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Monthly Digital Publication by Abogados Sierra

July 15, 2017
year 12 | No. 03

The Ineffectiveness
of the Deregistration
Power of Attorney.
by Jessi Saba

JUNE NEWS on
Mexican Aviation

COELUM: Pronunciation: 'che-I&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.

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The Ineffectiveness of the Deregistration Power of Attorney.

by Jessi Saba

There are certain tools available to lessors and financiers when leasing an aircraft in order to protect their rights and protect the aircraft in case the lessee of the aircraft falls into an event of default as defined in the corresponding lease agreement celebrated between the parties. One of these tools is the deregistration power of attorney (“DPOA”). The DPOA basically allows the lessor, financier, and any attorney named therein to act on behalf of the lessee to conduct certain actions to protect their rights provided that the lessee has fallen into a default under the corresponding lease. These actions include, among others, to request and obtain the cancellation of the aircraft registration mark, to request the removal of the aircraft from the lessee’s operating permits, to request and obtain authorization for a ferry flight, and to perform any action required before the Mexican authorities for the exportation of the aircraft.

The DPOA is always granted by the lessee with irrevocable status for the duration of the term of the Lease, pursuant to Article 2596 of the Mexican Federal Civil Code¹, provided that the granting thereof has been previously agreed as a condition in the lease agreement.

“The DPOA basically allows the lessor, financier, and any attorney named therein to act on behalf of the lessee to conduct certain actions to protect their rights provided that the lessee has fallen into a default...”

It is important to mention, that the DPOA has been used in Mexico for many years by lessors and financiers, though this instrument could certainly be replaced by the Irrevocable De-registration and Export Request Authorisation (“IDERA”), though provided that at the time of accession to the Cape Town Convention, Mexico did not make the required declarations in order to adopt the IDERA, the same is not applicable in Mexico. Therefore, lessors and financiers must use the DPOA.

In theory, the exercise of the DPOA would be ideal, as it would permit the lessor or financier to conduct the above-mentioned actions, among others, and protect its rights on the aircraft in case an event of default occurs. Unfortunately, the DPOA is largely ineffective to deregister and export and aircraft in any case, provided the following:

1. the DPOA can only be exercised upon the occurrence of an event of default as defined in the corresponding agreement between the parties, such default would have to be proven beforehand in a court. The Mexican Aeronautical Registry will only recognize the right of lessor or financier to act under the DPOA once the default has been proven before the corresponding court.
2. in accordance with procedure SCT-02-0281 of the Federal Commission for Regulatory Improvement (COFEMER)², in order to cancel the registration marks provided to an aircraft by the Mexican Aeronautical Registry, the original certificate of registration must be submitted along with the request made to the Mexican Aeronautical Registry for the cancellation. In practice, the original certificate of registration is practically unobtainable for the lessor or financier if it is not directly provided by the lessee. It is highly unlikely and very impractical for purposes of recordation of new interests with the Mexican Aeronautical Registry for the lessor or financier to hold the original certificate of registration of the aircraft, as this is required each and every time an interest is registered or discharged³.
3. that the Mexican Aeronautical Registry is a registry of operators, and in order to conduct any sort of registration of interest or discharges in respect to the aircraft (even when the lessee is not a party to such agreements), the operator must grant their consent in order for the Mexican Aeronautical Registry to proceed with such registration or discharge, which proves to be very inefficient to lessors or financiers, as the registration of their rights depends

1.- Article 2596. “The grantor can revoke the mandate when and how he sees fit; except for the cases where such mandate was stipulated as a condition on a bilateral agreement, or as a mean to comply with an obligation. In these cases, the attorneys in fact cannot renounce to such mandate. Whichever party revokes or renounces to the mandate on an inappropriate time must indemnify the other party of any damages caused”.

2.- <http://www.gob.mx/cntse-rfts/tramite/ficha/562febf78217e693f80017d6>

3.- Article 14 (VII)

on the consent provided exclusively by the operator of the aircraft. Therefore, even if the lessor or financier holds the original certificate of registration, it is highly unlikely that the Mexican Aeronautical Registry would proceed with the de-registration and export of the aircraft without obtaining consent from the operator first.

As explained, the exercise and enforcement of the DPOA is highly unlikely in practice. To the extent of our knowledge, not one aircraft in Mexico has been de-registered using a DPOA.

“Unfortunately, the DPOA is largely ineffective to deregister and export and aircraft in any case...”

