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register

A hand cursor icon, composed of yellow and black pixels, is positioned over the word 'register'. The cursor is pointing towards the 'i' in 'register'. The background of the entire page is a dark grey, textured surface. A vertical yellow bar runs along the right edge of the page. In the lower right quadrant, there is a close-up photograph of a dark grey suit sleeve with three buttons and a white pocket square.

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Interests Registries Employed at
the Aviation Industry in Mexico.
by Gerardo Reyes

April NEWS on
Mexican Commercial Law

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

Interests Registries Employed at the Aviation Industry in Mexico.

by Gerardo Reyes.

Aviation Companies established or running business in Mexico have at their disposal three different options to registry interests in order to ensure the compliance of contractual obligations. The individuals have the right to attend the following registration offices:

- 1.- "Mexican Aeronautical Registry" (*Registro Aeronáutico Mexicano, RAM from its Spanish initials*).
- 2.- "Sole Registry of Movable Guarantees" (*Registro Único de Garantías, RUG from its Spanish initials*).
- 3.- "International Interest in Mobile Equipment Registry."

"Convention on the International Recognition of Rights in Aircraft" held at Geneva in June 19, 1948 encouraged each signed country to create a local aeronautical registry in order to recognize rights of property, possession and interests in aircraft.¹ Mexican State signed and accept the "Geneva Convention" since the first day of its creation.

"Mexican Aeronautical Registry" (RAM) is mainly governed by the "Mexican Aeronautical Registry Rules"² issued in November 2000. This regulation abrogates the previous one dated on 1951. According with article 10 of the mentioned rules, the registry is splitted in two sections, one from "Aircraft Registry" and other one for "Airfield Registry". Among other registries, acquisitions, property transmission, property extinction, possession rights and any real interest of Mexican aircrafts and its engines can be registered at the "Mexican Aeronautical Registry".³

"Aviation Companies established or running business in Mexico have at their disposal three different options to registry interests in order to ensure the compliance of contractual obligations."

Article 21 of the "Mexican Aeronautical Registry Rules" states that the RAM's registries produce legal effects against third parties from the hour and day of the registry.

On the other hand, the "Sole Registry of Movable Guarantees" (RUG) is a department that belongs to the "Public Registries of Commerce"⁴ domiciled in Mexico City. The amendments of September, 2010 to the regulation of the Public Registries of Commerce specified that an individual can constitute an interest on an aircraft.⁵

Article 30 of the "Public Registries of Commerce Rules" establish that modifications, transmissions, and cancellation of mobile assets interests can be registered at the RUG's records. Also, article 31 from "Public Registries of Commerce Rules" and 29 of the "Commerce Code" (*Código de Comercio*) state that RUG's interest registration as RAM's interest registrations grants a priority interest according to the day and hour of the registration filing.

The third registry to study in this article is the "International Interest in Mobile Equipment Registry" which is founded in the "Convention on International Interests in Mobile Equipment" (Cape Town Convention). The Mexican Aviation Industry is able to use the International Registry because Mexico adopted the mentioned international treaty since 2007.⁶

1.- Articles I, III and IV of the Convention on the International Recognition of Rights in Aircraft.

2.- Reglamento del Registro Aeronáutico Mexicano in Spanish.

3.- Article 11 of the Mexican Aeronautical Registry Rules.

4.- Registro Público de Comercio in Spanish.

5.- Article 32, section A, subsection V of the Public Registries of Commerce Rules (Reglamento del Registro Público de Comercio).

6.- https://www.icao.int/secretariat/legal/List%20of%20Parties/CapeTown-Conv_ES.pdf

“Cape Town Convention” establish an International Registry to register:

- (a) international interests, prospective international interests and registrable non-consensual rights and interests;*
- (b) assignments and prospective assignments of international interests;*
- (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;*
- (d) notices of national interests; and*
- (e) subordinations of interests referred to in any of the preceding sub-paragraphs.”⁷*

According with article 29 of the “Convention on International Interests in Mobile Equipment” a registered interest has priority over any other interest subsequently registered and over an unregistered interest. Nevertheless, the priority may be modified through an agreement between the holders of those interests.

“Before the indicated amendments, article 22 of “Commerce Code” established that registries inscribed in a different registry from the RUG did not take any legal effect until the registry were informed to RUG’s offices.”

Now that we already described each Registry that can be used, we must be wondering why there are three different Registries for mobile assets interests? which Registry is better? which Registry predominate over the other two? These questions were too much easier to solve before the “Commerce Code Amendments” published on June 13, 2014.

