

coelum

September 15, 2018
year 13 | No. 04

Monthly Digital Publication by Abogados Sierra

Alternatives to give the lessors, buyers and lenders all the protection to its interests, and assure the correct order and priority against third parties if there is uncertainty?

by Viridiana Barquín and Jessi Saba

AUGUST 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

Construyendo México



The Abogados Sierra family has taken the task of building a home in the rural community of Mexicapa located in the State of Mexico. With in-house economic support and donations and with the work of all member of our team and their families. Abogados Sierra paired with Construyendo, a non-governmental organization that aims to reduce poverty in the most needed communities of Mexico, by building homes for families in rural areas to improve their standards of living. Our initial undertaking has provided one family with a home, and this grain of salt, is only the beginning.

Our social responsibility and commitment with helping the most needed communities in our country is our long-term plan. Abogados Sierra will continue to build houses with our hands in the Mexicapa community, and provide homes, classrooms and a better life for a brighter future. One house at a time.

The Abogados Sierra team invites any and all members of society, both in Mexico and abroad that wish to contribute in any way, to please contact Radina de la Peña at rdelapena@asyv.com should wish to come on-board this project.



Alternatives to give the lessors, buyers and lenders all the protection to its interests, and assure the correct order and priority against third parties if there is uncertainty.

by Viridiana Barquín and Jessi Saba

Previous deliveries of this publication have already addressed the subject of the different registries within which the interests related to aircraft should (or must) be recorded. However, dealing in first instance with the Mexican Aeronautic Registry (“RAM”), which being dependent of the Mexican Directorate General of Civil Aeronautics (“DGAC”) and considering its functions, should be the most specialized of all registries to provide the most conclusive evidence of order and priority of the rights registered thereunder; unfortunately, it is not. We have already explained this false preconception, and to which other parties, namely lessors, owners, etc., have restricted access, where contrary to other aircraft registries across the world, the RAM is a registry of operators (carriers, charter companies, air-taxis, aviation schools, among others), as opposed to a registry for property, possession, and liens over aircraft, airframes and/or engines¹.

Consequently, we have had to face refusal from the RAM to conduct registration or cancellation of records without the operator’s “consent”, defending a an incorrect but long existent assumption that the only one entitled to do so is the operator; and, contrary to what article 47² of the Civil Aviation Law (“CAL”) and the Rules of the RAM establish. The RAM, to this day, is an operators Registry solely because the right to obtain registration marks for an aircraft is subject to evidence of an operating permit, which is obviously authorized to operators only. However; this is a result of a practice passed from generations to generations of managers that, for the sake of organization and uniformity, have not dared to change, it is not something that derives from the law; circumstance that again, is opposed to what occurs in other aircraft registries, where rights of property, possession, and liens over aircraft, airframes and their engines prevail.

“...the Mexican Aeronautic Registry “should be” the more specialized of all registries as the one providing the most conclusive evidence of order and priority of the rights registered thereunder.”

Going through the documents that must be registered with the RAM pursuant article 47 of LAC, another obstacle has been for example that that the RAM has been objecting lately the registration of a bill of sale if it is attached with an officer certificate stating that the same is a true and correct copy of the original; provided that the RAM argues that signatures by the seller must be ratified before a public notary directly. Strangely, this criteria has not been applied in all cases but when dealing with used aircraft it represents a real problem when it comes to the registration of property rights. Furthermore, since any security can only be registered by the Mexican Aeronautical Registry (RAM), if the property rights under the Bill of Sale are duly registered; therefore, if there is a financing involved, no pledge, mortgage or security agreement can be registered. In addition, it is not a minor fact either that it might take up to 90 days for the RAM to issue an updated certificate of registration evidencing all registrations, this in spite of this shorter statute of limitation that is contained in the law.

1.-See Coelum December 15, 2016 year 11 | No. 08

2.- Article 47 of CAL states the documents that must be registered by the RAM:

I. The documents by which the property is acquired, transmitted, modified, encumbered or extinguished; the possession and other rights in rem on Mexican civil aircraft and their engines, such as the leasing of Mexican or foreign aircraft;

II. The registration and airworthiness certificates;

III. The resolutions of the aviation authority in case of abandonment, loss, destruction, uselessness or definitive disarmament of aircraft;

IV. The concessions and permits that protect the air transport service, as well as the acts and legal resolutions that modify or terminate them;

V. Insurance policies, and

VI. The documents by which the property is acquired, transmitted, modified, serious or extinguished, the possession and other rights in rem on civil aircraft piloted remotely pursuant to what is specified in the corresponding Mexican official standard.

Facing all the above described situation within the RAM; what is the alternative to give the lessors and lenders all the protection to its relevant interests to ensure the correct order and priority against third parties?

