

COELUM

Monthly Digital Publication by
SIERRA VAZQUEZ OLIVARES MOLINA

November 15, 2013 year 08 | No. 07

Photo by Viridiana Barquín

Changes in the
Civil Aviation Law
("cabotage").

by Emmanuel Jiménez
P. 01-03

OCTOEBR NEWS on
Mexican Aviation
P. 04-05

Contributors
P. 06

SIERRA
VAZQUEZ
OLIVARES
MOLINA

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.

Changes in the Civil Aviation Law (“cabotage”).

by Emmanuel Jiménez.

As a manner of introduction, it is important to remind that cabotage refers generally to the transport of passengers and goods. Originally, it referred specifically to shipping, but cabotage also applies to airlines, trucking and trains. Many nations have cabotage laws which dictate the terms which carriers must follow when transporting passengers, cargo and mail, between others.

The word comes from the French *caboter*, which means “to sail along a coast”. While the world initially referred to navigation and trade in coastal waters, it has come to refer also to the right of a country to restrict the transportation within its airspace. Cabotage rights are guaranteed to all nations because a threat to national airspace can threaten national security, and therefore countries need to be able to protect themselves by protecting their airspace. In addition to keeping themselves safer, many nations use cabotage laws to protect their economies and to promote a strong national shipping industry.

Looking around the world, we find that the application of this regulation varies from country to country and changes from time to time. Penalties for cabotage violations range from fines, to payment of all applicable duties and taxes, to seizure of aircraft. In the United States for example, cabotage is prohibited and carries a fine of up to \$27,500 USD. In Canada if cabotage is identified, the aircraft will be considered as an imported aircraft, causing equivalent taxes as an acquisition.

In the European Union, to transport E.U. nationals within the E.U., private non-revenue operators have the option of importing their aircraft. However, the expenses to do this have changed from a standard nominal fee to paying a fee equal to a percentage of the value of the aircraft. For charter (non-scheduled commercial) flights, landing permit gives permission to operate the approved schedule. The U.K., France, Germany, and Italy have been more stringent on application of cabotage for charter (non-scheduled commercial) aircraft and may deny permits (at the discretion of the appropriate Civil Aviation Authority).

“Looking around the world, we find that the application of this regulation varies from country to country and changes from time to time. Penalties for cabotage violations range from fines, to payment of all applicable duties and taxes, to seizure of aircraft.”

In Africa, Cabotage regulations and enforcement vary by country. Cabotage is an issue in South Africa, and private non-revenue operators should carry a letter of declaration from the owner to prove the flight is not for hire. Landing permits are required for charter (non-scheduled commercial) operations, with crew and passenger lists required per flight leg. Cabotage is prohibited in Mozambique.

In the Middle East, Cabotage regulations vary throughout the region. In Kuwait, cabotage is strictly prohibited. On the other hand, there are currently no cabotage issues in Saudi Arabia.

In Asia, we find that China does not permit cabotage, and the Civil Aviation Authority restrictions apply to both private non-revenue and charter (non-scheduled commercial) flights. India lacks clear regulations on cabotage. There are generally no problems picking up and flying Indian nationals within the country by foreign carriers, but this may change at a moment's notice.

In Mexico, cabotage is already expressly found in Article 2 of the Regulation to the Civil Aviation Law, as air transport for remuneration or any other onerous consideration of passengers, cargo, mail, or a combination thereof, between two or more points within Mexico. Also, in article 32 of the same Regulation, we find that a foreign concessionaire cannot conduct cabotage practices in Mexico, and only a Mexican concessionaires that provides international air-transportation under the modality of taxi carrier or non-scheduled carrier can transport passengers, cargo, mail, or a combination thereof, between two or more points within Mexico, who embarked in a foreign country, however, it was necessary to have specific regulations in Civil Aviation Law and set clear prohibitions of cabotage practices and exemplary sanctions.

“For Chicago Convention, “cabotage” constitutes the 8th Freedom of the air, which means the right to fly between two or more airports in a foreign country while continuing service to one’s own country.”

