

COELUM

Monthly Digital Publication by ABOGADOS SIERRA Y VAZQUEZ

December 15, 2012
year 07 | No. 08



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COELUM Pronunciation: 'che-l&m, is Latin for airspace 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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Summary of events that impacted the Aviation Industry during the period of Felipe Calderon as President of the United Mexican States.

by Viridiana Barquin.

On December 1st, 2012, the term of Felipe Calderon as president of the United Mexican States came to its end. There are differing views about the results that were achieved in various areas during this period, so it is a good opportunity to summarize the progress achieved within the aerospace industry over the 6-year period of Felipe Calderon's presidency. The figures provided by the Ministry of Economy show that Mexico has established itself as one of the major investment destinations for the aerospace industry, with a growth of nearly 19% annually over the last seven years¹. With this information we will begin our analysis more specifically with regard to the following fields:

Foreign Investment, International Trade and Manufacturing: Currently, México has the presence of 249 aerospace companies and support agencies; mostly NADCAP² and AS9100³ certified, mainly distributed in six federal states and employing more than 31,000 senior professionals. In 2010, aerospace industry exports maintained a growth of 16.5% per year, reaching a value of approximately US\$3,200.000 dollars. For 2011 the sector's exports were valued at US\$4,377.000 dollars and foreign and domestic investments exceeded one billion. Meanwhile companies have certified their processes in accordance with industry standards, ISO-9001, AS9100 and NADCAP.⁴ During the presidency of Felipe Calderón, various projects related to the manufacture of structures, airframes, equipment, parts, etc., were established in Mexico. Several companies set up their production facilities in Mexico, such as Bombardier which on October 21, 2010 with an investment of US\$250,000.000 dollars, opened a new plant in Mexico and in 2012 these facilities were expanded with a further investment of US\$250,000.000 dollars. In February 2011, General Electric Infrastructure Company opened its new facilities, also with an investment of US\$20,000,000 dollars as a first step; in October 2011, Eurocopter de Mexico announced the placement of the first stone of an industrial facility, with a direct investment of US\$250,000,000 dollars and in November of the same year Heroux Devtek, a manufacturer of aero structures, parts and components for landing gear, opened a plant with an investment of US\$2,000,000 dollars⁵. All these plants were established in the "Parque Industrial Queretaro" and involve the generation of significant employment in the country. According to the study "Competitive Alternatives 2012" by KPMG, Mexico is the most competitive country in America in terms of aerospace manufacturing costs.⁶

Last March 14, 2012 the Strategic Program of the Aerospace Industry in Mexico was finally launched, with the support of the Program of the United Nations for the Development in Mexico, the Mexican Federation of the Aerospace Industry (FEMIA being its acronym in Spanish)⁷ and the Ministry of Economy.

1.- <http://www.economia.gob.mx/eventos-noticias/sala-de-prensa/comunicados/6423-mxico-principal-destino-de-inversiones-para-el-sector-aeroespacial-a-nivel-mundial-bruno-ferrari>. Consulted on November 25, 2012.

2.- National Aerospace and Defense Contractors Accreditation Program. The global cooperative accreditation program for aerospace engineering, defense and related industries. Consulted on November 25, 2012 at <http://standards.sae.org/as7112/>

3.- Standard AS9100 are aerospace quality specifications known as "Model for Quality Assurance in Design, Development, Production, Installation and Servicing". It is emphasized that the quality system requirements specified in AS9100 are complementary (not alternative) to 5 the contractual and applicable law and regulatory requirements. Consulted on November 25, 2012 at <http://standards.sae.org/as9100/>

4.- http://www.promexico.gob.mx/es_us/promexico/Agricultura Consulted on November 25, 2012.

5.- http://www.economia.gob.mx/files/Monografia_Industria_Aeronautica.pdf Consulted on November 25, 2012.

6.- Competitive Alternatives. KPMG's Guide to International Business Location Cost. 2012 Edition. Page 13, Exhibit 3.5. Consulted on November 25, 2012 at http://www.competitivealternatives.com/reports/2012_compalt_report_vol1_en.pdf

7.- FEMIA is a non-profit association which integrates the majority of the aerospace companies in Mexico established in November 2007, to promote nationally and internationally the development of the Mexican Aerospace Industry, is recognized by the Federal Government given that it was established jointly as a mandate of the federal authorities to gather all national and international corporations within the sector. <http://www.femia.com.mx/index.php>.

“According to the study “Competitive Alternatives 2012” by KPMG, Mexico is the most competitive country in America in terms of aerospace manufacturing costs.”

