

# COELUM

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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.

Dear clients and friends,

As this very intense and busy year draws to a close. To maintain and continually improve our standard of service and to cope with the growth and increased amount of work with which you have favored our firm throughout the year. We are extremely pleased to present the following changes to all our esteemed clients, constituents and friends:

Firstly, effective November 1, 2015 we are proud to share the news of the appointment of the following members of our firm as partners in the respective practice areas named below:



VIRIDIANA BARQUÍN. Aircraft Finance and Leasing.

Viridiana has been made partner after 8 years successful years of practice first as attorney and subsequently as associate of our firm. Her experience in this area of practice is unmatched having worked in numerous transactions and restructures throughout these years. Viridiana's role as partner will undoubtedly strengthen our team in this substantial practice of our work.



MISAEEL ARELLANO. Aviation Regulatory.

Having worked as in-house counsel at AeroMexico, Misael has contributed for nearly 8 years to the substantial development of our practice in regulatory law. Misael's appointment as partner will consolidate our practice in this area and will position the regulatory team for further growth.



JULIO VARGAS. Civil and Commercial Litigation.

With vast prior experience in banking and securities of more than 20 years having worked as head of litigation at Banamex and other financial institutions. Julio has joined our team to strengthen and to diversify our litigation practice.



FERMIN ARAMBURU. Corporate Law.

Already a partner of our firm. Fermin will be leading the corporate law practice which will now take a more formal structure to benefit the increasing activity that we have in this area.

Secondly, but of no less importance, we are modernizing the corporate image of our firm and consolidating our name, which will from now on will only be addressed as:

ABOGADOS SIERRA

**sierra**

With this more modern image we intend to reflect our contemporary view of cross border legal services as well as our continuing motivation and improvement. Our new simple and direct image will carry the spirit of simplicity, straightforwardness and professionalism that characterizes our service.

Between now and the end of this year, our new corporate image will be gradually reflected in a new modern and refreshed website, in our newsletters Coelum and Terrum as well as in our sponsorships and other corporate branding. Please note that our e-mail addresses: @asyv.com; the address of our website: www.asyv.com, which will be updated in the coming weeks and the business address of our offices will remain the same.

With the changes described above, we expect to continue meeting the high standards that are continually expected by our clients. We would be very encouraged by receiving any feedback with any questions or comments you may have.

Kindest Regards

Carlos Sierra

# Interchange Agreements – Misconceptions, Benefits, and Potential Conflicts.

by Jessi Saba and Miguel Ruelas.

An Interchange Agreement is a contractual arrangement through which different aircraft operators agree to share the use of an aircraft and alternate operation control of such aircraft over an established period of time. This Agreement might also be referred to as 'multiparty sublease' or 'use agreement', and has become an especially popular legal figure in highly developing markets such as Latin America, proving to be effective and a cost reducing option for fleet management.

*"...these Agreements must be carefully designed and drafted to meet the different criteria and regulations from different jurisdictions..."*

At a first glance, the sharing of an aircraft amongst different air carriers for covering multiple destinations might not seem to pose a legal dilemma, though when mingling with international destinations, different jurisdictions, registrations marks, and multiple aviation authorities, the Agreement might pose certain legal risks. In that sense, these Agreements must be carefully designed and drafted to meet the different criteria and regulations from different jurisdictions, but with one same lessor.

In an Interchange Agreement, the possession of the aircraft is presupposed to being alternated from Interchangor to Interchangee and vice versa, where the Interchangor might be the lessee subject to a lease agreement or whether it is the initial lessor.

This specific type of agreements may at times erroneously resemble other legal figures such as a regular lease or subleases, wet leases, or code sharing agreement; but in its true nature, an Interchange Agreement is a *sui generis* figure used by air carriers for fleet management.

Thus, an Interchange Agreement is not:

- i) A regular lease or sublease agreement, provided that a standard lease or sublease does not contemplate the possession of the aircraft being shared and dual from time to time,
- ii) A wet lease, given that wet leases foresees that Lessor would provide both the aircraft and the crew to the lessee; thus the operational control of the aircraft is never shared.
- iii) A code share agreement, which is strictly a relationship among carriers regarding possibility for an airline to sell tickets and set passengers in a flight different from their own.

