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The Aircraft Registration Regime in Mexico and its Paradoxes.

- By Viridiana Barquín

NOVEMBER NEWS ON MEXICAN AVIATION

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.

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Audio Message

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We all know that the most important treaty in the field of International Aviation Law is the Chicago Convention through which the contracting states agreed on certain principles and arrangements in order to the international civil aviation could be developed in a safe and orderly manner and that international air transport services could be established on the basis of equality of opportunity and operated soundly and economically[1]. So it was through Chapter III whereby the International Civil Aviation Organization (ICAO) established the minimum standards applicable to nationality and registration of aircraft.

It is so that article 17 of the Chicago Convention (and more specifically ruled by Annex 7)[2] states that Aircraft have the nationality of the State in which they are registered and article 19 states that the allocation by each contracting state will be made pursuant to its own laws and regulations but let´s address the registration regime in Mexico and its particularities.

In Mexico, aspects related to aircraft registration marks[3] are contained in Chapter IV of the Mexican Civil Aviation Law[4].

> ***"In exceptional cases, aircraft with foreign registration, leased by the concessionaires or permit holders, may be operated temporarily..."***

Thus, Article 45 of the Civil Aviation Law provides: *"In exceptional cases, aircraft with foreign registration, leased by the concessionaires or permit holders, may be operated temporarily, prior authorization from the Ministry of Communications, Transport and Infrastructure, subject to the respective regulations"*; and this is probably where the inconsistencies and contradictions begin.

If the registration marks grant nationality to the aircraft as established by the Chicago Convention, and Article 45 of the Civil Aviation Law confirms that aircraft with foreign registration may be operated "in exceptional cases", why the Mexican system for aircraft registration marks is generating these distortions by authorizing foreign registration marks and not exactly temporarily.

For example, notwithstanding the provisions of Articles 12[5] and 31[6] of the Chicago Convention, Article 83Bis on the other hand states that when an aircraft with registration marks of a Contracting State is operated pursuant to an aircraft lease, charter or exchange agreement, or any similar arrangement, by an operator who has its principal registered or permanent residence in another Contracting State, the State of registry, by agreement with that other State, may transfer to it all or part of its functions and obligations as State of registry with respect to such aircraft. The State of registry will be relieved of its responsibility with respect to the functions and duties transferred.

1.- https://www.refworld.org/pdfid/3ddca0dd4.pdf (consulted on December 25, 2020)
2.- https://www.anac.gov.ar/anac/web/uploads/normativa/anexos-oaci/anexo-7.pdf (consulted on December 25, 2020)
3,- Article 44: All civil aircraft must carry distinctive marks of their nationality and registration. The Mexican aircraft must also hold the Mexican flag.
4.- https://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Ley_de_Aviacion_Civil.pdfV (consulted on December 25, 2020)
5.- Article 12: "each Contracting State undertakes to take measures to ensure that all aircraft bearing the mark of their nationality, wherever they are, observe the rules and regulations in force regarding flights and aircraft operation in that place. Each Contracting State undertakes to maintain its own regulation on this matter pursuant as far as possible with this Convention"
6.- Article 31: "all aircraft used in international navigation will be provided with a certificate airworthiness certificate issued or validated by the State in which it is registered".

When analyzing this Article of the Chicago Convention, it is important to identify that its scope is merely for airworthiness purposes, so it is only in terms of the supervision of the safety and airworthiness regulations of the state of registration.

And here we have then that the Mexican Civil Aviation Law and its regulation are exceeding such transfer of functions (which pursuant to the Chicago Convention should be limited to airworthiness aspects) to registration aspects also, so that Article 47 of the Mexican Civil Aviation Law specifies that there must be registered at the Mexican Aviation Registry ("RAM") the documents by which property or possession of Mexican registered Aircraft is acquired, modified, encumbered or extinguished and any other documents related to property rights over the Mexican civil aircraft and their engines; as well as, the lease of Mexican or foreign aircraft. Moreover, Article 11 of the Mexican Registry Regulation[7] confirms that the lease agreements entered in respect to Mexican and foreign registered aircraft must be filed for registry.

We could speculate about the reasons of the articles referenced above under Mexican law and the reasons why it is the interest of the Mexican Aviation Registry to have the documents evidencing possession of foreign aircraft duly registered, but the only reality is that they have nothing to do with airworthiness aspects which is contradictory to what Chicago Convention states.

> ***"Even though there are conflicting opinions about the benefits of authorizing the operation of foreign-registered aircraft in Mexico, the reality is that in practice the Mexican registration system is paradoxically far from achieving the objectives established in this area by the Chicago Convention and its scope."***

Therefore, how can we talk about the efforts to improve the registration system in Mexico if from the roots and from the fundamentals (such as the registration marks of aircraft under Mexican carriers AOCs and its operation and rules) we find unfortunately a defective and inefficient registration system?

