

# COELUM

COELUM Pronunciation: 'che-l&#38;m, is Latin for air space 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.

newsletter |

monthly digital publication by

ABOGADOS SIERRA Y VAZQUEZ

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

february 15, 2008

year 02 | No. 10

## CONTENTS

An Overview of the Approval Requirements for the Transfer of Shares of a *Concessionaire*

Antonio Vázquez P. 01

IATA Operational Safety Audit (IOSA)

Viridiana Barquín P. 02-03

JANUARY NEWS

on Mexican aviation P. 04-05

Contributors P. 06

## An Overview of the Approval Requirements for the Transfer of Shares of a *Concessionaire* | Antonio Vázquez

When an airline undertakes a major transfer of share ownership, should this transfer be pre-approved by the Aviation Authority?

In our legal system the capacities of the authorities of the Government are the ones expressly given and regulated by the laws. Opposite to the individuals, the authorities may only act according to the specific competences that the laws provide to them. This legal principle is very important in connection with my article of this month. The Aviation Law provides that the Secretary of Communications and Transport (Secretaría de Comunicaciones y Transportes) is the capable authority to give, modify or revoke the concessions and permissions that relate to aviation operators.

Article 14 of the Civil Aviation Law lists the cases in which the permission or concession granted to any kind of persons, natural or legal may terminate. One of the termination causes is the revocation ordered by the Secretary of Communications and Transport (The Secretary). In particular the Civil Aviation Law (article 15) states the cases in which a concession or a permit may be revoked. One of these causes is the transfer of the permit or concession by the operator to a third party without the consent of the Aviation Authority. Article 16 provides that the Secretary may authorize the transfer of the permit within ninety days from the date on which the operator applied to obtain this authorization.

As we can see, a permit may not be transferred to a third party without the consent of the Aviation Authority. In this event, the Aviation Authority should proceed to revoke this title.

I consider that the *ratio legis* is simple and easy to understand: The Mexican Authority must be able to carefully analyze the individuals or entities that operate a concession or permit and must be capable to intervene in the case that the permit could be transferred to an entity or individual which, according to the Authority criteria, may not be capable of operating at the level required by the Authority. It therefore seems reasonable that the Authority must be able to review not only the entities that operate under the corresponding title granted there to, but also the individuals or entities that may be the shareholders or owners of the title holder.

In spite of the above, interestingly, the Aviation Law does not however allow the Authority to review the transfer of shares of a permit holder before such has taken place. This means that the Authority may revoke a permit if it is transferred without its previous consent, but on the other hand, if the transfer is related to the shares of the permit holder, the Aviation Authority has no capacity to review this transfer. Of course, there is a clear contradiction.

Therefore, and following the principle that the administrative authority is only able to take action in cases specifically provided under law, it would be very important to modify the Aviation Law and possibly the applicable general law of Commercial Companies (LGSM) in order to give the Authority the ability to act in specific cases in which the spirit of the law may be avoided, as for example, the transfer of a title holder's shares. A case in which the Authority is now unable to act.

## IATA Operational Safety Audit (IOSA) | Viridiana Barquín

The IATA initiated the Operational Safety Audit (IOSA) Programme in 2001 to satisfy two specific needs of the industry, safety and cost efficiency. Prior to 2001, airlines were constantly subject to a proliferation of audits that used to be varied in content, in intention and in their objectives. IOSA is modifying this situation with the introduction of a unique norm, approved specifically for airline audits. Airline operational safety continues to be the major priority of the industry and compliance with the procedures and recommended practices of the IOSA program will help to achieve operational safety in all key areas, as well as increasing operational efficiency.

This Operational Safety Audit Program as defined by IATA is an internationally recognized and accepted evaluation system designed to assess the operational management and control systems of an airline. IOSA uses internationally recognized quality audit principles, and is designed so that audits are conducted in a standardized and consistent manner. Any airline can benefit from IOSA, however all IATA members must have registered into the IOSA registry by January 1st, 2008.

The IOSA audit standards are based on eight areas that contribute to airline operational safety, which are:

- Corporate Organization and Management Systems (ORG)
- Flight Operations
- Operational Control Flight Dispatch (DSP)
- Aircraft Engineering and Maintenance (MNT)
- Cabin Operations (CAB)
- Ground Handling (GRH)
- Cargo Operations (CGO)
- Operational Security <sup>1</sup>

Several Aviation Authorities in the world are currently analyzing the ways in which IOSA procedures will help and become the means for the improvement of their own functions of regulatory supervision. The Non-IATA Airlines are beginning as well to see the benefits that may be obtained by using IOSA procedures within their own operations.