International Treaties and Applicable Law: The most notable event related to this topic was clearly that on July 31, 2007 when the Mexican Ministry of Foreign Affairs finally deposited at UNIDROIT, the Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (the Cape Town Convention at its Protocol) causing these instruments to become effective in Mexico on November 1st of 2007. However, and as explained in previous editions of Coelum⁸, the ratification of these instruments by Mexico, with the declarations made, did not involved any legislation or substantial changes to our local applicable laws. Notwithstanding, a significant amendment occurred to the Mexican Commercial Code, to create the Registry of Guarantees of Mobile Equipment (“RUG”, its acronym in Spanish)⁹ which will begin operation approximately one year after the publication of the amendment¹⁰ and offers important benefits for those creditors who decide to use the RUG to register the guarantees related to mobile equipment.¹¹

In the bilateral agreements field, some of the achievements are the following: the Air Transport Agreement between the Government of the United Mexican States and the Republic of El Salvador entered into effect by its publication in the Official Gazette of the Federation (“DOF” for its acronym in Spanish) on May 30, 2007; the Agreement between the Government of the United Mexican States and the Government of Australia on Aviation Services entered into effect on May 13, 2011 by its publication in the DOF; and the Agreement on certain aspects of aviation services between the United Mexican States and the European Union¹² entered into effect on June 20, 2012 by its publication in the DOF. Regarding safety standards, Mexico is one of the few countries that have entered into a bilateral agreement on mutual recognition of certification systems aeronautics BASA (Bilateral Aviation Safety Agreement) with the FAA which was executed in Montreal on September 18, 2007¹³ and published in the DOF on February 23, 2010. As to local legislation for this topic on February 8, 2012 an official norm (NOM-060-SCT3-2011)¹⁴ entered into effect to establish the specifications for developing a system of identification of defects and failures occurring to aircraft, and applies to all Mexican air carriers with operations within the Mexican territory and abroad, as well as foreign air carriers carrying out operations within the country. Another bilateral agreement executed, is the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies¹⁵ which controls exports of conventional weapons, dual use goods (goods that can have alternative civil and military uses) and technologies. As mentioned by the Undersecretary of Industry and Trade, this Arrangement will result in economic benefits for Mexico, among which is potentially attracting investments worth an estimated US\$9 billion over the next two years, as result of potential access to markets and technologies that had been inaccessible to Mexico.¹⁶

With respect to tax reforms, not specifically related to the aeronautical industry but that might represent certain impact for the companies of the sector, a new federal income tax known as Single Rate Corporate Tax (“IETU”

8.- For further reading: *Cape Town in Mexico. Present and Future* Coelum October 2007 edition, by Carlos Sierra.

9.- For further reading: *The Creation of the Registry of Guarantees of Mobile Equipment* Coelum October 2009 edition, by Juan Antonio Tiscareño.

10.- The amendment was published in the DOF on August 27th, 2009.

11.- For further reading: *Registry on Guarantees on Mobile Assets by Svein Azcué and Procedure to Register a Mobile Asset upon the RUG* by Alejandro Lavat. Coelum July 2011 edition.

12.- For further reading: *The Air Services Agreement between the European Union and Mexico: A Coup de Grace to the Mexican International Operators?* Coelum June 2011 edition by Misael Arellano.

13.- http://www.faa.gov/aircraft/air_cert/international/bilateral_agreements/baa_basa_listing/media/Mexico_BASA_EA.pdf Consulted on November 25, 2012.

14.- To consult the text of the norm: http://dof.gob.mx/nota_detalle.php?codigo=5223508&fecha=08/12/2011

15.- Published in the DOF on June 17, 2011.

16.- For further reading: *The Wassenaar Arrangement*. Coelum March 2012 edition by Carlos Sierra.

for its acronym in Spanish) became effective in 2008. Pursuant to the Single Rate Corporate Tax Law, individuals with business related activities, companies resident in national territory as well as foreign companies with a permanent establishment in the country for income obtained, regardless of where they have been generated, are required to pay the tax at a rate of 16.5% provided that the IETU is applicable in the following areas: sale of assets, independent services and granting of use or enjoyment of goods and services, and is designed to be mutually exclusive with the Income Tax (ISR for its acronym in Spanish).

