, section I; states the existence of the Mexican Aviation Registry, a public entity that amongst other attributions, is entitled to register all rights *in rem* over Mexican civil aircraft and engines; as well as the lease of Mexican and foreign aircraft.

“Article 47. The Mexican Aviation Registry is public, it will be undertaken by the Ministry of Communications and Transportation, and it shall register:

I. The documents that entail the acquisition, transmission, amendment, encumbrance or cancellation of property, possession and any other right in rem over Mexican civil aircraft and engines; as well as the lease of national and foreign aircraft;

...”

* IN COLABORATION WITH JUAN MANUEL ESTRADA

As previously noted, the abovementioned Article 47 clearly overlooks the obligation or prerogative for the registration of rights *in rem* over foreign aircraft before the Mexican Aviation Registry.

Furthermore, Article 11 of the Regulation of the Mexican Aviation Registry, narrows down the acts subject to registration before the Mexican Aviation Registry, waiving the possibility of registering leases over foreign aircraft and engines; extending the viability for the registration of foreign engines, as follows:

“Article 11. The documents that evidence acts subject to registration, shall be registered in the following Subsection of the Aviation Section:

*In Aviation Subsection, those in regards to the acquisition, transmission, amendment, encumbrance or cancellation of property, possession and other rights in rem on Mexican civil aircraft and engines, as well as the lease agreements for Mexican and foreign aircraft and engines;
...”*

In that sense, and bearing in mind that the Civil Aviation Law does not state the obligation; and confirming that the Regulation of the Mexican Aviation Registry does not states a subsection of the Aviation Section of the RAM for its registration; rights *in rem* over foreign aircraft or engines cannot be registered before the Mexican Aviation Registry.

So, if rights *in rem* over foreign aircraft or engines cannot be registered before the Mexican Aviation Registry; the second issue is to define if these acts can be registered before a Mexican entity.

Movable Guarantees Sole Registry (RUG) and rights *in rem* over foreign aircraft.

The Movable Guarantees Sole Registry (*Registro Único de Garantías Mobiliarias*) was designed by the Mexican Government to stimulate the use of movable assets as securities; and established by the Secretariat of Economy “*Secretaría de Economía*” through the amendments to the Regulation of the Public Registry of Commerce published in the official gazette on September 23, 2010. In that sense the RUG is a section of the Public Registry of Commerce operated by the Secretariat of Economy.

The RUG has the authority to register, as per requested by any interested party, any Movable Guarantee, defined as the effect of any commercial legal act through which is constituted, modified, transmitted or cancelled a guarantee or special privilege or a retention right in favor to the creditor, over a movable asset or group, to guarantee the observance of an obligation¹.

Article 32 of the Regulation of the Public Registry of Commerce states the classification of Movable Guarantees and movable assets than can be subject of a Movable Guarantee. Based on these classifications, we can confirm that a guarantee or right *in rem* over a foreign aircraft fit within both

1.- Article 1, section II of the Regulation of the Public Registry of Commerce

of listed classifications for Movable Guarantees and movable assets because section A, subsection IV states Movable Guarantees constituted on aircraft and vessel; and section B, subsection II states that “engine vehicles” are subject to Movable Guarantees to be registered before the RUG.

“Movable Guarantee, defined as the effect of any commercial legal act through which is constituted, modified, transmitted or cancelled a guarantee or special privilege or a retention right in favor to the creditor, over a movable asset or group, to guarantee the observance of an obligation.”

On the other hand, and apart to the analysis made in precedent paragraphs; it is also relevant to refer to the article 31 Bis of the Regulation of the Public Registry of Commerce, which anticipates the existence of specialized registries to certain movable guarantees, stating the obligation of the specialized registry to replicate its registrations before the RUG in order to create a harmonized system. Nevertheless, and as we have analyzed, a guarantee over a foreign aircraft or engine is not subject to registry before the RAM as a specialized registry in aviation matters; so this rule is just applicable to guarantees registered before the RAM over Mexican civil aircraft.

As a result of the analysis made to the stated in Civil Aviation Law, Regulation of the Mexican Aviation Registry and the Regulation of the Public Registry of Commerce; rights *in rem* over foreign aircraft cannot be registered before the RAM; however as a sole discretion of the interested party its registration can be conducted before the RUG. The aforesaid, regardless of the legal principle stating that special provisions overrule general provisions, in this case applicable in regards to the specialized registry in aviation affairs (RAM) against the registry for Movable Guarantees (RUG) because the specialized registry does not states the registration of rights *in rem* over foreign aircraft and engines; just the registry of its leases.

Finally, this author can conclude that even when a Movable Guarantee over a foreign aircraft can be registered before the RUG; a domestic registry has not jurisdiction in regards to a foreign aircraft, therefore its registration would not cause any legal effect in regards to any other right *in rem* duly registered before the authority of the state of registry.

Mexican Airport failure affects operations.

