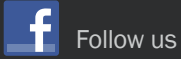


COELUM

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Registry of Guarantees on Mobile Assets.
Svein Azcué P. 01-04

Procedure to register a Mobile Guarantee upon the RUG.
Alejandro Lavat P. 05-08

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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COELUM

RAIL SUPPLEMENT

News and articles related to the development and trends within the Mexican rail industry, as well with the Luxembourg Rail Protocol.

In occasion of the joining incorporation earlier this year of Abogados Sierra y Vazquez, S.C. into the Rail Working Group, a not-for-profit group established at the request of UNIDROIT to represent the position of the rail industry relating to adoption and implementation of the 2007 Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment on matters relating to railway rolling stock (the Luxembourg Rail Protocol), which purpose is to work with the rail industry, government and government agencies to raise awareness of the proposed the Luxembourg Rail Protocol and to promote its adoption in



a form that will encourage greater and more cost-effective financing by the private sector of capital investment in railway rolling stock, we have decided to supplement our COELUM newsletter from time to time with news and articles related to the development and trends within the Mexican rail industry, as well as in connection with the Luxembourg Rail Protocol.

The same as the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment with respect aircraft equipment, the Luxembourg Rail Protocol addresses the concerns of financiersunders of railway equipment in connection with the security required that their interests will be respected even when their collateral moves across borders, so the assets can be reposed by the creditor upon non-payment or insolvency of the debtor. Likewise, it provides for an international registry system for security interests that, while different from the one applicable to aircraft equipment, will provide protection to the creditors considering that there is usually no specific registry at thea domestic level to regulating regulate the priority of creditors' rights.

The Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment was adopted at a Diplomatic Conference in Luxembourg in February 2007, sponsored jointly by UNIDROIT and OTIF and attended by 42 states and 12 international organizations. Up todayTo date, it it has been signed by the European Union, Gabon, Italy, Luxembourg and Switzerland, but although not yet ratified. It will come into force on the first day of the month following the expiration of three months after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession.

[The first article to be included as a way of supplement to the COELUM newsletter edition of [August 2011] will be "Regulation of the Rail Industry in Mexico". We hope you will enjoy.]

by Svein Azcué.

As discussed in the October 2009 edition of Coelum, on August 27th, 2009 an amendment decree was published in the Official Federal Gazette regarding the creation of the *Registro Único de Garantías Mobiliarias*, (Unique Registry of Guarantees on Mobile Assets, for its initials in Spanish “RUG”). The RUG was basically created to enhance the use of mobile assets as guarantees in order for small businesses and companies to obtain financing under better conditions, hence stimulating investment, growth and economic competitiveness. Since October 7, 2010 the RUG has initiated operations by granting creditors the possibility of registering guarantees on mobile assets thus allowing them to obtain better opportunities for loans and financing deals.

“...registration is automated and filed online, generally by the creditor or any other authorized entity...”

What is the RUG?

The RUG is a public registry created as a section of the Public Registry of Property and Commerce (“RPPC”) under the charge of the Ministry of Economy (“ME”) through which financial institutions, creditors and other authorized entities may register online any guarantee on a mobile asset. For the RUG, a mobile guarantee is defined as any legal mercantile action through which a guarantee, special privilege or withholding right on a mobile asset is constituted, modified, transmitted or canceled (“Mobile Guarantees”) and granted by the debtors hence allowing them to benefit from the effects of publicity and enforceability which is granted by a public registry with a single centralized online database, therefore offering instant benefits and advantages in the negotiations for financing conditions.