Airlines: With the start of new low cost carriers before the beginning of the administration of Felipe Calderón (Interjet in 2005 and Volaris in 2006) a potential growth of the Mexican aviation was projected, notwithstanding, there were many airlines that stopped operations, such as Líneas Aéreas Azteca in 2007, AeroCalifornia, ALMA, ALADIA, Nova Air and AVOLAR during 2008; and, AVIACSA in 2009, facts that offset the expected growth projections; but undoubtedly, the case that had the most impact on the history of the aviation in our country is Mexicana Airlines. Mexicana was founded in 1921 and was the Mexico's oldest airline before ceasing operations on August 28, 2010 it was in fact one of the oldest airlines in the world.

Airports: The Analysis of Cost-Efficiency of the Program of Investment of Acquisitions 2011, submitted by Services to Navigation in the Air Mexican Space (SENEAM for its acronym in Spanish), makes clear that the International Airport of Mexico City is close to exceeding its operational capacity.¹⁷ There have been many the controversies of a political, social, demographic and ecological nature that has generated the plans for the construction of an alternative airport but far seems to be any progress or concrete project in that respect. On the other hand, on May 10, 2010, the Ministry of Communications and Transportation published in the DOF the international public bidding for the 50-year concession to build, operate and manage the international airport in the Riviera Maya, in Tulum, Quintana Roo. Bids were offered by various participants including some special purpose companies representing some of the current airport groups. Notwithstanding, the international public bidding was declared void.

Aeronautical Policy: Mexico is late as regards to the development and planning of an aeronautical/aviation policy and an example of this is the re-classification from a Category I to a Category II imposed by the FAA in 2010, due to low security standards in Mexico. This change was as a result of a negative assessment of the Mexican Aviation Authority (DGAC) under the International Aviation Safety Assessment (IASA) Program.¹⁸ Although this situation did not last long and was overcome few months after regaining the Category 1, because of this, Mexican carriers were not able to open any new international routes to the United States, with the consequent economic impact for the country.

“The International Airport of Mexico City is close to exceeding its operational capacity. There have been many the controversies of a political, social, demographic and ecological nature that has generated the plans for the construction of an alternative airport but far seems to be any progress or concrete project in that respect.”

17.- <http://www.eluniversal.com.mx/nacion/184187.html> Consulted on November 25, 2012

18.- For further reading: FAA and the IASA Program: Indirect Enforcement of the International Standards on Passenger Air Transport Safety. COELUM October 2010 edition, by Alejandro Lavat.

Environmental Protection: There is an ongoing debate about possible taxation of air travel and the inclusion of aviation in an emissions trading scheme, with a view to ensuring that the total external costs of aviation are taken into account.¹⁹ The first in a series of regional training workshops to assist ICAO member states in producing national action plans for reducing CO2 emissions from international civil aviation was held in Mexico City on May 2, 2011, having as precedent the Resolution on International Aviation and Climate Change submitted by ICAO on December 4, 2010 in Cancun, México during the United Nations Framework Convention on Climate Change.²⁰ The efforts, work and discussions in this topic continue; nevertheless an achievement worth mentioning is that during 2010 and 2011 the DGAC in collaboration with Airports and Auxiliary Services (ASA for its acronym in Spanish) developed the “Flight Plan towards Sustainable Aviation Biofuels in Mexico”²¹ which primary objective is to promote the use of Biofuels in the Mexican aviation and on August 1, 2011 the first transcontinental commercial passenger flight using bioturbosina from the International Airport of Mexico City to Madrid, Spain, in collaboration between ASA (as the sole provider of jet fuel in Mexico), Airbus and Aeromexico.

In conclusion and despite some of the events described above which have offset the expected growth projections, it appears that the Mexican aeronautical industry is progressing in other fields such as foreign investment, international trade and manufacturing; and on the other hand, the Mexican air carriers that are currently operating are in healthy financial condition provide that, as experienced by this Firm, their fleet requirements have not diminished since the average lease transactions continue at the same level which shows that they continue being economically viable.

19.- For further reading: Carbon Market. A New International Business Alternative. COELUM August 2010 edition, by Viridiana Barquin.

20.- To consult the text of the resolution: http://www.icao.int/environmental-protection/Documents/STATEMENTS/sbsta-33_Item-6a.pdf

21.- For further reading: Biofuels. Coelum May 2010 edition, by Alejandra Llopis.

The most important amendment to México's Labor Law since 1970.

by *Antonio Vázquez**.

