

# COELUM.

Monthly Digital Publication by  
ABOGADOS SIERRA

## Cape Town Registration Filings and Sphere of Application of the Convention.

- By Jessi Saba

### MAY 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.

  
**sierra**  
L A T A M

June 15, 2023  
Year 18 No. 1

Find us in



Audio Message



## Cape Town Registration Filings and Sphere of Application of the Convention.

by Jessi Saba.

In aviation finance transactions, one crucial aspect to consider is the requirement for Cape Town Convention<sup>1</sup> (the “Convention”) registration filings to perfect the interests created by such transactions. Not all interests qualify as international interests, as defined by the Convention, necessitating a comprehensive analysis of the transaction to determine what constitutes an international interest in accordance with the Convention.

As provided in Article 2 of the Convention, *“an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely and identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol”*. This includes airframes, aircraft engines, and helicopters<sup>2</sup>, which are referred to as “aircraft objects”.

As per Article 7 of the Convention, an interest is constituted as an international interest under the Convention, where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

Interests created by virtue of a lease agreement, security agreement (including mortgages or pledges), assignment, novation, and sales relating to aircraft objects as defined in the Convention, etc., are known as international interests, and therefore, may be registered at the International Registry. One of the benefits of registering international interests with the Registry is the obtention of priority and effects against third parties. As asserted in the Practitioner’s Guide, *“the International Registry is not, per se, a title registry, the inclusion of contracts of sale has the added benefit of providing, over time, a searchable listing giving notice of the various transfers of the relevant object over the course of its life”*.

Within the analysis of an aviation finance transaction, in addition to determining if an object is an aircraft object for purposes of the transaction, and if the interest is in fact an international interest, we must analyze if the specific transaction falls into the sphere of application of the Convention.

Article 3 of the Convention states that the Convention will be applicable when at the conclusion of the agreement creating the international interest, the debtor is situated in a Contracting state, regardless of the where the creditor is situated.

The Convention will be applicable when the requirements stated above are fulfilled, and if the transaction satisfies the requirements known as “connecting factors”<sup>3</sup>. There are three connecting factors that will determine the applicability of the Convention, which are:

- 1) Where the debtor is located (as provided in Article 3 of the Convention)
- 2) Where the airframe of helicopter is registered; or

1.- Convention on International Interests in Mobile Equipment (<https://www.unidroit.org/instruments/security-interests/cape-town-convention/>)

2.- Article 3(a) of the Convention

3.- Practitioners Guide Section III (A)

### 3) Where the airframe or helicopter will be registered.

If at least one of the connecting factors is fulfilled, and the requirements mentioned above in respect to the creation of an international interests are fulfilled, then the Cape Town Convention will be applicable to that specific transaction, and registration of the relevant international interests will be applicable.

***“...we must analyze if the specific transaction falls into the sphere of application of the Convention.”***

Nonetheless, there is a specific situation that must be considered specifically related to aircraft engines considering all the above analysis. Let's say for purposes of an example, that a brand-new aircraft will be delivered to an aircraft lessor, to be further leased to an airline. The manufacturer of the aircraft in this scenario is situated in a non-contracting state, while the lessor and the airline are both situated in different contracting states. The aircraft will be registered at lessee's jurisdiction.

In this specific case, and at first glance, one might think that the Convention is not applicable given that the debtor is not situated in a contracting state, at the time the agreement given rise to the international interest is finalized, as per Article 3 of the Convention, though considering the aircraft is intended to be registered in the airline's jurisdiction which is a contracting state, the connecting factor is fulfilled and therefore, the transaction falls within the scope of the Cape Town Convention...but not entirely.

The connecting factor will only be applicable to the airframe and not the engines, even though the engines are considered aircraft objects for purposes of the Convention. This is mainly because the airframe is capable of being registered in a contracting state, for nationality purposes by being granted a registration mark, but not the engines. The engines of an aircraft are not registered locally in a jurisdiction for purposes of providing nationality, but rather for recording specific interests. The connecting factor fulfilled for the airframe, would not be applicable for the engines and therefore, the sale between the non-contracting state seller and the lessor will only create a contract of sale subject to recordation with the International Registry over the airframe (except in cases where the state of registration applies an accession doctrine in respect to the engines of an aircraft). The further lease between lessor and the airline will constitute an international interest on all aircraft objects, given that the debtor airline is situated in a contracting state.

It is important that the international registry is of declarative nature, and as mentioned before, the benefits of registering an applicable international interest and contract of sale would be to have the benefits of priority, and protection against third parties. Not having an interest registered, does not mean that the sale, the security, the lease, or the assignment did not occur, it means that it will not have priority against other registered interests.

***“The connecting factor will only be applicable to the airframe and not the engines, even though the engines are considered aircraft objects for purposes of the Convention.”***

The above is consistent with Mexican registration law. In practice, it is always advisable to register all interests in all available registries, to make sure that the interest ranks first in priority against any other registered or unregistered interests. An argument could be made however that even though the sphere of application of the Convention would not cover a case as the exemplified above, the abundance in registrations will certainly cause no harm, and if deemed improper, it will not have any effects to it but if an interpretation can be made that such registration is valid indeed, it is certainly best to be abundant in the protection of the interests.

