

# COELUM



COELUM Pronunciation: 'che-l&#228;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.

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## Mexican Aviation in 2008: Unprecedented growth, unprecedented challenges | Carlos Sierra

From an economic standpoint and primarily for the benefit of the passengers 2008 should be a very positive year for the Mexican aviation industry considering several new elements with which this sector begins the New Year and which will undoubtedly influence its development from an economic standpoint. The year however, also begins with challenges that need to be urgently addressed from a legal perspective if we want to have a regulatory framework that can be up to the task that the economic growth and activity of this sector will demand in years to come.

The positive developments are clear on the economic side. The year commences for this industry in Mexico with more airlines and more new aircraft operating in Mexican air space than ever before in the history of Mexican aviation. Once again, after more than a decade, 2008 will see no Mexican air carriers under government control. More cities than even will be connected by air and Mexican air carriers will fly to more international destinations and to distant points that have never being reached by a Mexican airline. The bid for the international market will continue and the adherence of Mexican carriers to international alliances will continue to connect Mexico to the world. We shall witness how the Mexican legacy carriers will face the toughest and most well prepared and financed competition that they have ever seen in their history in the domestic market, and more private investment with flow into new and veteran Mexican air carriers than ever before in aviation history. We shall also see which is the impact that the new tax reforms and the newly created federal tax<sup>1</sup> will have in this industry. 2008 should be a year of consolidation of new projects and a year in which the older players will need to bet on the strategy that they will implement to face the challenge. The year will be tough undoubtedly and there will be winners and losers, we shall see.

2008 should be a year of consolidation of new projects and a year in which the older players will need to bet on whatever strategy that they implement to face the challenge.

On the legal side however, as the year starts we find the lease and finance industry backed up by the recent adherence of Mexico to the Cape Town Convention and Protocol, but we still need to expect that the Mexican courts will be willing to recognize the rights and prerogatives that have been created pursuant to these instruments in a form in which the lessors and financiers of aircraft can find more legal certainty in placing high value assets in this country. The discussion needs to be opened in respect to the provisions that need to be modified as the currently made declarations to these instruments are far from ideal to serve its purposes; the discussion needs to be opened as well in regards to the legislation that will need to be either modified or implemented in order to properly integrate the Cape Town instruments into our legal system.

<sup>1</sup> A new federal income tax known as Single Rate Corporate Tax (IETU) has become effective for 2008 at rate of 16.5%, the IETU is designed to be mutually exclusive with the currently effective Income Tax (ISR).

The *acuerdo* that the legal working group that was integrated to implement Cape Town in Mexico has prepared and proposed to the Civil Aviation Authority (DGAC) to legitimize the election made by the Mexican Registry to become an Authorizing Entry Point, needs to be issued promptly by the Secretary of Communications and Transport in order to avoid controversies in regards to the legal ability of approved user entities of the International Registry of Mobile Assets to conduct registrations of interests related to Mexican registered aircraft. We will need to discuss the new and rather dangerous official norm that intends to regulate certain aspects of aircraft leasing to Mexican air carriers from a technical standpoint, a draft of which has already been issued by the DGAC. A thorough analysis needs to be made of which shall be the position that Mexico will assume in respect to open skies in bilateral negotiations. Congress needs to discuss and approve the already prepared law that will protect the rights of passengers that use air transportation services. New rules need to be discussed to prevent the airports from charging disproportionate fees for deficient or scarce services and also to resolve airport congestion and to procure funding for future growth.

Quite importantly as well 2008 will open a new opportunity to urgently modernize the Mexican Civil Aviation Authority (DGAC) and the Mexican Aeronautic Registry, a new director of the Registry has been appointed at the end of last year. We urge and offer all collaboration of the working group to implement a thorough modernization of the Registry. An urgent call is also made for the government to modernize and professionalize the DGAC, from its premises and staff to its procedures and regulations. The lack of a modern aviation authority is and will more evidently become a clear obstacle for the development of the new Mexican aviation industry.

In 2008, we hope that we will see the end of the era in which defaulting air carriers simply chose to defy the aircraft owners and all other creditors and simply

disappear leaving millions behind in debt, many unemployed workers and thousands of stranded and affected passengers, but worst of all, raising once again the fear of Mexican aviation being regulated by a poor and insufficient legal system that allows little room to remedy the many damaging results from the behavior of these carriers, while tarnishing the reputation of Mexican aviation altogether all over the world. With better funded carriers with more professional management structures and better prepared business plans and, hopefully with more thorough and efficient legislation, this too often repeated phenomenon appears to be going away for this year period. In this context, and procuring the exercise of such remedies in various particular cases in course, we shall witness the result of certain innovative legal proceedings that have been instrumented in order to mitigate the negative effects of recent defaults of this nature. In this respect we shall witness the outcome of cases in which lessors and aircraft owners expect to be compensated for the damage caused to their aircraft by ill intentioned lessees and we shall also see how courts finally consider the innovative attachment placed on an air carrier's concession granted by the State to operate air services, among other interesting actions that courts and tribunals need to resolve in due course throughout this year.