A failure in the Operation Tower's radar on February 12th, did not permit any operations in Latin America's busiest airport for over two hours. The delay affected over 50 programmed flights that could not leave the runway, as many other flights programmed for landing had to be re-routed. <http://mexico.cnn.com/> February 12, 2015.

Superb Aeronautic Export Profits for Mexico.

The director general of Airbus Group for Mexico, Fredric García has stated that the aeronautic industry in Mexico has a potential of up to 30 billion dollars in exportation in the next 20 years. The industry in Mexico is duly organized and has sufficient capacity for major aeronautic component exportation worldwide. Furthermore, Mexico can be one of the five major global economy exporters in the Aeronautic Industry. As President Enrique Peña Nieto stated in an official communication; the Mexican aeronautic Industry has had a spectacular development in the last years, with over 40 thousand employees and already a 6 billion dollar exportation profit. <http://mundoejecutivoexpress.mx/> February 19, 2015.

OECD's High Cost on Mexico City's New Airport Assessment.

Assessment costs and expenses of the Organization for Economic Cooperation and Development (OECD) for the New Mexico City International Airport will cost an estimate of US\$2.2 million. The document issued by the Secretary of Communications and Transport (SCT) on January 9, details OECD's undertakings and analysis. The work will be developed upon the entry into force of the Agreement for the Promotion of Integrity, Transparency and Good Procurement Practices in Development and Construction, it will be effective through November 2018, but could extend its stay up to 2020 at an additional cost. <http://www.mexico-now.com/?id=345>. February 19, 2015.

Mexican aviation industry on the rise again.

Despite the downfall of the aviation industry in Mexico, which caused no less than 14 companies to go bankrupt, this year it is expected to regain all the lost momentum. During last year the aviation industry went up by 8.4%. This year there is expected to be a potential of 6.4 million passengers in comparison with last year said Alfonso Sarabia Garza the director of the Services and Auxiliary Airports (ASA for its name in Spanish). And still, even though a huge increase is expected, the country has a lot of place for more growth. The southern part of the country, with the exception of Cancun, Quintana Roo, has been widely neglected in terms of direct flights. Sarabia Garza has stated that this needs to be changed to include more cities as important places for the aviation industry. Despite this, Mexico's aviation industry is expected to grow significantly during this next year. *El Economista*. February 22, 2015.

FAA to implement cold weather altitude correction at some airports new information to be included in instrument procedures beginning in March.

In an Information For Operators (InFO) notice posted on the FAA website, the agency said in response to recognized safety concerns over cold weather altimetry errors, the FAA completed a risk analysis to determine if current Title 14 of the Code of Federal Regulations (14 CFR) Part 97 instrument approach procedures in the United States National Airspace System (NAS) are at risk during cold temperature operations. The study used the coldest recorded temperature for the airport in the last five years and specifically investigated if there was a probability that expected altitude errors in a barometric altimetry system, during these non-standard day operations, could exceed the Required Obstacle Clearance (ROC) used on procedure segment altitudes. *AeroNetwork. February 27, 2015.*

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

As a result of the continuing support recently given by Iran to Yemen, both countries have agreed to sign an aviation deal. The deal will involve the major Airlines of each of the countries, Yemen Airways and Mahan Air, to fly up to 14 flights a week in both directions. The first flight is expected to arrive in Yemen's Capital Sanaa on March 1, 2015. *Reuters. February 28, 2015.*

Mexican Senator demands for civil aviation reforms.

Mexican senator, Teófilo Torres Corzo has proposed new reforms in terms of Mexican Civil Aviation. Torres Corzo has stated that these reforms should be directed to protect consumers' Human Rights in terms of refunds for cancelled flights, lost baggage or offensive treatment from part of Airlines' staff. He backs up his argument by stating that these reforms will have huge impact on the country as to establish new commercial, political, educational, and cultural relationships. *<http://www.larazonsanluis.com/> February 28, 2015.*

Boeing to Intensify Technical Career Development for Engineering Workforce.

Boeing says it is implementing a plan to renew its focus on the company's engineers worldwide by dedicating the first two of new Engineering Career Development Centers that would serve as training grounds for its technical workforce. Over the next year, leading up to Boeing's 100-year anniversary in 2016, the company will open a dozen of these centers at major sites around the company. The first two opening today are in Huntsville, Alabama, and Long Beach, California. The plan is part of an initiative called Engineering Central, which represents the community of technically focused professionals working within various parts of Boeing, and the strategy to provide world-class development and training for them. *Boeingmediaroom.com. February 28, 2015.*

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VÁZQUEZ

CONTRIBUTORS

Misael Arellano

Attorney at Law: Admitted to practice law in 2006. Mr. Misael Arellano, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Monterrey, Mexico City and attended studies in Social Sciences Program 2003 by Universidad Antonio de Nebrija, Madrid, Spain. LANGUAGES: Spanish and English.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Industry Affairs with Aviation Authorities, Real Estate and Corporate Law.

e-mail: marellano@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 / 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.