While the registry of the documents filed with the RAM could take 90 days (or more), the registry at the International Registry, and locally at the Sole Registry of Movable Guaranties (“RUG” by its acronym in Spanish), is completed immediately. Therefore, if the registry of interests is properly conducted before such entities (International Registry and RUG), the lapse of time the registry before the RAM could take would not pose any greater risk, as all interests recorded at the International Registry and RUG, respectively, would be duly and equally protected.

“...what is the alternative to give the lessors and lenders all the protection to its relevant interests to assure the correct order and priority against third parties?”

Notwithstanding the above, another local issue arises. The RUG is an electronic registry, therefore registrations are conducted electronically, most likely, by the notary public notarizing the interest to be registered. Provided that the RUG deals exclusively with guaranties, but not with property rights so the property rights under a bill of sale for example cannot be registered, and furthermore; if there were a mortgage over an aircraft, or an engine, it could not be registered either since the system does not even include the option as a mortgage is not considered to be available to movable assets, so the mortgage over an aircraft, which is lawfully recognized, is not a registerable document. This is why if the local security has not been entered yet, but it is intended (dealing with Mexican registered aircraft), it is recommended to enter into a local pledge instead of a mortgage, in order to be able to have this registered at the RUG (which would not be possible if it were a mortgage).

At the end, it is the International Registry the one at which absolutely all the relevant interests constituted within a transaction involving sale, lease, financing, etc., in respect of an aircraft or engine, can be duly registered immediately, and the one that considering all those circumstances that at a local level (RAM and RUG) as described above, provides fully protection to such interests since it will certainly have priority over the RAM, given that the IR derives from an international treaty (Convention on International Interests in Mobile Equipment (the “Convention”) and the Protocol to the Convention on Matters Specific to Aircraft Equipment (the “Aviation Protocol”))³, it has a higher hierarchy⁴. Provided that the priority search certificates retrieved from after a registry is complete at the International Registry, will constitute fully evidence of such order and priority pursuant to Chapter V of the Convention⁵. Conductively, once interests have been registered at the International Registry, they will be secured and will be effective against third parties, even if they are not registered by the Mexican Aeronautical Registry, or the RUG for such effects. The benefits of local registration might come in handy in case of an enforcement, as many judges are not very familiar with the Convention and the Aviation Protocol, so local registration might, although not always will, facilitate the process.

In light of the above analysis, our recommendation is to always prioritize International Registry filings, as this is conducted electronically and in real time, and has the higher hierarchy over the local registries. Local registrations tend to be slower given formalities required and can take longer than expected given the RAM load of work, or criteria at the time.

3.- The Convention and the Aviation Protocol as in effect in the United Mexican States from November 1, 2007, together with a Consolidated Text is a combination of the Convention and the Aviation Protocol that was authorized and created pursuant to the Resolution No. 1 adopted by the Cape Town Diplomatic Conference (the “Consolidated Text”), collectively the “Convention”.

4.- Pursuant to Article 133 of the Mexican Constitution, which states the following: “This Constitution, the laws of the Congress of the Union and all the international treaties that are in accordance with the same, and that are executed by the President of the Republic, with the approval of the Mexican Senate, will be the Supreme Law of the entire Union. The judges of each federal state will comply with said Constitution, laws and treaties, in spite of the provisions in contrary that there may be in the Constitutions or laws of the states”.

5.- The Convention as defined in footnote 3.

Universal Aviation Mexico Adds Hangar at Toluca.

Universal Aviation Mexico, the joint venture between Universal Weather and Aviation and Avemex, has opened a new 50,000-sq-ft hangar at its Toluca International Airport FBO. The \$3.5 million structure—the location's fifth on the airport—consists of 17,500 sq ft of aircraft storage and 32,000 sq ft of office space. The hangar will be used for locally based operators outside of peak periods, proving the rise of investment in the industry as part as a strategic sector in Mexico. www.ainonline.com/aviation-news/business-aviation/2018-08-15/universal-aviation-mexico-adds-hangar-toluca August 15, 2018.

Next Mexico government postpones airport decision, seeks public input.

Mexico's incoming government postponed a decision on whether to complete a new, Mexico City airport, saying the public should be consulted on the fate of the \$13 billion-dollar hub, which the next president had initially opposed. President-elect Andres Manuel Lopez Obrador said the project was tainted by corruption prior to his July 1 landslide election victory and had pressed for an existing military airport north of the capital to be expanded instead. uk.reuters.com/article/uk-mexico-airport/next-mexico-government-postpones-airport-decision-seeks-public-input-idUKKBN1L227L August 17, 2018.

