



**COUNTRY
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The Legal 500 Country Comparative Guides

Mexico

AVIATION FINANCE & LEASING

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This country-specific Q&A provides an overview of aviation finance & leasing laws and regulations applicable in Mexico.

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MEXICO

AVIATION FINANCE & LEASING



1. What international aviation conventions has your jurisdiction signed and/or ratified?

Mexico is a signatory to, and has ratified, most international aviation conventions, including: The 1929 Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Warsaw Convention), as amended by the 1955 Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the Hague Protocol); the 1944 Convention on International Civil Aviation (the Chicago Convention); the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention); the 1968 Convention on the International Recognition of Rights in Aircraft (the Geneva Convention); the 1999 Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention); the 2001 Convention on International Interests in Mobile Equipment and The Protocol to the Convention on Matters Specific to Aircraft Equipment (the Cape Town Convention).

2. If your jurisdiction has signed and ratified the Cape Town Convention: a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention? b. Does the Cape Town Convention take priority over conflicting national law?

a. Which qualifying declarations (opt-in and opt-out) has your jurisdiction made under the Cape Town Convention:

(1) Article 54 of the Convention: all remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court shall not be exercised, in accordance with Mexican law, without leave of the court; (2) Article 39 paragraph 1 of the Convention: a) all categories of non-consensual rights or interests which under Mexican law has and will in the future have

priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest; and b) nothing in the Convention shall affect the right of the United Mexican States or that of any entity thereof, any intergovernmental organization in which the United Mexican States is a member State, or other private provider of public services in its territory to arrest or detain an object, given in interest under Mexican law for payment of amounts owed to any such entity, organization, or provider directly relating to the services provided by it in respect of that object or another object, according to the Mexican law; (3) The Convention shall not apply to a transaction which is an internal transaction in relation to itself with regard to all types of object, subject to Article 50; (4) for the purposes of Article 1 and Chapter XII of the Convention, the relevant courts will be the courts legally constituted and invested with the Mexican Judicial Power; and (5) In accordance with Article 60 paragraph 1, the Convention will not be applicable to the pre-existing rights or interests as defined in Article 1 subparagraph v) of the Convention, constituted prior to the date of the entrance into force for the United Mexican States of the Convention, consistent with its national law. Those rights and interests will retain the priority they enjoyed under Mexican law prior to that date.

b. Does the Cape Town Convention take priority over conflicting national law? Pursuant to article 133 of the Political Constitution of the United Mexican States, the Constitution itself, the laws passed by the Congress of the Union and all treaties entered into by the President of the United Mexican States, and approved by the Senate, are the Supreme Law of the Union. Further, the Supreme Court of Justice has ruled that treaties rank above federal laws, and below the Constitution.

3. Will a court uphold the choice of a foreign governing law in respect of the following contracts and if so, please also state any conditions or formality

requirements to this recognition a. Lease and b. Security document (for example, mortgage)?

a. Lease Pursuant to Article VIII of the Protocol to the Cape Town Convention on Matters Specific to Aircraft Equipment, and the federal and civil local codes of the States of the Federation, contracting parties are free to choose the law that shall govern their contractual rights and obligations, except with respect to: (i) the exercise of rights *in rem*, including the enforcement of rights under a mortgage; (ii) agreements pertaining to mobile assets.

A court in Mexico would give effect to the parties' choice of law by applying the substantive elected by the parties.

b. Security document (for example, mortgage)

See a. above.

4. Please confirm whether it is (i) customary and (ii) necessary to also take a local law mortgage and if so, why?

It is both customary and recommended to take local law mortgage with respect to aircraft, and that such mortgage be recorded with the Mexican Aeronautic Registry. The latter constitutes public notice to third parties of the existence of the mortgage, and grants priority to the mortgagee. The rights resulting from a mortgage are rights *in rem*, enforceable before the competent Mexican court.

5. Are foreign judgments recognized and enforceable by courts of your jurisdiction and if so, please also state any conditions or formality requirements to this recognition (for example, do you require a local court order confirming such recognition)?

