

Order and Priority regarding Registration of International Interests before the International Registry.

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P. 01-02

SEPTEMBER NEWS on
Mexican Aviation
P. 03-04

Contributors
P. 05

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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.

Order and Priority regarding Registration of International Interests before the International Registry.

by Jessi Saba.

As stated in the Official Commentary to the Cape Town Convention (the “OC”)¹, the International Registry is a “system based on registration of an international interest in relation to a uniquely identifiable asset”² which operation is governed by the Convention on International Interests in Mobile Equipment (the “CTC”), the corresponding protocol thereto, and the Regulations and Procedures for the International Registry (the “Regulations”), which requires the approval of the International Civil Aviation Organization³. As set out in Chapter IV, Article 16 of the CTC, the International Registry is established for the following registrations: (i) international interests, prospective international interests and registrable non-consensual rights and interests, (ii) assignments and prospective assignments of international interests, (iii) acquisition of international interests by legal or contractual subrogations (iv), notices of international interests, and (v) subordinations of interests.

The relevant protocol, together with the Regulations establishes the requirements that must be fulfilled by a party intending to register an international interest with the International Registry in order for such registration to be valid⁴:

“...the International Registry is a “system based on registration of an international interest in relation to a uniquely identifiable asset”.

Though, it is important to note that the point of registering interests before the International Registry is to give public notice of the same, therefore enabling the creditor to preserve and enforce its rights as first priority interests against the debtor during an insolvency proceeding. The registration of said international interest also ensures the priority of the same against any other subsequently registered or unregistered interest - though registration, per se - is not necessary as proof of existence of an international interest. The international interest would be valid and existing even if it is not registered.

Following that line of thought and considering that the part of the CTC system is built on the principle of priorities, it is only natural to transacting parties to question and analyze the proper order of registration that international interests should follow in order to ensure that their rights in connection to a specific asset are maintained, enforceable and valid.

The priority rules are clearly set out in Article 29 of the CTC, which states in point 2 thereto that the priority of a registered interests applies, (a) even if such interest was acquired or registered with knowledge of other interests, and (ii) even as regards value given by the holder of the registered interest with such knowledge.

1.- Official Commentary to the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters Specific to Aircraft Equipment (Third Edition), Prof. Sir Roy Goode.

2.- Article 2.117 of the OC

3.- Article 2.118 of the OC

4.- See Chapter V of the CTC and Section 5 of the Regulations.

5.- Article 2.116 of the OC. Article 29 of the CTC.

As explained in more detail in the Practitioner's Guide to the Cape Town Convention (the "PG")⁶ the essence of this rule is to avoid any conflict that might arise as to whether a second credit had knowledge or not of an earlier, yet unregistered interest.⁷

Legal counsels around the world advise their clients on proper registration in order to safeguard their interests in connection with a specific asset. For example, in a transaction where X buys an aircraft from Y, and given the financing structure for the purchase of such aircraft, X grants its lender with security over the aircraft in the form of a mortgage, and an assignment of the lease agreement. The aircraft is to be leased to Z.

In the example above, the first international interest to be registered of course is the contract of sale between the seller and buyer, to ensure that the buyer holds title over the aircraft. Following the contract of sale, is the international interests created by virtue of the mortgage agreement. The Lease agreement between the buyer (assuming such is also the lessor) and the operator of the aircraft would be next, and finally, the assignment of the international interest created by virtue of the lease agreement in favor of the lender. When following this line of process, we ensure that all rights are protected.

"...registration is not necessary as proof of existence of an international interest, and failure to register such interest does not entail its ineffectiveness..."

Using the same example above, if the parties wished to register the Lease Agreement before the mortgage it could be considered as if the mortgage agreement was subject to the Lease Agreement, and when relating to any guarantees, it is especially important to advise and make sure that they are not deemed to be subject to any sort of condition. Another consideration to be taken into account when registering international interests, is the priority established by the assignment of international interests. In this specific matter, the registration of an assignment of an international interest is relevant exclusively for the establishment of priority against other assignment, though it does not affect the priority of the underlying interest.⁸ As explained in more detail in the OC, a transferred interest retains its original priority.⁹

Of course, and as stated above, registration is not necessary as proof of existence of an international interest, and failure to register such interest does not entail its ineffectiveness, though it would highly compromise the demonstration of the rights of under such international interest as against third parties, and it could result in the loss of ownership of the specific aircraft object, considering as well that according to paragraph 3.91 of the OC, there is no over-protection between interests, meaning that if for example, one party has two international interests in its favor, but only registers one of them, such registered interests does not secure priority of the unregistered one.

Therefore, registration of all interests within a transaction is always recommended, and parties should carefully analyze and agree on the order of registration to follow, as priority is established in that manner.

6.- Practitioner's Guide to the Cape Town Convention and Aircraft Protocol, prepared by the Legal Advisory Panel to the Aviation Working Group www.awg.aero

7.- PG, Section II (H)

8.- See PG, Page 35, Practice Note.

9.- Article 2.160 of the OC

Domino's Pizza is planning to become the world's first company to offer a commercial drone delivery service after conducting a trial run in New Zealand.