In general terms, the RUG’s functions are the registration of the constitution, modification, transmission or cancelation of the above described Mobile Guarantees, the registration is automated and filed online, generally by the creditor or any other authorized entity (the debtors consent is presupposed), with no qualification of the documents or guarantee by the RUG and evidenced by a digital receipt. The ones authorized to perform registrations in the RUG are: Attesters or certifying public officers (*fedatarios publicos*), judges, governmental offices, public servants and creditors, all of whom need to be previously registered and authorized by the ME (“Creditors”). The creditor that registers a Mobile Guarantee is responsible for all the corresponding legal effects, for the existence and truthfulness of the documents and information filed and it is their responsibility to rectify or amend any mistakes on such records as they are responsible for any damages and lost profits caused to the grantor, or at the grantor’s choice, they can be fined with a 1,000 S.M.G.V.¹ legal penalty. Currently there is no special proceeding to execute such penalty or any other special proceeding to remedy or

1.- S.M.G.V.: Is the current general minimum wage in Mexico which goes from \$59.82 pesos to \$56.70 pesos per day, depending on the region of labor, such term is generally used as a reference value in order to have a referred amount to which calculate legal amounts.

challenge the RUG's records. Regarding the Mobile Guarantee's duration, it will have the validity for the agreed period between the parties. If no period is established it will be valid for one year. In both cases if the guarantee is not renovated by the creditor, it will be automatically canceled.

Which guarantees are able to be registered under the RUG:

As mentioned before, only guarantees on mobile assets can be registered under the RUG and therefore the property of a mobile asset is not recordable if it is not granted as a guarantee. In accordance with Article 32 of the Code of Commerce, the criteria and classification of the Mobile Guarantees and affected mobile assets allowed to be registered are only the following:

Mobile Guarantees:

- i. Pledge without transmission of possession,
- ii. Derived from a fixed asset loan or from a working capital loan,
- iii. Derived from a package mortgage,
- iv. Constituted over an aircraft or boat,
- v. Derived from a financial lease,
- vi. On a conditional sale with a title retention clause of a mobile asset,
- vii. Derived from a deed of trust, retention rights and other special privileges in accordance to law.

Mobile Assets:

Machinery and equipment,

- i. Motor driven vehicles,
- ii. Livestock,
- iii. Farming products,
- iv. Inventory,
- v. Actions and obligations, bonds, futures contract,
- vi. Rights, including rights to collect, and
- vii. Other.

There are two specific operations available at the RUG: (i) the search and consultation of registered acts and (ii) the registration of Mobile Guarantees and preventive notices². Being an online registry the RUG is available for anyone to perform searches, consult and printout record certificates of any asset, anywhere in the world. Regarding record registrations, all entries must be performed with regard to the requirements stated in the applicable law³ and signed electronically with the Creditor's FIEL⁴, the ME will issue the digital certificates equivalent to a FIEL for the judges, public servants, certifying

2.- Preventive notices are the public records or entries that precede a Mobile Guarantee's record, granting the Creditor protection prior to the execution of the Mobile Guarantee.

3.- Code of Commerce articles 32 bis1 – 32 bis9 and Article 30 to 35 of the Regulations of the RPPC.

4.-The FIEL or Firma Electrónica (Electronic Signature) is an electronic signature granted by the Tax Administrative Service of the SHCP meant to identify taxpayers in order to fulfill obligations and execute electronic official documents. The FIEL contains all general information of its signee which identifies the sender as the legitimate author as if it were its own personal signature, including, name, address and RFC (Federal Taxpayer Registry), in order for the individual or company to be fully identifiable and located.

public officers and other authorized entities in order for them to directly register entries into the RUG. As stated before, the truthfulness and entry of the Mobile Guarantees are the responsibility of the registering party, including any amendments, corrections or cancelations.

The requirement for the FIEL is the only way that the RUG can offer legal certainty to the grantor that the Mobile Guarantee recorded is in fact the one agreed between the parties grounded on the fact that the FIEL is granted by the Ministry of Treasury and Public Credit (“SHCP”) with previous analysis and certification by this entity. Therefore the RUG publishes all of the registering party’s information along with the guarantee’s data, making the record completely transparent for the consulting public and grantor. If any correction or claims are to be made, all the Creditor’s information is available online.

In regards to foreign entities which are not able to obtain a FIEL, in this case, the foreign entity needs to be registered upon the RUG and consequently request the ME for an authorization that would be equivalent to the FIEL. Once this authorization is granted, the foreign entity may perform registrations upon the RUG using this “Foreign FIEL” or authorize their domestic legal representative to do so; the legal representative should use their personal FIEL as they would be personally responsible for any liabilities or damages of any records.