Also, it is important to note that this type of Interchange Agreement is not the same as the one described under part 91 of the United States Federal Aviation Regulations<sup>1</sup>, as this describe an Interchange Agreement as follows: *"arrangement whereby a person leases his airplane from another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owing, operating, and maintaining the two airplanes."*

Therefore, Interchange Agreements as defined by the FAR's supposes two companies with two different aircraft, that would eventually be swapped and the exchange times must be equal for the usage of both aircraft by the two different companies. Furthermore, the FAR's limit the use of the agreement to U.S. registered aircraft.

Interchange Agreements have proven to be effective for highly developing markets, but they definitely do not follow the traditional structure of aircraft usage, possession and leasing, which may pose a threat to international aviation norms. The current international aviation treaties and international safety treaties do not establish regulations on these type of contractual arrangements, therefore, countries must individually regulate them.

1.- 14 CFR 91.501 (c)(2) of the Federal Aviation Regulations (FARs)

A bilateral agreement amongst two countries that allows these type of agreements must comprehend and suffice safety obligations as required by the Chicago Convention, supposing that the contracting states are member states to the Convention. A substantive part of the drafting of these bilateral treaties result on whether the State of Operations or the State of Registry will be responsible for complying with the safety obligations. There is no current model to these type of Interchange Agreements but the Latin American subcommittee has proposed one to ICAO.

Given the complex operational scheme that these interchange agreements permit, the aviation authorities must issue permits regarding, the life of the agreement, the airports authorized for the interchange to occur, revision of the operating permits, and airworthiness of the aircraft, among others. Precisely, the distinction of operational rights, as permitted by the aviation authorities on each segment of the aircraft is vital in order to avoid cabotage restrictions and practices. Given for example a Peruvian air carrier with a domestically registered aircraft. The aircraft operates a flight from Lima to Mexico City. The interchange occurs in Mexico City, where a Mexican air carrier will now operate the Peruvian aircraft on a domestic flight in Mexico. Thus, the permit for said domestic flight would be solely for and by the Mexican carrier, and completely different to the operational permits under which the Peruvian carrier originally landed the aircraft in Mexico.

*“...given the nature of these agreements, aircraft location might be harder for the original lessor to identify in need of a repossession, thus additional precautions should be dealt with.”*

It is also important to consider that in accordance with article 45 of the Civil Aviation Law, aircraft bearing a foreign registration mark, under a lease agreement, can certainly be operated temporarily as long as there is previous consent for the authority. Therefore, in an Interchange Agreement, both operators must have previous authorization from the authority to operate the aircraft under the same registration mark, but given that the operators and routes are different, both must have authorization. Following the example above, the operator flying the aircraft from Lima to Mexico City must have authorization, and once the aircraft lands in Mexico City, and the Interchange Agreement comes into force, the carrier flying that same aircraft to any other destination must have its own permission for operating. If any of the carriers fail to obtain such permit, that aircraft would be operating illegally in Mexico, even if under an Interchange Agreement the aircraft has been approved for another carrier and route.

Another point that might cause confusion and is not clear, is the temporary import regime set out in article 106 of the Customs Law, specifically, when one of the parties to an Interchange Agreement is a Mexican carrier. For aircraft to be operated in Mexico by Mexican carriers that have concession or permit to operate, aircraft must be imported into the country, therefore, an Interchange Agreement might pose a risk to this regime, given that some might consider that if the aircraft will be operated by a Mexican carrier under an Interchange Agreement, then it is not necessary to import the aircraft. But, if it is necessary, and the aircraft is not imported as required, it would be operating illegally.

Despite the aviation domestic authorities inspecting these kind of agreements, and bilateral treaties safeguarding the safety regulations on other International Treaties, several questions arise that must be clarified and put forth in the interchange agreement and to the original Lessor's knowledge. For example, the risk of loss, might be liable to the party in possession, thus strict logbooks and records regarding usage must be strictly enforced, and insurance must be dealt both by Interchangor and Interchangegee in a single policy. Finally, given the nature of these agreements, aircraft location might be harder for the original lessor to identify in need of a repossession, thus additional precautions should be dealt with.

