

COELUM

COELUM Pronunciation: 'che-läm, 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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Foreign Investment Allowed Under Mexico's Foreign Investment Law. | Viridiana Barquín *

Mexico's Foreign Investment Law "Ley de Inversión Extranjera" (LIE), establishes the general rules under which a foreign entity can participate in any investment through the capital of Mexican companies, these companies can acquire fixed assets, enter into new fields of economic activity, offer new products, open and operate establishments, and extend or re-locate existing ones. Nevertheless, the LIE also establishes exceptions in which foreign investment cannot take part, or in which the above participation is subject to certain limits. These exceptions or limits are as follows:

- *Activities reserved exclusively to the Mexican State e.g. oil and other hydrocarbons including petrochemical industries; electricity; radioactive minerals, etc.*
- *Activities reserved to Mexican citizens or to Mexican companies operating with a foreigners exclusion clause. These means that no foreign investment is allowed in any proportion.*
- *Activities and companies where only a specific percentage of foreign investment is allowed. For example, there is a limit of 25% foreign capital participation in domestic air-transport, "air-taxi" transport and other specialized air transportation.¹*
- *Activities and companies in which authorization from the National Commission of Foreign Investment is required in order for the foreign investment to be over 49%.*

“...the LIE establishes exceptions in which foreign investment cannot take part, or in which the above participation is subject to certain limits, for example, there is a limit of 25% foreign capital participation in domestic air-transport, “air-taxi” transport and other specialized air transportation.”

* IN COLABORATION WITH SVEIN AZCUE.

1.- Article 7, Section II of the Foreign Investment Law

It is important to note that, in the cases in which the LIE establishes maximum percentages of foreign investment, they cannot be exceeded directly, by trusts, social or statutory agreements or any other mechanism that grants control or participation greater than that established under the Foreign Investment Law.

Types of Foreign Investment Allowed Under Mexican Law:

- 1) The participation of foreign investors, in any proportion of the share capital of Mexican companies.
- 2) Those carried out by Mexican companies with a majority of foreign capital, and
- 3) The participation of foreign investors in such activities recognized by the LIE.

In general terms, there are two forms recognized by Mexican legislation allowed for investment projects:

- 3.1) The establishment of a foreign company within Mexico, this can be achieved in two ways:
 - *As an agency, branch or representation office with revenue. These are companies legally constituted abroad and recognized legally in Mexico. In order for these companies to be set up and to trade in Mexico, they need an authorization from the National Commission of Foreign Investment so that they may be registered in the Public Registry of Commerce and before the Ministry of Public Funds in order to operate legally.*
 - *As a representation office without revenue. These companies do not carry out acts of trade. They only act by representing foreign companies and have the sole purpose of providing information and advising on activities, products or services provided by the company in the country where its headquarters are located. This type of representation office require authorization as well by the National Commission of Foreign Investment in order to be established in Mexico. They do not need to be recorded in the Public Registry of Commerce, only before the Ministry of Public Funds as a company without revenue.*

3.2) Through the constitution of a Mexican company in which the foreign investment takes part, subject to the percentages established by law, which require authorization of the Ministry of Economy and needs to be registered in the Public Registry of Commerce and before the Ministry of Public Funds.

In any case, authorization by the Ministry of Economy shall not be unreasonably withheld, as long as:

- *The company provides evidence that they are constituted pursuant the laws of the country where its headquarters are located.*
- *The social contract and constitutional documents are not in conflict with the rules of public order established by the laws of Mexico.*
- *The companies have a representative in the place where they are going to operate, authorized to act on behalf of the company constituted abroad.²*

Considering the foregoing in regards to air transportation services, no foreign company would be authorized to provide air services within Mexico, and pursuant to article 7 of the LIE, foreign investment is limited to 25% in national air transport companies. The mechanism by which a foreign company could trade within Mexico would be as a branch or representation office, otherwise it would be through the constitution of a Mexican company with the inclusion of foreign investment subject to the percentages of foreign investment as established by law.

²- Article 17 A of the Foreign Investment Law.

Navigation Assistance Services and use of the Mexican Air Space. | Misael Arellano*

In this issue, Coelum provides an analysis of the most relevant factors involved with the Navigation Assistance Services and use of the Mexican air space. In this article and in the following articles to be written by this author we will analyze: i) how the calculation of duties is made; ii) how the carriers make payments; iii) the payment verification procedure; and, iv) the suspension procedure of Navigation Assistance Services and use of the Mexican air space due to any lack of payments.