**Pilots and flight attendants foresee chaos in obtaining medical certificates due to AFAC Decision.**

A railway between the airports of Mexico City (AICM) and Felipe Angeles (AIFA) would help to depressurize the customs of Manzanillo, in Colima, and Pantaco, in the capital of the country, and at the same time would facilitate the migration in the processing of goods from AIFA, considered the director of the airport, Isidoro Pastor Roman. The project, suggested by the concern of the companies of the air cargo sector, has high possibilities of becoming a reality. It is currently under study to be presented to the President of Mexico, and according to Pastor, "there are proposals from some companies to build that spur to be able to handle cargo from those points". [www.forbes.com.mx/pilotos-y-sobrecargos-preven-caos-para-obtener-certificados-medicos-por-decision-de-afac/](http://www.forbes.com.mx/pilotos-y-sobrecargos-preven-caos-para-obtener-certificados-medicos-por-decision-de-afac/) 09/05/2023.

**AIFA, with potential to rebound in cargo movement.**

With the current restrictions imposed on cargo operations at Mexico City's International Airport (AICM), it is anticipated that the tonnage previously handled by the Mexico City terminal will now be dispersed to other nearby regions. According to the Bonded Warehouse, Terminal Logistics, the Felipe Angeles International Airport (AIFA) is expected to significantly benefit from this situation and could potentially rise to the second position nationally in terms of cargo operations. Additionally, the Querétaro International Airport (AIQ) is projected by the Secretariat of Sustainable Development (SEDESU) to capture 10 to 15% of the AICM's annual cargo volume, which amounts to 285,000 tons. As a result, this redistribution of cargo will lead to an increased demand for logistics services in these new regions. [www.eleconomista.com.mx/estados/AIFA-con-potencial-para-repuntar-en-movimiento-de-carga-20230515-0119.html](http://www.eleconomista.com.mx/estados/AIFA-con-potencial-para-repuntar-en-movimiento-de-carga-20230515-0119.html) 15/05/2023.

**State-owned airline is official: Government publishes decree in DOF.**

On May 18, the Mexican Government officially announced the creation of the Mexican State Airline through a decree published in the Official Gazette of the Federation (DOF). This new airline will operate under the supervision of the Ministry of National Defense. The reforms to the Aviation and Airports Law, approved by the Congress on April 29, were deemed essential for achieving Category 1 status recovery. However, they also included provisions allowing the government to establish its own airline. The government's parastatal airline will primarily cater to beneficiaries of social programs while also aiming to serve routes that are currently underserved by national airlines. [www.elfinanciero.com.mx/nacional/2023/05/18/aerolinea-del-estado-es-oficial-gobierno-publica-decreto-en-el-dof/](http://www.elfinanciero.com.mx/nacional/2023/05/18/aerolinea-del-estado-es-oficial-gobierno-publica-decreto-en-el-dof/) 18/05/2023.

**AMLO withdraws the concession for the Nuevo Leon Airport.**

The renovation of the concession for the International North Airport was denied by the president, Andrés Manuel López Obrador (AMLO), which is valid until August 2023. Several sources suggest that there was a meeting between executives who reached this agreement. Furthermore, the most recent reforms that have been approved by the Senate have had a clear impact on this decision, by tightening the requirements for granting the concession. [www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?\\_\\_rval=1&urlredirect=/quita-amlo-concesion-a-aeropuerto-en-nuevo-leon/ar2610722](http://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?__rval=1&urlredirect=/quita-amlo-concesion-a-aeropuerto-en-nuevo-leon/ar2610722) 25/05/2023.

**New aerospace cluster is born to cover demand in the State of Mex.**

Due to the presence of business opportunities in the aerospace sector for supplying the AIFA (Felipe Angeles International Airport) and the AIT (Toluca International Airport), 12 companies from the State of Mexico have come together to form an aerospace cluster. This cluster aims to provide technological and industrial resources as well as expertise to support the airports. The project is currently operational, and its first activity took place in March, involving the export of aircraft parts to the United States. [www.a21.com.mx/aeroespacial/2023/05/26/nace-nuevo-cluster-aeroespacial-para-cubrir-demanda-en-el-edomex](http://www.a21.com.mx/aeroespacial/2023/05/26/nace-nuevo-cluster-aeroespacial-para-cubrir-demanda-en-el-edomex) 26/05/2023.

# COELUM.

---

## JESSI SABA

Admitted to practice law in 2013. Ms. Jessi Saba, of Mexican nationality obtained her law degree at Universidad Iberoamericana, México. She has been admitted at the secondment program for the Aviation Working Group, and holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Aircraft Contract Law, Corporate Law.

e-mail: [jsaba@asyv.com](mailto:jsaba@asyv.com)



---

Prol. Reforma No. 1190 25th Floor,  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)



[www.linkedin.com/company/asyv](http://www.linkedin.com/company/asyv)

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.