Another issue worth discussing regarding the DPOA relates with the Federal Law for the Prevention and Identification of Operations with Illicit Resources. Article 17 of such law establishes a list of “vulnerable activities” which must be identified and proper notice must be given to the Financial Intelligence Unit (Unidad de Inteligencia Financiera). The granting of an irrevocable power of attorney before a notary public is considered by the law as a vulnerable activity and must be notified to the corresponding authority⁴

In order for the notary public to give proper notice to the authority certain documents must be provided to the notary in respect to the grantor, and all of the attorneys named therein, including the lessor (a foreign company or entity). The notary public will request among others, (i) the deed of incorporation of the company duly apostilled⁵, (ii) for the representative of such company to execute a specific format (must be signed and delivered in original), (iii) Tax ID of the country of residence of each attorney, (iv) for each attorney to complete a specific format and provide it in original to the notary, and (v) to provide evidence of the legal domicile.

Most notaries will not certify a DPOA unless all the information above is provided, and not all parties are always willing to provide all the required information or with the formalities required by the notary.

From our experience, in the past few months, the granting of a DPOA has become more and more complicated, both for legal counsels and lessee’s. It is becoming more and more difficult to obtain this DPOA and to get a notary to agree to issue such DPOA. The practical problems to obtain the DPOA are becoming a burden to all parties involved.

In light of all the mentioned above regarding the inefficiency of such instrument for obtention, exercise and enforcement of the same, counsels seem to agree that a new method or a new tool for the protection of the rights of the lessor or financier must be found in coordination with the lessee. Lessee’s are highly aware of the inefficiency of the DPOA and therefore, granting of the same does not represent an issue, and for lessors to invest time and resources in the obtention of a useless tool, so long as the applicable regulations does not change, is highly inefficient.

In recent transactions, the concept of the IDERA has been included providing an agreement by the lessee to issue an IDERA in favor of the lessor/financier in case it becomes applicable in Mexico. In case it does become applicable, the lessee would be obligated to issue and IDERA and file it with the Mexican Aeronautical Registry. It is important for lessors and financiers to include this sort of clauses in their agreements, as well as any other clauses that protects their rights, provided that the DPOA cannot be exercised unless the above-mentioned conditions are met, and cannot even be issued if the information mentioned above is not provided to the notary public.

Many efforts have been conducted relating to the amendment of the declarations made by Mexico to the Cape Town Convention and the Aircraft Protocol, and of course, in the project of amendment the IDERA is included as one of the most important changes. This will be the most reliable way for the lessors and financiers to protect their rights and be able to effect the de-registration and export of the aircraft in case of the occurrence of an event of default.

4.- Article 17(XII)(A)(b).

5.- There is an opinion between notaries that such document must be translated into Spanish for purposes of the notice. This would result in additional costs.

What about Qatar and ICAO?

Qatar has called on the International Civil Aviation Organization to resolve its airspace dispute with Saudi Arabia, Bahrain and the United Arab Emirates, although few if any lawyers expect the UN agency to arbitrate the political stand-off beyond trying to calm the ongoing row. The Gulf state petitioned ICAO's governing council on 12 June to intervene in the dispute, which has seen Saudi Arabia, Bahrain and the UAE close national airspace to Qatari-registered carriers and airplanes. ICAO confirmed on 14 June that it was reviewing the request and that it planned to host discussions between senior government officials from Qatar, the UAE, Saudi Arabia, Bahrain and Egypt in Montreal on 15 June. <https://gettingthedealthrough.com/article/5647/icao-expected-duck-qatar-intervention> June 15, 2017.

EU sets out drone airspace plan.

The European Union has published its proposed framework for the management of low-level airspace used by drone operators. The Single European Sky Air traffic management offered the outlines to conduct the management of and access to "U-Space", airspace commonly used by drone flyers. The intention is to ensure the same level of safety at lower altitudes creating a largely automated system. U-Space intends to be flexible to allow the development of new businesses and facilitate the overall growth of the EU. https://gettingthedealthrough.com/article/5657/eu-sets-drone-airspace-plan?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8413516_GTDT%20Aviation%20Law%20News%2022%2F06%2F2017&utm_content=headline_2&dm_i=1KSF,50BWS,OWNUJL,J3CK1,1 June 22, 2017.

US and Cuba flights, exempted by Trump's travel ban?

Lawyers say scheduled commercial flights between the US and Cuba are here to stay, after President Donald Trump exempted carriers from new rules banning trade with Cuba's state-owned services. President Trump announced a partial reversal of policy changes introduced by his predecessor Barack Obama that liberalised trade and diplomatic relations between both countries, but decided against reinstating restrictions on flights between both countries. Cuba and the US signed a memorandum of understanding in February 2016, after originally reaching an agreement in December 2015, permitting the operation of scheduled commercial flights between both countries for the first time in over 50 years. The first such flight departed nine months later and nine US carriers now operate services to Cuba. <https://gettingthedealthrough.com/article/5656/trump-safeguards-flights-us-cuba> June 22, 2017.

