

BECAUSE SECURITY REALLY MATTERSⁱⁱ
An Overview of the Mexican Trust Agreement
to secure payment obligations.

by Viridiana Barquín
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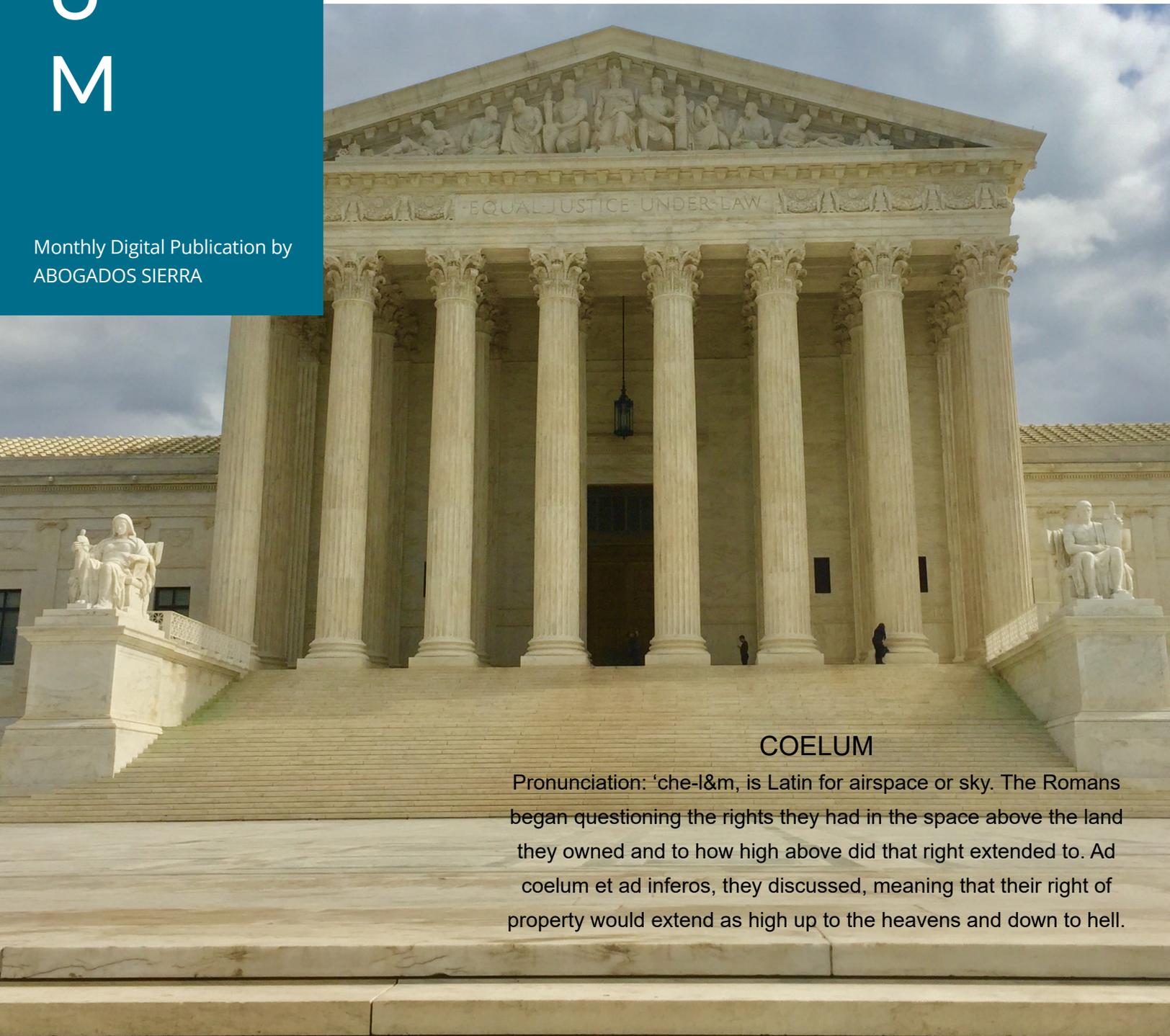
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COELUM

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.

BECAUSE SECURITY REALLY MATTERS:ii

An Overview of the Mexican Trust Agreement to secure payment obligations.

by Viridiana Barquín

We have addressed in previous deliveries of Coelum, some of the guaranties to provide security of payment obligations under aircraft facility or credit agreements, e.g., Mexican law mortgages¹ in respect of Mexican registered aircraft entered between foreign companies acting as borrower and creditor respectively; and, the issue of U.S. registration of aircraft under ownership trust agreements, and specifically, the non-citizen trusts (NCT's)².

