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by Adriana Hernandez

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COELUM: Pronunciation: 'che-I&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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Proposed reforms regarding passenger's rights and obligations, applicable to National Air Transportation Service. A New Chapter for Mexican Civil Aviation?

by Adriana Hernández

From October 2016 to March 2017, a total of sixteen legislative initiatives to reform several provisions of the Civil Aviation Law (LAC¹), were presented before our National Congress. Since all the initiatives referred to the same subject matter, the Transport Commission of the Deputies Chamber decided to integrate them for their analysis and to provide just one opinion for all of them. On the other hand, on December 2016 it was also presented an initiative to amend the Federal Consumer Protection Law (LFPC²). In general, both projects proposed a broad change regarding the manner in which national air carriers provide their service and how they actually shall treat their users.

After a first unsuccessful attempt, it was on last April 18th that these initiatives, were finally discussed, voted and approved by the Deputies Chamber. In general, the main idea of such initiatives is to adequately protect the users of the air transport service in Mexico. As stated by the president of the Transport Commission, Mr. Alfredo Rodríguez Dávila, the reforms are necessary because “the current legislation does not acknowledge rights to which the passengers shall have access, since the passenger is one of the two parties in the transport agreement. It does not consider either the compensations in the event the service provider does not comply with the terms of the agreement”.³

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In broad terms, the main changes to be included in the LAC may be described as follows:

1. Inclusion of the terms *ticket* and *passenger*.
2. The airlines companies shall be obliged to publish the total fare of the flight, identifying the applicable restrictions; such information shall be accurate, true, verifiable and clear. The relevant conditions shall apply to all the passengers without discrimination.
3. The addition of *Chapter X Bis – Passenger's rights and obligations*, which includes among other provisions that:
 - a. The passengers with any sort of disability that require inherent instruments to their condition, shall be allowed to transport these instruments, without any additional charge.
 - b. Minors under the age of two years old may be transported without cost.

1.- For its acronym in Spanish.

2.- For its acronym in Spanish.

3.- *Elevan a rango de ley los derechos de pasajeros del transporte aéreo*. April 18th, 2017. Available at: http://www.canaldelcongreso.gob.mx/noticias/9963/Elevan_a_rango_de_ley_los_derechos_de_pasajeros_del_transporte_aereo

- c. The passengers shall be allowed to use just a segment of the complete route and the airlines cannot deny boarding for not having used the other segment(s).
- d. It is possible to request a complete ticket refund, in the event the passenger does not perform the trip, as long as the permit holder is informed of such situation within twenty four hours from the purchase time.
- e. Twenty five kilograms for checked baggage, without additional charge, when the flights are performed in aircraft with capacity for twenty or more passengers (or fifteen if the aircraft has lower capacity).
- f. The sale of the ticket shall not be conditioned to the acquisition of additional services.
- g. Indemnities for damage or loss of carry-on and checked baggage from \$6,000 MXN up to \$11,000 MXN respectively.

In the same pattern, the main changes to be incorporated in the LFPC are described below:

1. The addition of two articles that include the following provisions:
 - a. Without prejudice to the terms set by the LAC and the passenger transport agreement, the permit holders shall publish through physical or electronic media the cause or reason why the flights are delayed and make available to the consumer all related information for the filing of claims or complaints.
 - b. The permit holders, in their character as suppliers, shall inform the consumers, at the purchasing time of the ticket and in the modules for passenger's support, about the terms and conditions of the hired services, compensation policies, as well as the list of passenger's rights set in the LAC.

It shall be noted that both initiatives were approved in a record time, at least taking into consideration the average time it takes for any legislative initiative to be analyzed, discussed and eventually approved by the National Congress. In this specific case, the rationale of such reforms is to protect the rights of the passengers, apply the relevant sanctions to the airline companies when it corresponds and to provide the relevant tools to the Federal Consumer Protection Office to apply and enforce such sanctions.

Are the reforms current applicable law? Status of the legislative procedure.

In order to answer this question, it is important to understand first the relevant procedure to create or reform current legislation here in Mexico. The referred process is regulated by articles 71 and 72 of the Mexican Constitution and there is a series of steps that need to be followed before the reform of any law, in this specific case the LAC and the LFPC. The general terms of such procedure may be summarized as follows:

1. **Legislative initiative:** the project shall be presented before the Chamber of Deputies, Chamber of Senators or the Permanent Commission by those constitutionally authorized to do it; which are the President, deputies or senators of the National Congress and the States Congresses.
2. **Assignment:** the initiative is assigned to the relevant Commission(s)⁴ for its analysis and opinion.⁵
3. **Presentation and Discussion:** the relevant opinion is presented before the corresponding Chamber's Plenum⁶, which includes the law or decree project regarding the legislative initiative from the Commissions involved. The initiative shall be subsequently discussed in both Chambers.

4.- Either from the Deputies or Senators Chamber, as it may correspond.

5.- In Spanish, such opinion is actually referred as "Dictamen".

6.- The relevant Chamber (Deputies or Senators) that knows in the first instance a legislative initiative is referred as Chamber of Origin, the one that receives it in the second instance for its review is called the Revising Chamber.