On September 2012, former President Felipe Calderon¹, exercising the new right of the Executive Federal Power of sending preferent bills to the Congress at the commencement of each period of sessions, sent two preferent bills to the Congress: One of them was an ambitious amendment to the Federal Labor Law, which was sent to the Chamber of Deputies and the second one was an amendment to the General Governmental Accountancy Law which was sent to the Senate. In this article we will refer only to the amendment to the Federal Labor Law. According to its “preferent” character, this Preferent Bill should be discussed and voted in the two Legislative Chambers (Senators and Deputies) within a limited period of thirty calendar days per Camera. After discussion in both Chambers and with some important modifications in respect the original Bill sent by President Calderon, on November 30th the amendment was finally published in the Federal Official Gazette. The reform became effective on December 1, 2012. This amendment represents the most important modification to the Federal Labor Law since 1970. The most relevant changes are listed below and for purposes of making a clear and organized summary, we have divided them in two principal categories: Individual Labor Relations and Collective Labor Relations. Please be aware that each one of the following points may be the subject of an extended specific study, but we for now are just covering the highlights of each of them for information purposes.

I. INDIVIDUAL LABOR RELATIONS.

Employment Relationship

Before the reform, our Federal Labor Law only stated three different criteria for the period of effectiveness of the employment agreements: (i) Employment agreements for specific work (ii) Employment agreements for specific season and (iii) Definite or indefinite period contracts. The reform now includes training agreements as a new type of employment contract.

The initial training employment agreements must establish a time period of three months, as a general rule, and six months, for executive positions. In addition, a probationary period of 30 days, generally, and 180 days, for executive positions, will apply to employment agreements for an indefinite term or to those exceeding 180 days.

Outsourcing

The reform heightens the regulations on outsourcing (subcontracting). In the recent years, many companies used the outsourcing model as a way to avoid its own employer liabilities, by transferring its employees to a “subcontractor” which assumed all the implications as a new employer. With the reform, new law provides specific rules for “outsourcing” and leaves clear that this practice is legal and valid under certain conditions. For example, “outsourcing” is defined as follows:

“The subcontracting regime occurs when work is performed or services are rendered through workers hired by and working under a contractor’s control, for the benefit of a customer, whether a legal or natural person, and the customer sets the tasks for the contractor and supervises the contractor in rendering the services or performing the contracted work:

This type of work must comply with the following conditions:

- It cannot cover the totality of the activities, whether equal or similar in totality, undertaken at the center

* IN COLABORATION WITH MAURICIO CASTILLO.

1.- On last November 30, 2012 Mr. Felipe Calderon finished his six year-period as President of the United Mexican States. Since December 1st 2012, Mr. Enrique Peña Nieto is the new President of our country.

of the workplace.

- It is justified due to its specialized character.
- It cannot include tasks equal or similar to the ones carried out by the customer's workers. If these conditions are not met, the customer will be deemed to be the employer for purposes and effects under the Law, including as it applies to obligations related to social security."²

The approved outsourcing regulations may impact employers in several ways, not only in the labor area, but also in tax matters. Many companies that do not require direct manpower may be at risk, but whose corporate structures depend on service companies to provide specialized functions. However, the result of this reform should bring specific rules which may help to avoid the increasing abuse of this labor practice.

Grounds for Termination and Dismissal

The reform adds bullying and sexual harassment against any person in the workplace as new grounds for termination of the labor relations. The notice of dismissal requirements are more flexible, by allowing such notice to be delivered directly to the worker or through the corresponding Labor Board.

Arrears of Wages

Before the reform arrears of wages were accumulated during the labor proceedings. As consequence, a prolonged labor caused of massive economic liabilities to the employers.

The new law limits the accumulation of back wages to 12 months. Once that period has concluded, a monthly interest rate of 2% will be generated on 15 months of the employee's monthly wage, which are to be paid once the process has concluded and only if the employer has been required by law to do so.

Payment of Hourly rates.

The reform also formalizes the option of paying for work at an hourly rate, under the condition that the income would never be lower than what would correspond to a complete day's work.

Training and Productivity

The reform establishes rules to make training mandatory for the employer as well as for the workers, with the express objective of increasing productivity and the optimization of human, material and financial resources. It further suggests a correlation between increased wages and productivity and presupposes that training will increase and develop the worker's abilities, allowing him or her to carry out multiple functions.

First, it requires that a worker's capacity and productivity be considered above seniority. It further seeks to establish that a worker be promoted only if he or she is in the next lower grade or rank and is able to demonstrate greater training, seniority, aptitude, productivity and fitness for the position.