In this delivery, the analysis will be focused on the Mexican Trust. Unlike other countries in Latin America³, the trust was implemented in Mexico many years ago pursuant to the common law, as it is based on certain "trust deeds" entered in 1908⁴ by Mexican companies of the railway industry and US Trusts but has been progressively adapted and so that it has successfully worked in Mexico as a solid and reliable collateral.

"The purpose of the Guaranty Trust's shall be to hold title to the aircraft as collateral for the payment obligations under the Loan and will however contemplate the procedure for non-judicial foreclosure against the aircraft that could be exercised by the lender acting as beneficiary..."

Therefore, the trust agreement as another mechanism to provide security of payment obligations under a loan or credit agreement (the "Loan")⁵, granted in favor of a Mexican Borrower for the purchase and/or financing of Mexican registered aircraft. Under this mechanism, the financing of the aircraft will be secured by establishing a Mexican Trust (a Guaranty or an Administration Trust) which shall hold title to the financed aircraft; and by placing the right of possession thereof, with a designated third party (the Mexican carrier acting as lessee (the "Lessee") under the relevant aircraft lease agreement (the "Lease")). Thus, in the event of failure by the borrower to comply with any of its obligations under the Loan, the lender shall be entitled to exercise non-judicial foreclosure against the aircraft in accordance with the Trust as well as to instruct the Lessee to retain or preserve the aircraft under normal operations and to transfer any monies associated with the aircraft or the Lease in favor of the lender; provided that, at the end of the term of the Lease, re-delivery of the aircraft will be tendered to the lender.

The trust agreement described above, would have to be constituted under Mexican law as mentioned, and before a pre-selected Mexican licensed trustee (the "Security Trustee"). Such trust agreement could be structured under two alternative mechanisms:

- a. A guaranty trust that will receive title to the aircraft as guaranty for the payment obligations of borrower (the "Guaranty Trust"). Under this mechanism, the obligations of the Security Trustee thereunder will be passive throughout the term of the Loan. The purpose of the Guaranty Trust's shall be to hold title to the aircraft as collateral for the payment obligations under the Loan and will however contemplate the

1.- See Coelum, June 15, 2008, year 03, No. 02. "Convenience of entering into Mortgages governed by the Law of the place where the asset is located", by Viridiana Barquin.

2.- See Coelum, June 2011, year 06, No. 02. "United States Registration of Aircraft under Ownership Trust Agreements", by Jessi Saba and Vera Garcia. Coelum September 15, 2013 year 08, No. 05, FAA Policy Clarification on Non-Citizen Trusts, by Jessi Saba.

3.- E.g.: Uruguay, 2003 pursuant "Ley 17,703-Fideicomiso". Argentina, 1995 pursuant "Ley 24,441-Fideicomiso". Colombia, 1972 pursuant Title IX, Commercial Code.

4.- BATIZA, RODOLFO. El Fideicomiso Teoría y Práctica. Editorial Jus, México 1991, P. 102.

5.- It is not required that the Loan shall be governed by the Mexican laws; however, a Promissory Note issued from the Borrower to the Lender, in a principal amount equal to the amount borrowed (and Scheduled Payments for amortization of such principal amount), should be prepared in order to be effective and enforceable under the laws governing the Loan, but also under Mexican law.

procedure for non-judicial foreclosure against the aircraft that could be exercised by the lender acting as beneficiary of the guaranty constituted under the Trust, or if applicable, will contain the mechanism for the adjudication thereof in favor of Lender that would be conducted in case of default incurred by the borrower of its payment obligations under the Loan.

The right of possession of the aircraft will be transferred by the Security Trustee in favor of the Lessee (as the designated third party). The payment obligations of Borrower under the Loan will be paid directly by Borrower in favor of Lender and the Lessee will pay its obligations under the Lease directly to Borrower, or directly to the Lender if instructed⁶ by Borrower to do so under a security assignment (the "Security Assignment")⁷, so no payments or monies required to service the Loan or generated from the operation of the aircraft will be administered by the Security Trustee under a Guaranty Trust.