Before the indicated amendments, article 22 of “Commerce Code” established that registries inscribed in a different registry from the RUG did not take any legal effect until the registry were informed to RUG’s offices. In that scenario, the recommendation would be to registry the interest at the RUG. Otherwise, the individual would have to do two procedures instead of only one. The applicant would have to inscribe the interest at RAM’s offices or at the “Sole Registry of Movable Guarantees” and after that inform about the registration to the RUG.

However, the outlined on the last paragraph became obsolete because the obligation to inform the RUG all the interest inscriptions out of his office to take legal effects was removed on the 2014 Commerce Code Amendments. The current article 22 of that Code only requires to registry the interest in any Registry Office to take legal effects, so we are not able to confirm which of the three registries is better to use.

“...given the waiving of regulation that establish a hierarchy between Registries of mobile assets interests all we can do is to employ the Principle of Community Law that states “first come, first served” to prioritize the competing interests.”

Besides, we must notice that the “Convention on the International Recognition of Rights in Aircraft” that motivated the creation of the “Mexican Aeronautical Registry” is dead letter because Mexico withdrawn “Geneva Convention” while signs “Cape Town Convention.”

One aim of “Cape Town Convention” is to remove local interests’ registries created because of “Geneva Convention” in order to remain only with the “International Interest in Mobile Equipment Registry.” The Governments that are part of “Cape Town Convention” and refuse to remove the local registries generate doubts to creditors about which is the best registry to inscribe their interests.

In conclusion, given the waiving of regulation that establish a hierarchy between Registries of mobile assets interests all we can do is to employ the Principle of Community Law that states “first come, first served” to prioritize the competing interests.

⁷- Article 16 of Cape Town Convention.

Mexico's lower house of Congress votes to strip politicians of immunity.

Mexico's lower house of Congress approved changes to the constitution to eliminate immunity from prosecution for all public servants, including lawmakers and the President, a move meant to tackle deeply entrenched corruption in the country. The resolution, which required approval by the Senate and ratified by a majority of state legislatures, is said to be ready shortly. <https://www.reuters.com/article/us-mexico-corruption-lawmaking/mexicos-lower-house-of-congress-votes-to-strip-politicians-of-immunity-idUSKBN1HQ38U> 18/04/2018.

New NAFTA deal may be ready shortly.

A new NAFTA deal could be reached in two weeks, according to the president of the Mexican Business Council for Foreign Trade, Investment and Technology (COMCE), who claimed that he is optimistic that Mexico, the United States and Canada are close to concluding the agreement. He also stated that countries agreed that the sunset clause will not automatically lead to the termination of NAFTA if it is not renegotiated every five years. Instead, it will act as a review mechanism that allows any of the three countries to leave the agreement if the results hasn't been satisfactory. <https://mexiconewsdaily.com/news/trade-group-optimistic-new-nafta-in-2-weeks/> 21/04/2018.

How much is the 2018 Presidential Election costing.

In October 2017 the "Consejo General del INE" determined the maximum limits of expense for the federal electoral process of 2017-2018. The limit is provided reaches to MXP \$429 million 633,325 pesos. To this date, the 5 candidates to the Presidency of Mexico have reported 147.7 million pesos spent on their campaigns. It seems expenses are well under control, but awaiting 3 more months, for the election, time may well tilt the expense balance overbudget. <https://www.economista.com.mx/politica/Gastan-presidenciables-147.7-millones-de-pesos-20180422-0084.html> 22/04/2018.

Germany's Merkel calls for strengthened WTO.

German Chancellor Angela Merkel called for a new trade pact between the European Union and Mexico to be implemented quickly, adding that the World Trade Organization should be strengthened in parallel with bilateral agreements. <https://www.reuters.com/article/us-germany-mexico-trade/germanys-merkel-calls-for-strengthened-wto-idUSKBN1HU1BP> 23/04/2018.

Mexico's senate ratifies sweeping Asia-Pacific trade deal.

Mexico's Senate voted to ratify the Asia-Pacific trade agreement, making it the first of 11 signatory countries to back the arduously negotiated framework that was rejected by the United States. Mexican President Enrique Pena Nieto said the new Asia-Pacific pact would open up more markets to Mexican goods. <https://www.reuters.com/article/us-trade-tpp-mexico/mexicos-senate-ratifies-sweeping-asia-pacific-trade-deal-idUSKBN1HWOAT> 24/04/2018.

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