

**AN INTRODUCTION TO MEXICAN DRONE
REGULATIONS**

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Carlos represents plaintiffs and defendants in civil litigation matters in a variety of industries including commercial disputes, malpractice, constitutional litigation, personal injury, and wrongful death cases. Carlos serves on the firm's Management Committee and heads the firm's Litigation Practice.

Recent Experience

In recent years, Carlos' work includes obtaining settlements on behalf of plaintiffs in wrongful death and personal injury cases involving trucking and other accidents, as well as being asked to assist in representing plaintiffs and defendants in preparing, submitting, and arguing jury instructions, and other appellate work particular to complex cases. Carlos has represented clients in cross-border disputes for years including on disputes involving the potential applicability of Mexican Law.

Carlos is Board-Certified in Personal Injury Trial Law and has tried, as either first chair or in a supporting role, a variety of cases to juries, the bench, and arbitrators. He has published and lectured in the area of trial practice including Evidence, Jury Selection, *Daubert*, and Choice of Law Issues.

Activities

Robert Calvert Chapter, Inns of Court, Member (2001-2007)

State Bar of Texas; Rules Committee (2007 to present)

State Bar of Texas; Business, Consumer & Employment Pattern Jury Charges (Vol. 4) Committee (2001-2007)

The University of Texas, Lecturer (Spring 2001)

Advisory Board Member to Center for U.S. and Mexican Law (2012-present)

Professional Background

Yale Law School, J.D. 1994

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Admitted to Practice: Texas; Colorado; Supreme Court of the United States of America, United States Court of Appeals for the Fifth Circuit, United States District Courts for the Eastern, Northern, Southern, and Western Districts of Texas

AN INTRODUCTION TO MEXICAN DRONE REGULATIONS

I. Some aspects of the Legal Framework

While Mexico is a federalist republic like the United States with 31 states and the federal district, the legal system is far more centered on federal law and the codes of many states mirror the provisions of federal laws. Numerous cases litigated in courts of the United States have applied Mexican laws of one type or another.¹ In one of those cases implicating Mexican aviation law, *Curley v. AMC*, involving tort claims in connection with air transport from New York through Texas to Mexico, the Second Circuit recognized Mexico's sovereign jurisdiction over Mexican airspace and the exclusive jurisdiction of the Mexican federal government over issues relating to the "inspection, supervision and control of civil air navigation, [including] all civil aircraft in Mexican territory or which fly over it, as well as their crew, passengers and goods transported."²

Some aspects of Mexico's Constitution warrant mentioning. First, unlike the United States Constitution, Mexico's 1917 Constitution reflects the times and has many very detailed and specific provisions. As a treatise has summarized: "The Mexican Constitution provides the legal basis for civil aviation."³ Additionally, as may become relevant to non-Mexican drone operators, article 27 of Mexico's Constitution forbids foreign ownership of land within the restricted zone comprising of 100 kilometers from the border or 50 kilometers from the coastline.⁴

The *Dirección General de Aeronáutica Civil* (DGAC), operating under the *Secretaría de Comunicaciones y Transportes* (SCT), is the Mexican federal agency regulating airspace and civil aviation matters in Mexico pursuant to the Civil

¹ See generally Carlos R. Soltero & Amy Clark-Meachum, *The Common Law of Mexican Law in Texas Courts*, 26 U. Hous. J. Int'l L. 119 (Fall 2003).

² *Curley v. AMC*, 153 F.3d 5, 15 (2nd Cir. 1998) (citing Mexico's civil aviation laws and the 1944 Chicago Convention on International Civil Aviation); see also, *Bell Helicopter Textron, Inc. v. Arteaga*, 113 A.3d 1045, 1054 (Del. 2015) ("aviation activities in Mexican airspace are a matter of Mexican federal jurisdiction.") (emphasis in original).

³ JORGE A. VARGAS, 3 MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS p. 103 § 31.1 (West 2001). The specific constitutional provisions referenced are Articles 27 and 42, Section VI. Professor Vargas also references Article 3 of the Law of Civil Aviation as directing "that the direct domain of space situated over the national territory is reserved for the Nation." *Id.*

⁴ Constitución Política de los Estados Unidos Mexicanos, art. 27, § 1; see generally, JORGE A. VARGAS, 1 MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS pp. 63-64. § 2.41 (West 1998); STEPHEN ZAMORA, JOSÉ COSSÍO, LEONEL PEREZNIETO, JOSÉ ROLDÁN-XOPA & DAVID LOPEZ, MEXICAN LAW, pp. 573-74 (Oxford Univ. Press 2004). These treatises also discuss the limited Calvo Clause exceptions.

