

coelum.

Monthly Digital Publication by Abogados Sierra

March 15, 2019
year 13 | No. 10

Aircraft Engines: Swapping spare engines and their necessary separate registration.

by Miguel Ruelas

FEBRUARY 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.

sierra

Aircraft Engines: Swapping spare engines and their necessary separate registration.

by Miguel Ruelas.

You are taxiing to the runway and clearly hear “flight crew, take your seats, ready for takeoff”. You stop for a moment on the tarmac and listen to the roar of the engines, the aircraft vibrates as it accelerates and by inertia and the laws of motion you’re pulled back and sink in your seat. You are now airborne, thanks to the thrust and force, often equivalent to that of a minimum of 28 Formula 1 racing cars¹, in one single cylindrical thing called an engine. Like most engineering marvels, such power does not come cheap, with commercial aircraft engine prices ranging approximately from a dozen million dollars to four times that².

“...the engines referred to under the original agreements registered before the local registry, are different to those that are actually and physically bestowed in the aircraft. The engines are now different, they are not those publicized against third parties, and in fact, the new one(s) are not registered.”

There are often two general scenarios in which aircraft engines are legally and physically bestowed in an aircraft. One, where the aircraft definition in the underlying agreement -usually a lease- includes, and more importantly defines, both the airframe and its engines. The second, where, for multiple reasons, the engine is a spare object not contemplated under the original underlying agreement of whichever legal regime the possession, and property of the aircraft is operating under. The first scenario seems quite orthodox, in which the registration of the legal documents before the local registry is sufficient to assure interest security for both the airframe and its engines. However, the second scenario, requires extra caution.

Now, let us imagine you are the owner of a multimillion-dollar engine. Said engine, is meant to replace³ an existing engine in an already operating and registered aircraft. The documents registered under the Mexican Aeronautic Registry (“*Registro Aeronáutico Mexicano*”), are those originally registered and reflected under the Registration Certificate. The registration certificates issued by the Mexican Civil Aviation Authority does not detail the engine serial number, but usually, solely reflects the airframe serial number and the aircraft’s registration mark. However, when registered diligently, there is evidence filed before the registry that refers to the Bill of Sale and underlying agreements -for example a lease- in which the engine serial number specifications are made.

Under this context, would you, as the owner, feel comfortable, and sufficiently legally secured to track the registration and thus legal assurance of property over your engine in a simple engine swap on an airframe, without any further registrations?

Overwhelmingly, the answer is no. In the scenario described above, the engines referred to under the original agreements registered before the local registry, are different to those that are actually and physically bestowed in the aircraft. The engines are now different, they are not those publicized against third parties, and in fact, the new one(s) are generally not registered. Now let us imagine that there is a breach of contract under the financial terms of the engine’s underlying agreement with the aircraft operator, and let us even

1.- “Jet Propulsion and Aircraft Propellers” Marks Standard Handbook for Mechanical Engineers, 8th Edition. Zucrow & Resse, New York.

2.- Jacky van Damme and Miranda Stolk-Oele, KLM Newsletter Blog.

3.- The replacement of an engine can occur for multiple reasons, amongst them: the faculty the lessee has under the lease agreement to replace/swap them, interchange of parts, changes for route operating reasons, natural wear-out, loss or destruction. Whichever the scenario that gave rise to a need in changing the aircraft, the legal problem remains the same.

further imagine, a breach of contract between the lessee and the owner of the airframe⁴. Foreseeing these circumstances is critical in satisfying that registration rights remain in first order and avoid any confusions that may naturally arise in these cases between airframe and engines as the case may be.

“Therefore, under law; the Mexican Aeronautic Registry is obliged to register engine swaps under the corresponding folio, annotating and making the pertinent annotation that demonstrates the legal property of the engine, separate to that of the airframe...”

In order to properly register and ensure that all legal rights on the engine are bestowed, and protected, the Civil Aviation Law (*“Ley de Aeronáutica Civil”*⁵) clearly encompasses the lawful registration of any documents corresponding to both – and separately-, engines and airframes. While, the Mexican Aeronautic Registry does not have a specific archive for engines, the law permits the registration of engine-specific documentation through specific annotations under the Mexican Aeronautic Registry archives. Thus, article 47 of the cited law clearly states:

Article 47: The Mexican Aeronautic Registry is public, and is under the charge of the Secretary [of Communications and Transportation] and in it, they shall register:

- i. All documents under which it may acquire, transfer, modify, establish liens, extinguish the property, possession and any other in rem rights over Mexican civil aircraft and its engines; as well as the lease of Mexican or foreign aircraft.*

Furthermore, Article 11 of the Mexican Aeronautic Registry Bylaws (*“Reglamento del Registro Aeronáutico Mexicano”*)⁶ details that:

Article 11: The documents testament to the acts that are object of registration, shall be registered in the following folios of the Aviation Section:

