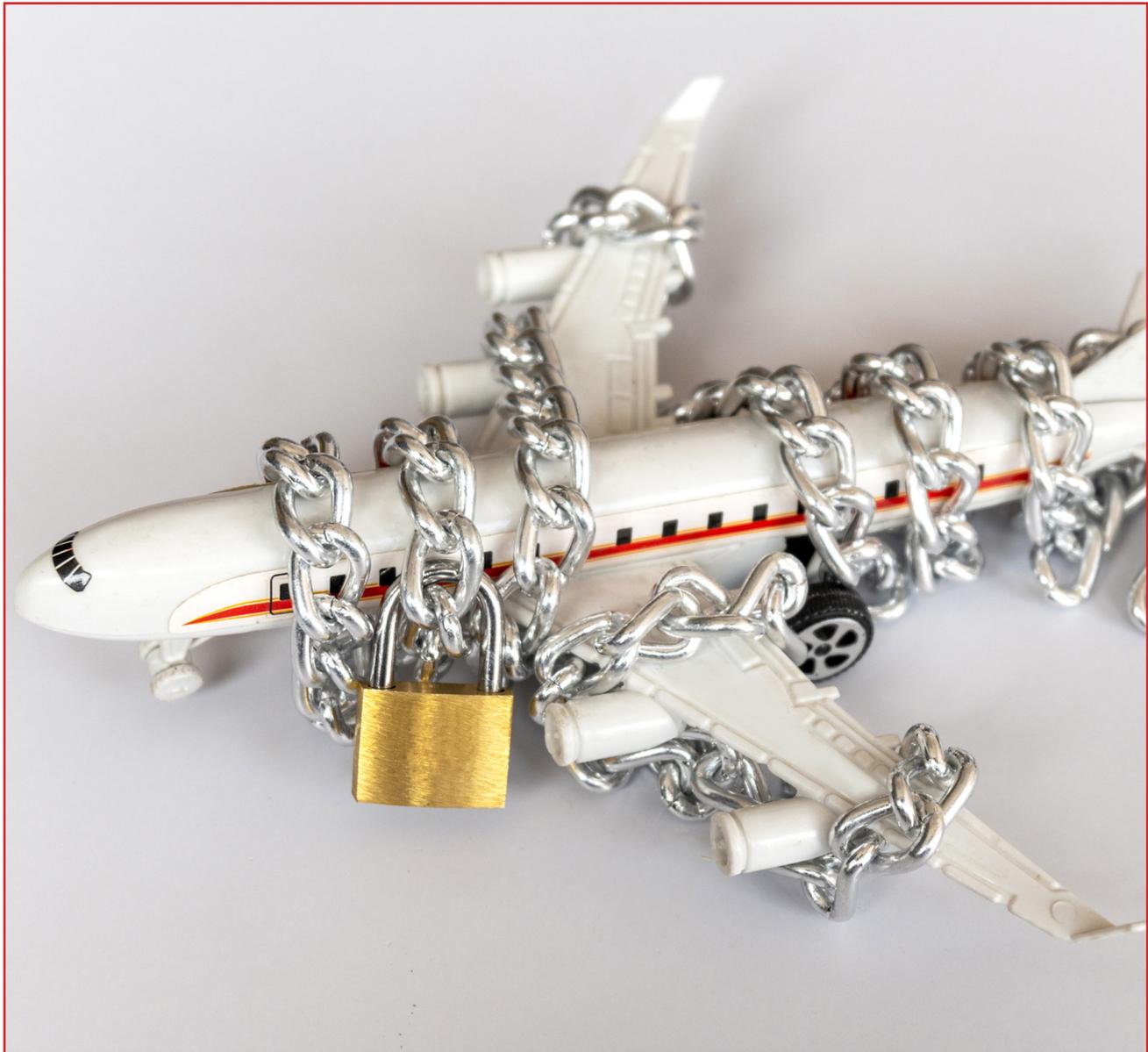


COELUM.

Mortgage/ Pledge: Is the prior authorization of the Ministry always required?
by Vera García.



NOVEMBER NEWS on Mexican Aviation

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.

Mortgage/ Pledge: Is the prior authorization of the Ministry always required?

by Vera García.

We have addressed in previous deliveries of COELUM and TERRUM how the term Aircraft Mortgage was established for the first time in international law in the Convention on the International Recognition of Rights in Aircraft signed at Genova on June 19, 1948, entered into force on 17 September 1953.¹

Article 1 fraction d of such convention established that: *“the Contracting States undertake to recognize (...) d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness; provided that such rights (i) have been constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution, and (ii) are regularly recorded in a public record of the Contracting State in which the aircraft is registered as to nationality.”*²

When Mexico entered the Geneva Treaty included and regulated the Aircraft Mortgage term under its jurisdiction. This legal figure was regulated through the Law of General Means of Communications published on January 23, 1950, in book 4: “Aeronautical Communications”, articles 361- 365.