Calculation of Duties.

The Federal Law of Duties (hereinafter LFD) provides the mechanisms to calculate the amounts incurred for Navigation Assistance Services and use of the Mexican air space managed by the entity known as Navigation Services in the Mexican Air Space (Servicios a la Navegación en el Espacio Aereo Mexicano "SENEAM")¹. Each carrier must choose the mechanisms of calculation of the duties that better fulfill their needs and notify the offices so authorized by the Tributary Administration Services which ordinarily are the offices of SENEAM, within the first 20 labor days of each year, or if applicable, within 20 labor days of commencing operations or the registration of a specific aircraft before the Aviation Registry.

There are two mechanisms for the calculation of duties offered by SENEAM: i) where the calculation is made in terms of the orthodromic

distance flown²; or, ii) based on the aircraft fuel consumption charged every time the aircraft is supplied with fuel. In general, the non-scheduled carriers use the payments based on the orthodromic distances, while scheduled carriers prefer the duties based on fuel uplift.

Once a mechanism is chosen by the carrier, the calculation cannot be changed until the following calendar year which will be notified in accordance with the aforementioned procedure. Moreover, the LFD states that legal representatives of the carriers have to recognize in the power of attorney, exhibited to that effect, their joint liability on the tax obligations fulfillment of their client.³

1) Section I of Article 289 of the LFD states that the payment system for the use of the Mexican air space by flight kilometer will vary based on the wingspan of the aircraft. By means of this system, the operator should calculate the orthodromic distances of the operations as follows:

a) Domestic flights – the calculation will be made based on the orthodromic distance covered from the airport of departure to the airport of destination.

“There are two mechanisms for the calculation of duties offered by SENEAM: i) where the calculation is made in terms of the orthodromic distance flown ; or, ii) based on the aircraft fuel consumption charged every time the aircraft is supplied with fuel”.

* IN COLABORATION WITH ALEJANDRO LAVAT.

1.- Article 289 of Federal Law of Duties.

2.- Shortest distance between two points on the globe.

3.- 8th paragraph of Article 289 of the Federal Law of Duties

b) International flights – the calculation will be made by the orthodromic distance covered from the entrance or departure point of the Flight Information Region (hereinafter FIR) to the destination or departure Mexican airport.

c) International over-flights – will be calculated by the orthodromic distance covered from the entrance FIR point to the departure FIR point.

Orthodromic distances in the cases of local flights returning to the departure airport must be calculated by the application of 5 kilometers per each flown minute.

To calculate the applicable duties by orthodromic distances, the LFD states that for each flown kilometer, the carrier will pay \$5.63 MXP for aircraft classified as “Large”, \$3.76 MXP for “Medium” aircraft, \$1.30 MXP in case of an aircraft classified as “Small Type B”; and \$ 0.16 MXP if it is an aircraft classified as “Small Type A”.⁴

2) Sections II and III of Article 289 of the LFD state the single quote amounts to be paid for the carrier that chooses the fuel uplift payment system for each time that the aircraft is supplied with fuel.

Section II of Article 289 of the LFD states the single quote duty amounts to be paid in cases of aircraft with less than 16.7 meters of wingspan, as follows: \$74.98 MXP in cases of aircraft with up to 10 meters wingspan or helicopters; \$107.12 MXP in case the aircraft has more than 10 to 11.1 meters of wingspan; and \$160.68 MXP in cases of aircraft with more than 11.1 to 16.7 meters of wingspan.

On the other hand, Section III of article 289 of the LFD states the single quote fees based on fuel uplift payment system to be paid each time that aircraft are supplied with fuel in case the aircraft is classified as “Small Type B”, “Medium” or “Large” based on their wingspan. \$2,977.94 in case of aircraft classified as “Small Type B”; \$8,639.23 in case of “Medium” aircraft; and \$12,947.59 if aircraft are classified as “Large”.⁵

Furthermore, to such effect article 290 of the LFD states the aircraft classification regarding their wingspan as follows:

SMALL		MEDIUM	LARGE
Type A	Type B		
With up to 16.7 meters and helicopters.	With 16.7 meters to 25 meters.	With more than 25 meters to 38 meters.	With more than 38 meters.

In the next issue to be written by this author, we will attempt to review and analyze the procedure of payments for the SENEAM's services regardless of the system chosen by the carrier.

