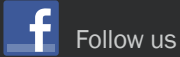


COELUM

Monthly Digital Publication by ABOGADOS SIERRA Y VAZQUEZ



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COELUM 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 to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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“In a few months our monthly newsletter COELUM will be entering its seventh year of being published every month without interruption. We have strived for it to become an appreciated, reliable and continuing source of information on the developments of Mexican aviation law and aircraft finance and leasing. The feedback that we have received over the years from our clients and friends has encouraged our belief that we have gradually and modestly achieved such purpose -at least in part-. For this reason in order to expand the scope of the topics that we like to cover in our newsletter also to such not strictly related to aviation law, with the commencement of this new year, we will be adding a by-monthly new supplement to which we have given the name

TERRUM

Which will cover a few more earthly topics such as rail, commercial law, corporate law, litigation and other relevant aspects of Mexican law that we hope can be of interest to our non-aviation related readers as much as to our current aviation constituents. COELUM will of course continue to be published every month as it has been during its six plus years of history while **TERRUM** will add an occasional new flair to its contents that we trust will be welcomed as well. We hope you will enjoy this first supplement of **TERRUM** and as usual we would be grateful to receive your feedback, thoughts and contributions.”



Registration of Short Form Aircraft Lease Agreements before the Mexican Aviation Registry.

by *Alejandra Llopis*.

The Mexican Aviation Registry (RAM).

In accordance with the Convention on International Civil Aviation (OACI) all aircraft must be registered before its national aviation authority, registration marks are printed on the aircraft's fuselage and the official Certificate of Registration or a certified copy thereof must be placed on board to be able to operate any flight.

In Mexico, the RAM is part of the General Directorate of Civil Aviation (DGAC) which is the national aviation authority. The RAM is responsible of the regulation of the requirements for the registration of aircraft. Article 14 of the RAM Regulation (RRAM)¹ establishes that filings for registration regarding certain documentation should be done personally or by a legal representative under a power of attorney granted by the party involved, the lessor or lessee. These documents will have to be filed with all the legal formalities. In case that a power of attorney has been issued abroad, it must be: i) certified by a notary public of the jurisdiction in which the power of attorney was issued; ii) apostilled by the local competent authority (i.e. Secretary of the State, Country Clerk or equivalent) in applicable jurisdiction based on the requirements of the Hague Convention of October 05, 1961; iii) translated into Spanish which needs to be certified by a court approved translator in Mexico; and iv) certified by a notary public in Mexico.

“In this article the author will talk about a new option for the registration of those ALAs that consists in the registration of a short form aircraft lease agreement...”

It is important to mention that in the case that the requirements for registration duly filed before the RAM do not fulfill the requirements established under Article 14 of the RRAM, the Director of the Mexican Registry must, within five business days counted from the date of the reception of the requirement, notify the omissions of the requirement to the interest party in a written form. The applicant will have fifteen days to correct noted omissions or missed requirements; if the applicant does not fulfill the requirements of the Director of the Registry, the application will be rejected and will not proceed.

For the RAM, the most important document that must be registered regarding aircraft interests, is the aircraft lease agreement (hereinafter referred to as the “ALA”) because it is the principal document used by the aircraft operator to prove the legal possession when the aircraft is not of its property, and it must establish all the obligations between the parties with respect to the leased aircraft.

As we know, ALAs are very extensive documents that contain many requirements which take a lot of time for review and the registration before the RAM. In this article the author will talk about a new option for the registration of those ALAs that consists in the registration of a short form aircraft lease

1.- Regulation of the Mexican Aviation Registry.

agreement (hereinafter referred to as the “SFALA”), this document contains approximately eight pages instead of filing the whole ALA that contains approximately two hundred pages.

Our firm has experienced the registration of a SFALA and the RAM has accepted it because it fulfills with all the essential elements of the contract established under the Mexican Civil Code for the Federal District that consists in the agreement and knowledge between the parties of all their rights and obligations in this case regarding an ALA and the subject matter of the contract that has to be the same as set out in the ALA , it means the description of the aircraft, model, serial number, registration mark etc.

“This SFALA summarizes the information of the ALA in brief clauses that only specify the important and required information by the RAM”.

Short Form Aircraft Lease Agreements.

A SFALA is executed by the lessor and the lessee in which all of the terms and provisions of the ALA will be considered and incorporated only by reference in the SFALA as if repeated in full. This SFALA does not have to be a substitution of the ALA; all the terms set out there have to be referred to the ALA because in the case of controversy the ALA will prevail. This document should be executed by the lessor and lessee and or executed by the corresponding legal representatives under a power of attorney duly granted by the parties. This new option for the registration of ALA, benefits the lessor as it protects the information that the lessor does not want to be public, for example, representations and warranties, rent amounts and other payments, fees and expenses, operational undertakings. It also may be used when time restrictions make it easier to file a SFALA.