The final purpose of this process is for airlines to become certified or audited by IOSA. An airline that has completed the audit of the IOSA Program and has demonstrated full conformity with the procedure will be incorporated as an IOSA Operator.<sup>2</sup>

---

<sup>1</sup> <http://www.quali-audit.aero/pagelibre000100e6.html>

<sup>2</sup> <http://www.iata.org/registry>

The ICAO has taken part in the development of the IOSA audit, considering it as part of the Universal Program of Audit of Supervision of the Security Conditions of the States. The IATA supervises the quality of the whole IOSA program. Some of its functions include the constant development of the IOSA System of Documentation, (Manual of the IOSA Procedures, IOSA Program Manual, Guide for the IOSA Auditor) the ongoing maintenance of the procedures, the management and the quality guarantee of the organizations that carry out the audits and provide training, the organization of the meetings of the IOSA Committee of Supervision (IOC) and the maintenance of the IOSA Registry of audited airlines.

The IOSA Manual contains the procedure that governs all the aspects of the IOSA Program in order to guarantee a standardized and consistent audit product. This manual is the base for the Audit Organizations Certification, the official approval of the IOSA Auditors and other important aspects of the program. The IOSA Manual is not an operational manual and, therefore, technically it is not an element demanded in the process of preparation for an audit. Nevertheless, because this manual offers a detailed description of the requirements of the IOSA Program, its review is recommended before the starting an audit process.<sup>3</sup>

IATA puts the IOC in charge of the Audit Organizations, and the completion of audits in its name.<sup>4</sup> The IOC (IOSA Supervision Committee) is an organism inside the structure of government of IATA that is responsible for guaranteeing that the IOSA Program maintains a high level of quality and standardization. It is controlled on behalf of Member Airlines and keeps continuously satisfying the needs of the industry. The IOC is under the supervision of the Operations Committee (OPC), which in turn depends on the Managerial Meeting of IATA. The IOC is composed of representatives of the 25 airline members of IATA plus 10 aviation authorities. At the IOC meetings, there are also numerous invited observers representing interested segments of the industry. Currently the IOSA Program is applicable only to passenger airlines.

The IOSA Manual is not an operational manual and, therefore, technically it is not an element demanded in the process of preparation for an audit. Nevertheless, its review is recommended before the starting an audit process

Nevertheless, there has been a great interest to expand the scope of the audit to include cargo airlines. In the near future IATA plans to coordinate the development of technical modifications to the pertinent IOSA procedures so that the program can also be applied to cargo airlines.

In Mexico, several airlines has completed the audit, the list of such IOSA Registered airlines is as follows: AeroLineas MesoAmericanas S.A. de C.V. (ALMA), Aerolitoral, S.A. de C.V., Aerovías Caribe S.A. de C.V. (Click), Aerovías de Mexico, S.A. de C.V., Interjet and Mexicana Airlines.<sup>5</sup>

<sup>3</sup> [http://www.iata.org/NR/ContentConnector/CS2000/Siteinterface/sites/ps/iosa/file/IOSA\\_faq\\_spanishfinal.pdf](http://www.iata.org/NR/ContentConnector/CS2000/Siteinterface/sites/ps/iosa/file/IOSA_faq_spanishfinal.pdf)

<sup>4</sup> <http://www.iata.org/iosa/accreditation>

<sup>5</sup> <http://www.iata.org/ps/certification/iosa/registry>

## News | January

### Extract of Mexican Aviation News

#### ICAO: Mexico's Aviation industry grew 7%

Mexico's aviation industry grew faster than the world-wide average. According to preliminary figures, Mexico grew 7%, from 2006 to 2007 compared with 4.5% internationally. "Mexico has an aviation tradition of well qualified personnel and mature airlines, but it is necessary to maintain surveillance to ensure continued harmonious development", said Roberto Kobeh, president of ICAO

El Universal, 07 / January / 2008

<http://www.eluniversal.com.mx/finanzas/62012.html>

#### Mexican aviation is safe

The International Civil Aviation Organization (ICAO) qualified the Mexican Aviation industry as safe, according to the audit made in the country. ICAO also confirmed the aeronautical authority's ability to guarantee the security of air operations to avoid accidents and terrorist acts. There are 10 thousand norms in security issues and ICAO made observations in less than 60.

Reforma, 08 / January / 2008

<http://www.reforma.com/negocios/articulo/422/842624/default.asp?Param=4&PlazaConsulta=reforma&EsCobertura=false&DirCobertura=&TipoCob=0>

#### Finishing touches to Terminal 2

Effective January 15, 2008, Aeroméxico and Aeroméxico Connect, COPA Airlines and LAN, will join Aeromar and Delta to operate from the new Terminal 2 of Mexico City International Airport. Continental Airlines will not be moving, and will continue operating from Terminal 1.