- b.** An administration trust (the "Administration Trust") where the trustee (the "Owner Trustee") will receive an assignment of the rights of the original buyer under the relevant purchase agreement and the Owner Trustee acting as assignee will subsequently purchase the aircraft directly from the seller in accordance with such agreement. The Owner Trustee will act as Borrower under the Loan and will receive the funds from Lender to purchase the Aircraft. Title to the aircraft on the Administration Trust, will be held by the Owner Trustee and will serve as collateral for the payment obligations under the Loan. The Owner Trustee will receive all funds to service the Loan from the original buyer who will act under the trust as trustor and/or from the Lessee as result of the operation of the aircraft. The Owner Trustee will service the Loan by subsequently transferring all payments to the Lender.

It is important to note that the Guaranty Trust described under (a) above will be easier to establish and will impose a lower cost than the Administration Trust described in (b), provided that, the role of the Owner Trustee under the Administration Trust will be active for which the party acting as trustee will need to be more carefully selected for such purpose. In either case, a Trust Agreement⁸ by and among the Borrower as trustor (*fideicomitente*), a Mexican bank as (Security or Owner) Trustee (*fiduciario*)⁹ and Lender as the beneficiary (*fideicomisario*) will be entered. The Trustee shall be the only party with capacity to adjudicate or to conduct the sale of the aircraft.

To be recognized vis a vis third parties to evidence the rights of the Trustee (Security or Owner) under the Trust Agreement in respect to the aircraft, this must be registered at the the Mexican Aeronautic Registry and at the Mexican Registry of Security over Movable Assets. Moreover, upon registration at the International Registry, the international interest in the aircraft and the Lease constituted under the Trust Agreement and the Security Assignment, will be recognized against third parties in any Contracting State under the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on Matters Specific to aircraft Equipment (the "Aviation Protocol") as in effect in the United Mexican States from November 1, 2007, including the United Mexican States.

6.- An Instruction Letter from the Borrower as trustor to the Trustee (Security or Owner Trustee), to act upon the instructions of the Lender as necessary, must be issued upon the execution of the Trust Agreement.

7.- A Security Assignment Agreement through which the rights of the Borrower (as lessor under the Lease) will be assigned by way of security in favor of Lender.

8.- Pursuant to Article 381 of the Law of Securities and Credit Operations ("Ley de Títulos y Operaciones de Crédito"): "Under the trust, the trustor transfers to a trustee the ownership or title of one or more assets or rights, as the case may be, to be used for purposes determined and licit, entrusting Mexican bank as (Security or Owner) Trustee itself for the accomplishment of such purpose.

9.- Provided that pursuant to Article 395 of the Law of Securities and Credit Operations, as of Guaranty Trusts: "there can only be constituted as Security Trustee those of which its purpose is to provide security of the fulfillment of an obligation and their order of priority, being therefore the following: bank institutions, Stock Exchange Companies, Multi-purpose Financial Companies ("SOFOMES" by its acronym in Spanish), Insurance Institutions, Bond Institutions ("instituciones de fianzas").

First flight with biofuel from an ATR biturboiler.

ATR and the Swedish regional company BRA (formerly Braathens Regional) have made the first biofuel flight between Stockholm and Umea, with 45% non-fossil fuel obtained from used cooking oils, which marks a milestone with an ATR. BRA provides an essential air service in connection from Stockholm-Bromma with twelve regions of Sweden. BRA's ATRs provide the obvious benefit of its performance in months where adverse weather conditions prevail. The airline, as well as Sweden in general, is committed to preserving the environment, and has long been replacing its less-efficient Saab 2000 fleet with the ATRs 72-600, which is a more efficient aircraft for regional routes such as those operating BRA. www.aviaciondigital.com February 01, 2017.

Disposable drones.

These devices, cardboard and low cost, function as precision gliders, auto piloted and guided by GPS. They are also biodegradable for the most part. The project Icarus (Inbound, Controlled, Air-Releasable, Unrecoverable Systems), financed by the agency Darpa, works in the development of this type of drones in which it does not compute the return trip, benefiting the load capacity and simplifying its configuration. This peculiarity of the Icarus drones requires that the cost of these drones is low enough not to have to worry about their recovery, or that this can be considered as a secondary aspect. www.elpais.com February 05, 2017.

EU extends aviation emissions cap exemption.

International airlines flying in and out of the European Economic Area will remain exempt from CO2 emissions caps, following rules designed to reduce greenhouse gases. On February 3, the Commission plans to amend the European Union's emissions trading systems extending the benefits granted to carriers on 2013, by exempting flights in and out of Europe (in the European Economic Area) from restrictions on CO2 and other gas emissions. Under the terms of the ICAO agreement, aviation sector emissions are uncapped, but airlines are obliged to offset their emissions with carbon credits. These rules will not become mandatory until 2027 in the attend to achieve the development of carbon neutral growth on the aviation industry. www.gettingthedealthrough.com February 09, 2017.