II. COLLECTIVE LABOR RELATIONS

Exclusionary Clause, Internal Democracy, Transparency and Accountability

At the beginning of the discussions in the Congress, this chapter related to Unions was one of the more controversial. In Mexico, Unions are a real power and some of the political actors do not like to affect its privileges. However,

2.- *Mexico Enacts Important Reforms to the Federal Labor Law.* Oscar de la Vega, Monica Schiaffino, Eduardo Arrocha and Liliana Hernandez. Article visible in [www.littler.com/publicationsandpress/Mexico Enacts Important Reforms to the Federal Labor Law](http://www.littler.com/publicationsandpress/Mexico%20Enacts%20Important%20Reforms%20to%20the%20Federal%20Labor%20Law).

some important amendments were finally accepted in this reform. We will name three of them:

Repeal of the Exclusionary Clause

The reform repeals the Exclusionary Clause, within the contexts of both hiring and separation. This repeal represents great progress for freedom of association and is in line with the Federal Supreme Court's jurisprudence which pronounced it unconstitutional.

Internal Union Democracy

The reform allows the general assembly to determine whether the election of its executive board should be by "indirect and secret" voting or "direct and secret" voting. This language leaves open the possibility that the general assembly will continue authorizing union elections "by a show of raised hands," a practice currently followed by some unions.

Union Transparency and Union Accountability

The new law requires the following:

- Labor authorities will be required to disclose to duly authorized individuals union registration information, including the fully integrated bylaws and information about the union's domicile and executive board, among other information. Additionally, information and copies thereof must be posted on the entity's internet page.
- The Labor Board will be required to disclose, upon any person's request, information regarding the collective bargaining agreements filed with the Board, in accordance with the Federal Law of Transparency and Access to Governmental Public Information ("*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*").
- The Labor Board will be required to disclose the content of the internal work rules that are filed with the Board.
- With the reform the union executive should submit to the assembly a detailed account of the administration. An individual affiliate to the Union able to ask the Labor Board to request the union to observe this provision and the worker who takes such actions will not lose his rights nor be separated from this union.

III. LABOR PROCEDURES

Another part of the reform was related to the Chapter of labor procedures, but unfortunately we consider that no substantive changes were made to these kinds of legal processes which usually are lengthy and troublesome. We hope that in the near future a new amendment to the procedures and competent authorities (Federal and Local Labor Boards) may be inserted in order to make both legal procedures and competent authorities in them, more efficient.

As explained before, we just want to give you a general overview of the reform but it is important to mention that the reform contains many complex matters that surely will be subject of deep analysis and eventually interpretation from our Federal Courts.

Aviation Law must be updated.

Entrepreneurs of the aeronautic sector are requesting a modification of the aviation law, which operates with many restrictions. At his conference on the X Mexico Business summit meeting, Interjet's CEO requested a law that allows a healthy coexistence between airports, aircraft, authorities and the private initiative. The aeronautical law that actually exists dates from 1995, when all the airlines and airports were in hands of the government. *El Economista*. 13/November/12.

Aerospace Industry – a challenge for Mexico.

There are around 200 aerospace industry companies that operate in Mexico, and even though it is still a very young industry, it has attracted major investments. Mexico has the challenge to position itself in the ranks of the 10 strongest nations with an aerospace industry, and to be the country in Latin America that brings the most foreign investment. The two main competitive advantages that Mexico offers are a well-trained and a less expensive workforce. *El Informador*. 19/November/12.

Mexico City requires a new airport terminal.

Mexico City requires a new airport terminal to take care of the increasing demand for airport services. Given today's capacity, the Mexico City Airport and the Toluca Airport, will have sufficient capacity for only 7 or 8 years. There is therefore an urgent necessity to begin the construction of a new terminal. Andres Conesa from Aeroméxico, says that in the next 18 years the Mexican aviation industry will transport almost 100-million passengers; 78.6% more when compared with the 56-million estimated for 2012. *Milenio*. 21/November/12.

Air Industry lacking an aviation policy.

Guillermo Heredia Cabarga, Chief Executive of National Chamber of Air transportation (Canaero) said that it will be not be until possibly in first quarter the next year, when the aviation policy will be settled, with the purpose of improving and moving ahead to make this sector more competitive. He also mentioned that in order to improve aviation practices, the creation of an autonomous regulatory organization is necessary, given that the General Directorate of Civil Aviation (DGAC) has a conflict of interest. That is because the DGAC regulates, monitors, authorized and investigates the industry, so it is not an impartial authority. *Excelsior*. 23/November/12.

AIC Usage Fee for Airport Services (TUA) increases.

As of January 1, the TUA will increase almost 2.1% for national and international operations according to the information publish in the Mexico's Official Gazette. The TUA will increase from USD\$15.44 to USD%15.76 while international passengers will have an increase of 41 cents. *Reforma*. 28/November/12.

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