4.- Part I of the Article 289.

5.- All amounts are based on the Federal Law of Duties in Force.

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Extract of Mexican Aviation News

[When is the Government going to open the gates to information about the Aeronautical Sector?](#)

In the topic of access to governmental information, the aeronautic sector is one of the most restricted. The details of the sale of the airlines that once had been in government hands, Mexicana and Aeromexico, is not available to the public. Today's argument is that this is a matter of national security. Information on the aviation sector is totally restricted, including information about the construction problems with Mexico City Airport's Terminal 2. La Cronica. 01/October/2008.

[Air passenger traffic will go down.](#)

Air passenger traffic numbers will go down in Mexico next year, and the solution for this would be to reduce ticket prices. If the lower cost of the fuel continues, the airlines will have to adjust their rates and find mechanisms to lower salary costs. In this way they will become more productive. El Universal. 03/October/2008.

[Mexico at the forefront of aviation technology.](#)

In the celebration for the 30th anniversary of SENEAM, the Secretary of Communication and Transport Luis Tellez, declared that even in these tight financial times, the resources for the acquisition of more secure and modern equipment has been a priority for the government. This is shown in the trust of millions of people and thousands of aircraft that operate in Mexican airports. El Economista. 08/October/2008.

[Aeronautic industry growth is expected to slow.](#)

A growth of 10% was expected at the beginning of 2008, but it will only reach a 3% to 3.5% growth due to the international crisis in aviation. Gilberto Lopez Meyer, ASA's (Airport and Auxiliary Services) General Director stated that the economic crisis will reduce credit availability and this will directly affect the aeronautical industry as well as airport infrastructure which will slow down and even cancel a couple of projects. He also stated that the subject of new fuel suppliers will be discussed in the very near future. El Universal. 14/October/2008.

[Proposal to decrease the charge for airspace use.](#)

The President of the labor Commission of the Mexican Congress has considered a proposal to avoid the loss of more industry jobs in 2008-2009. In order to ease the crisis, a proposal to decrease the charge for the use of Mexican airspace was filed with Congress, through the modification of the fares established Federal Law of Duties. The objective would be to ease the financial crisis and avoid the loss of jobs. El Economista. 15/October/2008.

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Extract of Mexican Aviation News

Spare parts factory moved to Mexico. Labinal closed in the U.S.

It moves to the state of Chihuahua.

The French company of spare parts Labinal Inc. today announced that next year will close its plant in Pryor, Oklahoma, to move to Mexico part of its production of wiring systems for aircraft. The company, which employs 485 people at its facilities in Pryor, said in a statement that all these jobs will be transferred to the company's plant in the northern Mexican state of Chihuahua and in Corinth, Texas, which has its offices in North America. The company currently has two plants, one for the manufacture and assembly of cable systems for planes from Airbus and Bombardier, and the other for Boeing aircraft. El Universal. 17/October/2008.

Avolar is going under.

Still waiting for the results of the lawsuit filed against his partners, Jorge Nehme, President of Avolar Aerolineas faces a new issue. There are 300 labor law suits from pilots, flight attendants, managers and other staff demanding the payment of salaries owed by the airline. The company's excuse is that the shareholders did not inject a requested 80 million dollars of capital. El Universal. 17/October/2008.

For 2009 airline ticket cost will lower.

Next year passengers will notice the difference in the cost of the tickets, and they will travel again. All this is because of the lower of cost of fuel. Between July and September the cost of national airlines tickets went down by 2.28%. Air transport is however still 16.36% more expensive than last year. El Excelsior. 21/October/2008.

No subsidy for fuel. A complicated future?

The Ministry of Communication and Transport, will implement strategies to counteract the financial crisis in the aviation industry. Among them are: review of charges for air navigation services and an endeavor to reduce costs and become more user efficient; improve the level of services and assure competent service. Also expected is a reduction of fuel costs due to more efficient transport, storage and supply services. El Economista. 22/October/2008.

More Mexican airlines will close.

Consultants said that the next airline will be Aviacsa, because of poor finances and low passenger traffic. This year, three national airlines closed, and specialists said that more airlines could close over the next year. The principal problem for these companies is the difference in the exchange rate between the MX Peso and the US Dollar as most of them receive their payments in MX Currency while the of lease rentals is made in US Dollars. El Excelsior. October 28, 2008.

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