In conclusion, an Interchange Agreement has proven to be a very useful and effective scheme for fleet management but it poses certain risks that must be assessed and carefully dealt with when drafting and designing the agreement. Civil Aviation Authorities must also carefully review and assess this type of agreements to ensure they comply with safety regulations and other international provisions.

**Ultra-Long Range Version aircraft revealed.**

Airbus has formally launched the A350-900ULR (ultra-long-range version), an aircraft that will enable Singapore Airlines (SIA) to resume nonstop flights to the U.S. As part of its launch deal, SIA will change part of its existing order for 63 Airbus A350-900s, and take seven of the aircraft in the new -ULR version. The baseline A350-900 has a range of 7,590 nm, according to Airbus, but the -ULR variant will fly 1,200 nm further, matching the range that Boeing projects for its 777-300ER. According to Airbus, the main change made is increased fuel capacity, which will jump to 165,000 liters, from 141,000 liters. To make that possible, the air-venting system in the tanks had to be adapted, and sensors and inert gas-distribution pipes both had to be relocated. [www.aviationeek.com](http://www.aviationeek.com) October 13, 2015.

**Mexico, Seeking To Increase Its Competitiveness: Boeing.**

According to Boeing executives, Mexican companies have potential to increase their quality levels and the labor force specialization offered to Boeing to stay competitive. Mexico is positioned among the 10 countries in which Boeing invests, with an annual rate of 5% growth in its purchases, in order to that, Mexican firms supply them with different aircraft components such as seats, doors, reverse thrusts, among others. Boeing estimates that the airplane manufacturing will grow between 30% and 60% for the next years, and it expects that the Mexican manufacturing reach the same growth percentage. The executives pointed out that Mexico has several advantages over other countries of the region, because of its labor force, quality and costs, as well as the transportation ease along the North frontier with the U.S. [www.mexico-now.com](http://www.mexico-now.com) October 22, 2015.

**NAICM needs to learn from the AICM to succeed.**

Aiming to get efficient operations at the Mexico City's New International Airport (NAICM), it is crucial to consider those things that do not work properly at the current airport. Javier Christlieb Morales, former President of the Air Transport National Council (Canaero), pointed out that the NAICM needs a wide territorial reserve, which was omitted for the AICM and this brought difficulties with expansion projects. Besides, Fernando Dragone, President of IATA's (International Air Transport Association) Committee of Cargo Airlines, said that the NAICM should have enough space and speed to unload and efficiently move cargo, which does not happen at the AICM either. Meanwhile, Moises Solis Flores, President of the Mexican Association of Cargo Agents (AMACARGA), highlighted that is fundamental that the foreign trade actors express their requirements for air cargo, in order for the NAICM to ease this activity's. [www.mexico-now.com](http://www.mexico-now.com) October 22, 2015.

**Direct Flights between Russia and Ukraine cancelled.**

Direct Flights between Russia and Ukraine will be cancelled as of October 25, 2015, after dialed negotiations between the suppression of multiple restrictions that both countries have set upon the other. Russian and Ukrainian authorities negotiated in the city of Brussels to reach an agreement on reducing restrictions to their neighbors when operating flights into each other's' countries. Kiev blames Moscow for their political support in Crimea and will not lower the tight security measures for direct flight operations, meanwhile Russia accuses Kiev of affecting 70 thousand passengers a month. [www.informador.com.mx](http://www.informador.com.mx) October 24, 2015.

**Mexico's Aerospace Industry, in the sight of emerging countries.**

Mexico's Aerospace Industry has captured the attention of the emerging countries that gradually take a look to watch what is done in Mexico, assured the General Director of the International Congress of Aviation Mexico (CIAM), Jose Carrera Quesada. He said that the geographic location of Mexico, near to the U.S. and its position for launch and landing of spacecraft are reflected in the aerospace sector development. He also highlighted that the country has an important presence in the North and the Bajio regions, such as Queretaro, where this industry is developed. The CIAM's Director expressed that given the growth of this sector in Mexico, companies from the United Arab Emirates, Holland, Spain, Lithuania and South and North America look at what is done in the Country. [www.mexico-now.com](http://www.mexico-now.com) October 29, 2015.

