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Foreign Registered Aircraft Grounding: A Matter of Timing and Precision.
by Misael Arellano.

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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 how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

Foreign Registered Aircraft Grounding: A Matter of Timing and Precision.

by Misael Arellano

The grounding of a foreign registered aircraft in Mexico has always been a near impossible mission for a private entity to achieve, especially when the acting party has not recognized involved rights to such effects by a Mexican court after a tortuous legal proceeding. However, the scenario is quite different when special conditions, involving private and public international law are of public knowledge due to media and international news.

In this edition of Coelum, we will share the experience of recent aircraft groundings conducted in Mexico. These groundings came as a result of the sanctions imposed to Russia in response to the government's actions against Ukraine, which were published in the Official Journal of the European Union on February 25, 2022[1].

Among other prohibitions with immediate effects, the EU passed Council Regulation (EU) 2022/328 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, in forward as the "EU Regulation" which states the following in Article 3c, section 2):

> *"…*
> *2. It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI[2] of the Sanction to any person, entity or body in Russia or for use in Russia.*
> *…"*

In that sense, what were the options for lessors when the effectiveness of the EU Regulation entered in full force when the aircraft was in flight or located in a third-party country airport waiting for the turnaround of a scheduled operation? How to stop the operation of an aircraft flying to a third-party country when the carrier has all permits required by such third-party civil aviation authority to do so? What are the alternatives of the lessor when the window to act is just a timeframe of 2-3 hours for the flight turnaround? How will the aircraft be ferried to a safe and secure location?

Responses to referred questions must be addressed to the following essential elements: i) strategy; ii) reference to effective legal basis and knowledge of how the Mexican civil aviation system functions; iv) preparation of precise arguments; and last but not least, v) the 24/7 availability to swiftly and effectively act at any required moment.

i) Success of the aircraft groundings in Mexico were achieved because of a strong actions plan involving the precise law applicable to the specific scenario faced by every single aircraft; the immediate and direct communication with high-level officers with the authority to order an aircraft grounding on late night and/or on weekends/non-labor days; and, of course, the coordination with, and support of additional stakeholders such as those foreign registries involved in the registered aircraft, including but not limited to the civil aviation authority in which the aircraft is registered. The first step in this path was arguing the lack of valid insurance, and the effective lease termination to procure the grounding notices. After, obtaining the cancellation of aircraft airworthiness certificates was the next step to success;

ii) Mexican aviation law as well as the permits granted by Mexican civil aviation authority to foreign carriers state a list of required documentation to conduct operations in Mexican airspace; in addition, there are also international treaties and conventions stating formalities and/or describing the process to notify any amendment or, as is the case, the application of any measure or restriction imposed, which must be notified through diplomatic channels. Because the aforesaid, the effectiveness and validity of recent modifications to such international instruments may not be just as stated in the involved instruments but an official ratification is required so it is essential to choose effective legal basis, to provide evidence and the precise arguing.

iii) A complete and well-documented request may be fruitless if it is addressed to the wrong recipient. Having a

1.- Council Regulation (EU) 2022/328 of 25 February 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0328
2.- Annex XI lists "aircraft, spacecraft, and parts thereof" as the prohibited goods and technology..

short period of time to solve an urgency, any application must be addressed to the specific officer with the faculty to take care of. Bureaucracy is not the best partner of an urgency, so it is vital to avoid the first and go directly to the personnel in charge of the matter instead to go through to the higher officer involved as occurred with any regular matter. Unfortunately, it is a fact that high level officers of Mexican civil aviation authority, not always take care of calls and e-mail messages during non-business hours or weekends.; and

iv) Full availability of involved team to act at any required moment without scarifying the quality of legal services, is one of the main characteristics of the aircraft grounding success. Formal writs were formally filled within the following hour of the notice about the instruction to ground the involved aircraft.

Other prohibitions, like providing or enabling financing or financial assistance related to the goods and technology referred to in paragraph 1[3] for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia, shall not apply to the execution until 28 March 2022 of contracts concluded before 26 February 2022, or ancillary contracts necessary for the execution of such contracts.

Under such circumstances, and among any other Event of Default which may have occurred prior to the date of the publication of the EU Regulation, the operation of any Russian registered aircraft after February 25, 2022, imply an Event of Default of the involved lease agreements, given the position in relation to insurances under the sanction imposed by the EU and considering that most of the worldwide insurers are based in the EU.

As noted, in matters of urgency, not only is the legal process required to be expedite and flawless but dealing with the technical and real-life conditions of dealing with all the involved government official parties is pivotal. Therefore, the path to success could be summarized as follows:

a) To prove to the Mexican Civil Aviation Authorities, that the cancellation of the insurance deemed the flight inoperable in accordance with ICAO standards, and in a colorful argument with the requirements by the Mexican regulations;

b) To proof to the Mexican Civil Aviation Authorities that the Civil Aviation Authority of the country of registry had effectively suspended the Airworthiness certificate. This allowed us to further strengthen the argument to ground the aircraft. The relevance of this is to take into consideration the time-difference between these jurisdictions as applied to the limited timeframe of a turnaround; and

c) To effectively coordinate all operative actions with the airport authority to proceed with the grounding order. However, this is the most technically challenging step, specially when dealing with airports where there is limited or no space to store the aircraft.

