

AVIATION & TOURISM JOURNAL

AVIATION NEWS - 1/2016

ENTRY INTO FORCE OF THE AIRCRAFT PROTOCOL OF THE CAPE TOWN CONVENTION	1
EXPIRY OR LIMITATION OF PASSENGER'S RIGHT TO CLAIM FOR DAMAGES	2
SPANISH REGULATIONS ON DRONES	3
RECENT ACTIVITIES	3
PLANNED ACTIVITIES	4

ENTRY INTO FORCE OF THE AIRCRAFT PROTOCOL OF THE CAPE TOWN CONVENTION 2001

On 1 March 2016 the Aircraft Protocol of the Cape Town Convention, the full name of which is **“Convention on international interests in mobile equipment”** made in Cape Town on 16 November 2001, entered into force for Spain. The said Convention, which Spain ratified in June 2013, requires the acceptance of certain additional protocols (relating to aircraft equipment, railway rolling stock and space assets) to become effective. The Spanish State ratified the Aircraft Protocol on 13 November 2015 and deposited the relevant instrument at the International Institute For The

Unification Of Private Law on 15 December 2015. The procedure was completed through the publication of the convention and protocol in the State Official Gazette on 1 February 2016.

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After this ratification, Spain joins the group of more than 70 countries that have chosen to become parties to the so-called “Cape Town System”, which aims at offering a unified framework for the creation of guarantees over certain assets with great economic value, thereby facilitating and reducing the cost of financing such assets. The Convention has created a new type of guarantee, called “international interest”, which is independent from the domestic or national guarantees and which the contracting States undertake to recognize and enforce. As an additional enhancement to this international interest, the Cape Town System foresees the creation of a single international registry, establishes uniform rules for insolvency scenarios and provides quick mechanisms to enforce international interests.

THE REGULATIONS RELATING TO THE
ACCESS OF AIRCRAFT FINANCE
TRANSACTIONS TO THE MOVABLE
ASSETS REGISTRY HAVE BEEN
PUBLISHED RECENTLY

As a consequence of the entry into force of the said Convention, and in accordance with the provisions of the Sixth Additional Provision of Royal Decree 384/2015, whereby the new Regulations of the Aircraft Matriculation Registry were issued, on 29 February 2016 the Directorate General of Registries and Notaries (DGRN) has issued a **Resolution whereby the forms to access the International Registry of Aircraft Assets**, located in Ireland, are approved. Spain has designated the Provincial Movable Assets Registry of Madrid as the national access point to the said International Registry. The Resolution states that those parties who wish to record an international interest in aircraft airframes or helicopters with a Spanish registration mark must ask the Movable Assets Registry to issue an **authorization code** by filing a simple form –which is downloadable from the website of the Movable Assets Registry with the main data of the transaction. Once such authorization code has been issued, the parties will be allowed to arrange for the recording of the international interest in the International Registry. Although we will have to wait for some months before giving an opinion on the newly implemented system, the Spanish authorities have stated their intention to act with the utmost speediness, in accordance with the spirit of the Convention.

The said Resolution also approves the form of an “Irrevocable De-registration and Export Request Authorisation”. This is an instrument contemplated under Article XIII of the Aircraft Protocol, known as “**IDERA**” pursuant to its English acronym, and it intends to allow an easy cancellation of the registration marks of an aircraft and its export to third countries where the debtor of an international interest breaches the terms of the agreement. The effort made by the DGRN to incorporate this instrument into our legal system is praiseworthy, although the many legal implications which it entails oblige us to be prudent as regards its effectiveness in the short term. Among other issues, the interaction between an IDERA and the Spanish insolvency legislation is yet to be determined. Spanish law will possibly have to be adapted to allow for a

proper functioning of this new legal instrument of an international nature.

EXPIRY OR
LIMITATION OF
PASSENGER’S RIGHT
TO CLAIM FOR
DAMAGES

An issue which is controversial in Spanish jurisprudence and in many other countries is that relating to the nature of the two-year-period stated under article 35 of the Montreal Convention (and previously under article 29 of the Warsaw Convention) to bring an action for damages against the air carrier.

In our country, the Courts have been hesitating in taking a unified position. On the one hand, a large number of Provincial Audiencias (among them, those of Barcelona, Baleares, Vizcaya, Valencia and Zaragoza) hold that this is a period which sets out a statute of limitations (“plazo de prescripción”), which can therefore be interrupted by the plaintiff. On the other hand, the Provincial Audience of Madrid has been considering for some years that this is, in fact, an expiry period (“plazo de caducidad”) and that it cannot be interrupted by the plaintiff.

