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**The No-Russia Clause in Contracts and Its
Impact on Mexican Aviation Businesses.**

By Jessi Saba

Audio Message



The No-Russia Clause in Contracts and Its Impact on Mexican Aviation Businesses.

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In response to Russia's invasion of Ukraine in 2022, many Western countries imposed a variety of sanctions on Russia. These sanctions extended into the private sector, where businesses began incorporating "no-Russia" clauses into their contracts. These clauses typically prevent companies from engaging with Russian entities or conducting business within Russia¹. While Mexico has not imposed sanctions on Russia, the no-Russia clauses present unique challenges and opportunities for Mexican businesses, particularly in the aviation sector.

Understanding the No-Russia Clause

The no-Russia clause is a contractual provision that prohibits a company from entering into business transactions with Russian entities or engaging in business activities in Russia. This clause is a preventive measure adopted by companies to align with international sanctions and to avoid potential legal and reputational risks associated with doing business in Russia. These clauses can appear in various forms, ranging from prohibitions on direct transactions to more comprehensive restrictions that include indirect dealings and third-party associations².

"These clauses typically prevent companies from engaging with Russian entities or conducting business within Russia."

An example of a no-Russia clause in a lease agreement could read as follows³:

The Lessee agrees that it shall not, directly or indirectly, export, re-export, lease, transfer, sell, or supply the Leased Equipment or any part thereof to any entity or individual located in, or for use in, the Russian Federation ("Russia") or Crimea, or any other territory that is subject to sanctions or embargoes by the United States, the European Union, or other relevant authorities, without obtaining the necessary approvals or licenses from the appropriate governmental agencies.

The Mexican Context

Mexico has maintained a neutral stance in the geopolitical conflict between Russia and Ukraine, opting not to impose its own sanctions on Russia. This neutrality has allowed Mexican businesses to continue their operations with Russian counterparts without facing legal repercussions from their government. However, the global nature of the aviation industry, which often involves partnerships and contracts with companies from countries that have imposed sanctions, complicates matters.

Impact on Mexican Aviation Businesses

Mexican aviation companies, particularly airlines and maintenance firms, may find themselves restricted by the no-Russia clauses in contracts with international partners. For instance, a Mexican airline that has a partnership with an American or European airline might be bound by the no-Russia clause such partner has incorporated it into their agreements. This could limit the Mexican airline's ability to lease aircraft, purchase parts, or engage in code-sharing arrangements with Russian companies.

1.-https://neighbourhood-enlargement.ec.europa.eu/news/eu-adopts-12th-package-sanctions-against-russia-its-continued-illegal-war-against-ukraine-2023-12-19_en; <https://ofac.treasury.gov/media/8741/download?inline>

2.-[https://www.penningtonslaw.com/news-publications/latest-news/2024/no-russia-clause-what-is-it-and-when-is-it-needed#:~:text=\(1\)%20The%20%5BImport-er,EU%20No%20833%2F2014](https://www.penningtonslaw.com/news-publications/latest-news/2024/no-russia-clause-what-is-it-and-when-is-it-needed#:~:text=(1)%20The%20%5BImport-er,EU%20No%20833%2F2014)

3.- This form of clause was compiled by the author combining different precedents.

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The aviation industry heavily relies on a global supply chain for parts, maintenance, and technology. No-Russia clauses could disrupt these supply chains if key suppliers or service providers are restricted from dealing with Russian entities. Mexican aviation businesses might face delays or increased costs as they seek alternative suppliers that comply with these clauses.

The no-Russia clauses could also affect financing and insurance arrangements. International banks and insurance companies, particularly those based in countries that have imposed sanctions on Russia, may include no-Russia clauses in their contracts. Mexican aviation companies seeking financing or insurance from these institutions might have to comply with these restrictions, potentially leading to higher costs or limited access to financial services.

Possible Consequences of Breaching a No-Russia Clause

Breaching a no-Russia clause can lead to legal action from the contracting partner. This could include lawsuits for breach of contract, resulting in hefty fines and damages. In some jurisdictions, violating such clauses might also attract regulatory scrutiny and penalties. In addition, non-compliance with a no-Russia clause can lead to financial losses as the breaching party might be required to pay substantial penalties as stipulated in the contract⁴.

Additionally, the company might lose access to crucial financing and insurance services, as international banks and insurers may terminate their agreements due to the breach, not to mention the damage to the trust and business relationships with international partners. This can lead to the termination of existing contracts and the loss of future business opportunities.

Although Mexico has not imposed its own sanctions on Russia, breaching a no-Russia clause could expose Mexican businesses to indirect sanctions from other countries. These indirect sanctions can (i) restrict access to international markets, (ii) freezing of assets, (iii) export controls, and (iv) limit partnerships with foreign companies, among others⁵.

Considering the above, and in order to navigate the complexities introduced by no-Russia clauses, it is crucial for Mexican aviation companies to understand and prepare for the potential impact of indirect sanctions and manage the implications of no-Russia clauses, particularly in sectors like aviation that are heavily interconnected with global supply chains and markets. This includes regularly reviewing contracts, staying informed about international sanctions, and training staff on compliance requirements. Businesses should implement robust due diligence processes to ensure compliance with international sanctions regulations that can help avoid inadvertent violations. Flexibility in contract terms and the ability to adapt to changing geopolitical dynamics will be crucial for the Mexican aviation industry.

4.-<https://www.mondaq.com/export-controls--trade--investment-sanctions/1453456/the-eus-new-requirement-for-a-no-russia-clause-in-supplier-contracts-with-third-countries-enters-into-force-on-20-march-2024>

5.- U.S. Department of the Treasury - OFAC; European Union Sanctions Map

COELUM

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Jessi is a partner and head of the transactional group. She has over 14 years of experience advising a wide range of lessor and financial institutions in structured financing and leasing matters, organizing complex cross-border asset-finance structures in Mexico and Latin America. Jessi has negotiated transactional documents for commercial and executive aircraft and aircraft equipment assuring the enforceability or Sierra LATAM clients' rights and remedies.

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- Aviation Contracts Law, Aircraft Acquisition and financing and Law of Aviation Insurance by IATA
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Publications

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