This SFALA summarizes the information of the ALA in brief clauses that only specify the important and required information by the RAM. For example, the following clauses described below, show us how these are established under a SFALA:

Clause 1. Definitions

Here is established that all the words and expressions shall have the meaning as described in the ALA.

Clause 2. Representations and Warranties

It refers to all representations and warranties set out in the ALA for lessee and lessor.

Clause 3. Conditions

Here are established the conditions precedent for the lessee and the lessor before the delivery date.

Clause 4. Agreement to Lease

The lessor and the lessee agreed to lease the aircraft under the ALA terms.

Clause 5. Lease Term and Rent

As mentioned before this SFALA protects important information, for example, this clause only

mentions the obligation from the lessee to pay the basic rent established under the ALA, but it does not mention the amount, so the agreed amount will not appear in the recorded documents.

Clause 6. Scope of Lease

This is the most important part of the SFALA because here it is established that the lessee shall not be able to conduct any operations with the aircraft until the document has been filed for registration before the RAM and until other requirements established under the ALA have been provided in full by lessee to lessor. Also it is agreed between the parties, that this SFALA will not prejudice the rights and remedies of lessor under the ALA and that this SFALA will be subject and subordinate to the principal ALA in all aspects.

Clause 7. Additional Requirements

Here, the parties involved agree to perform all acts that the lessor, acting reasonably and under the ALA, considers appropriate to perfect the agreements set out in this SFALA and the ALA.

Clause 8. Notices

This clause refers to the delivery of notices by courier to the involved parties.

Clause 9. Law and Jurisdiction

Sets out in a brief summary of the governing law established under the ALA.

These brief clauses include all the necessary and required information for the registration before the RAM and it do not reveal any private and confidential or simply unnecessary information to protect the rights of the parties; this short document covers every requirement from the RAM and as it refers in every clause to the ALA.

It is important to mention that contrary to the registry before the Federal Aviation Administration, the registry of a SFALA or any other document that is filed for registration will not enter into force when the document has been filed before the RAM, it will enter into force until RAM completes the registration. The effect for the registration of this SFALA is that the document will be enforceable before third parties when the RAM notifies the SFALA registration.

Nowadays, there can be many ways and options for the registration of documentation for aircraft to protect the interests and confidential information agreed by the parties, one is the SFALA that we have studied in this article that is a better option to complete the registration before the RAM in order to avoid mistakes in the translation of a long document like the ALA and to protect the confidential information. As mentioned before, our firm has registered before the RAM some SFALA and we recommend this option because this document is valid although it is not registered before the RAM as it fulfills with all the essential elements of the contract and there are no conditions for its legality, also, it satisfies the requirements of the RAM and fulfills every condition for an ALA to be registered. This document reduces the turnaround times for a registration, which means that the authority will notify the entry into force of agreed clauses stated in the ALA in less time.

Relevant aspects of Know Your Customer.

by Vera García.

It is very important to study the legal concept of “Know Your Customer” (KYC), since nowadays it is vital to understand the figure and its application to individuals and to entities engaged into commercial activities that generates any profit or involve any cash transaction. The KYC figure is focused on preventing corruption, fraud, terrorism, organized crime and money laundering, in addition to the frauds committed within the big companies such as Ponzi investment schemes¹ and the Enron and WorldCom frauds.

Several countries have been forced to face these crimes through legislation, with laws and statues that are applicable to the financial institutions and in Mexico to the stock market, to the retirement saving system; to credit unions, foreign companies, investment institutions, savings cooperatives and insurance companies.

In this article we will discuss the countries that are now implementing these regulations through the legislation of companies’ policies; about the KYC’s objective and the actual situation in Mexico, and the advantages of its application within the economic, security and social aspects.

Precedents.

The first legal precedent referred to this area was the Patriot Act of the United States of America (PAUS). Main purpose and nature of PAUS was to provide the necessary tools to fight intercept and obstruct terrorism. This act was signed into by President George W. Bush on October 24 of 2001 as a result of the terrorist attacks of September 11, 2001. The act was based on the Foreign Intelligence Surveillance Act which granted the authorities the required elements to obtain the necessary information for the prevention or resolution of terrorism crimes. The Act contains the resolutions of the Fiftieth General Assembly, the resolutions of the National and Immigration Act of the United States issued by the United Nations as 1373, 1390, and the U.S. National Security Act. In addition, effects of PAUS are extra-territorial because it covers international jurisdiction and is based on international conventions and treaties².