In summary a very interesting year lies ahead in 2008 for Mexican aviation in which the main challenge will be to cause the applicable legislation to be as modern as this vibrant industry has come to demand. This goal must be achieved with the participation of all players in the industry, with the participation of the federal government and of the DGAC, but most importantly with the integration of Congress and the Judiciary into the discussion of a new or thoroughly revised regulatory framework. Mexico will face this challenge and the aviation industry will continue to grow. It is going to be an exciting year.

## Explaining the MEXICAN OFFICIAL NORM | Juan Antonio Tiscareño

*In our December 2007 issue of COEULM, Misael Arellano wrote an article related to the Mexican Official Norm that set of forth. In this number Juan Antonio Tiscareño will describe how a Mexican Official Norm is inserted into the Mexican legal system.*

The Mexican Official Norms or MONs (Normas Oficiales Mexicanas) have become of great importance within the Mexican legal system.

An exhaustive investigation of the subject would require at least, the clarification of its legal nature, its possible unconstitutionality, and the range of action that it can direct.

Norms have gained much vigor recently because of the rapid growth of technological developments, and the need for the state to provide a comprehensive regulation of this industrial growth.

This will exceeds the purpose of this specific article which has a simpler purpose. The object of this article is to explain in a general way the procedures for the elaboration of a norm, according to the Federal Law on Metrology and Standardization (FLMS).

In first place, it seems necessary to define what a norm is. The FLMS says<sup>1</sup> that it is a "...technical regulation of obligatory observance issued by the competent dependences, in accordance with the purposes established in article 40, which establishes rules, specifications, features, guidelines, characteristics or requirements applicable to a product, process, installation, system, activity, service or method of production or operation, as well as those relating to terminology, symbols, packaging, labeling and those that relate to fulfillment or implementation".

As we can observe, these are particular rules, as they relate to concrete subjects, objects and situations. Such norms have gained much vigor recently because of the rapid growth of technological developments, and the need for the state to provide a comprehensive regulation of this industrial growth.

The purposes of a norm are varied, but in general they seek the standardization of features and specification of products, processes, services, instruments and industrial practices, etc., to bring them into accordance with other laws.

However, I will explain, summarizing where possible the process of developing the norm, without going into irrelevant details<sup>2</sup>:

<sup>1</sup> Article 3, Section XI.

<sup>2</sup> According to the deadlines that the law provides, the process of creating the norm is about 230 days, except in extraordinary circumstances.

1. The development of a norm will depend on each individual case. According to the product, service, method, process, activity, subject, etc., each Government Secretariat and its departments will be granted powers for the development of the norm. In our industry, The Secretariat is the Ministry of Communications and Transport, and the department is, for example, the General Directorate of Civil Aviation, among others.

2. The dependences in particular will prepare a preliminary norm project, and will deliver it to the National Advisory Committees of Standardization (CCNN). In the case of aviation, for example, this committee could be the National Advisory Committee for Standardization of Ground Transport and Air Transport

In every case, the departments will check to see if there are other related norms, and if so, they will coordinate these so as to jointly develop a single norm for the specific Mexican industry or field<sup>3</sup>.

3. Based on the preliminary projects, the NACS will make comments and observations on the norm. Also the law introduced a mode of participation and consultation by allowing the collaboration of individuals, mainly those affected, called "interested parties". In the elaboration of any norm, international standards will be taken into account. It is also essential that the norm submitted for discussion in the NAC, be accompanied by a regulatory impact statement, which should contain a brief explanation of the purpose of the norm, the proposed measures, and an overview of the advantages and disadvantages.

4. The dependences will take notice of such comments, and then the norm will be published in the Official Journal of the Federation "Diario Oficial de la Federación".

5. The norm should be reviewed every five years. For the amendment thereof, the same procedure required for their implementation must be followed<sup>4</sup>.

The effectiveness of the norm is undefined and will depend on each individual case. The law establishes mandatory observance of the norm, making it clear that it not only will apply to products, processes, methods, facilities, and services or activities within the country, but also to those which are imported, which must also abide by its terms.