In that sense, it is important to mention that the described path was effective to this specific referred scenario particular to the grounding of aircraft in the Russia-context basis. This specific process, as is the case with any grounding or repossession of aircraft, should not be considered as general instructions list applicable for any aircraft grounding process. The successful grounding of aircraft has been achieved in the past under different circumstances and the process is always a tailored suit and prepared on a case-by-case basis.

In conclusion an effective aircraft grounding is the achievement of the operative stage of a repossession. It gives the chance to conclude, if any, all involved proceedings that began before a Mexican court which involves the observance of formalities required by the Mexican legislation for the applicability of international instruments appropriate for the enforceability of default remedies considered, as is the case of the Cape Town Convention and remedies available therein, which have been successfully enforced in the past, under different circumstances and legal paths. What is evident is that the operative and legal paths for the repossession or handling of aircraft are effective and efficient in Mexico.

3.- Article 3c, paragraph 1: "It shall be prohibited to sell, supply, transfer or export, directly or indirectly, goods and technology suited for use in aviation or the space industry, as listed in Annex XI, whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia."

Federal Government declares Mexico City International Airport saturated.

The Ministry of Infrastructure, Communications and Transportation (SCT) reported that the two terminals of Mexico City's International Airport (AICM) were saturated, due to the fact that both airport facilities exceeded the number of takeoffs and landings they could handle. The SCT warned that in the last ten years there were changes in the composition of the air fleet of the airlines operating at the AICM, by incorporating medium to wide-body aircraft, going from 65% to 89% in terms of size. Consequently, the AICM is saturated in the airfield and exceeded in the capacity of the passenger terminal buildings. The government detailed that after the saturation at the AICM, the general bases for the allocation of landing and take-off schedules at the airport must be reviewed and, if necessary, modified. *www.politica.expansion.mx/mexico/2022/03/04/gobierno-federal-declara-saturado-el-aeropuerto-de-la-ciudad-de-mexico* March 04, 2022.

Toluca International Airport, a project in free fall.

The start of operations of the Felipe Angeles International Airport (AIFA) has given the final blow to the Toluca International Airport (AIT), an air terminal that 15 years ago became a viable option to decongest the operations of the Benito Juarez International Airport in Mexico City (AICM). Although its infrastructure can accommodate up to 10 million annual users, in the first half of 2021 it mobilized 70,000 passengers. Rogelio Rodríguez Garduño, aeronautical specialist at UNAM, indicates that the problem relies Mexican law, the civil aviation law of 1995, which allow operators to fly without limitation to any airport where they decide as long as there are slots. *www.elpais.com/mexico/2022-03-20/el-aeropuerto-internacional-de-toluca-un-proyecto-en-caida-libre.html* March 20, 2022.

Travelers experience ordeal at AIFA due to logistics and staffing.

On its second day of operations, and even though it only had 8 flights to manage, the Felipe Angeles International Airport (AIFA) gave a dozen travelers a hard time when they missed their flights to Tijuana and Cancun and had to reach their destinations from Mexico City's International Airport (AICM). People struggled for at least two hours to get into the airport complex due to the lack of organization. Although some passengers even got 40 minutes before to board the plane, access was denied by the airline personnel, who told the inspections were still manual and not with scanners, a process that would take at least 30 minutes. *www.forbes.com.mx/viajeros-viacrucis-aifa-por-logistica-y-personal-los-mandan-al-aicm/* March 22, 2022.

"It was not possible to sell"; presidential airplane will be rented for private trips: López Obrador.

The former presidential airplane is going to be delivered to the company that will operate the Mayan Train and the airports of Tulum, Chetumal, Palenque and the Felipe Ángeles International Airport (AIFA), to be leased and to earn income from it, stated López Obrador. The plane will remain in Santa Lucía open to the public, but he suggested that it can be used to transport guests for weddings, 15 years, birthdays, or for companies that want to give recognition to their workers. The President clarified that the sale is not ruled out as long as it is done at appraisal but insisted that the Federation has found it difficult to carry out the transaction since it is very extravagant and luxurious, which makes it difficult to give it another use or to reconvert it for tourism. *www.milenio.com/politica/avion-presidencial-rentara-viajes-no-se-logro-vender-amlo* March 28, 2022.

Airlines lost in pandemic still not recovered.

119 airlines lost their air operator's certificate (AOC) during the peak years of the COVID-19 epidemic, eight of which were freighters. In comparison, there were 71 new airlines with new commercial operations, 16 of which were freight businesses. According to figures provided by the International Air Transport Association, this means that by the end of 2020, there will be a shortfall of 48 airlines compared to the airlines that existed in 2018. (IATA). Thus, in 2021, 57 new airlines (of which 12 are cargo airlines) were registered versus 33 cancellations (3 cargo airlines), reversing the trend of recent years; yet it would still be 24 airlines below the 2018 total. There were 69 airlines that were no longer in operation. *www.a21.com.mx/aerolineas/2022/03/29/aun-no-se-recuperan-aerolineas-perdidas-en-pandemia* March 29, 2022.

In this month extract was prepared by A. Fragoso, P. Arandia, R. Nerio, R. Mancilla, J. García, S. Robles, Alexis Pérez.

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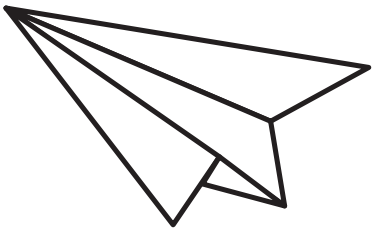

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