Foreign judgments are recognized and enforceable by the courts of Mexico without further review on the merits pursuant to Article 1347-A of the Commerce Code (*Código de Comercio*), provided that: (a) the judgment is obtained in compliance with the legal requirements of the jurisdiction of the court rendering that judgment and in compliance with all legal requirements of the relevant transaction documents; (b) the judgment is strictly for the payment of a certain sum of money, based on an *in personam* (as opposed to *in rem*) action; (c) service of

process was made personally on each party or on its appointed process agent (*apoderado*) (a court of Mexico would consider the service of process upon the process agent to whom a power of attorney has been granted in accordance with Mexican law by means of a notarial instrument, to be personal service of process meeting procedural requirements of Mexico); (d) the judgment does not contravene Mexican law, the public policy of Mexico, international treaties or agreements binding upon Mexico or generally accepted principles of international law; (e) the applicable procedure under the laws of Mexico with respect to the enforcement of foreign judgments (including issuance of a letter rogatory by the competent authority of the jurisdiction requesting enforcement of the judgment and the certification of the judgment as authentic by the corresponding authorities of the jurisdiction in accordance with the laws thereof) is complied with; (f) the judgment is final in the jurisdiction in which it was obtained; (g) the courts of the relevant jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in that jurisdiction; and (h) the action in respect of which the judgment is rendered is not subject to legal proceedings in Mexico, among the same parties.

6. Is your aircraft registry an owner-register (registering ownership interests) or an operator-register (registering interests as operator)? Please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a Certificate of Registration)

Mexican Aeronautic Registry is an operator-register. Article 14 of the Mexican Aeronautic Registry's Regulations lists the general requirements for those documents that are subject to registration therewith. The application must be in writing, and include, at least, the following: (a) name of the applicant, (b) evidence of existence (certificate of incorporation, formation, bylaws, etc.); (c) power of attorney of the individual representing the applicant; (d) an address within Mexican territory for purposes of receiving any relevant notice; (e) evidence of payment of any relevant recordation fees; and (f) the relevant transaction document(s), duly executed by the parties thereto, formalized before a Notary Public, legalized, or apostilled, applicable, and if in a language other than Spanish, translated by a court-approved translator. The corresponding recordation will be evidenced by issuance of a certificate of registration.

7. Is there a security document register in your jurisdiction where a mortgagee's interests will be recorded? If so, please also state any conditions, procedural steps or formality requirements for such registration and explain how this is evidenced (for example, the issuance of a certificate or official stamp on the security document)

There is no independent security document register for aircraft mortgages within the Mexican Aeronautic Registry. All instruments with respect to the possession and ownership of aircraft and engines are recorded with the Mexican Aeronautic Registry.

Mortgages on aircraft registered in Mexico must be registered on the Aviation Section of the Mexican Aeronautic Registry to be binding on third parties. Pursuant to article 14 of the Regulations of the Mexican Aeronautic Registry, any request to record a mortgage or any other lien must be filed in writing, setting forth the factual statements and attaching: (i) evidence of the incorporation and existence of the applicant, if the applicant is an entity, or a copy of its official identification, if the applicant is an individual; (ii) a power of attorney, if such application is being filed by a third party; (iii) a domicile within Mexico to receive any notices and documents; (iv) proof of payment of the recordation fees; (v) a description of the documents that are attached to the corresponding application; (vi) the date of filing and original signature of the applicant or its attorney-in-fact; (vii) originals of the certificate of registration marks and certificate of airworthiness; and (viii) the documents by means of which the corresponding mortgage was created. If the latter was issued abroad, such document must be apostilled and translated into Spanish by a court-approved translator. If the document was issued in Mexico, signatures thereto must be ratified before a Notary Public.