The new "flying car" from Airbus.

One of the initiatives A3, the group of advanced projects of Airbus, is working on is the design of an autonomous single-seater aircraft which can alleviate traffic problems in big cities. Called Vahana, the design chosen for this aircraft is a convertiplane, an aircraft whose wings rotate, allowing it to take off and land like a helicopter and fly like an airplane. It is, moreover, electric, with which it contaminates less, and, besides, autonomous, with which it is not necessary to be a pilot to use it. Its autonomy is about 80 kilometers, distance that will travel in half as long as a car. www.elpais.com February 14, 2017.

The solution to escape of the traffic: the taxi - drone.

From July, the citizens of the city of Dubai (United Arab Emirates) will be able to move side to side flying in a taxi-drone. The director of the Agency of Roads and Transports, Mattar al-Tayer, has announced that in the summer there will be non-crewed vehicles flying over the sky of the city and they will be requested from a mobile application. The EHang 184 is a drone made in China of eight propellers, designed for individual transport. The vehicle, capable of supporting up to 100 kilograms in weight, allows to carry up to one piece of luggage. Its battery lasts approximately 30 minutes and can travel up to 50 kilometers away at 160 km/h. Al-Tayer says it has already been tested in places like Las Vegas. www.elpais.com February 15, 2017.

In this month extract was prepared by Miguel Ruelas, Carla Espinosa, Luis Salas, Juan R. Madero, Diana Aguilera and Selma Gonzalez.

A rock and a hard place: Gibraltar could block Brexit aviation deal.

Spanish diplomats have assured that because of the ongoing dispute between Spain and the UK about the sovereignty of Gibraltar, the obstruction of any Brexit deal granting the UK's aviation industry open access to EU skies if it were to apply to Gibraltar's airport seems possible. Spain sustains that it would block the access to the open UK aviation market unless Gibraltar's Airport is carved out from any post-Brexit deal, cause doing so would imply the recognition of the legal right of the UK over Gibraltar. This dispute has been holding the EU aviation legislation, it should be solved soon. www.gettingthedealthrough.com February 16, 2017.

Sales launch for flying cars.

PAL-V has officially started the sales of its flying cars, the Liberty Pioneer and Liberty Sport. Following the successful test programs of the concept vehicles in 2009 and 2012, PAL-V started the design of the commercial products that are now for sale. Deliveries of road and air certificated models are scheduled by the end of 2018. www.generalaviationnews.com February 17, 2017.

Trump TFRs paralyze Florida flight operations.

Airport operators and flight schools in the Palm Beach, Florida, area are bracing for long-term economic loss and disruption due to the presidential TFR covering President Trump's visits to his Mar-a-Lago resort. "For the third weekend in a row, the presidential TFR covering Trump's visit has shut down busy Palm Beach County/Lantana airport and disrupted flight training and other prohibited general aviation activities. Although local authorities and advocacy groups have approached the Secret Service requesting a cutout or procedural relief, none has been forthcoming. In a preliminary economic analysis presented to Palm Beach County, Miller estimated losses for operators for just one weekend to total about \$30,000 and his losses for the year could reach \$200,000. www.generalaviationnews.com February 20, 2017.

Companies collaborate on optionally piloted aircraft.

Stemme AG and S-PLANE Automation have entered an agreement to integrate S-PLANE subsystems into the ECARYS ES15 aircraft to create an Optionally Piloted Vehicle (OPV). As a manned aircraft, the OPV can execute missions that demand human judgement and control, such as flight in civil airspace, flight over congested areas, flying at low level and transporting passengers, they explained. A remote pilot can take control of the aircraft at any time, altering the mission or interactively controlling the aircraft and payload. www.generalaviationnews.com February 20, 2017.

A group of university students, photographs Zanzibar with drones.

Students joined to photograph Zanzibar to create the most precise map and help solve territorial and environmental problems. The mapping of Zanzibar is a project that is driven by the Commission of Earths of the Government (COLA), the State University (SUZA), Drone Adventures, and the World Bank, which has realized an investment of 200,000 dollars to make it possible. They want to develop the capacities of the university students in innovation and production of maps, and to endow the Government of the cheapest and rapid tool that allows them to obtain a map when and where they want of his territory to improve the management. www.elpais.com February 24, 2017.

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