“...if a Mobile Guarantee is subject of registration in a special registry, such registry’s system will copy and take note of each entry in the RUG.”

Inconsistencies with special registries:

In accordance to Article 31 bis of the RPPC Regulations, if a Mobile Guarantee is subject of registration in a special registry, such registry’s system will copy and take note of each entry in the RUG. These replicas or notes will be subject to collaboration agreements between the specialized registries and the ME. These collaboration agreements have not been executed or prepared by any of the special registries to this date. Stressing the above, it is absurd to believe that special registries such as the Mexican Aeronautical Registry (“RAM”) that has no electronic database and no system whatsoever could send a note to the RUG of the million dollar aircraft and engine guarantees registered within its records or vice versa This brings out an important inquiry: if two different guarantees exist for the same asset, let’s say an aircraft’s engines are registered, the first upon the RAM and the second upon the RUG, which record will be valid? The RUG’s record is immediate, the RAM takes days, weeks or even months to issue a record certificate. This added to the lack of communication and a nonexistent collaboration agreement and you get a period of time when a different creditor may execute a guarantee disregarding the prior “registration” of a different guarantee regarding the same engine listed with a special registry. Legal inconsistencies and procedural bumps like these will arise as the RUG becomes more popular and hopefully obliging all other national and special registries to follow its steps into technology and maybe even efficiency, with consistent communication and actual real time replicas of all entries and notes.

Benefits and disadvantages:

In summary and compared to the existing registration methods in Mexico we can emphasize the benefits and disadvantages derived from the creation of the RUG.

Benefits: It's an online federal registry with a centralized electronic database, granting transparency and greater legal certainty to creditors regarding guaranteed obligations. There is no qualification of the information hence eliminating influences and corruption. Currently there is no cost for registration, avoiding current collateral expenses such as transport, lines, personnel and lost time hence impacting on the financial benefits granted by creditors. The registration is automated and performed immediately, records are subject to the FIEL and therefore a previous analysis and certification is performed by the SHCP, and it's always open with no more working days or bureaucratic inattention.

Disadvantages: The record entries are under the charge of one of the parties and the grantor can only request corrections with no real enforceability. Article 42 of the RPPC Regulations grants the administrative revision recourse (*recurso de revisión*), also as stated above, Article 32 bis-4 of the Code of Commerce states the option of a legal penalty to the Creditor in order to respond to damages and lost profit caused to the grantor. Either way there is no special judicial proceeding to execute such a penalty and in both cases the grantor would be involved in a costly and long litigation process, cancelling out most of the benefits expected when using the RUG.

“The RUG may be the first step to update Mexico’s registration process and its databases, but it’s still far from being a communicated and consistent unit.”

Conclusion:

As a critique to the RUG’s legal framework, currently no collaboration agreements have been executed between any specialized registry and the RUG, therefore no record replicas or notes are done and contraventions may occur among registries regarding the same mobile asset. Also as of the creation of the RUG, there is no existing registry for mobile asset property, only guarantees on mobile assets are accepted.

The RUG may be the first step to update Mexico’s registration process and its databases, but it’s still far from being a communicated and consistent unit. Special judicial proceedings need to be implemented in order to avoid bad faith and illegalities. Mexico needs to continue digitalizing its public records and files by updating its infrastructure and technology if we expect to compete and even collaborate with international registries, as well as granting international investors greater legal certainty and protection for them to invest and finance operations in Mexico.

Procedure to register a Mobile Guarantee upon the RUG:

(Capitalized terms used but not defined in this Article mean the same as when used in the previous article.)

by *Alejandro Lavat*.

The basic effects of registration upon a public registry are the publicity and therefore enforceability against 3rd parties of the registered act, hence the RUG has the same purpose but directed to the registration of guarantees on mobile assets.

Registration requirements and process:

Below you will find all the necessary steps and guidelines in order to register upon the RUG for consultation matters and also in order to file and register a Mobile Guarantee in accordance with the RUG's requirements and regulations:

As the RUG is an online registry, all records and entries may be performed through the internet anywhere in the world. The first step is to register upon the RUG's online platform. The applicant must therefore enter through the website www.rug.gob.mx and choose a "username" and "password", and providing general information such as name and email. Once the first step is completed, a confirmation email will be sent to the provided account in order to confirm and activate the new user's RUG account.

