

## IN THIS NUMBER

- 1 A New Era: The Standard Bearer  
Editorial
- 2 Let's start the debate...  
Carlos Sierra
- 5 Aerocalifornia: 90 Days...  
The Countdown  
Andrea Valencia

## A New Era: The Standard Bearer

### Editorial

For its nearly 12 years of existence the firm Alegre y Sierra provided services to the aviation industry with foremost quality and dedication, opening, in fact, the availability of services in the fields of aviation law and asset finance and leasing in Mexico serving leasing companies, airlines and other aviation related companies from around the world.

Resultant from its continued growth, the firm has evolved in order to maintain the modern trend and the dynamism that characterizes the legal services dedicated to the aviation community. With new offices located in the thriving business district of Santa Fe in Mexico City, with new members, a new corporate structure and state of the art systems and procedures, from January 1st onwards the firm has changed its name and corporate image to become:

### ABOGADOS SIERRA Y VAZQUEZ, SC (ASV)

---

*"We have been and will continue to be for many years to come the Standard bearer in legal services to the aviation industry".*

---

With the above changes and improvements our firm will continue to be the leader in the provision of aviation law and leasing and finance legal services in Mexico, fields in which, as all of our clients can attest, we have been and will continue to be for many years to come the standard bearer.



Regarding the future of the Mexican air transport industry:

## Let's start the debate...

Carlos Sierra

It is the intention of this firm to commence the debate and the study related to the topics that concern the current reality and future of the air transport industry that conforms the forum of our professional practice. For this discussion exercise, we propose this project that intends to be one of information and debate of the ideas and concepts of law that the development of this industry requires. We intend to participate in the hope to provide a reliable and professional source of analysis and information and to facilitate the challenging decisions that such to which this is addressed must take in their daily endeavors.

### *Which are the topics...*

With the opening of new low cost carriers and with the growth of aviation that these, in appearance, represent for Mexico, it is necessary to commence the discussion related to the air transport policy that will be implemented in this country for years to come.

The growth in services offered resultant from the increase in the number of aircraft that will operate in Mexico and the improvised and circumstantial reduction of prices at which air transport services are beginning to be offered to the traveling public will not necessarily produce substantial growth in the domestic or international air transport market, which nowadays comes close to 6 million passengers per year<sup>1</sup>.

Between 2006 and 2007 the available seat capacity in Mexico will have nearly duplicated considering that only Interjet and Volaris alone have signed contracts for the acquisition of 27 and 56 aircraft respectively with average capacity of 100 to 150<sup>2</sup> passengers each and that Mexicana and AeroMexico maintain fleets nearing 60 aircraft each with similar seating capacity, this, without contemplating the arrival of projects in which companies like Gol and Ryanair have become involved and others that intend to commence airline operations within the following months.



Abogados Sierra y Vázquez



---

*We intend to participate in the hope to provide a reliable and professional source of analysis and information and to facilitate the challenging decisions that such to which this is addressed must take in their daily endeavors.*

---

The foregoing will generate load factors per aircraft that will be undoubtedly lower than current figures and that will be inferior also to the ability of the market to grow in an economy that has not grown at the rates of countries like China or India, where as a result of such growth the number of aircraft that supply the increasing demand of air transportation services has been increased substantially and not vice-versa.

Low prices are certainly always welcome, but such per se do not constitute an adequate formula for the modernization of the national air transport industry, the costs involved in the operation of air services are elevated in general, particularly in the current environment where the high costs of fuel and security minimize or do away with the estimated profit of the airlines. A price war like the one that is about to commence in Mexico will only generate, by mid term at the latest, victims that will not be able to survive such scheme with the consequent substitution, at best, of some of the players that currently provide air transportation services and not by any means the dynamic growth of the market that is intended. At the end of this war, the survivors will undoubtedly increase their tariffs once again and the vicious circle will once again be repeated with the consequent detriment of the quality and safety of the service. This has already occurred in the past when airlines like Taesa and others formed part of the national air transport industry in yesteryears.