8. What is the effect of registration of: a. Ownership interest (for example, proof of title to third parties of ownership) b. Lease (for example, perfects the status of the Lessor under the Lease) c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these

a. Ownership interest (for example, proof of title to third parties of ownership) Mexico is a party to

the Convention on the International Recognition of Rights in Aircraft, signed in Geneva on June 19, 1948. Therefore, rights in relation to the ownership of aircraft are consistent with the rules set out therein. Furthermore, registration of ownership constitutes public notice to third parties of the rights and interests in respect of the aircraft. Upon registration, interests are enforceable against third parties before any Mexican court.

b. Lease (for example, perfects the status of the Lessor under the Lease) Registration of a lease is declarative in nature rather than constitutive of rights. The effect of registration of an aircraft lease is to protect the lessor and/or lender's rights under the relevant lease.

c. Security document (for example, secures priority over later registered security). If there are any interests that could rank prior to the security document please state these) Once a security document has been recorded, deregistration of the aircraft will require the secured party's consent.

9. What types of lease are recognized in your jurisdiction (for example, translation, notarization, apostille, legalization etc.)?

Operating, wet, finance leases, or leases concerning only engines or parts, are all permissible and recognized in Mexico. If the relevant document was issued abroad, it must be apostilled and translated into Spanish by a court-approved translator. If the document was issued in Mexico, signatures there to must be ratified before a Notary Public.

10. What formalities are required to perfect Lessor's rights under a lease in your jurisdiction?

The Mexican Aeronautic Registry is an operator-register. Therefore, any lease with respect to Mexican-registered aircraft must be recorded with the Mexican Aeronautic Registry. The application must be in writing, and include, at least, the following: (a) name of the applicant, (b) evidence of existence (certificate of incorporation, formation, bylaws, etc.); (c) power of attorney of the individual representing the applicant; (d) an address within Mexican territory for purposes of receiving any relevant notice; (e) evidence of payment of any relevant recordation fees; and (f) the relevant transaction document(s), duly executed by the parties thereto, formalized before a Notary Public, legalized, or apostilled, applicable, and if in a language other than

Spanish, translated by a court-approved translator. The corresponding recordation will be evidenced by issuance of a certificate of registration.

11. Are the ownership rights relating to engines recognized as separate and distinct from the ownership of the rest of the aircraft in your jurisdiction? Please highlight any separate registration, filing or additional formalities that are required to be completed to perfect Lessor's interest in the engines

Engines installed on aircraft are not separate or distinct from the ownership or possession of the rest of the aircraft. There are no separate registration, filing or additional formalities required to be completed to perfect Lessor's interest in engines installed in an aircraft.

12. What form does security over aircraft generally take in your jurisdiction?

Apart from security granted abroad, it is customary and recommended to take local law mortgage with respect to aircraft, together with its recordation with the Mexican Aeronautic Registry. The latter constitutes public notice to third parties of the existence of the mortgage, and grants priority to the mortgagee. The rights resulting from a mortgage are rights *in rem*, enforceable before the competent Mexican court. Mortgages governed by foreign law are recognized and recordable in Mexico; however, if the aircraft is located in Mexico, it is advisable that the mortgage be regulated by Mexican law as a practical matter.

13. Are there any particular terms or characteristics that such a security document must take (for instance, a cap on the secured liabilities)?

To be enforceable against third parties, a mortgage with respect to aircraft bearing Mexican registration marks must be recorded with the Mexican Aeronautic Registry. Such mortgage must either: (a) be created as a public deed before a notary public; (b) have the parties' signatures ratified before a Mexican Notary Public; or (c) if executed abroad, be notarized, apostilled and translated into Spanish by a court approved translator, if granted in a language other than Spanish.

14. Are there any perfection requirements for such security document? If so, please state any conditions, procedural steps, formality requirements or documentation (for example, corporates, list of directors etc.) required to effect this

See 13. above.

15. Summarize any captive insurance regime in your jurisdiction as applicable to aviation.

Captive insurance is not regulated in Mexico. The closest reference to a similar regime is contained in Article 74 of the Law of Insurance and Bonds, which establishes that insurance transactions with affiliates cannot be undertaken on more favourable terms than those offered to the public. Therefore, becoming a captive under Mexico's current legislation has not been attempted by Mexican business entities.

16. Are cut-through clauses under the insurance and reinsurance documentation legally effective in your jurisdiction?

Article 18 of the Insurance Agreement Law sets forth that even when an insurance company reinsures against insured risks, it shall remain solely liable with respect to the insured party. However, "cut-through" clauses in insurance and reinsurance documents are common practice, and enforceable based on the principle of liberty of contract.

