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Mexican Airlines Operating Wet Leased Foreign Registered Aircraft: A Lawful and Properly Regulated.
By Misael Arellano

COELUM



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L A T A M

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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This edition of Coelum addresses the legal framework governing the operation of wet leased foreign registered aircraft by Mexican air carriers. While wet leasing has long been a widely used tool in international aviation, its use by Mexican airlines for domestic operations became particularly relevant in late 2023, following a global reduction in fleet availability resulting from the mandatory inspections of aircraft equipped with Pratt & Whitney engines, coupled with an unprecedented increase in aircraft demand.

In this context, Aircraft, Crew, Maintenance and Insurance (ACMI), commonly referred to as wet leasing, emerged as the most efficient mechanism to ensure the immediate availability of additional fleet capacity. Unlike long-term dry lease structures, which generally require a full authorization process associated with the incorporation of aircraft into a carrier's concession or permit, wet leasing allows carriers to meet urgent operational requirements without undergoing the lengthy procedures applicable to aircraft intended for long-term operation.

As opposed to long-term leasing structures typically used by scheduled carriers, wet leases are expressly regulated as short-term arrangements, approved for specific and limited purposes. Accordingly, their authorization process is significantly more streamlined, as it does not require (i) the inclusion of the aircraft in the carrier's Air Operator Certificate (AOC) Operations Specifications, (ii) amendments to operational, maintenance and security manuals, or (iii) additional training and certification processes for flight and ground personnel. This regulatory flexibility enables the near-immediate deployment of wet-leased aircraft to address urgent capacity shortages.

Although wet leasing is widely accepted and routinely used worldwide, both by non-scheduled operators in connection with large charter programs and by scheduled carriers to cover peak seasonal demand, its implementation in Mexico through the use of foreign-registered aircraft generated significant controversy. Notably, such opposition did not originate from passengers, air carriers, or even the aviation authority, but rather from a Mexican pilots' union.

"...civil aircraft have the nationality of the State in which they are registered, and Mexican nationality is acquired upon issuance of the aircraft registration certificate."

As a first step, it is necessary to properly interpret the constitutional provision requiring Mexican nationality by birth "...for all personnel crewing any vessel or aircraft covered by the Mexican flag or merchant insignia"¹ as set forth in Article 32 of the Constitution. Such interpretation must be assessed in light of the Convention on International Civil Aviation (the Chicago Convention), which establishes the fundamental principles governing international aviation, aircraft nationality, the prohibition of dual registration, and the operation of foreign-registered aircraft², principles that are fully aligned with the Mexican Constitution and domestic aviation legislation.

1.-This is a literal translation of the wording used in Article 32 of the Constitution. The terminology employed reflects the original constitutional language and is not intended to introduce or imply any technical, regulatory, or operational interpretation beyond the literal meaning of the Spanish text.

2.- Articles 12, 17, 18 and 83 bis, respectively.

In accordance with Articles 17 and 20 of Chicago Convention³, as well as the last paragraph of Article 44⁴ and the second paragraph of Article 45⁵ of the Civil Aviation Law (LAC), civil aircraft have the nationality of the State in which they are registered, and Mexican nationality is acquired upon issuance of the aircraft registration certificate. Likewise, the first paragraph of Article 44⁶ of the LAC provides that Mexican aircraft shall display the national flag.

Furthermore, the third paragraph of Article 45 of the LAC provides that *"Aircraft registered in another State may acquire Mexican registration, upon prior cancellation of the foreign registration."* This provision is consistent with Article 18 of the Chicago Convention, which expressly prohibits dual registration by providing that *"An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another"*.

"...foreign registered aircraft cannot be subject to Mexican crew nationality restrictions, and the requirement to display the Mexican flag applies exclusively to Mexican registered aircraft"

Accordingly, foreign registered aircraft cannot be subject to Mexican crew nationality restrictions, and the requirement to display the Mexican flag applies exclusively to Mexican registered aircraft. Unfortunately, in practice, Mexican carriers customarily place the Mexican flag on all aircraft within their operational fleets, including foreign registered aircraft. While Mexican legislation does not expressly prohibit the display of the Mexican flag on foreign registered aircraft, the absence of an explicit restriction may contribute to regulatory confusion.

Finally, the operation of foreign registered aircraft in Mexico is expressly regulated by the Civil Aviation Law and its Regulations (RLAC), which contemplate aircraft operations under various leasing arrangements, including those in which the aircraft remains registered in a foreign State, subject to prior authorization by the aviation authority⁷. In 2020, Mandatory Circular CO AV-08.03/20, which establishes the technical rules for the leasing of aircraft (CO AV-08.03/20), was issued; however, a mandatory circular cannot validly create substantive rights or impose obligations contrary to the Mexican Constitution, the Chicago Convention, or the Civil Aviation Law and its Regulations. In this respect, a detailed legal analysis of CO AV-08.03/20 is unnecessary, given its evident inconsistencies and internal contradictions.

Based on the foregoing, wet lease / ACMI structures constitute a lawful and viable mechanism for the immediate integration of foreign-registered aircraft, together with duly certified crew, into Mexican airline operations, for the purpose of addressing urgent capacity needs during short-term periods.

3.- "Aircraft have the nationality of the State in which they are registered"; and "Every aircraft engaged in international air navigation shall bear its appropriate nationality and registration marks", respectively.

4.- "...Civil aircraft have the nationality of the State in which they are registered."

5.- "The Mexican nationality of the aircraft is acquired with the aircraft registration certificate..."

6.- "...Mexican aircraft shall moreover display the national flag."

7.- Last paragraph of the article 45 of the Civil Aviation Law.

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