“ARTICLE 362.- are subject to Mortgage:

I.- Aircraft.

II.- The complete unit of an air transport company, in which case the mortgage will include the respective concessions or permits and, unless expressly stipulated, the flight equipment, the navigation aid facilities, the engines, propellers, radio, instruments, equipment, accoutrements, fuels, lubricants and other movable or immovable property intended for exploitation and considered in its unit.

*The mortgage referred in this fraction, may only be constituted with prior authorization from the Ministry of Communications and Transports.”*³
“...this requirement only applies on acts created by a Mexican concessionary or permit holder by which a mortgage or lien is constituted on an aircraft destined to provide air transport services.”

Additionally, article 363 established that engines, spare parts, and other equipment could be subject to pledge and that such pledge will be effective against third parties from the date of its registration in the Mexican Aeronautical Registry and Article 364 established the formalities and requirements that the pledge and mortgage agreements should meet.⁴

The Civil Aviation Law (*Ley de Aviación Civil*, for its acronym in Spanish, “LAC”) published on May 12, 1995 in the federal official gazette, derogated several dispositions of the Law of General Means of Communications, including articles related to aircraft mortgage. Consequently, this figure is no longer regulated in our legislation although aircraft mortgages are still effective in Mexico.

On November 1, 2007, Mexico ratified the Convention on International Interests in Mobile Equipment (the “Cape Town Convention”) and the Protocol to the Convention on Matters Specific to Aircraft Equipment. Article 7 of the Cape Town Convention establishes that an interest is constituted as an international interest where the agreement creating or providing for the interest meets the following requirements: (a) is in writing; (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose; (c) enables the object to be identified in conformity with the Protocol; and (d) in the case of a

1. ICAO. CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT SIGNED AT GENEVA ON 19 JUNE 1948. November 28, 2020, ICAO web site: https://www.icao.int/secretariat/legal/List%20of%20Parties/Geneva_EN.pdf

2.- UIO the Faculty of Law. Convention on the International Recognition of Rights in Aircraft (Geneva Convention). November 28, 2020, UIO web site <https://www.jus.uio.no/english/services/library/treaties/07/7-01/recognition-rights-aircraft.xml>

3.- SJNC. Ley General de Vías de Comunicación. November 28, 2020, SCJN web site <http://legislacion.scjn.gob.mx/Buscador/Paginas/wfArticuladoResultadoBusqueda.aspx?q+=QEhBiEx/gBZk6L8QsyEtTrfUYfdlcNKMMyO/9R6CTnvrckSakJUImNm3q/T+nUDdvJzr2QS/W15+xoqKeKEWSJYBIXLxTOrDuXtccdn6zUk0ghtzpUpnH9FHATEORCDR>

4.- SJNC. Ley General de Vías de Comunicación. November 28, 2020, SCJN web site <http://legislacion.scjn.gob.mx/Buscador/Paginas/wfArticuladoResultadoBusqueda.aspx?q+=QEhBiEx/gBZk6L8QsyEtTrfUYfdlcNKMMyO/9R6CTnvrckSakJUImNm3q/T+nUDdvJzr2QS/W15+xoqKeKEWSJYBIXLxTOrDuXtccdn6zUk0ghtzpUpnH9FHATEORCDR>

security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.⁵

The Cape Town Convention did not limit the kind of security that can be constituted on an aircraft as the Geneva convention did in 1948. An aircraft and its parts can be subject to aircraft mortgages, aircraft pledge or any kind of security interest agreements that meet the requirements of the Cape Town Convention.

In respect to Mexican legislation, as previously mentioned, the current LAC does not specifically regulate pledges or mortgages on aircraft or its parts, although article 47 fraction I of the LAC provides that all documents by which the property, possession and other real rights over Mexican civil aircraft and their engines are acquired, transmitted, modified, encumbered or extinguished should be registered in the Mexican Aeronautic Registry dependent from the Ministry of Communications and Transports (the “Ministry”).

Furthermore, Article 101 of the Regulations of the LAC, establishes that *“the act by which a mortgage or a lien is constituted on an aircraft destined by a Mexican concessionary or permit holder to provide air transport services, should:*

I. Have the prior authorization of the Ministry, in the terms of Fraction V of article 15 of the LAC, and be in writing, and

II. Be registered in the Mexican Aeronautical Registry.

In cases of seizure or any other judicial assurance of aircraft intended to provide regular air transport services of passengers, cargo, mail or a combination of these, the Ministry should be informed in order to request the authority that decrees the measure to provide what is necessary so that the service is not interrupted, if it is the only service provider.”