Aviation Act.⁵ The Secretariat maintains an Aeronautics Registry to record “Mexican aircraft, their engines and the legal activities related to them.”⁶

II. The April 2015 Mexican Drone Regulations

Signed by Gilberto Lopez Meyer, minister of the DGAC, the new Mexican Drone Regulations (*Circular Obligatoria* CO AV-23/10 R2) pertaining to drone usage in Mexican airspace went into effect on April 8, 2015.⁷ The DGAC issued another communication in April of 2015 to highlight and explain the mandatory Mexican Drone Regulations or *Circular Obligatoria*, the DGAC had just adopted.⁸

The Mexican Drone Regulations refer to drones as “RPAS” or Remotely Piloted Aircraft Systems. The expressed purposes for these new regulations were to maintain public safety and the safety of operators due to the increased usage of RPAS/drones in Mexico.⁹ The April 2015 DGAC Regulations supplant the regulations previously in effect since issued in 2010. The DCGA made compliance with the Mexican Drone Regulations mandatory for all RPAS/drone operators.¹⁰

The DGAC notes the novelty and new concepts raised by RPAS/drones, the need for information from many interested parties and refers to the regulations as the “first step” to a comprehensive legal framework for regulating the safe operation of RPAS/drones in Mexico.¹¹ To the extent any issues are not addressed/expressly considered in these Mexican Drone Regulations, they expressly direct that the Aeronautical Authority shall resolve them.¹²

⁵ Several cases in the U.S. have referenced investigative activities of the DGAC after air crashes. See e.g., *Wolf v. Boeing Co.*, 810 P.2d 943, 945 (Wash. App. Div. 1 1991); *Diaz v. Mexicana de Avion, S.A.*, No. SA-86-CA-1065, 1987 WL 275695 *4 (W.D. Tex. Jan. 23, 1987); *Arteaga v. Bell Helicopter Textron, Inc.*, 2014 WL 2600092 *1 (Del. Super. Ct. 2014), *rev'd by* 113 A.3d 1045, 1054 (Del. 2015).

⁶ VARGAS, 3 MEXICAN LAW, p. 103 § 31.2.

⁷ Dirección General de Aeronáutica Civil, *Circular Obligatoria* CO AV-23/10 R2, Que Establece Los Requerimientos Para Operar un Sistema de Aeronave Pilotada a Distancia (RPAS) (8/4/2015) (herein “*Circular Obligatoria* CO AV-23/10 R2”); located at http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGAC/00%20Aeronautica/CO_AV_23_10_R2.pdf

⁸ See Exhibit A attached, DAGC, *Regula la SCT el uso de Aeronaves no Tripuladas (Drones)*, Comuniado 190, 4/29/2015.

⁹ *Id.*

¹⁰ To the extent any RPAS/drone operator desires to operate in a manner different from the Mexican Drone Regulations, they are required to submit an application for approval from the Aeronautical Authority. *Circular Obligatoria* CO AV-23/10 R2 § 11.

¹¹ *Circular Obligatoria* CO AV-23/10 R2 § 5.

¹² *Circular Obligatoria* CO AV-23/10 R2 § 12.

A. Classification of RPAS/drones and effect of classifications

The Mexican Drone Regulations classify the RPAS/drones by three categories based on weight in Section 7.1 and has a table in the regulation itself:

1. **Micro (Up to 2 kg)** which do not require DGAC authorization.¹³
2. **Light (Between 2 and 25 kg)** where if for commercial use, DGAC authorization is required¹⁴; but if for recreational use only they may only be used within authorized *aeromodelismo* clubs and the requirements and subject to the limitations applicable to those clubs.¹⁵

There are also speed limits of 161 km/hour and a minimum height of 152 meters (500 feet).¹⁶
3. **Heavy (Greater than 25kg)** Detailed DGAC regulations and restrictions apply and the operator must have a pilot license.

B. Flight/operational restrictions applicable to all RPAS/drones

The following is a summary and translated list of Section 7.2 I prepared, which sets forth a list of requirements and limitations that apply to all RPAS/drone operations:

- a) No operator may allow the falling or throwing (even with a parachute) of any object or material from a RPAS/drone that could cause damage or harm (*daño*) to any person or property.
- b) No operation may occur if the operator cannot do so safely as determined by a pre-flight inspection.
- c) At all times operations must be in class G airspace except with a strict and prior coordination with the *Servicios de Tránsitos Aéreo*/air traffic control.
- d) No operations/flights allowed in areas designated as prohibited, restricted, or hazardous.
- e) No transporting of dangerous materials or substances prohibited by law nor to use or transport arms or explosives.

¹³ See generally *Circular Obligatoria* CO AV-23/10 R2 § 8.