Other countries that regulate this legal concept are Germany, with the Law on Money Laundering of 1993; Spain with Law 19/1993 issued on December 28 of 1993; South Africa through the Prevention of Organized Crime adopted in 2001; India through the guidelines that founded the Reserve Bank in 2004; New Zealand with KYC laws in 2010 and in Mexico, a law project named

1.- A Ponzi scheme is an investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Ponzi scheme organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the fraudsters focus on attracting new money to make promised payments to earlier-stage investors and to use for personal expenses, instead of engaging in any legitimate investment activity.

www.sec.gov

2.- http://www.fincen.gov/statutes_regs/patriot/index.html

the Federal Law on the Prevention and Identification of Operations with funds of Illicit Origin and Financing of Terrorism (FLPIOFIOFT) undertaken by the President on August 2, 2010. There are currently more than 65 countries that now regulate in this area³.

“Both the enactment of FLPIOFIOFT and modification proposed to the Mexican Tax Code (MTC) were approved by the Senate in April, 2011, but have yet to be published in the gazette of the federation”.

Mexican Legislation concerning KYC.

In Mexico, KYC was implemented by the enactment of FLPIOFIOFT and the modification proposed to the Mexican Tax Code (MTC) in the Article 27 and the addition of Article 27 BIS, according to the recommendations made by the Financial Action Task Force on Money Laundering (FATF). Both the enactment of FLPIOFIOFT and modification proposed to the Mexican Tax Code (MTC) were approved by the Senate in April, 2011, but have yet to be published in the gazette of the federation⁴. Article 27 of the Mexican Tax Code establishes that people acquiring shares through recognized markets and those considered placed with public investors will be exempted from the necessity to apply for registration in the Federal Register of Taxpayers and the electronic signature certificate. Now it introduces the obligation to extend notary public disclosures to identify the payment of consideration and the instrument that was covered. Article 27 BIS provides the obligation for legal entities to inform the tax authorities of a change of partners or shareholders, as well as names of people in control of the corporate rights or property of the company⁵.

In Mexico, the enactment of FLPIOFIOFT and the modifications proposed to articles of the Tax Code will ensure that the financial institutions, individuals and corporations listed below cannot be used by organized crime to carry out money laundry or the financing of terrorist activities. Also it is relevant to the legislation that there shall be constant coordination between the obligors and the Federal Government through the Ministry of Finance and Credit Public and other government institutions, so that there is a correct and early detection of any illegal operation that generates income for criminals.

Applicability.

The statutory provisions under laws such as FLPIOFIOFT establish administrative sanctions and coercive measures such as imprisonment, for people who do not abide the requirements and

3.- Joaquin Mañeru López. “Jornadas de Seguridad de Entidades Financieras. “Evolución de la Normativa para Combatir el Blanqueo de Capitales. Editorial Borrmar, Sa. http://www.borrmart.es/articulo_seguritecnia.php?id=1800

4.- For any Act or regulation to enter into effect, it must be first published in the Gazzete of the federation.

5.- <http://www.presidencia.gob.mx/documentos/iniciativas/ley-recursos-procedencia-ilicita-terrorismo.pdf>

orders stated. The sanctions are categorized by the degree of seriousness and are priced from two hundred to three thousand days of general minimum wage in Mexico City⁶ for less serious offenses; from three thousand to fifteen thousand days of the general minimum wage in Mexico City for offenses with a significant degree of seriousness, and behaviors that violate the system of prevention, a fine in from fifteen to one hundred thousand times the minimum daily wage in Mexico City, or from 10% to 100% of the value of the act or operation quantifiable in money. Likewise the law provides that in cases where organizers of contests, sweepstakes or gambling or commercial public notaries who violate the law can have their permits or clearances that allow them to perform their activities withdrawn. There may also be a second penalty that carries the possibility of applying a detention order for up to 16 years in imprisonment⁷.

The Law against Money Laundering and Terrorism applies to financial institutions, individuals and corporations that hold contests, raffles and those who issue credit cards or services, real estate agents, jewelers, landlords and sellers and leasers of vehicles, art dealers, stock carriers, public notaries⁸ and other “ Gatekeepers⁹”.