In accordance with the above, on October 1st, 2013, the Mexican Congress unanimously approved changes to the Aviation Law with 427 votes in favor. This ruling amends the Civil Aviation Law and Airports Law and introduces new air provisions and also regulates the “cabotage operations” performed by foreign concessionaires and permit holders in Mexico.

This dictum, sent to the Senate for eventual ratification, defines “cabotage” as air transport for remuneration of passengers, cargo, mail, or a combination thereof, between two or more points within Mexico.

The amendment is related to Articles 15 and 39, and Articles 2, 11, 15, 16, 27, 32, 38, 41; also a Chapter XV Bis called “Operational Safety”, which refers to Articles 78 Bis to 78 Bis 10 , 86, and 88 Bis of the Civil Aviation Law.

The amendment states that “cabotage” performed in Mexico, by a foreign concessionaires for private air-transportation business services, will be fined with 10 to 25 thousand times the minimum wage.¹

1.- Minimum wage is used as a reference in order to set penalties. This concept is established by the National Commission of Minimum Wage (Comisión Nacional de Salarios Mínimos) every year, and the amount at this moment is \$64.76 mexican pesos, (around 4.9 US dollars).

“...it was necessary to have specific regulations in Civil Aviation Law and set clear prohibitions of cabotage practices and exemplary sanctions.”

Also, when “cabotage” is detected by the aeronautic authority at the time it is being committed or within the 24 hours following the event, the authority may impound the aircraft. At this point it is important to mention that supported opinion shows that the ruling rendered can be declared void if the aeronautic authority does not issue the corresponding resolution within the 60 working days of the date the “cabotage” event was discovered.

It should be noted that those foreign permit holders that provides private aviation business services may not perform “cabotage” flights in Mexico. However, this provision does not apply to carriers operating non-commercial private air-transport aircraft.

In conclusion, the amendments to the Civil Aviation Law emphasize the sanctions of cabotage practices and specify the amounts of the sanctions.

Changes to Civil Aviation Law and Airports Law.

The Chamber of Deputies yesterday unanimously approved several reforms to a number of provisions of the Civil Aviation and Airports Laws, with the object of stimulating the National Aviation Industry and to avoid permit holders from having different regulation treatment than foreign carriers providing private commercial air transportation services in Mexican territory. The initiative that was presented by the Transportation Commission, will modernize the recognition of the aeronautic workshops and the training centers that provides service to aircraft with Mexican crew, operating outside the country. *T21mx. October 01, 2013.*

Airbus and Japan Airlines agree landmark \$9.5bn deal.

The Airbus Company won an order from Japan Airlines for 31 of its A350 planes, in a deal worth nearly \$9.5bn (£5.9bn) at list prices. The A350 is designed to be more fuel-efficient and is a direct competitor to US rival Boeing's 787 Dreamliner, which has been hit by safety and technical issues in recent months. The deal is a blow for Boeing, which has dominated Japan's aviation market. *BBC news. October 08, 2013.*

Alitalia risks having its fuel supply cut off on Saturday unless it can reach a deal.

Italian oil firm ENI will stop supplies unless it is reassured by Alitalia's management and the government that it can keep operating. Alitalia is trying to raise 100m Euros (\$136m; £84m) from its shareholders to avoid bankruptcy. Shareholders, who include Air France KLM, are due to vote on a financing deal on October 14. *BBC news. October 09, 2013.*

Mexican air industry takes off with strength.

After the late 2009 economic crisis, caused by influenza and Mexicana's market exit, the air industry has recovered almost immediately. Last year it reached the historic number of 55.1 million passengers. The goal is to reach 85 million passengers by 2020. The economic crisis, health alerts, extinction of airlines, and the high costs of operation and financing of aircraft and engines, gas and personal are some of the challenges that the national air sector has faced up to in the last seven years that have put profitability at risk and even survival in front of foreign enterprises that have a participation in a Mexican market that continues to consolidate through the fusion, alliances, purchases and code share. *Alto Nivel. October 09, 2013.*

The European Commission proposes to charge for the Carbon Dioxide from International Flights.