- ii. In the Aviation [folio], those relating to the acquisition, modification, establishment of liens, extinction of property, possession and any other in rem rights over Mexican civil aircraft and its engines...”*

Therefore, under law; the Mexican Aeronautic Registry is obliged to register engine swaps under the corresponding folio, annotating and making the pertinent annotation that demonstrates the legal property of the engine, separate to that of the airframe, including the legal right under which the airline or Mexican operator has possession to it. Under this circumstances, the registration of a lease, or whichever underlying agreement particular to the engine swap is necessary to ensure and grant protection. Only, this will affirm a true distinction of rights and assure the prompt repossession. Thus, the only answer to the question above, and to grant comprehensive legal protection under Mexican law for an engine swap is by registering the Bill of Sale of the engine and the underlying agreement under which the engine is bestowed on the aircraft when the owner of the latter is different to that of the engine⁷.

4- Assuming for the purposes of this exercise, that the lessor to the airframe is different to that of the engine, to maximize and evidence the problematic.

5- Ley Aviación Civil, publicized in the Federal Gazette (*“Diario Oficial de La Federación”*) by which public laws are entered into force in Mexico on 12 May 1995.

6- Reglamento del Registro Aeronáutico Mexicano, publicized in the Federal Gazette (*“Diario Oficial de La Federación”*) by which public laws are entered into force in Mexico on 28 November 2000.

7- When the engine owner and airframe owner are the same, as previously explained, the filing of the underlying documents of the transaction, clearly stipulate the engines' serial number, allowing them to be tracked, registered and granting protection against third parties, with no need for specific registrations -which to the opinion of the author, would be unnecessary and duplicative-.

Protectionism continues affecting the airline Industry: IATA.

The International Air Transport Association (IATA) made a call to face the existing protectionism in several countries, such as England with Brexit and the Middle East with the economic and political blockade to Qatar that especially affects the airline industry. In fact, in the framework of the Summit of Aero political and regulatory affairs held there, the president of the international organization, mentioned the importance of the work that must be done by the Airline Industry towards an inclusive globalization. <https://a21.com.mx/organismos/2019/02/07/proteccionismo-continua-afectando-industria-aerea-iata> February 07, 2019.

Microindustry goes by aeronautical supply.

The incorporation into the supply chain of large companies is one of the constant objectives of micro, small and medium enterprises (MSMEs) industrial. The aeronautical industry is seen as one of the productive sectors in which MSMEs seek to forge supply chains, said the president of the Association of Industrial MSMEs of Querétaro (Amiqro), Beatriz Hernández Rojas. Therefore, one of the lines of action of the association is to train and advise MSMEs so that they have the capacity to join the supply chain of various industries. Currently, the first generation of MSMEs, for the aviation industry, is underway for the program to develop competitive capacity of service providers and indirect materials, coordinated by Amiqro. For April, the exit of this first generation is scheduled, in which 15 to 20 companies have participated. It is planned to start a second generation. This initiative goes hand in hand with the Aeroclúster de Querétaro, specialized in the aerospace industry. Among the products that are supplied, the packaging material, suppliers of machining, metal finishes and fumigation services are listed, among others. The mitigation of risks is one of the points that large companies evaluate to add MSMEs to their supply chain. <https://www.economista.com.mx/estados/Microindustria-va-por-proveeduria-aeronautica-20190215-0007.html> February 15, 2019.

The Ministry of Communications and Transportation will create the Federal Aviation Agency.

In the coming months, the Federal Aviation Agency will begin operations, as was announced this Wednesday, by the Undersecretary of Transportation, Carlos Morán Moguel. The purpose is to strengthen the regulatory capacity to supervise and guarantee the security of aviation in Mexico, according to a statement from the Ministry of Communications and Transportation. <https://expansion.mx/nacional/2019/02/20/la-sct-crear-la-agencia-federal-de-aviacion> February 20, 2019.

Aviation, the most committed industry to the environment.

The civil aviation organization (OACI) decided to limit the nvPM emission in all the aircraft engines reason why it is the only industry that has all the standards certifications for the environmental care. In a meeting that took place in Montreal, The OACI has completed all the main environmental standards for the engines certification as the noises, air quality, and global warming. They also spoke about the technological goals to be reached in the near future to prevent the global warming. <http://a21.com.mx/organismos/2019/02/21/aviacion-la-industria-mas-comprometida-con-el-medioambiente> February 21, 2019.

Aviation industry has shortage of employees.

There's a lack of industry technicians affecting the aviation industry, which leads to a very expensive operational training costs, affecting the industries workforce, specially the aviation industry that requires an 80 percent of qualified manpower. There's very cheap qualified manpower in Mexico but very expensive operational training costs generating this problem, luckily in Monterrey the manpower in the aviation industry is on an unexpected high specially for aircraft maintenance. <https://diario.mx/economia/padece-industria-aeronautica-escasez-de-empleados-20190225-1482213/> February 25, 2019.