Article 15 of the LAC establishes that: *“Concessions or permit titles may be revoked by: (...) V. Assignment, mortgage, encumber, transfer, or disposal of the concessions, permits, or of the rights conferred on them to other individuals, nationals, or foreigners without authorization of the Ministry; (...)”*

From reading the two previous articles, the following doubts arise: i) is the prior authorization of the Ministry required in all pledges/ mortgages constituted on aircraft

destinated to provide air transport services? ii) what’s the intention of Article 101 of the Regulations of the LAC iii) is the Ministry entitled to revoke a concession or permit if the aircraft destined to provide air transport services is pledged or mortgaged?

From reading the two previous articles, the following doubts arise: i. is the Ministry entitled to revoke a concession or permit if the aircraft destined to provide air transport services is pledges or mortgaged? and ii) is the prior authorization of the Ministry required in all pledges/ mortgages constituted on aircraft destined to provide air transport services?

First, the Ministry is not entitled to revoke a concession or a permit because a lien is created on an aircraft destined to provide air transport services without the prior authorization of the Ministry, as article 15 fraction V of the LAC only refers to mortgage, encumber, transfer, or disposal in respect to a concession or permit.

Second, Article 101 of the Regulations of the LAC tries to protect the air transport service by including improperly the provisions of the abrogated article 362 of the Law of General Means of Communications. The abrogated article established that a mortgage in respect of a concession (including flight equipment if was expressly stipulated) may be constituted with prior authorization of the Ministry. It is important to note that derogated provision only imposed the requirement on mortgages in respect of a concession, and not in respect to an aircraft.

The mentioned article of Regulations of the Law is worded incorrectly, the authorization of the Ministry should only be required on mortgages in respect of concessions and not in respect of aircraft if the air transport service is not compromised. Furthermore, this prior authorization of the Ministry is validated and reaffirmed by the Mexican Aeronautic Registry dependent of the Ministry with the registration of the Mexican Assets Pledges/Mortgages before the Mexican Aeronautic Registry.

In conclusion, the creation of a lien on an aircraft, it is made up of the agreement of wills between the creditor and the owner of the aircraft, as debtor. Constituting a pledge/mortgage on an aircraft destined to provide public services, only affects private interests, as is the natural process of these liens and should not subject to the authorization of the Ministry.

5.- UNIDROIT. (2017) CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT. November 28, 2020, UNIDROIT web site <https://www.unidroit.org/instruments/security-interests/cape-town-convention>

Audit to the Federal Civil Aviation Agency (AFAC) will continue.

Due to the limitations of the covid-19 pandemic, the Federal Aviation Administration (FAA) of the United States has not concluded with the audit of the Federal Civil Aviation Agency (AFAC), as atypical conditions have led to the evaluation process being extended to February next year. A 90% of the International Aviation Security Assessment Program (IASA) was completed. In this audit, Mexico must demonstrate that it carries out the correct operational, airworthiness and navigation guidelines, outlined in the annexes of the International Civil Aviation Organization (ICAO). www.a21.com.mx/normatividad/2020/11/05/aun-no-termina-auditoria-de-afac November 05, 2020.

Mexican Airlines on Path to Recovery.

The International Air Transport Association (IATA) pointed out that international demand measured in revenue passenger kilometers (RPK) remains 88.8 percent below 2019. On the other hand, domestic demand is down only by 43.3 percent across all member nations. Somehow, Mexican airlines report better figures thanks to growing demand for air travel. Mexico's flagship airline Aeromexico and ultra-low-cost airline Volaris both reported an increase in demand in October by both domestic and international travel. The latter pointed out that it would operate at 94 percent of its total capacity during November 2020, while the former indicated its plan to increase the number of international flights to destinations across Latin America. www.mexicobusiness.news/aerospace/news/mexican-airlines-path-recovery?tag=aviation November 12, 2020.

Mexico holds meeting for space cooperation in Latin America.

Mexico's Secretary of Foreign Affairs, Marcelo Ebrard, presided over a virtual meeting with authorities from Bolivia, Ecuador, Argentina, Paraguay, Colombia, El Salvador and Peru with the aim of laying the foundations for the establishment of the Latin American and Caribbean Space Agency (ALCE), expected by 2021. "This is not a short-term political exercise, but it has the potential to boost scientific and technological progress if the countries of the region join forces.", declared Ebrard. The countries of the region will no longer be marginalized from major space projects, such as the return of man to the Moon in 2024 or the exploration of Mars with unmanned flights. www.a21.com.mx/aeroespacial/2020/11/17/sostiene-mexico-reunion-para-cooperacion-espacial-en-latam November 17, 2020.

UNICEF seeks airlines for vaccine distribution.