The process of developing a norm is relatively complex, and this subject will remain disputed by diverse interested sectors of the society (including lawyers) for a long time, because of their impact on the economy of Mexico. It is therefore important to understand how these norms are enacted.

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<sup>3</sup> Article 44, fourth paragraph.

<sup>4</sup> According to the article 51

## News | December

### Extract of Mexican Aviation News

#### [Click Mexicana strike ended](#)

With a salary increment of inflation plus one percent, equivalent to 4.75 percent, the Union of Flight attendants (ASSA) decided to end the Click Mexicana strike that started in the first minutes of December 1st. At the 05:00 hours they summoned 155 flight attendants to a meeting and they decided to accept some of the company's proposals.

Reforma, 03/ December / 2007

<http://www.reforma.com/negocios/articulo/417/833237/default.asp?Param=4&PlazaConsulta=reforma&EsCobertura=false&DirCobertura=&TipoCob=0>

#### [Aeroméxico suspends operations in Guatemala](#)

Aeroméxico, that offered five weekly flights to Guatemala, that had begun last July, have suspended their operations to this country, according official sources. Although the reasons of the cancellation are unknown, the National Institute of Tourism presumes that is because the sale of the airline.

El Financiero, 04/ December/ 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=92979&docTipo=1&orderBy=docid&sortBy=ASC>

#### [Airlines will be audited](#)

The national aeronautical industry has reasons to be glad. The Presidency authorized the General Direction of Civil Aeronautics (DGAC) under Gilberto López Meyer to recruit 231 new inspectors who will give a needed boost to the supervision work that the DGAC is required handle.

Reforma, 07/ December / 2007

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

#### [The Mexico City Airport's second terminal \(T2\) is not still finished](#)

The work on the Mexico City Airport's second terminal is not finished, although it is one month since it was inaugurated. Worker groups are still to be seen carrying out construction work. A visit by this newspaper verified that dozens of employees are continuing work on electrical and phone facilities and the construction of the information module,

Crónica, 10/ December / 2007

[http://www.cronica.com.mx/nota.php?id\\_notas=337118](http://www.cronica.com.mx/nota.php?id_notas=337118)

#### [Aeroméxico orders Dreamliners](#)

Aeroméxico headed by José Luis Barraza has already started contract talks with Boeing for the design of the internal configuration of the five B787 Dreamliner aircraft planned to start delivery in February of 2010. Those aircraft will allow Aeromexico to gain a stronger presence in the international segment that today represents 40% percent of their revenues.

<http://www.eluniversal.com.mx/columnas/68937.html>

## News | December

### Extract of Mexican Aviation News

#### An 80% increase in the issue of Electronic air tickets

Mexican airlines show a total increase of between 70% and 80% for the change from the paper tickets to the electronic ones. Although there is no estimate on savings in the Mexican market, the International Association of Air Transport (IATA) says that this change will generate annual industry savings of three-thousand-million dollars worldwide.

Milenio, 18/ December/ 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=578058&sec=5>

#### Mexican airlines had a turbulent year

2007 was a year of turbulence for the Mexican airline industry: A more competitive market, new airlines, a price war, cost increases for all companies, such as the high price of the fuel and labor. In 2008 the specialists expect a consolidation of the new companies and an adaptation to the new market conditions by all the participants. Those that do not adapt will disappear.

El Universal, 19/ December / 2007

<http://www.eluniversal.com.mx/finanzas/61791.html>

#### Airlines compete for December business

In spite of the demand in the domestic aviation market during the Christmas season, the Mexican airlines waged a war of promotions and prices that, added to new airplanes and routes, allowed them to double the number of passengers in December of 2007, compared to the same period in 2006.

Reforma, 20/ December / 2007

<http://www.reforma.com/negocios/articulo/420/838183/default.asp?Param=4&PlazaConsulta=reforma&EsCobertura=false&DirCobertura=&TipoCob=0>

#### Air France-KLM will continue in negotiations with Alitalia

The Council of Administration of the company Alitalia agreed today with the Franco-Dutch airline Air France-KLM to continue the negotiations "exclusively" with the Government for the purchase of the state quota of 49.9% that was offered for sale.

El Financiero, 21/ December/ 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=95974&docTipo=1&orderBy=docid&sortBy=ASC>

#### Aeroméxico suspends its stock on the Stock Exchange

Aeroméxico announced its stock would be suspended on the Mexican Stock Exchange with the purpose of restructuring its market strategy. This is effective from December 24 and this was made by application of Aeromexico and conforms to article 248 of the Stock Market Law

Reforma, 26/ December/ 2007

<http://www.reforma.com/negocios/articulo/420/839416/>

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