In this month extract was prepared by J. Estrada, J. Muñoz, J. Dorantes, A. De la Fuente, P. Arandía, R. Nerio, R. López, R. Mancilla.

Necessary incentives and subsidies to reduce the cost of bio-turbosine.

The airlines are receptive to make greater use of the bio-turbosine in their flights, however the cost is still very high, so the country should incentivize or subsidize the price so that its use in the industry grows more, experts from the Cluster of Bioturbosina and the Mexican Center for Innovation in Bioenergy (CEMIE-BIO). The objective is simple: to promote the use of fuels that help combat climate change. The industry worldwide knows this and has launched several strategies throughout the 21st century. The last one is CORSIA (Compensation and Carbon Reduction Plan for International Aviation), which seeks that CO2 emissions in 2050 are lower than those of 2005. The road is long: ten years ago, producing a liter of alternative fuel cost four hundred times more than a liter of normal turbosine. Nowadays, the difference has been drastically reduced, however the sustainable bet continues between 1.5 and 3 times more expensive. This has meant that, more and more frequently, the airlines announce with great fanfare the use of biofuels made from an infinity of raw materials in certain commercial flights. <https://a21.com.mx/aeronautica/2019/02/25/necesarios-incentivos-y-subsidios-para-reducir-costos-de-bioturbosina> February 25, 2019.

CIASA announces course of aeronautic regulations.

ASA (Airports and Auxiliary Services) will be including the new aeronautic regulation course as part of the training for all the administrative personnel interested in learning the national and international regulations. The course will be taking place in the CIASA facilities on the 27th and 28th of February 2019 and it will be referred to some matters like the elements of the national and international aeronautic regulation, authorities and national aviation organisms. The purpose of this is to increase the competitiveness in between the personnel and their knowledge in the area according to the OACI standards. <http://a21.com.mx/aeronautica/2019/02/25/anuncia-ciasa-curso-de-normatividad-aeronautica> February 25, 2019.

Cancellation of Mexico City New Airport will affect industry growth.

In its most recent report, Moody's indicated that thanks to revenue growth and passenger traffic, it is expected that between the next 12 to 18 months, airports in Mexico will maintain a solid credit quality. However, the cancellation of Mexico City New Airport and macroeconomic factors such as the deceleration of the economies of Mexico and the United States could affect the growth of the sector. <https://a21.com.mx/aeropuertos/2019/02/26/cancelacion-de-naim-afectara-trafico-aereo-aeropuertos-privados-se> February 26, 2019.

While there are no studies, 140 million passengers is just a number: IATA.

Alexandre de Juniac, director of the International Air Transport Association (IATA) stated that it will be very difficult for the Metropolitan Airports System (MAS) to have the capacity to receive 140 million passengers per year. In the framework of Aviation Summit Mexico, the IATA director asked the government to provide the necessary information to analyze the capacity offered by the new airport system, made up of the airports of Mexico City (AICM), Toluca (AIT) and Santa Lucia. <https://a21.com.mx/aeropuertos/2019/02/28/mientras-no-haya-estudios-140-millones-de-pasajeros-es-solo-un-numero-iata> February 28, 2019.

Mexico Aviation Summit 2019 host by IATA, CANAERO and ALTA.

IATA, CANAERO and ALTA have joined forces to host this Aviation Summit Mexico. The goal of the event is to partner to drive the country's economic and social development through aviation and discuss aviation's largest opportunities and key challenges across Mexico. This flagship event draw upon leading experts such as senior airline and airport executives and government authorities to examine the key challenges of the air transport industry and identify how to address them collaboratively. <http://www.breakingtravelnews.com/events/details/aviation-summit-mexico-2019/> February 28, 2019.

In this month extract was prepared by J. Estrada, J. Muñoz, J. Dorantes, A. De la Fuente, P. Arandia, R. Nerio, R. López, R. Mancilla.

coelum.

Monthly Digital Publication by Abogados Sierra

MIGUEL RUELAS

Attorney at Law: Mr. Miguel Ruelas Rosas of Mexican nationality obtained his law degree at the Instituto Tecnológico Autónomo de Mexico. Miguel has participated in the legal structuring and counseling of transactional, financing and leasing of aircraft and mobile assets in Mexico. Mr. Ruelas has actively assisted international and private entities in the understanding and application of the Cape Town Convention in Mexico, through the careful assessment of applicable law. He has participated in the development of various academic projects for the Cape Town Convention and other publications on this matter. Mr. Ruelas has been admitted in an internship program of the Aviation Working Group and is currently in secondment to the organization. He attended several business and law courses at Oxford University.

Languages: English, Spanish, French and Portuguese

Practice Areas: Aviation Law, Aircraft Finance, Private International Law.

e-mail: mruelas@asyv.com

sierra

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 Terrum 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 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.