FLPIOFIOFT obligates the financial institutions and gatekeepers to develop policies, criteria and procedures for customer identification and knowledge of each customer’s transnational profile: To identify measures for the detection of unusual transactions in order to generate training programs for personal and information dissemination. To maintain and update records on transactions with its clients. To evaluate the degree of risk and make reports when there is suspicion of illegal transactions, and to submit reports to the Ministry of Finance and Credit Public when there is a cash operation for the purchase of any goods or services, when the amounts are higher than those stipulated in the Law (According to article 23 of FLPIOFIOFT the amount will be \$ 100,000.00 (one hundred thousand pesos 00/100 MN).

Currently the legal concept of KYC is based on compliance with the internal practices of companies, since the act has not yet been published in the gazette of the federation, it is still not mandatory and therefore the implementation of this kind of provisions by private companies has been optional so far.

Conclusion.

Currently, Mexico is facing a difficult situation fighting organized crime, violence, corruption and impunity, and these issues have weakened the state of law, the institutions and the entire society. Enforcement of the FLPIOFIOFT and the modifications proposed to articles of the MTC could help to neutralize crimes concerning the flow of illicit money.

6.- The General Minimum Wage in Mexico City is of \$59.82 pesos per day.

7.- Articles 45-47 of FLPIOFIOFT

8.- Article 8 of FLPIOFIOFT

9.- People whose activities are involved the movement of capital in different financial systems.

Airway tourist air grew only 0.4% this year.

The Ministry of Tourism reported that visitor arrived by air to Mexico grew only 0.4 percent from January to October 2011, compared to the same period in 2010. In total, 8 million 271 thousand passengers amounted in the aforementioned period. Based on immigration data, the ministry said that in the same months but in 2010 the amount stood at 8 million 239 thousand passengers. In conference, the head of the Ministry of Tourism indicated that this slight increase is due to the lack of air connectivity that prevails in Mexico. *Milenio. 01/December/11.*

Grows 8.3% in passenger traffic of Asur.

Huatulco's Airport recorded a 29.2 percent increase in passenger movement for Southeast Airport Group (Asur) a 8.3 percent rise in passenger traffic in November was reported, making it up to one million 341 thousand and 32 passengers. In a statement, the company said that in November Huatulco's airport had the highest increase with the 29.2 percent. Cancun's airport had a 6.4 percent rise in passenger traffic. The movement of domestic passengers in November rose 13.9 percent to 635 000 551, while international number of passengers grew 3.7 percent to 705 000 481. *Reforma. 05/December/11.*

OMA is looking to versify.

The Central North Airport Group, OMA, has an investment plan of 2.745 million pesos for the period 2011-2015. This five year plan is focused to invest and expand the commercial area of the thirteen terminals, diversifying their sources of income. A key aspect of the plan is to optimize the use of their property. "We found that between 900 and 1,000 hectares in our 13 airports that could generate more income if they realize its potential, I'm talking about hotels, shopping centers or industrial parks," said the CEO of the airport group. *El Economista. 08/December/11.*

AICM ignores the airlines.

At least seven companies requested compensation to the airport due the blackout of September 29 that lasted almost six hours; they have had no answer. The incident affected 240 flights and 30,000 passengers, losing millions. *CNN Expansion. 13/December/11.*

Judge recognizes new creditors of Mexicana.

A Federal Court recognized 1, 571 new creditors of Mexicana de Aviacion. These creditors are mainly ticket owners that resorted to the Federal Consumer Attorney (Profeco). The new creditors would have the last priority of payment in case of bankruptcy of the airline and the liquidation of its assets. *El Universal. 20/December/11.*

Mexican Aviation Industry – Getting Better.

The Mexican Aviation Industry is preparing to enter into a new era with the new industry model starting on February this year. This new model depends on whether Mexicana Airlines goes to bankruptcy or initiates operations. Experts analysts are confident that even if Mexicana does not initiates operations again, the market has been almost balanced with the growth of other national and international airlines. *El Universal. 26/December/11.*

Suggestion - Improve the Airports.

Mexican Airports that receive more than 2 million passengers per year such as Mexico City, Cancun, Puerto Vallarta and Los Cabos, need to improve the quality and lower the prices of their services and facilitate the passengers the connecting flights procedure. As for the airports that do not receive more than 2 million passengers per year, it is suggested to improve the check in services, passport control, and security. This methodology was implemented by the Ministry of Turism in order to promote tourism. *Reforma. 28/December/11.*

Airlines owe ASA 800 million pesos.

At least nine Mexican Airlines have debts for almost 800 million pesos to Airports and Auxiliary Services (ASA) caused by fuel that was delivered and never paid. ASA is following the legal procedure in order to recover these resources, problem is none of this airlines are still operating and six of them practically disappeared. *El Universal. 29/December/11.*

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