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Monthly Digital Publication by
ABOGADOS SIERRA

**Prior Tempore Poitor Iure.
But what if the Public Registry does not make it so easy?**

- By Viridiana Barquín.

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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August 15, 2023
Year 18 No. 3

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Prior Tempore Poitor lure. But what if the Public Registry does not make it so easy?

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The registry rights and obligations refer to the responsibilities and prerogatives of both the registry authorities and the users involved in the various existing public registries in Mexico. The Public Registries are the governmental authorities in charge of registering legal acts related to the assets and rights of individuals or companies, which contributes to providing legal certainty in commercial relations and transactions.

The most relevant rights and obligations in the field of registration in Mexico are:

1. Registration Rights:

- **Right to Registration:** every individual or company has the right to register in the corresponding Public Registry the acts or contracts from which rights and obligations are constituted (in each case the applicable legislation will indicate those that must be registered as applicable).
- **Right to Consultation:** every individual or company has the right to consult public records to obtain information about the registered acts, rights or liens over any asset.
- **Right to Rectification:** If there are errors or inaccuracies in the records, the relevant party has the right to request correction or rectification.
- **Right to Legal Certainty:** The Public Registries have the obligation to secure the integrity, authenticity and availability of the registered information, thus providing legal certainty to the registered acts and rights.

2. Registration Obligations:

- **Registration Obligation:** The Public Registries must register the acts and contracts established as registrable in the applicable law.
- **Publicity Obligation:** The Public Registries must secure the publicity of the registrable information so that the relevant party can consult and get certified evidence.
- **Obligation of Confidentiality:** Although the registry information is public, the Public Registries are obliged to maintain the confidentiality of certain sensitive data of the holders, complying with the data protection laws.
- **Obligation to Collaborate with Authorities:** The Public Registries must collaborate with other authorities and entities as necessary to pursuant their functions and to protect the rights of holders.

So, with regard to liens, guarantees and securities constituted over aircraft or engines, it is important to consider certain aspects, specifications and also some discrepancies with respect to the different competent Public Registries as each of them has its own rules and procedures and this is where the Sole Registry of Guaranties on Movable Assets (RUG) becomes relevant given its specialty¹. Hence, Article 22 of the Commercial Code (second paragraph) provides: *“There must be coordination² and communication between the special registries so that the registered security interests and liens on movable can also be consulted through the Sole Registry of Guaranties on Movable Assets.”*

In terms of the effects of registration in Mexico, it is essential to establish effectiveness against third parties (opposability)³ and to protect the rights of the holders. Within the effects of registration, we also have publicity to allow third parties to know the registered act and the holder, priority and legal certainty.

1.- Article 30 of the Public Registry of Commerce Regulation: *“The recordation of the acts trough which a security on moveable assets is constituted, modified, transmitted or cancelled will be made with the RUG in accordance with the provisions of the Commercial Code...”*

2.- Coordination that should be noted does not exist unfortunately.

3.- Article 22 Commercial Code (first paragraph): *“When pursuant to the applicable law, an act must be registered in the Public Registry of Property or in special registries to be effective against third parties, its registration in such registries will suffice”...*

But the big question comes regarding the specific date on which the registration is effective? From the date of the filing of pledge, guaranty or security document with the Mexican Aviation Registry (RAM)?, from the date on which the RAM issues the Certificate of Registry evidencing such registration?; or from the date of payment of the applicable duties?⁴. Or, in respect to the RUG, from the date of the registration form issued?

“There must be coordination and communication between the special registries so that the registered security interests and liens on movable can also be consulted through the Sole Registry of Guaranties on Movable Assets.”

Let’s recall however, that the registration by the RAM after the filing can take weeks or even months, and as for the RUG, although the registration is carried out more quickly. It must be pointed out that in any case it can only occur some days after the corresponding pledge or security had been entered once the notary who formalized the document issues the corresponding notarial instrument.

Therefore, in practice, the only registration that could be completed on the same day on which the pledge or security document is entered by the parties is the one conducted with the International Registry. So, while the International Registry is as valid as all other Public Registries in Mexico, unfortunately, its existence is not well known or understood in general, so its operation and scope has had to be explained to Mexican courts on numerous occasions. It has been difficult for some of them to understand its agility and ease way of operation, the absence of multiple requirements and several formalities for the registration is usually difficult to understand in a system of excessive formalities such as the Mexican. The RAM for example, requires that for the registry of any lien, the ownership of the relevant asset must be also registered pursuant the corresponding formalities.

As explained above, each Public Registry will have its own requirements and procedures, and even though the RUG is faster in registering than the RAM, there is one of its requirements that we have considered important to analyze and specifically in terms of the aircraft pledge agreements. Such requirement is about the obligation to indicate the term of the pledge and the termination date as a mandatory information to complete in the form that must be submitted electronically for registration. Definitely this is an area for improvement since the pledge is only terminated once the pledgor complies in full with the secured obligation and pledgees releases the pledgor accordingly.

So that the question of what happens after such maturity date in the event that the pledgor had not fully complied with the secured obligations is still in the air. Does it mean that the pledgee is being violated, harmed or diminished its priority, opposability against third parties and protection rights as described above? And moreover, will this also imply additional and no-sense actions and expenses, due to the constant follow up and meticulous monitoring the compliance of the obligations; or, where appropriate, entering into additional documents to extend the term such maturity date is close and thus avoid the interpretation that the pledge has been terminated?

That is why we emphasize the importance of International Registry and why we will continue emphasizing such importance and even though there are many things to improve in each of the local Public Registries herein analyzed, we also still recommend such registration pursuant to its corresponding procedures in order to comply with them properly and avoid future complexities. But definitely, it is necessary a deep analysis of all these deficiencies in order to have an efficient local public registry system and functional in practice.

4.- Article 21 of the Mexican Aviation Registry Rule: “the registered documents produce effects against third parties from the day on which the registration is conducted”.

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