¹⁴ *Circular Obligatoria* CO AV-23/10 R2 § 9.2.1.

¹⁵ *Circular Obligatoria* CO AV-23/10 R2 § 9.1 (a) Operators are also required to have the appropriate aircraft knowledge to operate the RPAS/drone under section 9.1 (c).

¹⁶ *Circular Obligatoria* CO AV-23/10 R2 § 9.1.(b) and (d).

- f) The operator must maintain control of the flight path/trajectory of flight at all times.
- g) The operator is responsible for its operation, and in the event of an accident, of any damages or harms (*daños*) caused by the RPAS/drone.
- h) The operator is responsible for the misuse of any information obtained during the operation of the RPAS/drone.
- i) The operator must comply with all laws, regulations, and norms, whether federal or local, related to national security, public safety, and the protection of privacy, intellectual property among others.
- j) The person responsible for the RPAS/drone may not operate the RPAS/drone in a manner that is negligent or that endangers a third person's life or property.¹⁷
- k) Operations may only occur during daylight hours absent specially obtained authorization from the aerospace authority for nighttime flights or IFR.
- l) The operator must yield the right of way to any aircraft *tripulada* unless the RPAS/drone and the other aircraft are under positive control of the *Servicios de Tránsitos Aéreo*/air traffic control.
- m) RPAS/drones may not be operated from moving vehicles unless they are on water and that it is necessary for the adequate or proper operation.
- n) Foreign registered RPAS/drones or RPAS/drones operated by foreigners with scientific objectives must apply for a permit from the *Secretaría de la Defensa Nacional* in accordance with other federal laws.

Among the restrictions highlighted by the communication with the Mexican Drone Regulations is that operations/flights may not take place closer than:

- 9.2 km (5 nautical miles) from any controlled airports absent prior coordination with the *Servicios de Tránsitos Aéreo*/air traffic control;
- 3.7 km (2 nautical miles) from any uncontrolled *aeródromos*; or
- 900 meters(0.5 nautical miles) from any heliport.¹⁸

For **Micro RPAS/drones**, there are additional requirements and limitations located in Section 8 of the Mexican Drone Regulations. These include that the maximum height of operations is 122 meters (400 feet) above the ground, the

¹⁷ Compare with 14 C.F.R. § 91.13(a).

¹⁸ *Circular Obligatoria* CO AV-23/10 R2 § 8.1.1.(c).

minimum height of operations is 46 meters (150 feet) above the ground, and the RPAS/drone must be operated within the light of sight and within a horizontal distance of 447 meters or 1,500 feet from the operator according to Section 8.1.1. a) and b). There are also speed restrictions applicable to takeoff and operational speed depending on the weight of the RPAS/drone.¹⁹ The Mexican Drone Regulations require micro RPAS/drones to be made of material that is destructible and designed with the objective of minimizing risk to any person or object that collides with the unit. If used for commercial purposes, then the operator must have an applicable insurance policy covering harm (*daños*) to third persons.²⁰

III. Additional DGAC regulations for commercial use of heavy RPAS/drones in excess of 25 kg as provided for in Section 10.

The recreational use of heavy RPAS/drones are subject to the same regulations applicable to the recreational use of light drones described above and detailed in Section 9.1.1.²¹ For commercial uses of heavy RPAS/drones, the DGAC regulations have other requirements including requiring the operator to be a licensed pilot as set forth in Appendix C of the Mexican Drone Regulations.²²

For the commercial use of heavy RPAS/drones in Mexico, there is a detailed permitting process which provides for testing procedures specified in Section 10.2 and its subparts. Section 10.2.3 contains prerequisites to obtaining a permit which include personal information as well as proof of an applicable insurance policy covering harm (*daños*) to third persons. RPAS/drones registered under this regulation are required to have a certificate of enrollment and must have the flag of their nationality and registration information painted on the RPAS/drones themselves for identification purposes.²³ A manual of operations with prescribed procedures is also a requirement.²⁴

IV. Other general considerations relating to drone operations in Mexico.

The title of an article from Fusion summarizes a possibility for the future of Mexican drone usage and regulation: “How Mexico is becoming the drone capital of

¹⁹ *Circular Obligatoria* CO AV-23/10 R2 § 8.1.1.(d).

²⁰ *Circular Obligatoria* CO AV-23/10 R2 § 8.1.2 and 8.1.4.

²¹ *Circular Obligatoria* CO AV-23/10 R2 § 10.1.1.

²² *Circular Obligatoria* CO AV-23/10 R2 Anéxo C. These require the same knowledge and psychological fitness as a private pilot’s license as well as 50 hours of flight time.

²³ *Circular Obligatoria* CO AV-23/10 R2 § 10.2.3.5.