The European Commission proposed today that the airlines that operate International flights that pass through the European Union pay starting in January for the emissions of Carbon Dioxide (CO2) within in European space air, although it did accepted some restrictions. "Europe needs to insist in its sovereign rights to regular aviation in its own air space", said Connie Hedegaard, appointed in a conference of the Commissary of European Action for the climate. She also said that she trusts that the countries outside the European Union understand and accept this measure. This new proposal was produced after all the 191 members of the Organization of Civil Aviation, of which the European Union is a member, reached an accord two weeks ago in Montreal, which agreed that in 2016, a written draft will be created, called Global Commercial Mechanism to reduce aviation emissions, that will enter into law in 2020. *La Cronica. October 16, 2013.*

Mexican Supreme Court to decide if the Civil Aviation Agreement applies in accidents caused by property of the State.

The Supreme Court will solve for the first time, the legislation that applies to civil responsibility in Mexico. This is because of an accident on a helicopter that was the property of the Attorney General of the Republic (PGR). The judges will need to establish if an accident within a property of the state applies under the Civil International Aviation Agreement. The specialist's reports indicate that aircraft accident compensation applies only to Civil Aircraft. But should they also apply to aircraft that are property of Government? This is important because, according to the specialist's report presented by the family of a victim, the enterprise, Schweizer Aircraft Corporation, that builds the helicopter, is responsible for the accident because of the bad design of the device. *La Cronica. October 17, 2013.*

Solar-powered plane lands in New York to complete cross-country trip.

A solar-powered aircraft completed a cross country trip with a final stop at New York's John F Kennedy International Airport. The Solar Impulse landed at JFK at 11.09AM, completing the final stage of the cross-country journey that started in California in early May. For Saturday's flight, the aircraft left Dulles International Airport outside Washington, DC, a little before 5AM. The flight plan for the revolutionary plane, powered by some 11,000 solar cells on its oversized wings, had called for it to overfly the Statue of Liberty before landing early Sunday at New York. But an unexpected tear discovered on the left wing of the aircraft Saturday afternoon forced officials to scuttle the fly-by and proceed directly to JFK for a landing three hours earlier than scheduled. *The Guardian. October 18, 2013.*

Aeronautic University to train Technicians in Aviation.

More than 120 technicians of TechOps receive training in the maintenance of large aircraft such as Boeing 757 and 737, also MD 80 and 90 at the National Aeronautic University of Queretaro(UNAQ), the Headmaster, Jorge Gutierrez de Velasco Rodriguez advised. The Headmaster emphasized that "In the facilities of the UNAQ a course of training of TechOps, for Delta and Aeromexico, will be taking place, in which more than 120 technicians will begin a program of training , focused primarily on the maintenance of large aircraft". He also discussed the commitment to a plan for the University to train 1400 technicians over the next few years, and thus set new challenges for this Institution. *Diario Yucatan. October 22, 2013.*

COELUM

Monthly Digital Publication by
SIERRA VÁZQUEZ OLIVARES MOLINA

CONTRIBUTORS

Emmanuel Jiménez

Attorney at Law: Admitted to practice law in 2004. Mr. Jiménez, of Mexican nationality obtained his law degree at the Universidad Nacional Autónoma de México (UNAM). Mr. Jiménez attended post-graduate studies in Intellectual Property at the Instituto Tecnológico Autónomo de México (ITAM) and a mini MBA in Boston University. Currently Mr. Jiménez is member of the Association of Corporate Counsel (ACC).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Corporate Law, Administrative Law and SOX-Compliance.

e-mail: ejimenez@asyv.com

SIERRA
VAZQUEZ
OLIVARES
MOLINA

Prol. Reforma No. 1190 25th Floor
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com / www.asyv.aero

The articles appearing on this and on all other issues of Coelum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra y Vazquez SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.