“As the RUG is an online registry, all records and entries may be performed through the internet anywhere in the world.”

Creditor's registration: To perform any operation, you must list the creditor in whose favor the Security Interest is held and who may allow people to perform tasks on behalf of the creditor.

- a. Individual Creditor:** If the creditor is an individual person, the creditor must be signed electronically by the creditor himself with his personal advanced electronic signature.
- b. Corporate Creditor:** If the creditor is a corporation, the creditor's representative or agent must use the companies FIEL to file any Mobile Guarantees.

Once you are a registered user and have an active account and hence authorization from the ME, Creditors can perform the following operations on the RUG:

- Preventive Notices
- Registration of a Mobile Guarantee
- Change of Registration
- Transfer of security interest
- Correction of error
- Renewal of term
- Cancellation of Mobile Guarantee
- Registration of authority orders and decisions
- Consultation and request for certification

For registration purposes, the following information must be identified in the RUG's system¹:

- I. Grantor and, or debtors
- II. Creditor
- III. The type of Guarantee
- IV. The movable object or the Mobile Guarantee
- V. The guaranteed obligations
- VI. The validity of the registration

Whenever a user is consulting information or requesting a record certification, the following information is provided²:

- I. Name, corporate name and address of the creditor, as the case may be
- II. Name, corporate name and address of the grantor, as applicable
- III. Name, corporate name and address of the debtor, in cases where the latter is different from the grantor
- IV. Folio of grantor
- V. Type of Security Interest
- VI. Description of property subject to the Security Interest
- VII. Date and time of registration of the security and certification
- VIII. The security number assigned by the system
- IX. Record secured Transactions force.

1.- Article 33 bis of the RPPC Regulations.

2.- Article 34 of the RPPC Regulations.

Documents needed for filing a Mobile Guarantee:

1. Document or agreement through which a guarantee, special privilege or withholding right on a mobile assets is constituted, modified, transmitted or canceled, basically establishing the granting of a Mobile Guarantee.
2. FIEL or electronic signature:
 - All record entries need to be executed with the FIEL, for search and consulting proposes, there is no need for a FIEL and only a username and password registration are required.
 - If the Creditor performing the record entry is not an Individual or corporation, the ME will provide an authorized entity with an equivalent to the FIEL in order to perform registries and publish the registering party's information.

Information provided about the Mobile Guarantee Grantor³:

- Type of entity (corporation or individual)
- Nationality
- Name, Legal Name
- Electronic-File (if the Grantor does not have an Electronic File and is an individual person, the system will provide an RFC)

Information from the debtor who may or may not be the same as the Grantor:

- Type of entity (corporation or individual)
- Nationality
- Name, Legal Name

“At the end of any operation on the RUG, the system issues a digital receipt containing the information recorded including time, official seal and signature.”

3.- Information obtained from the tutorial proceedings before the RUG..

At the end of any operation on the RUG, the system issues a digital receipt containing the information recorded including time, official seal and signature. This information can be downloaded by whoever performs the corresponding operation.

Registration of secured transactions and annotations will be held in an electronic folio of the grantor of the security or owner of the property, as applicable, which lies in the national database of RUG. Any registered user in the RUG may consult and request the issuance of certificates of registration upon the RUG.

It's very important to mention that in accordance to Article 30 Bis of the RPPC Regulations, the Ministry of Economy shall have no obligation to qualify or revise the record made in the RUG to determine if valid, whether it constitute an appropriate registration or whether they were authorized by the parties involved or mentioned therein.

Conclusion:

The registration form, inscription, modification, transmission, rectification, cancellation, renewal of term, as well as early warnings are all very simple. It also speeds up the registration procedure by turning it into a digital process, and even better at no cost (so far); all major benefits resulting from the creation of a reliable national database. However it only provides for the registration of security interests that exist under Mexican law and is not available as an actual registry of property.