Reforma, 14 / January / 2008

<http://www.reforma.com/parseo/printpage.asp?pagetoprint=../editoriales/negocios/418/834581/default.shtm&subcategoraid=49&categoraid=6>

#### Brazilian airline to operate from Mexico

One of Brazil's major carriers, the low cost airline named Gol, is starting Mexico operations. Lincoln Fakes, Gol's Commercial Manager advised: "Starting on January 11, 2008 we will begin to operate a daily flight between Sao Paulo-Mexico, with our Varig subsidiary."

Excelsior, 17 / January / 2008

[http://www.exonline.com.mx/diario/noticia/dinero/economia/aerolinea\\_brasilena\\_se\\_estreno\\_en\\_nuestro\\_pais/103932](http://www.exonline.com.mx/diario/noticia/dinero/economia/aerolinea_brasilena_se_estreno_en_nuestro_pais/103932)

#### Companies to be asked to stop "dumping" in the Mexican domestic market

The National Aviation Chamber (Canaero) will design a guide to establish base costs for healthy competition in the national market. This is to try and avoid the current practice of offering rates below cost, a practice also known as "dumping".

Milenio, 18 / January / 2008

<http://www.milenio.com/mexico/milenio/nota.asp?id=586281&sec=5>

## News | January

### Extract of Mexican Aviation News

#### [New airport to be built in Texcoco](#)

Mexico City's new airport will be built on a 9 thousand hectare, Federal Government property in Texcoco. The minimum investment is expected to be 8 thousand million pesos. The Transportation Ministry expects that it will take a year to start the bidding process between companies and that 2012 will see the start of operations.

El Universal, 21 / January / 2008

<http://www.eluniversal.com.mx/finanzas/62252.html>

#### [Smaller losses for Delta Airlines](#)

Delta Airlines registered a net loss of 70 million or 18 cents per share in the 4th quarter, compared with the loss of a thousand 980 million dollars in the same period of the previous year, when the company was in bankruptcy. The airline, with headquarters in Atlanta, said that the operating revenues grew 10 percent to 4 thousand, 680 million dollars compared with 4 thousand 250 million dollars the previous year.

El Financiero 23 / January / 2008

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=100754&docTipo=1&orderby=docid&sortby=ASC>

#### [Aeroméxico prepares new investments](#)

Aeromexico is getting ready to face the American recession by maintaining an aggressive investment plan for this coming year. The airline is preparing to invest 250 million dollars in additional resources. The company needs investment in technology and in a new maintenance base among other projects that are still under evaluation but which will soon be presented to the Board of Directors.

Excelsior, 25 / January / 2008

[http://www.exonline.com.mx/diario/noticia/dinero/empresas/aeromexico\\_prepara\\_nuevas\\_inversiones/110746](http://www.exonline.com.mx/diario/noticia/dinero/empresas/aeromexico_prepara_nuevas_inversiones/110746)

#### [IATA establishes deadline for conversion to E-tickets](#)

IATA, the International Air Transport Association established May 31, 2008 as the deadline for all the member airlines to convert from paper tickets into electronic tickets (e-tickets).

El Universal, 28 / January / 2008

<http://www.eluniversal.com.mx/finanzas/62385.html>

## Contributors



### ANTONIO VÁZQUEZ

Attorney at Law: Admitted to practice law in 1991. Mr. Vázquez of Mexican nationality obtained his law degree at the Universidad Nacional Autónoma de México (UNAM). Mr. Vázquez attended post-graduate studies in Civil Law, Corporate Law, "Amparo" Financial and Procedural Law, Civil and Commercial matters. Mr. Vázquez has been Professor of "Amparo" in UNAM and Lecturer at various universities throughout Latin America. Currently Mr. Vázquez is member of the International Bar Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Arbitration, Civil Law, Civil Litigation, Amparo, Corporate Law and Foreign Investment. e-mail: [avazquez@asyv.com](mailto:avazquez@asyv.com)



### VIRIDIANA BARQUÍN

Attorney at Law: Admitted to practice law in 1999. Ms. Barquín, of Mexican nationality obtained her law degree at Universidad La Salle, Mexico City and attended post-graduate studies in International Business by Universidad La Salle, Barcelona, Spain; Airline Contract Law by International Air Transport Association (IATA), Geneva, Switzerland and International Arbitration by Escuela Libre de Derecho, Mexico City. LANGUAGES: Spanish, English and Catalan. PRACTICE AREAS: Aviation Law, Aircraft Contract Law and Corporate Law. e-mail: [vbarquin@asyv.com](mailto:vbarquin@asyv.com)

## ABOGADOS SIERRA Y VAZQUEZ

Prol. Reforma N° 1190 Piso 25  
Santa Fé México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com)  
[mail@asyv.com](mailto:mail@asyv.com)