²⁴ *Circular Obligatoria* CO AV-23/10 R2 § 10.2.3.7.

Latin America.”²⁵ As is the case in the United States and other parts of the world, drone operations are in a state of great expansion for commercial uses such as agriculture as well as a myriad of uses changing constantly.²⁶ In the case of Mexico and its rich pre-Columbian history, academia is using drones in pursuit of archaeological investigation.²⁷

While the DGAC has issued the Mexican Drone Regulations, some Mexican drone operators seek greater clarity and guidance. For instance, in a December 14, 2015 article, Edwin Gomez Torres, identified as president of the Mexican Drones Association is quoted as noting that the Mexican Drone Regulations “are quite basic” and lacking additional information.²⁸ The article notes that the Mexican Drone Regulations “do not include penalties or list responsibilities.”²⁹

Finally, the 2,000 mile shared border between Mexico and the United States is likely to raise continuous legal disputes in both the federal system and notably in the four U.S. border states. Texas, for one, has enacted very detailed statutes relating to drone operations, including particular distinctions between public and private drone usage.³⁰

²⁵ <http://fusion.net/story/160643/how-mexico-is-becoming-the-drone-capital-of-latin-america/> (describing in part the fabrication of drones in Mexico; as well as a range of uses of drones in Mexico including a number of agricultural uses and by the “informal economy”).

²⁶ <http://thenews.mx/2015/04/mexico-drones-get-green-light/>

²⁷ *Id.*

²⁸ <http://latino.foxnews.com/latino/lifestyle/2015/12/14/mexican-developers-push-for-national-legislation-on-drones/>

²⁹ *Id.*

³⁰ See e.g., TEX. GOV'T CODE §§ 423.002 *et seq.* and 423.0045.

COMUNICADO: 190

FECHA: 29/04/2015

REGULA LA SCT EL USO DE AERONAVES NO TRIPULADAS (DRONES)

- ***Se privilegia la seguridad del público y de los usuarios***
- ***Sólo pueden ser usados lejos de los aeropuertos y helipuertos***
- ***Las nuevas normas son obligatorias para todos***

Debido al creciente uso de aeronaves no tripuladas, conocidas como drones, la Secretaría de Comunicaciones y Transportes ha actualizado y fortalecido los criterios que regulan su operación, a fin de preservar la seguridad del público y también, por supuesto, de los operadores de esas aeronaves.

La Dirección General de Aeronáutica Civil (DGAC) de la SCT emitió, el pasado 8 de abril, la circular CO AV 23/10 R2, que sustituye la emitida en el 2010. Este documento es de observación obligatoria para todos los operadores civiles de esas naves.

El documento establece limitaciones al uso de drones no tripuladas (llamadas Sistemas de Aeronave Pilotada a Distancia, RPAS) según su peso, pero incluye limitantes válidas para todos los equipos.

Por ejemplo, sin importar el peso, sólo pueden ser operadas durante el día, en áreas no clasificadas como prohibidas, restringidas o peligrosas, y al menos a 9.2 kilómetros de los aeropuertos controlados, a 3.7 kilómetros de los aeródromos no controlados, y a 900 metros de los helipuertos, y no deben dejar caer objetos que puedan causar daños a personas o bienes.

Consulte nuestro portal de internet www.sct.gob.mx donde también encontrará fotografías, videos e información de interés. Síguenos en:



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La circular distingue tres tipos de drones: de hasta 2 kilogramos de peso, de más de dos a 25 kilogramos, y de más de 25 kg. En los tres casos, los operadores, sean personas físicas o morales, están obligados a respetar todas las leyes, los reglamentos y las normas federales y locales aplicables.

Sólo los RPAS que pesen menos de 2 kg pueden ser operados sin necesidad de requerir autorización de la DGAC, pero si se usan para actividades comerciales deben contar con un seguro de daños a terceros, entre otras condicionantes.

En cuanto a los que pesan más de 2 kg, cuando su uso es recreativo, sólo pueden ser usados dentro de clubes de aerodelismo. Los de uso comercial requieren autorización de la DGAC. Las limitaciones son aún más específicas para operar aparatos de más de 25 kilogramos de peso, que sólo pueden volar en los términos y condiciones autorizados por la DGAC, además de que su operador debe contar con una licencia de piloto.

La publicación de esta circular forma parte del esfuerzo permanente de la SCT para actualizar la regulación del sector conforme los avances de la tecnología.

La circular completa está disponible en la página web de la SCT, mediante la siguiente liga:

http://www.sct.gob.mx/fileadmin/DireccionesGrales/DGAC/00%20Aeronautica/CO_AV_23_10_R2.pdf

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