## **Nine A380 aircraft to operate in Mexico by 2020: Airbus.**

Nine A380 model aircraft (considered the biggest model worldwide) will be operating in Mexico within the next 20 years, as a result of the market expected growth, pointed out Rafael Alonso, Airbus' President for Latin America and the Caribbean. He said that the A380 will be part of the new 600 airplanes that the Mexican market may require by 2033. Up to now, the A380 has 240 daily flights and an aircraft of this model lands or takes off every three minutes. These planes are operated by 13 large airlines such as Air France, Lufthansa and British Airways. The Mexico City International Airport (AICM) announced an investment per US\$6.87 million to make necessary infrastructural adjustments to start receiving the new airplanes. [www.mexico-now.com](http://www.mexico-now.com) October 29, 2015.

## **Aircraft crash over the Sinai Peninsula.**

A Russian airliner crashed in Egypt on October 31st early morning and broke up "in the air", an investigator said. All 224 people were killed on board. President Abdel Fattah al-Sisi urged patience to determine the cause of Saturday's crash, after the Islamic State jihadist group (IS) claimed to have brought down the aircraft as a group operational attack. "The disintegration happened in the air and the fragments are strewn over a large area," said Viktor Sorochenko, a senior official with Russia's Interstate Aviation Committee, quoted by the Russian news agency RIA-Novosti from Cairo. The debris was scattered around several kilometers in the Sinai Peninsula. Sorochenko, who is heading an international panel of experts, said it was "too early to draw conclusions" about what caused the flight from the Red Sea holiday resort of Sharm el-Sheikh to Saint Petersburg to crash. [www.news.yahoo.com](http://www.news.yahoo.com) October 30, 2015.

## **Automobile and Aerospace major investment for Mexico.**

The State of Jalisco recently announced investments of US\$607 million, through nine projects of various sectors, including the automotive, electronics and aerospace that will be established in the State, generating 11,000 jobs. US\$142.83 million come from four foreign companies that will arrive to Jalisco by 2016. Other Rocriva Airlines will put into operation a regional airline based on the Guadalajara International Airport, investing US\$60 million and creating approximately 600 jobs. [www.mexico-now.com](http://www.mexico-now.com) October 30, 2015.

## **Deliveries of commercial aircraft will exceed \$3 trillion in the next decade, Aviation Week Network's new Commercial Fleet & MRO Forecast says.**

The Asia-Pacific market is expected to take \$702.7 billion in new-aircraft deliveries during the forecast period, followed by North America with \$614.6 billion, and Western Europe with \$468.7 billion. The worldwide fleet will grow about 3.3% annually, from 31,700 in-service aircraft next year to nearly 42,660 by the end of 2025. India, China and the Middle East have the fastest-projected growth rates of any regions. Western Europe is also seeing many new aircraft enter service during this period to replace older models, and will see its fleet grow at a 2.6% annual rate. The Asia-Pacific market will grow faster during this time period: at a 5.5% rate. [www.aviationeek.com](http://www.aviationeek.com) October 30, 2015.

## **AW609 Prototype Crashes in Italy, Killing Both Pilots.**

An Agusta Westland AW609 tiltrotor prototype crashed in Italy on Friday morning, October 30, while on a routine test flight, killing both crewmembers. The aircraft went down outside Santhia in Vercelli province. Italy's National Agency for Flight Safety (ANSV) is investigating. Unconfirmed Italian press reports indicate that one of the engines was on fire before the crash. The destroyed aircraft, Prototype 2, had been flying since 2006. Lately it had been used to test new installations, such as validation of a new pitot-static system, and making marketing flights for the company throughout Europe. Agusta Westland is not releasing the names of the pilots at this time. Agusta Westland had hoped to gain FAA certification for the AW609 in 2017 and begin customer deliveries in 2018. Last month, Prototype 2 set a speed record on a trip of 627 nm from the UK to Italy, covering the distance in two hours 18 minutes. Agusta Westland is currently building test ships 3 and 4. [www.ainonline.com](http://www.ainonline.com) October 30, 2015.

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