---

<sup>1</sup> Source, DGAC.

<sup>2</sup> Interjet has purchased 7 Airbus A320 aircraft and has signed a purchase agreement for new aircraft with Airbus Industrie that contemplates a total of 20 aircraft 10 firm and 10 options. Volaris has subscribed with Airbus Industrie an agreement for the acquisition of 16 firm Airbus A319 aircraft and 40 options of any of the Airbus A320 family.

---

*Mexico is in urgent need to insert its aviation industry in the international debate of topics that are currently reshaping air transport on a worldwide scale to develop a modern and consistent air transport policy placed in the global context.*

---

Mexico is in urgent need to insert its aviation industry in the international debate of topics that are currently reshaping air transport on a worldwide scale to develop a modern and consistent air transport policy placed in the global context. To this effect various are the subjects that must be opened for discussion in the following months among which some are the following:

Mexico must debate whether the regulatory framework of this industry should continue to be ruled by the bilateral relationship among pairs of states derived from the scope of the International Air Transport Agreement signed in Chicago in 1944, or else, discuss if this industry as any other shall in the future be ruled by the norms of international trade promoted by the WTO<sup>3</sup>. Derived from the transformation of this activity, it is now widely believed that the traditional IATA Tariff Conferences no longer meet the economic expectations of an industry that has increasingly lost the protecting veil of what in previous years had been a uniform protectionist policy of air transport at a worldwide scale as a strategic activity and as a matter of national security of states, in order to be now placed face to face against the market forces that conform its day to day reality and shape the services that this industry offers all around the world.

In different countries the debate has been started to discuss whether the traditional model based on such bilateral air transport agreements between states has already exhausted its potential and to whether the future of aviation should be such as of any other international services industry. In face of this, the projected future of the bilateral relations that Mexico has with countries throughout the world should be outlined to determine if Mexico will participate in a growing international tendency towards open skies or whether it will close its air space to international undertakings, is Mexico willing to enter into an agreement with the European Community, as a group, as such Community intends, or will intend to maintain effective the current bilateral agreements with each separate country of such block; will it permit market rules to determine the potential growth of frequencies and the capacity offered to different destinations or will it continue to restrict the capacity on the basis of reciprocity and protectionism.



*Abogados Sierra y Vázquez*

---

<sup>3</sup> World Trade Organization.



What will be the policy that Mexico will adopt in face of alternative concentration mechanisms such as international commercial alliances between air carriers; how does this phenomenon affect this country from the standpoint of the currently effective legislation and of the recently approved reforms in economic competition laws; will Mexico permit an increased participation of foreign investors in air transportation concerns; will it therefore permit the consolidation of markets through international alliances which, piercing the strictly commercial aspects, would involve the corporate control of companies in this sector by foreign individuals and concerns or shall it maintain such areas closed in order for such projects to be developed solely by Mexican nationals and entrepreneurs and for such, in the worst case scenario, to be rescued once again at some point by the government in order to prevent the industry from disappearing all together.

In sight of the high cost of acquisition of modern high technology aircraft, which are key to an efficient and safe air transport service, is Mexico contemplating to open the debate in respect to the difficulties that the currently available mechanisms contemplated in the law generate for the exercise of effective legal action against defaulting lessees and debtors, situation of which several embarrassing cases illustrate why Mexico has fallen to the bottom of the list in respect to legal certainty in aircraft leasing activities, which are of imperative need for the development and economic viability of the aviation industry?



*Abogados Sierra y Vázquez*

---

*...we will deepen the analysis of the issues described to propose and hopefully provoke the discussion of the same for the benefit of our industry and of this country.*

---

Will Mexico open the debate on the viability to adhere to international instruments such as the Cape Town Convention<sup>4</sup>, which would allow the expedite recovery of aircraft and equipment and which once ratified by the states create attractive financing opportunities and economic incentives for air carriers thereof in consideration of the diminished legal risk that the placement of high cost aircraft entails in countries that recognize such legal instruments and with the consequent economic benefit that such would represent for Mexican air transportation companies? Would it be possible for Mexico from a legal standpoint to form part of international agreements of such nature, without provoking conflicts of constitutional nature when the parties to an agreement shall submit to their provisions?