17. Are there minimum requirements for the amount of third-party liability cover that must be in place in your jurisdiction?

Yes. The Civil Aviation Law and its Regulations provide for mandatory insurance requirements for air carriers.

18. Can a mortgagee (or equivalent security interest holder) or lessor following an event of default under a mortgage (or equivalent security document) or lease, respectively, take possession of the aircraft without judicial intervention in your jurisdiction? Please also state any conditions, procedural steps, formality

requirements or documentation (for example, original, legalized, translated Lease/Mortgage, corporates etc.) required to effect this

The repossession, entry, removal, sale, transfer or other disposition of property -including aircraft- or similar action in Mexico, pursuant to remedial provisions under any agreement, may not be made in Mexico without judicial intervention, pursuant to due legal process consistent with Mexican law provisions; including, without limitation, that the defendant is given the right to be heard and defended in court, as self-help remedies are not enforceable in Mexico.

19. How can a mortgagee (or equivalent security interest holder), lessor under a lease or designee/beneficiary of an IDERA deregister the aircraft? Please also state any conditions, procedural steps, formality requirements or documentation (for example, original, legalized, translated Lease/Mortgage/IDERA etc.) required to effect this

A reasonable security interest grantor/lessee will ensure that the authority granted to a security interest holder/lessor (or its representatives) under any deregistration power of attorney can only be exercised upon the occurrence of an event of default under the relevant transaction document. Since self-help remedies are not enforceable in Mexico, such a default must first be ruled by a judge and the relevant transaction document be terminated. Only then may the authority granted under the deregistration power of attorney be exercised. It is advisable that any deregistration power of attorney be granted before a notary public, in Spanish language, and in observance of the formalities mandated by the Federal Civil Code.

20. Can the government or the lessee lawfully prevent the repossession or deregistration and if so, in what circumstances

The Mexican Code of Commerce regulates precautionary measures generally. Aircraft are subject to such general regulations, and in any case, must be applied for, and a judge, based on the merits, shall rule on whether such a request is granted.

21. If judicial intervention is required, please describe the process? Please also state any procedural steps, length of time to complete and advise as to documentation required

The proceeding to repossess an aircraft in Mexico makes it necessary to first legally terminate the instrument under which a lessee obtained possession thereof. There are two types of proceedings to achieve the aforementioned: (i) the ordinary commercial procedure (*juicio ordinario mercantil*), and (ii) the executive commercial procedure (*juicio ejecutivo mercantil*). Eligibility of either procedure will be determined based upon the formality under which the relevant instrument was executed: the executive commercial procedure is only available when the debtor's obligations are documented in a public instrument, as defined by article 1237 of the Commercial Code. Unlike ordinary procedure, the executive procedure is conducted with shorter statutory periods, and the plaintiff can request cautionary measures to guarantee the value of its claim before the procedure begins.

22. How is legal title transferred under the laws of your jurisdiction? Please also state any conditions, procedural steps, formality requirements or documentation (for example, corporates etc.) required to effect this

For purposes of registering an aircraft or transfer of ownership, AFAC will require an original or certified copy of a bill of sale or document evidencing transfer of ownership; furthermore, if such document was issued abroad, such document must be apostilled and translated into Spanish by a court-approved translator. If the document was issued in Mexico, signatures thereto must be ratified before a Notary Public.

23. Are there any restrictions on the sale of an aircraft following enforcement (for example, the requirement to obtain a court order or conduct a public auction or other action in order to sell the aircraft upon enforcement)

Since self-help remedies are not enforceable in Mexico, any default must first be ruled by a judge and the relevant transaction document be terminated.

24. Would lease rentals be subject to tax (for example, withholding or income tax)? Please also state if there are any conditions for such tax to be imposed and any steps usually taken to mitigate this

All payments of rent and all payments by a Mexican tax resident under any relevant lease aircraft lease may be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or assessed by Mexico or any political subdivision or authority thereof or therein having power to tax; except for withholding tax on payments of rent imposed pursuant to article 167 of the Mexican Federal Income Tax Law (*Ley del Impuesto Sobre la Renta*), which as of the date hereof set forth a withholding tax rate of 1%

25. Would a sale of an aircraft in your jurisdiction incur sales tax? Please also provide details of amount or calculation and any steps usually taken to mitigate this

Only aircraft owned or in the possession of Mexican persons (by virtue of a lease or any other instrument conveying possession thereof), and aircraft owned by foreign persons for the exclusive provisioning of private non-commercial air transportation, can be registered in Mexico.