PROFECO sanctions add over 22 million pesos to Airlines in Mexico City Airport.

The Federal Attorney General for Consumer matters ("PROFECO" for its initials in Spanish) has sanctioned 5 airlines – one international carrier and four domestic air carriers- for charging for the first checked-in bag in flights from Mexico City to the United States of America and Canada. The sanctions add up to 22.4 million pesos and have been issued in accordance with an investigation that began in April. PROFECO claims that charging for the first checked in baggage goes against the norms established by the Federal Law for the Protection of the Consumer and the Civil Law of Aviation. <http://eleconomista.com.mx/industrias/2017/06/27/profeco-multa-224-mdp-5-aerolineas-cobros-primera-maleta> June 27, 2017.

New Aviation Law in Mexico skews as pro-passenger.

On June 26, 2017 the new regulations and modifications to the Federal Law for the Protection of the Consumer ("Ley Federal de Protección al Consumidor") and the Civil Law of Aviation ("Ley de Aviación Civil") have been published in the Federation Official Gazette, and have been conditioned to enter into force as of June 27. The modifications foresee, 10 new rights granted to passengers which include: to check one baggage of 25 kilos for free in international flights; compensation in case of delays; and the full reimbursement of cancelled flights, among others. <http://eleconomista.com.mx/industrias/2017/06/27/dof-cambios-ley-aviacion> June 27, 2017.

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New book for Aviation Maintenance Technicians.

The new book from ASA is Practical Electricity for Aviation Maintenance Technicians, its based on the original text by Dale Crane, and edited by Dennis W. Wilt. ASA officials note that it is an ideal textbook for high school STEM and Magnet programs, and vocational, avionics, and maintenance classrooms. <https://generalaviationnews.com/2017/06/28/new-book-for-aviation-maintenance-technicians/> June 28, 2017.

Commercial drone market to reach \$12.6 billion by 2025.

According to a new report from Tractica, worldwide commercial drone hardware and services revenue will increase from \$792 million in 2017 to \$12.6 billion by 2025. While the majority of revenue currently comes from hardware sales, the balance will shift in the next few years and, by the end of the forecast period, Tractica anticipates that drone-enabled services will represent approximately two-thirds of the total revenue mix. <https://generalaviationnews.com/2017/06/29/commercial-drone-market-to-reach-12-6-billion-by-2025/> June 29, 2017.

Ruling against discriminatory seat allocation sets international precedent.

El Al flight attendants must stop asking female passengers to move seats at the request of ultra-orthodox Haredi Jewish men, a court in Jerusalem has ruled, in a decision that may influence a pending class action suit on allegedly discriminatory age-based pricing practices. In its ruling on 22 June, the Jerusalem Magistrates Court ordered El Al to cease implementing a policy that compelled its flight attendants to ask women to switch seats if ultra-orthodox men refused to sit next to them on religious grounds. <https://gettingthedealthrough.com/article/5679/israeli-carrier-ordered-cease-discriminatory-seat-allocation-policy> June 29, 2017.

Aviation Groups Ask Congress to Wait on Drone Regulation Legislation.

An open letter from 13 groups including the Aircraft Owners and Pilots Association, Academy of Model Aeronautics, Commercial Drone Alliance and others was presented in the senate in order to wait on drone regulation legislation under the argument that the legislation is premature and needs adjustments. <http://www.flyingmag.com/aviation-groups-ask-congress-to-wait-on-drone-regulation-legislation> June 29, 2017.

Online insurance portal now available for drone operators.

In partnership with Global Aerospace, aircraft insurance broker Aviation Insurance Resources (AIR) recently launched its online UAS/Drone insurance portal. The Global Aerospace policy offers multiple liability options, as well as hull coverage and worldwide territory, according to AIR officials. <https://generalaviationnews.com/2017/06/30/online-insurance-portal-now-available-for-drone-operators/> June 30, 2017.

Airway Routes Could Soon Become Extinct in Europe.

By 2021, the European air traffic management network will be almost fully route-free, offering operators more flight options for city pairs and helping improve airspace performance in the pivotal areas of capacity, efficiency and the environment, according to Eurocontrol's latest pronouncement on the advantages of the ongoing development of the European Single Sky concept. <http://www.ainonline.com/aviation-news/business-aviation/2017-06-30/airway-routes-could-soon-become-extinct-europe> June 30, 2017.

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