Be Ready for Mexico's 406-MHz ELT Mandate.

The Aircraft Owners and Pilots Association (AOPA) is advising members of a mandate for the use of 406-MHz emergency locator transmitters (ELT) in Mexico beginning this Saturday. Mexico's civil aviation authority DGAC originally had planned to implement the 406-MHz ELT requirement in January 2002 but has since granted a series of extensions at the requests of AOPA. The most recent of those extensions was in August 2015, running through the end of this month. But the DGAC informed the association this month that no further extensions would be approved since the cost of equipage is much lower, Rune Duke, AOPA senior director for airspace and air traffic, said in an update on the issue. The agency also cited a need to comply with International Civil Aviation Organization standards. www.ainonline.com/aviation-news/business-aviation/2018-06-25/aopa-be-ready-mexicos-406-mhz-elt-mandate August 25, 2018.

IATA: Mexico's New Airport Crucial for Passenger Growth.

Mexico's incoming government has postponed a decision on whether to complete a partially constructed new airport in Mexico City, saying the public should be consulted on the fate of the \$13-billion hub, which the next president initially opposed. Mexico risks losing long-term passenger growth and billions of dollars if it fails to go through with building a new hub in the capital to alleviate congestion, as stated by an executive with the International Air Transport Association (IATA). <https://www.voanews.com/a/iata-mexico-s-new-airport-crucial-for-passenger-growth/4538512.html> August 27, 2018.

MEX, GDL and MTY, with more international departures during the low season.

The international airports of Mexico City (MEX), Guadalajara (GDL) and Monterrey (MTY) will be the three main points of departure for Mexicans on flights abroad during the off-season. In an analysis carried out, based on data from the General Directorate of Civil Aviation, it was pointed out that, although 64 of 77 airports in the national territory operate international flights, five of these are the largest flow of travelers in the period from the end of August to the middle of November. a21.com.mx/aeropuertos/2018/08/27/mex-gdl-y-mty-con-mas-salidas-internacionales-en-temporada-baja August 27, 2018.

Flights are now taking longer than they did a decade ago.

Airlines have strongly denied that they are extending flight times for any reason to do with compensation being claimed on delayed flights. The investigation found that more than six in ten flights now takes longer than it used to in 2009 – despite flight technology having advanced since then.. www.thesun.co.uk/travel/7109423/airlines-flights-longer-avoid-passenger-compensation-delays/ August 27, 2018.

The aviation industry protests by rising in fuel storage rate.

The International Air Transport Association (IATA), the Latin American and Caribbean Association of Air Transport (ALTA) and the National Air Transportation Chamber (CANAERO) on called on the government to reconsider aviation fuel storage rates to reflect the conditions of market equilibrium, and consideration of international best practices. expansion.mx/empresas/2018/08/27/la-industria-aerea-protesta-por-alza-en-tarifa-de-almacenamiento-de-combustible August 27, 2018.

Trade Deal Optimism Curbs NAFTA Uncertainty but Aerospace Ambiguity Remains.

NAFTA and Mexico's competitiveness have promoted the installation of aerospace manufacturing and design operations. Neverending NAFTA 2.0 negotiations have clouded the sky with an uncertainty that could be starting to finally clear. However, in a public announcement on August 27, US President Donald Trump talked with Mexico's President Enrique Peña Nieto to make a joint announcement of a major breakthrough toward a modernized trade agreement between the two countries. www.aerospacemx.com/trade-deal-optimism-curbs-nafta-uncertainty-but-aerospace-ambiguity-remains/ August 28, 2018.

Rising Demand and a Growing Fleet: Mexican Aviation Soars.

Mexico's commercial aviation industry has experienced solid growth both in terms of passenger and cargo in 1H18 despite the challenges that the country's limited airport infrastructure and rising jet fuel prices pose. This growth in demand for aviation services has boosted the growth of national carriers' fleets. According to data of Mexico's aviation authority DGAC, in 1H18 passenger traffic increased 7.7 percent and airborne cargo grew 15.6 percent compared to the same period of 2017. www.aerospacemx.com/rising-demand-and-a-growing-fleet-mexican-aviation-soars/ August 31, 2018.

Mexico and Korea will cooperate on aerospace issues.

During a meeting between the Mexican Space Agency (AEM) and the Korea Aerospace Research Institute (KARI), the institutes found convergence points to collaborate on the aerospace issue; the objective was to exchange an overview of space activities, as well as current and future projects developed by both agencies to find a common agenda to collaborate in areas such as human capital formation, design and satellite development. a21.com.mx/aeroespacial/2018/08/31/mexico-y-corea-cooperaran-en-tema-aeroespacial August 31, 2018.

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