Having said the above, the sale of aircraft registered in Mexico and owned by non-Mexican tax residents is not subject to VAT, without regard to the type of aircraft. However, if the aircraft being sold is registered in Mexico and has been imported on a temporary basis by a concession or permit holder (pursuant to Section V, paragraph b) of Article 106 of the Customs Law), the aircraft must first be exported from Mexico in the same condition in which it was originally imported.

Sale of aircraft registered in Mexico and owned by Mexican tax residents is subject to the general 16% VAT, without regard to the type of aircraft. Furthermore, courts have resolved that if the seller is a Mexican tax resident (which definition may comprehend certain foreign entities with an establishment in Mexico), VAT is due and payable, even if the transaction (understood as transfer of title and physical transfer of the aircraft) occurs outside of Mexican territory.

26. Are there any restrictions on the import or export of aircraft in your jurisdiction and would such importation or exportation incur any liability as to customs or taxes? Please also state if any consents or approvals are required and the procedural steps taken to obtain these, and any procedural steps or formality requirements to mitigate any taxes

Pursuant to Section V, paragraph b) of article 106 of the Customs Law, concession- and permit-holders may import aircraft on a temporary basis for up to 10 years, provided that such aircraft are utilised in the provision of air transportation services. The aircraft must still be exported from Mexico no later than on the 10th anniversary of its import, in the same condition in which it was originally imported. Such period of time may be renewed as required. If the aircraft is imported on a definitive basis, the importer would be required to pay the full importation tax rate.

27. Are there any foreign exchange restrictions on transfers of funds

Mexico does not have any foreign exchange restrictions on transfers of funds. However, pursuant to the Mexican Monetary Law, obligations acquired within or outside Mexico to be performed in Mexico, can be discharged in Mexican currency, at the exchange rate of the date on which payment is made, as published in the Official Gazette of the Federation by Banco de Mexico (Mexico's central bank).

28. How successful have foreign creditors and lessors been in enforcing their security and lessor rights over and successfully repossessing aircraft in a timely manner?

Repossession of aircraft in Mexico requires a court order issued on the basis of a final judgment, since self-help remedies are not available in Mexico. The effectivity and enforceability of irrevocable deregistration powers of attorney are challengeable, since the document by which the lessee obtained possession of the aircraft must be legally terminated prior to repossession of an aircraft by the lessor, termination that will necessarily require judicial intervention, pursuant to due legal process consistent with Mexican law provisions, including, without limitation, that the defendant is given the right to be heard and defended in court. Since irrevocable deregistration powers of attorney are not enough to repossess an aircraft in Mexico, local law

mortgage with respect to aircraft, duly recorded with the Mexican Aeronautic Registry, significantly increases chances of timely repossession in case lessee falls in default.

29. What government led reforms affecting creditor and lessor rights are currently underway in the aviation sector in your jurisdiction?

There are no reforms affecting creditor and lessor rights currently underway in the aviation sector in Mexico.

30. Please describe any interesting legal development in your jurisdiction (for instance, decided court cases or arbitral awards) which affect creditor and lessor rights?

There haven't been any interesting legal development in

Mexico which affect creditor and lessor rights.

31. Please discuss any relevant governmental regulations implemented in your country to help alleviate the financial and other difficulties faced by airlines in your jurisdiction caused by CoVid 19 and whether that will impact rights of lessors (who lease aircraft to the airlines) and lenders (who finance such aircraft which are mortgaged in favour of the lenders)? Are such governmental regulations expected to be in place until the difficulties faced by airlines caused by the CoVid 19 subside or are they more long term?

Consistent with the President of the United Mexican States' statement back on 2020, the government has not provide any tax stimuli or relief to Mexican airlines.

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