The pizza maker carried out a demonstration delivery by drone in Auckland on Thursday, and afterwards said it aimed to launch a regular service in late 2016. Amazon and Google are among companies looking to make deliveries by drone, and aviation authorities in the US, the UK, Australia and New Zealand have been relaxing rules for this purpose. Last month, US convenience store chain 7-Eleven trialed the first single commercial drone delivery of coffee, doughnuts and a chicken sandwich. Drone deliveries will be legal in Australia next month, providing they stay at least 100ft (30 metres) away from houses. www.theguardian.com September 05, 2016.

Mexico will show its progress in the space sector during the 67 International Astronautical Congress.

The event will be performed 26 to September 30 in Guadalajara, with the presence of the director of the Mexican Space Agency, Francisco Javier Mendieta. The event will bring together more than five thousand specialists with different approaches from Space Telecommunications from over 80 countries. Similarly, they are more than 30 space agencies such as NASA, the Agency of China, Russia and Latin American countries part of the inclusion of emerging nations that are entering to the sector. www.informador.com September 05, 2016.

Demand for air cargo strengthens in July according to IATA numbers.

The International Air Transport Association (IATA) released data for global air freight markets in July 2016 showing robust growth in demand. Measured in freight ton kilometers (FTKs), demand increased 5.0% in July 2016, compared to July 2015. This was the fastest pace in almost 18 months. Freight capacity measured in available freight ton kilometers (AFTKs) increased by 5.2% year-on-year, outstripping demand and keeping yields under pressure. Despite the subdued global trade backdrop, carriers in the world's four biggest air cargo markets – Asia-Pacific, Europe, North America and the Middle East – reported an increase in freight demand. The strongest growth occurred in Europe and the Middle East, with July demand up by 7.2% and 6.7% respectively, compared to the same period last year. www.aviationnews-online.com September 09, 2016.

Boeing Says China To Become First Trillion-dollar Market.

Boeing projects a demand for 6,810 new airliners in China over the next 20 years, making it the first trillion-dollar aviation. "As China transitions to a more consumer-based economy, aviation will play a key role in its economic development," said Boeing Commercial Airplanes vice president of marketing. "The continuing expansion of China's middle class, coupled with new visa policies and a wide range of widebody airplanes with new technologies, capabilities and efficiencies, gives us every reason to expect a very bright future for China's long-haul market," concluded Tinseth. www.ainonline.com September 13, 2016.

Ireland blacklisted by Brazil.

The Irish ambassador to Brazil is looking to meet up with the Brazilian Revenue service after the South American country branded Ireland a tax haven. The Department of Federal Revenue of Brazil has announced that it is adding Ireland, Austria, Curaçao and Saint Martin to its list of countries denominated as tax havens. The change is set to come into effect on 1 October. Irish officials have hit back at the decision, with a spokeswoman for the Department of Finance saying that it “strongly refutes any allegations that we are a tax haven”. Other jurisdictions on the list include notorious tax havens such as Panama, Monaco and the Isle of Man. The category that Ireland is in includes countries that have no tax, hide banking or trade information or have a corporate income tax rate of less than 20%. Companies listed in Ireland will now have to pay a 25% tax rate on deals with businesses from Brazil instead of a 15% rate that they were previously subjected to. Sinn Féin MEP Matt Carthy said that the move will likely hit trade between the two countries. Brazil is one of the largest economies in the world and this move will have serious consequences for our trade with the state,” he said. “The Irish government urgently needs to take action on remaining tax avoidance schemes in light of Brazil’s decision.” www.thejournal.ie September 25, 2016.

New Aircraft approved by Mexican DGAC.

Piper received type validation late last week for the M600 from the Directorate General of Civil Aviation of Mexico (DGAC). This marks the first approval of the new turboprop single in Central and South America, and paves the way for deliveries of the airplane in Mexico. The OEM obtained U.S. FAA approval in June. “M600 validation in Mexico is exciting news,” said Piper president and CEO Simon Caldecott. “The M600 is ideally suited to the Central American region with its expanded range, payload and speed. [It] is ideally suited to multiple mission profiles in the region. “The \$2.853 million M600 is a more powerful and updated version of the M500 with a new wing and Garmin G3000 touchscreen-controlled avionics. According to Piper, the M600 has a top speed of 274 kts, 1,484 nm range and full-fuel payload of 645 pounds/293 kg. www.ainonline.com September 26, 2016.

Mexican Congress to oversee Mexico’s New Airport development.

The Mexican congress has created a special commission to oversee the construction of Mexico City’s new international airport. The commission’s main objective is to address public concerns about the raising costs of the project, the terms and conditions of the international funding it will receive, as well as the environmental impact and its effects on neighboring properties, congress said in a press release. “The future international airport will benefit the entire country. That is why it needs to be monitored by all the actors involved in its construction, to avoid a lack of transparency, corruption and unilateral decisions,” said Rafael Hernández Soriano, congressman and president of the commission. www.subscriber.bnamericas.com September 29, 2016.

Airport Information systems a soaring billion-dollar industry.

According to researcher, the Global Airport Information Systems Market is accounted for \$3.03 billion in 2015 and is expected to reach \$4.39 billion by 2022 growing at a CAGR of 5.5% during the forecast period. Rising passenger traffic, necessitate for real-time information sharing and cooperation are the key factors fueling the market growth. However, regulations regarding data sharing and high upgradation costs are restraining the market. Growth in emerging economies is the major opportunity for vendors in airport information systems market. On the other hand, Geopolitical tensions and management of big datasets and generation of predictive insights are the key challenges faced by the vendors. www.airlines.einnews.com September 29, 2016.

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