The United Nations Children's Fund (UNICEF) held a teleconference with about 40 airlines to carry out a plan for distribution of COVID-19 vaccines once they become available. The Fund is the world's largest purchaser of vaccines and plans to distribute the medicine against the pandemic to the 92 member countries of the Global Alliance for Vaccines and Immunization, expecting to cover 70% of the world's population. The International Air Transport Association (IATA) informed that, according to its forecasts, the equivalent of eight thousand 747 cargo planes with a capacity of 110 tons will be needed to take the vaccine all over the world. www.a21.com.mx/organismos/2020/11/19/busca-unicef-aerolineas-para-distribucion-de-vacunas November 19, 2020.

e-AFAC: Key to AFAC's Consolidation.

The implementation of an integral system called e-AFAC has been initiated to determine the need for computer systems in all areas of AFAC to enter the digital era, for the authority to be capable of responding in real time. The e-AFAC system should allow the aeronautical authority in Mexico to generate timely and efficient information for decision-making at the national level and to narrow the technology gap. Once implemented, e-AFAC will offer the following advantages: it will be a large, virtual library containing all the national aeronautical regulations, digitized and referenced; it will serve as a digital portal for interaction with users, where they will be able to carry out the tasks associated with the reception, evaluation and issuance of applications for all types of permits, licenses and aeronautical certificates; it will reduce response times and provide total transparency of the processes, among other processes that will strengthen the security of the whole sector. www.mexicobusiness.news/aerospace/news/e-afac-key-afacs-consolidation November 20, 2020.

In this month extract was prepared by A. Fragoso, A. De la Fuente, P. Arandia, R. Nerio, R. Mancilla, M. Castro, J. García.

Introduces IATA's digital passport initiative.

The International Air Transport Association (IATA) unveiled its new IATA Travel Pass initiative, a system that includes the creation of a digital passport. "By creating a digital passport, instead of handing over my physical documents, I can look into a camera and, since I previously shared my information with governments, airports and airlines, they already have the information and allow me to have a more fluid process. The main point of this initiative is that my face is my boarding pass," said Alan Murray Hayden, director of airports and security products at IATA. The Travel Pass will allow for the control and verification of a secure flow of necessary information from tests or vaccines between governments, airlines, laboratories, and travelers. www.a21.com.mx/aerolineas/2020/11/23/presenta-iata-iniciativa-de-pasaporte-digital November 23, 2020.

IATA: Mexico is a success story.

Markets such as Brazil and Mexico, which never totally closed their borders, have had an improvement. In the case of Mexico, capacity is practically at the same level as it was in 2019, with a drop of only 5%. Mexican companies have done an exceptional job in bringing back that capacity. By December 2020, Mexico leads in the number of reservations made, compared to last year. www.a21.com.mx/index.php/aerolineas/2020/11/25/mexico-es-un-caso-de-exito-iata November 25, 2020.

How will the sanitary passport be to access international flights?

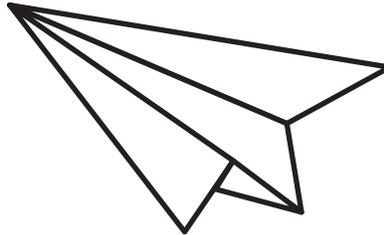
After masks and PCR tests performed less than 72 hours before boarding, an international anti-coronavirus tool could soon become a new must-have for air travel: The International Air Transport Association's "Travel Passport". International travelers must download an application developed by the International Air Transport Association, the passenger will be able to know the procedures to be carried out, the types of tests requested, the authorized laboratories and the future vaccines to be performed. www.infobae.com/america/mundo/2020/11/25/como-sera-el-pasaporte-sanitario-para-acceder-a-los-vuelos-internacionales/ November 25, 2020.

Mexico-Cancun route takes flight.

The country's main air route, Mexico-Cancun is 33% below the number of passengers carried in January 2020, according to figures published by the Secretary of Communications and Transport. In October, the airlines covering this route transported 281,420 passengers, an increase of 6.17% compared to the previous month, and 89% compared to May, when the crisis of the covid-19 pandemic most seriously affected the Mexican air industry. www.a21.com.mx/index.php/aeropuertos/2020/11/27/ruta-mexico-cancun-toma-vuelo November 27, 2020.

Aviation medicine to be returned to AFAC.

The Communications and Transport Commission of the Chamber of Deputies seeks to bring before the Congress a legislative project to return to the aeronautical authority the exclusivity over the aspects of Aerospace Medicine in Mexico. Carlos Cinta Rodríguez, secretary of the Commission, explained that the initiative seeks to modify the Civil Aviation Law, in order to obey the rules of the International Civil Aviation Organization (ICAO), which through the Chicago Convention, establishes that civil aviation medical institutions must always depend on the civil aviation authority, in this case, the Federal Civil Aviation Agency. a21.com.mx/index.php/aeronautica/2020/11/29/buscan-regresar-medicina-de-aviacion-afac November 29, 2020.



VERA GRACIA

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