These and other topics should conform the agenda of the companies that participate in the Mexican air transport sector, as well as in the highest priorities of the aeronautic authorities involved. With an adequate development policy that contemplates the foregoing issues and that generates certainty to investors in this industry, Mexico will effectively develop a modern aeronautic industry that will permit to go beyond the temporary and recurrent tariff war among undertakings and generate effective growth of the market and sector to which this serves beyond the strictly circumstantial.

In the numbers to come of this news letter, this firm intends to discuss these and other topics related to air and space law with the intention to provide a modest contribution to the debate of the foregoing issues, in subsequent deliveries we will deepen the analysis of the issues described to propose and hopefully provoke the discussion of the same for the benefit of our industry and of this country.

---

<sup>4</sup> Convention on International Interests in Mobile Equipment, Cape Town, 2001.



## Aerocalifornia: 90 Days...The Countdown

Andrea Valencia

The past 02 of April of 2006 the General Directorate Of Civil Aviation made a major verification to Aerocalifornia airline, property of Raul Antonio Aréchiga. As a result of said inspection, the mentioned authority, decreed immediate suspension of operations of the referred airline, anticipating that if they did not amend a series of deficiencies regarding security, personnel training and aircraft maintenance, such airline would not be able to continue operating.

On April 3<sup>rd</sup>, the General Directorate Of Civil Aviation, issued a resolution in which it grants a term of 90 natural days to Aerocalifornia, term in which they would have to amend the found deficiencies in the inspection of April 2<sup>nd</sup>, 2006, measures that contemplate, among others, the maintenance and renovation of its aircraft, under the warning, that the lack of fulfilment of the said requirements, would have the immediate consequence of the revoking the concession granted by the Ministry of Communications and Transports.

As a result of the suspension decreed by the General Directorate Of Civil Aviation and the threat of a possible revocation of the concession, a great controversy has arisen around this subject.

On one hand, the constant plea of Aerocalifornia's directors and employees regarding an apparent arbitrary action of the Aviation Authority and their necessity to give more space to the new low cost airlines, specifically Interjet, property of Miguel Alemán, who rumour has it, is interested to obtain Aerocalifornia's concession; and an alarming reality of 2,200 direct employees of Aerocalifornia that will be unemployed if the company does not continue operating and the concession under which it provides services is finally revoked.

On the other hand, it has been very well received that the competent authorities are "finally" applying a serious aviation legislation in Mexico, in a time in which it is indispensable to have a correct application of the law in this particular subject.

For the above mentioned, it is inevitable to make a series of questions around this matter. Is the major verification applied the April 2<sup>nd</sup>, 2006, to Aerocalifornia, an arbitrary measurement of the General Directorate Of Civil Aviation and slow begging of the concession revocation process, therefore grant it to the new low cost airlines? Are these security and training deficiencies found in Aerocalifornia's operations reasons for suspension or revocation? Is the term of 90 days granted to Aerocalifornia to amend the mentioned deficiencies legal?

---

*Is the major verification applied the April 2<sup>nd</sup>, 2006, to Aerocalifornia, an arbitrary measurement of the General Directorate Of Civil Aviation and slow begging of the concession revocation process, therefore grant it to the new low cost airlines?*

---



*Abogados Sierra y Vázquez*



According with article 191 of the Reglamentation of the Civil Aviation Law, the Secretary is authorized, to carry out, himself or by third person, "at any moment" and in a random matter, the inspections and verifications that he considers pertinent.

The article 197 of the referred Regulation, indicates that a suspension of operations can proceed when, in a verification, it is found that security conditions can risk the airline operations, or when the technical aviation personnel present temporary or permanent phycologic or physical incapacities that unable them to carry out their assigned functions in a suitable manner. Therefore, it is perfectly legal the random verification applied to Aerocalifornia and the resolution of the Aviation Authorities under which they decreed a temporary suspension as a result of the found irregularities, based on the articles above described.