A trap for ASUR?

After the aborted bidding declaration for the construction of a new airport concession in the Riviera Maya, evidence suggests that it was trap to threaten ASUR (the Grupo Aeroportuario del Sureste) the terminal operator in Cancun. The two participants for the concession were disqualified for alleged technical and legal faults, however the arguments by the Ministry of Communications and Transport are lacking consistency. *El Universal*. 06/June/11.

Anti-bankruptcy insurance still up in the air.

It is nearly ten months since the Ministry of Tourism and the Ministry of Communications and Transport announced that they were working on the creation of an insurance program to protect air passengers from airline bankruptcies. Travel agencies and airlines said that there is no progress or even a clear proposal in the works. On the other hand, airline executives do not agree to fund a fee for bankruptcy insurance, as this is a cost that the airline can't absorb, so it would have to be charged to passengers. *El Financiero*. 06/June/11.

A fight for Mexicana's aircraft.

Ground workers from Mexicana de Aviación presented a criminal claim against the general manager of the Foreign Trade National Bank, Héctor Rángel Domene, with the charge of defrauding the public exchequer of 991 million 969 thousand pesos. This is in respect of the loan that the bank granted to Mexicana. The administration of Mexicana paid 219 million 600 thousand pesos to Bancomext. Now, they want to recover the remnant of 771 million 369 thousand pesos. *El Universal*. 06/June/11.

Necessary the regularization of slots.

The new policy for domestic air industry was delayed because it wasn't approved by the Sub-secretary of the Ministry of Communications and Transport. Though there has been progress on many issues, there are some that are vital for regulating the supply of air services to transport passengers and cargo. The operation of airports must be regularized, as no airport can even release the infrastructure used by Mexicana de Aviación. *Excelsior*. 14/June/11.

Downgrading by the FAA increased the insurance cost for airlines, Volaris.

One of the side effects caused by Mexico's down grading by the aviation authority of The United States that took place last year was the increase in the cost of airline insurance, said the director of Volaris. In his participation at the Second Pan-American meeting of security, the Director explained that the payment of insurance in simple situations depends on three factors: the size of the fleet, its average value and its age. *El Economista*. 16/June/11.

In this month extract was prepared by Samantha Garnica, Vera García and Jessi Saba.

Queretaro at the Paris Air Show.

Presentations to foreign companies will show the advantages offered by this State. In order to show that this federal entity is becoming a global center for maintenance and repair of aircraft equipment, the Minister of Sustainable Development will travel to France to attend the Air Show to be held in Paris next week. The state is becoming very competitive in the manufacture of parts for the aviation industry, and based on the beliefs of the Minister of Sustainable Development, it could also be competitive for the repair and maintenance of equipment. An aircraft maintenance workshop generally employs between 150 and 400, which would represent a new source of employment for the state. *El Financiero*. 17/June/11.

Airport's inefficient slot assignment increases costs.

An efficient and transparent distribution of slots – spaces for departures and arrivals – in the Mexico City International Airport would allow tickets price reductions of almost 60% which would mean an increase of around 10 million more users. Every year, passengers pay an extra of 3,000 million dollars. Some of the options are to increase the number of slots from 54 to 61, and make public all relevant information in order to avoid mismanagement. *El Economista*. 24/June/11.

Mexicana – one year later.

Mexicana's problems keep getting worse. The Pilots Union (ASPA) is preparing a complaint against the airline's directors. They are arguing that the directors did not reveal the true financial situation of the airline in a timely fashion. When the pilots owned 5% of the shares, they were entitled to be kept fully informed so that different measures might have been taken. *Excelsior*. 24/June/11.

Fuel price increases 35.8%.

In comparison to last year, the cost of fuel has increased 35.8%, going from \$8.41 to \$11.06 Mexican Pesos, per liter. Experts state that Mexico is one of the countries with high aviation costs, causing very expensive tickets. With Mexico being an oil producer, the cost of fuel for the airlines could be lower in order to support the industry and offer users better prices and service. *Milenio*. 29/June/11.

In this month extract was prepared by Juan Antonio Tiscareño.

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