There are definitely many areas of improvement for the Mexican Aeronautical Registration System, as innumerable are obstacles that lessors, owners and financiers have to face; and even the Mexican carriers as lessees face such obstacles despite that the Mexican Aeronautical Registry is an operator registry. Many examples can be listed, one of the most important is the delay to complete the registry of documents filed for registry and the subsequent delay for issuance of the updated Registration Certificate (in case of aircraft of Mexican Registration Marks), and/or completion of registry of the relevant lease agreements for both Mexican and foreign registered aircraft (considering that under Mexican law as is has been explained above, the filing of the lease agreement applies for both Mexican and foreign registered aircraft); provided however that the effects are not retroactive but the registry is effective from the date on which it is actually completed by the RAM. Upon filing, the RAM reviews the documents and then, there is a gap between the date of filing and the date on which registry is completed where the principles the effects of priority and publicity that are inherent to any registration system, are not met in respect of the Mexican registration system.

Even though there are conflicting opinions about the benefits of authorizing the operation of foreign-registered aircraft in Mexico, the reality is that in practice the Mexican registration system is paradoxically far from achieving the objectives established in this area by the Chicago Convention and its scope.

7.- http://www.ordenjuridico.gob.mx/Documentos/Federal/html/wo88684.html (consulted on December 25, 2020)

What happens if my flight is overbooked? These are your rights under the Civil Aviation Law.

Overbooking allows airlines to sell, at most, 5 percent more than their maximum flight capacity. The International Air Transport Association (IATA) estimates that only 0.1 percent of passengers are affected by overbooking. The rights, according to the Federal Consumer Protection Agency (PROFECO) and the Civil Aviation Law are: (1) to be refunded the price of the ticket or the proportion that corresponds to the unused portion of the trip; (2) to be offered substitute transportation on the first available flight and provide the services of telephone or cable communication to the destination point, food in accordance with the waiting time, hotel accommodation at the airport or in the city and transportation to and from the airport; (3) transport at a later date that suits the same passenger to the destination in respect of which boarding was denied. In the last two options the airline is obliged to pay a compensation of at least 25 percent of the ticket price or of the unused portion of the trip. *www.elfinanciero.com.mx/empresas/2022/12/11/que-pasa-si-sobrevenden-mi-vuelo-estos-son-tus-derechos-segun-la-ley-de-aviacion-civil/* 11/12/2022.

AMLO sets off alarms in the Mexican airline industry with cabotage reform.

Mexico's President, Andrés Manuel López Obrador, submitted to the Chamber of Deputies an initiative to modify airline legislation. One of the proposals considers allowing cabotage, the transfer of passengers to foreign airlines at points within Mexico. "The Mexican Government seeks to authorize it with the erroneous idea that foreign companies will encourage competition; on the contrary, cabotage opens the door for these foreign airlines to harm Mexican aviation," said the Mexican Airline Pilots Union Association (ASPA). "They could displace Mexican airlines due to better fares, since foreign airlines, basically American airlines, have subsidies and support from their respective countries," said industry expert Fernando Gómez Suárez. *www.bloomberglinea.com/2022/12/17/amlo-activa-alarmas-de-la-industria-aerea-mexicana-con-reforma-de-cabotaje/?outputType=amp* 16/12/2022.

AIFA takes flight: one stop away from entering the top 10 in passenger traffic.

The Santa Lucía terminal received 181,000 passengers in regular service in October, its best month since it opened on March 21. It has captured almost twice as many travelers in September and has received more traffic that several terminals located in beach resorts such as Mazatlán, Huatulco, and Acapulco, according to the most recent figures from the Federal Civil Aviation Agency (AFAC). AIFA has moved 481 thousand people from March 21 to October 31 and is close to reaching the official plan for the present year. *www.eluniversal.com.mx/cartera/aifa-toma-vuelo-esta-un-paso-de-entrar-al-top-10-de-trafico-de-pasajeros* 17/12/2022.

Negative balance with air cabotage.

The Aviation Industry argues against the decree presented to reform, add, and repeal provisions of the Civil Aviation Law to allow cabotage in Mexico. Although President Andrés Manuel López Obrador mentions there are five conditions foreign companies must comply with before the Federal Civil Aviation Agency (AFAC), experts believe there is no way to ensure those conditions are executed. It has also been reiterated that this violates an international agreement that Mexico signed and is actively in force. This is believed to be another initiative to impulse the growth that the President so desperately desires for the Felipe Angeles International Airport. *www.eleconomista.com.mx/empresas/Ven-saldo-negativo-con-cabotaje-aereo-20221222-0004.html* 22/12/2022.

AICM flight delays to double by 2022.

The Mexico City International Airport (AICM) has registered 69,186 delayed flights this year, 71% of which were not the fault of the airlines. These delays were provoked by authorities, occasional events, and/or airport infrastructure. The remaining 29% were related to airline-attributable delays, some of the causes including: prolonged standby crew waiting, safety procedures, operational requirements, aircraft maintenance, and more. However, there has been a decrease in cancellations in comparison to 2021. This is particularly important because of the impact the cancellations generate in the tourism sector. *www.a21.com.mx/aeropuertos/2022/07/28/se-duplican-las-demoras-en-el-aicm* 28/12/2022.

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