This latter position has been confirmed in a new **judgment of 18 May 2015**; a passenger filed a claim in court against an airline after he broke the internal meniscus of his left leg, an injury which occurred when the passenger was taking his seat in the plane. Following previous reasonings, the Provincial Audience of Madrid analyses in great detail the original and authentic versions in English of the provisions contained in the Warsaw Convention 1929 and in the Montreal Convention 1999, comparing them with the translations into the Spanish language which have been used by the Courts in Spain. The Provincial Audience of Madrid concludes that there are no difference among the authentic English versions, but that there is a disparity among the translations made into Spanish and that this disparity has caused the interpretation problems. According to the tribunal, therefore, the period of two years contemplated in the Montreal Convention is clearly a term of “expiry of the right” which cannot be interrupted by the parties.

Although the interpretation made by the Provincial Audience of Madrid is, in our view, appropriate and in accordance with the interpretation given by the majority of the States party to the Montreal Convention, it is also true that not all Spanish Courts follow such interpretation. Therefore, we cannot discard a future judgment of the Supreme Court which unifies the present different opinions.

SPANISH REGULATIONS ON DRONES

Miquel Campos, who cooperates with our Aviation Law Department, has recently submitted his master's degree final project under the heading "**The Regulation of Civil Aircraft piloted by Remote Control or Drones**". Miquel's academic project has been awarded a very high mark by the evaluating tribunal of the Social Sciences Faculty of the Universitat Abat Oliba CEU. It analyses in great detail not only the legal regime currently in force in Spain for this type of aircraft (currently mainly embodied in the Act 18/2014, of 15 October), but also the potential future evolution of such provisions in the light of the new legislative developments within ICAO, the European Union and the main neighbouring countries.

Miquel Campos writes on a regular basis for the specialized website "Legal Drone", and he recently published an article which analyses the future joint regulation on RPAs in Europe. This article can be downloaded from <http://www.legaldrone.es/analisis-de-la-futura-regulacion-conjunta-de-rpas-en-europa/>.

RECENT ACTIVITIES

IATA LEGAL SYMPOSIUM 2016

Between 17 and 19 February the "**IATA Legal Symposium 2016**", one of the main international events in Aviation Law, was held in Barcelona. For three days some of the world experts met in Barcelona to analyse and discuss current issues, such as the mergers among airlines, current trends in the financing of aircraft, airport charges, the impact of the social networks, etc. Several lawyers of our firm attended the event and had thus an opportunity to enhance their education and knowledge, greet old acquaintances and also act as "cicerone" in our hometown.

IAWA MEETING

Simultaneously with the IATA symposium, the members of the "**International Aviation Womens Association**" (www.iawa.org) held a meeting in our town, at which our partner Alicia Herrador had an active participation.

L2B GLOBAL MEETING 2016



As soon as the IATA symposium was finished, our firm had the pleasure of welcoming a good number of the members of the L2B Aviation network, (www.l2baviation.com), on occasion of the first "**L2B Global Meeting**" that was held in Barcelona. Among the 45 countries in which L2B Aviation has a presence, we had the honour of having 24 of them in our office, where we carried out some interesting workshops. The exchange of opinions, reports on new legislative developments in the respective jurisdictions and future actions were on the agenda. Obviously, during the weekend we also had time for a

cultural visit to the Sagrada Familia and to enjoy the Mediterranean gastronomy in its different versions. We hereby wish to thank all the attendants for their presence and excellent cooperation, and express our desire to see them again very soon!

PROGRAMMED ACTIVITIES

MASTER'S DEGREE IN AIRPORT AND AERONAUTICAL MANAGEMENT

During the month of May some lawyers of our firm will give some lectures, as in previous years, on a number of topics relating to the Aviation Law Module of the "Master's Degree in Airport

and Aeronautical Management 2016" which the international business school "IT ÁEREA Aeronautical Business School" offers to industry professionals.

AVIATION LAW CONFERENCE AT LUISS BUSINESS SCHOOL IN ROME

By mid-June Sergi Giménez will participate in the expert's panel on the financing of aircraft that will be held as part of the conference "**The Dynamism of the Aviation Industry**", organised by the LUISS Business School, of the LUISS Guido Carli University, in Rome. During this conference, where distinguished members of the European aviation industry will participate. Issues such as the free competition in the global aviation market, the protection of consumers and the upcoming regulatory framework on drones will also be discussed.

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