Article 6 of the Civil Aviation Law, indicates that the Secretary of Communications and Transports is capable to grant concessions and permits, is be able to verify the fulfilment of the needed requirements and is able determine, in a given situation, on its modification or revocation. Once a concession has been granted, the concessionaire is obligated to fulfil a series of conditions, according to the article 9 of the referred law, he will have to proof he has the technical capacity to provide the service under safe and qualified conditions, aircraft availability, aircraft equipment, etc., that will allow him to comply with technical and safety requirements, among others.

Additionally, article 15 of the Civil Aviation Law, enlists the causes of revocation of a concessions, in which we can find on its fraction X, that one of the causes of revocations is to infringe the conditions of security regarding airworthiness matters. Nevertheless the referred article indicates:

*"concession or permits will only be revoked, once the concessionaire has been previously sanctioned, due to the same infraction, at least in three times, by the causes provided in the said fraction."*

As far as the term of 90 natural days granted to Aerocalifornia to amend their security and training deficiencies, in order to continue operating, the Civil Aviation Law, in its article 91, establishes that in order to declare the revocation of concessions, permits, licenses and suspension of services, the imposition of sanctions provided in this Law, as well as for the interposition of the administrative recourses, the procedure will be applied accordingly to what the Federal Law of Administrative Procedure establishes.

---

*...it is perfectly legal the random verification applied to Aerocalifornia and the resolution of the Aviation Authorities under which they decreed a temporary suspension as a result of the found irregularities...*

---



*Abogados Sierra y Vázquez*



The Federal Law of Administrative Procedure contemplates in its Fifth Title a Unique Chapter of "Safety Measures", in which it indicated the following:

*"Article 81.- safety measures are those that the competent authorities consider necessary to protect public health and public security. The safety measures will be established on each case by the administrative laws.*

*Article 82.- The administrative authorities according to the results of the verification visits or the report of the said verifications, will be able to dictate safety measures to amend the irregularities that had been found, they will notify such irregularities to the person responsible and they will grant him an adequate term of time in which such irregularities would have to be amended. Such term will last the strict duration the authorities consider enough in order to amend the specific irregularities."*

---

*Will be enough to proof to the competent authorities the capability of the airlines to continue with its operation, or, if the term of 90 days granted to Aerocalifornia is only the beginning of the slow countdown for the disappearance of Aerocalifornia?*

---

In regards to the articles above mentioned, the term of 90 natural days granted to Aerocalifornia, is granted according to the discretionary capacity of the Aviation Authority and it is based on whatever is considered as a "pertinent" amount of time in which the irregularities can be amended.

On April 17, 2006, the technical secretary of Aerocalifornia affirmed that a series of evidences had already been filled before the General Directorate of Civil Aviation, with the sole purpose of proving that the aircraft are completely capable of operation, due to the fact that their components are duly registered and have the correspondent certification of its personnel.

The question remains, on the time in which the Aviation Authorities will evaluate the filed evidence, but further more if such evidences will be enough to proof to the competent authorities the capability of the airlines to continue with its operation, or, if, the term of 90 days granted to Aerocalifornia is only the beginning of the slow countdown for the disappearance of Aerocalifornia.



*Abogados Sierra y Vázquez*



# COELUM

NEWSLETTER



ABOGADOS SIERRA Y VÁZQUEZ

## ABOGADOS SIERRA Y VÁZQUEZ

Prol. Reforma N° 1190 Piso 25

Santa Fé

CP. 05300

México D.F.

T. (52.55) 52.92.78.14

T. (52.55) 50.93.29.63

[www.asyv.com](http://www.asyv.com)



Editor:  
Mier y Terán & Asociados



COMUNICACIÓN  
E INTELIGENCIA  
[www.mierysteran.com](http://www.mierysteran.com)