



CUAUHTLI, BUFETE LAN AVIATION NEWSLETTER

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CUAUHTLI
Cuauhtli, means 'eagle' in nahuatl,
the Aztecs' language.

Corporate law, contracts, international trade, intellectual property, energy, aeronautical law, ground transportation, maritime law, administrative law, environmental, sanitary law, information technologies, franchises, real estate, foreign investment, migratory law, commercial transactions.



AIRCRAFT LEASE IN MEXICO

February 2, 2021.

Lease of aircraft is a common transaction in aviation throughout the world and Mexico is no exception.

However, is a complex topic which should be addressed by attorneys with expertise in aviation and airport law such as those of Bufete Lan Law Firm in Mexico City.

Recently, our aeronautical authority, the Mexican Federal Agency of Civil Aviation- AFAC, issued the Technical Rules for the Lease of Aircraft.

These Rules were issued in accordance with Mexican aviation legislation and standards and with the ICAO Convention on International Civil Aviation.

Our Law Firm reviews some of the relevant aspects of this important topic for aviation.

Compliance of these mandatory Rules is closely related to the draft of a good aircraft lease agreement. An inadequate document could contradict the Rules and, thus, become void.

In fact, in order to complete a lease transaction, first the technical part of a lease agreement shall be submitted for review and authorization of AFAC which may enter into transfer of responsibility agreements with other national aviation authorities regarding vigilance of operational safety in lease schemes.

The Technical Rules for the Lease of Aircraft are applicable to holders of concessions and permits for air transportation that operate aircraft with Mexican nationality marks and registration or foreign, as well as to foreign operators that operate aircraft with Mexican nationality marks and registration.



Any concession or permit holder that cedes or pretends to cede an aircraft of its property or its possession to another holder of a concession or permit or to a foreign operator is subject to the Rules, as well as those that pretend to acquire or actually acquires an aircraft under a lease.

The responsibility of operational control of an aircraft with Mexican nationality marks and registration that operate abroad (outside Mexico) is of the holder of the concession and permit that controls the corresponding aircraft. If they themselves perform maintenance, flight control and flight dispatch, authorization from the Mexican aeronautical authority is required.

In case of aircraft with Mexican nationality marks and registration which are leased, chartered, interchanged or operated by foreign operators, the airworthiness maintenance is subject to Mexican legislation but the Mexican authority may transfer the responsibility of the vigilance of this obligation to the aviation authority of the foreign operator.

Mexican Rules on aircraft lease covers leases with or without crew. This is an important aspect which should be accordingly drafted in a lease agreement because of the different legal considerations involved under each format.

In the lease without crew the aircraft is operated with the AOC of the lessee and usually under its operational and commercial control using its corresponding airline designation code and traffic rights.

The Rules also cover leases with crew which involves an aircraft operated with the lessor AOC and usually exploited under the commercial control of the lessee using the airline designation code and traffic rights of the lessor.

LEASE WITHOUT CREW

Lease agreements shall establish that the lessee that makes the crew available is the responsible party which shall have the operational control of the aircraft and assume all the corresponding obligations.

It is also important that the lease agreement contemplate the following aspects related to the responsibilities of the parties concerning:

- a) Licenses and training of the crew
- b) Training of flight attendants
- c) Aircraft airworthiness and maintenance
- d) Operational control including flight dispatch and tracking
- e) Schedules for crew and flight attendants
- f) Regime of signatures concerning conformity of maintenance

It is relevant to point out that the General Manual of Operations and/or the operation specifications be correspondingly amended to contemplate as a minimum the following information: name of the parties involved in the lease and its duration, nationality marks and registration of each aircraft involved in the agreement, types of aircraft to be used, operational areas, and rules and standards applicable to the operation of the aircraft.

The Rules also contain provisions regarding leases without crew of aircraft registered in other States.

In this regard, it is pertinent to point out that when the aircraft is registered in another State different to Mexico, it is possible to reach an agreement for the transfer of responsibility to the Mexican aviation authority by the State of Registration by which the latter delegates to AFAC the total or part of its obligations and responsibilities as State of registration in accordance to the Chicago Convention or, if possible, also with its national legislation (Article 83 bis).

There are also obligations concerning aircraft under lease without crew registered in Mexico's Aeronautical Registry (Registro Aeronáutico Mexicano) belonging to foreign persons or companies.

LEASE WITH CREW

It should be noted that in the case of aircraft with Mexican flag, regardless of the State of registration, only Mexicans pilots by birth with license granted by AFAC can fly it.

In leases with crew, it is the lessor which usually controls the operation of the plane and it should be operated in accordance with an AOC issued by the aviation authority of the State of registration.

The party that leases the aircraft and makes available to it crew, maintenance and fuel, is the lessor who is therefore considered as the operator. In addition, if the lessor charges for the use of the aircraft and related services, its operation would be subject to the rules and other applicable provisions of AFAC, the Mexican aeronautical authority.

An important issue in a lease agreement is the determination of the party in control of the operations and, thus, responsible of operational safety. So it is advisable to carefully determine in the agreement who de facto and de iure has the control of the aircraft operations.

There are different formats of leases with crew: charter or sub-charter which is intended for a short or very short term. Under these formats, it is the lessor who assumes all the responsibilities involved and the operational control.

As to be expected, in relation to the Rules there are many other aspects involved in the lease of aircraft in Mexico. The above is just a sample of some which are relevant.

In a future "Cuauhtli", Bufete Lan Law Firm will address the legal issues involved in the acquisition of aircraft under the mentioned AFAC Rules.

Last but not least, an aircraft lease agreement is a complex document which involves a substantial number of technical and legal issues and considerations.

Should you need reliable, professional assistance in this topic and in general in Mexican aviation and airport law, contact us at bufetelan@bufetelan.com

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