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Pooling of Aircraft Engines and Parts in Mexico: Ownership Risks.

By Jessi Saba and Julio Vargas

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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.

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Pooling of aircraft engines and parts is an indispensable practice in modern aviation. Airlines depend on the interchangeability of engines and components to maintain schedules, minimize downtime, and ensure safety. Lessors and financiers recognize the operational need for pooling and usually allow it under controlled conditions in their lease agreements. Absolute prohibition would paralyze airline operations. However, pooling can raise certain legal risks in Mexico, including cases when the owner of an engine or part belonging to one party, acting in bad faith, installs it on an aircraft belonging to another and, in the event that the aircraft is subject to a Mexican pledge, the doctrine of accession can extinguish the original owner's rights and draw the engine or part into the scope of the pledge and the owner of the incorporated engine may be ordered to pay damages caused to the owner of the aircraft.

Under Mexican law, the rules on accession regarding movable assets are complex. When two movables belonging to different owners are united to form a single item, the owner of the principal acquires the accessory, but must pay its value if the union was made in good faith. If the objects can be separated without detriment and subsist independently, each owner may demand separation. Where the owner of the accessory acted in bad faith, that party loses the asset and must indemnify the owner of the principal. Conversely, if the owner of the principal acted in bad faith, the accessory owner may demand compensation or even the separation of its property, even if the principal is destroyed in the process. Mexican law also contemplates situations where incorporation is made with the knowledge of both parties and without objection; in such cases, the respective rights are settled according to the good or bad faith shown by each party.

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Accordingly, accession is not automatic in every case where one object is attached to another. One particular interesting case is when the principal asset is subject to a pledge. Article 2888 of the Federal Civil Code provides that *"The rights of the Pledgee under the pledge are extended to all accessories of the asset, and all increments thereof".* In other words, once an aircraft is pledged, the creditor's right extends to all accessories and increments of the pledged property made by the accessory's owner. An engine installed on such an aircraft becomes an accessory to the pledged asset and is effectively absorbed into the collateral. The practical result is that the pledgee's rights prevail, and the engine owner—Party A—loses the ability to assert ownership against the aircraft owner or its creditor. Depending on whether the parties acted in good or bad faith, Party A may retain the right to be compensated for the value of the engine, and in certain circumstances, even to claim damages.

This legal effect becomes particularly significant in default and repossession scenarios. Suppose Party A leases an engine to an airline, and that engine is subsequently installed on an aircraft owned by Party B. If Party B's aircraft is not pledged, Party A retains ownership, and if it loses it, he retains the right to be paid. Also, since in all these cases the united assets can be separated each owner retains the right to demand separation. Recovery may still require legal procedures—notice, judicial confirmation, or enforcement through contractual mechanisms—but Party A's title is not extinguished. By contrast, if Party B's aircraft is pledged, the situation changes dramatically. Once the engine is affixed to the pledged aircraft, Article 2888 extends the pledge to cover it. Party A's ownership interest is subordinated to the pledge, and the engine becomes part of the collateral. In such cases, Party A retains only a right to be compensated, potentially with damages depending on the circumstances, but

cannot recover the engine itself. Any additional remedies would be limited to contractual claims against the lessee who permitted the installation.

The consequences of this framework are complex. Party A, the engine owner, faces the risk of losing its asset if it allows engines to be pooled onto pledged aircraft. Party B, the aircraft owner, benefits from the expansion of its collateral base. The pledgee enjoys the certainty that all accessories, including substituted engines, are covered by its security. The lessee, meanwhile, breaches its pooling covenants and becomes liable to Party A, but in practice may lack the resources to provide full compensation. The result is that Party A bears the risk of loss, while Party B and its pledgee gain protection.

Therefore, engine owners and lessors must take preventive measures. The first line of defense lies in contract drafting. Lease agreements should include explicit restrictions on the installation of engines or parts onto aircraft that are subject to pledges. Lessees should be obliged to disclose whether any aircraft in their fleet are pledged and to keep that information updated. Where pooling cannot be avoided, the agreements should contain robust indemnities and replacement obligations, ensuring that if an engine is lost to accession, the lessee must compensate or replace it. Equally important, the lessor should retain the right to deny any request from the lessee to install an engine on a pledged aircraft. Notification obligations and the ability to veto installations on encumbered assets provide a practical means of managing the risk before it materializes.

At the same time, parties must disclose at the outset whether aircraft or engines are already pledged, since much of the complexity arises when installations are made without notice or with incomplete information. Questions of good faith are particularly sensitive in these cases, and courts may treat undisclosed or unilateral actions as bad faith.

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If accession has already occurred, Party A's options are limited. The pledgee's rights are definitive, and Party A cannot repossess the engine from the aircraft or its creditor. What remains is a right to be compensated, possibly with damages depending on the circumstances, and contractual enforcement against the lessee. In practice, this means demanding indemnities, replacement, or damages for breach of the lease. In some situations, commercial considerations may favor negotiation with Party B or the pledgee, especially if ongoing business relationships exist, but strictly speaking, no legal claim lies against them. A further difficulty is the registration of ownership interests. The International Registry does not provide a specific procedure for recording ownership rights in engines that have become subject to accession. This leaves publicity of ownership vulnerable in disputes, particularly when conflicting claims arise between lessors, lessees, and pledgees.

In conclusion, pooling of engines and parts is unavoidable in the airline industry, but in Mexico it creates distinct risks where pledges are involved. While accession is not automatic, in some cases, once an aircraft is pledged, Article 2888 of the Federal Civil Code extends the pledge to accessories and increments, absorbing engines into the collateral. For lessors and engine owners, the lesson is clear: preventive action through precise drafting, and disclosure obligations is essential. Once accession occurs, remedies are limited to contractual enforcement and compensation claims, which can involve time consuming litigation. Awareness of these risks, and careful planning to avoid entanglement with pledged aircraft, is vital for protecting engine ownership in the Mexican aviation market.

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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.

Education

- Attorney at law by Universidad Iberoamericana in Mexico City
- Aviation Contracts Law, Aircraft Acquisition and financing and Law of Aviation Insurance by IATA
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Memberships

- Member of the Mexican Contact Group for the Aviation Working Group
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Publications

Jessi has written multiple articles related to aircraft finance and leasing in COELUM and TERRUM. She is a published author by the Aviation Finance and Law Reviews, Mexico Chapter, and the Transportation Lawyers Association.

Engagements

- Speaker and moderator at Air Finance, IAWA, and TLA conferences
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Languages

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Julio is a partner and heads the litigation group. His expertise in financial litigation gives him a unique understanding of the delicate matters surrounding the intricate matters involving contractual default and insolvency. Mr. Vargas has over 25 years of experience in financial litigation, heading the legal practice of a major Mexican bank before joining Sierra LATAM.

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Publications

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