4. **Voting (Approval):** the law or decree project is submitted to voting. The approval shall be granted first in the Chamber of Origin and then in the Revising Chamber. If the project is approved in its entirety by both Chambers, it shall be sent to:
 - a. The President for its publication in the Federal Official Gazette. If the President has observations to the project, it may return the project for a new analysis, review or amendment (veto power to be exercised only one time) within thirty calendar days. If there is no action within ten business days, the next step shall be the publication and entry into force of the law or decree.
5. Publication and entry into force: it is the last step to conclude the legislative procedure.

Once we have reviewed the legislative procedure, our initial question can be answered straight forward: no, the proposed reforms are not current applicable law, yet. At this moment, the initiatives are in stage 4.a. Nevertheless, if the process runs smoothly and the President has no further comments, then the reforms shall be published in the Official Gazette. Only then, the proposed reforms will become current applicable law.

Future scenario, any possible conflict of laws?

As provided by article 133 of the Mexican Constitution: “the Mexican Constitution, the laws from the National Congress and all the treaties that are executed in accordance to it, with the Senate approval shall be Supreme Law of the country”. Due to this hierarchy of laws principle, the initiatives presented herein (once published), ideally, shall not contravene the provisions of international treaties: i.e. the Montreal and Warsaw Conventions. Although, the foreseeable entry into force of these initiatives, gives rise to several questions regarding legal and practical issues.

Due to the lack of clarity regarding the applicability of the new provisions, specifically when it comes to differentiate between a national vs. an international flight or between a national carrier providing international air services vs. an international carrier providing such services as well, as the case may be, there is no certainty in terms of whether national or international legislation shall prevail. What it can be predicted is that many different scenarios will be faced by both, the passengers and the airlines, which may lead to conflicts, claims and misunderstandings that shall be unequivocally solved in court. Such controversies will be enhanced due to the lack of judicial precedents along with the unclear legal position of Mexico’s key players/relevant authorities within the industry. It will be definitively an interesting challenge that authorities and individuals hopefully overcome in the best possible way, respecting at all times the legality and equity principles.

The initiatives proposed by our congressmen are intended to level Mexican legislation with the international treaties of which Mexico is a party and consequently, to be more competitive in this specific sector. Although, are these initiatives truly aligned to international applicable standards? As stated by Peter Cerdá, regional vice-president for the Americas of the International Air Transport Association is not exactly like that: “allegedly, in order to protect the passengers, or maybe just to gain political returns, a group of congressmen has proposed a draconian legislation that alienates Mexico from the standards set in the air transport globally. If it becomes law, it will make more expensive the air transport for the passengers in Mexico and will reduce their options regarding destinations and the variety of fares and services that are now available to the traveler audience”?

Up to this point, what it is possible to foresee is a messy and confusing environment of applicable regulation, especially in terms of the possible liability for national and international carriers. Hopefully these reforms will eventually aid to: a) clarify certain practices and procedures that are already applicable within the international transport service and b) create a more solid industry in which the interests of both parties, airlines and passengers, may be conciliated in a civil manner.

7.-IATA rechaza cambios a la Ley de Aviación Civil. April 26th, 2017. Available at: <http://www.eluniversal.com.mx/articulo/cartera/economia/2017/04/26/iata-rechaza-cambios-la-ley-de-aviacion-civil>

Ryanair 'will have to suspend UK flights' without early Brexit aviation deal.

Ryanair warned the UK government that if Prime Minister Theresa May does not seal an early bilateral Brexit deal on international aviation, many airlines will have to suspend flights to the UK. The company's CFO said that "in the worst-case scenario there will be no flights in or out of the UK to Europe for a period, for all carriers". The Dublin-based company is legally allowed to operate in the EU under the "open skies" regulation pact; which allows the airlines to transport in a "common travel area". Without this deal the UK companies will not be allowed to fly in and out of any country that has signed the pact. For this reason, after the Brexit in April 2019, Ryanair will pursue growth opportunities in Italy, Spain, and eastern Europe. <https://www.theguardian.com/business/2017/apr/06/ryanair-uk-flights-brexit-deal-wto> April 06, 2017.

Proposed laws following United incident are 'opportunistic'.

New regulations have been proposed by several US lawmakers to protect airline passengers after United Airlines forcibly removed a costumer from a flight and aviation specialists have questioned whether new legislation is politically driven, rather than a necessary safeguard. The proposed law would make it easier for consumers to sue airlines after being bumped from overbooked flights against their will, as well as for tarmac delays and chronically late flights. <https://gettingthedealthrough.com/article/5549/proposed-laws-following-united-incident-opportunistic-practitioners-say> April 20, 2017.

Switzerland develops 'electric plane'.

The Swiss aeronautical experimental project, H55, has developed an aircraft, aEro1, which uses electric propulsion technology to move, with the aim of becoming a means of air transport that generates less noise, pollution, and being safer. This electrical plane, becomes the most innovative sustainable aircraft project to date. <http://a21.com.mx/aeroespacial/2017/04/21/suiza-desarrolla-avion-electrico> April 24, 2017.

HondaJet Goes the Distance En Route to Panama Airshow.

The growing aviation market in Latin America caught Honda Aircraft's attention. The company's HA-420 HondaJet made its debut on April 20th and 21st, on the second-annual edition of the Central American business aviation show, at Aero Expo Panamá Pacífico. The jet flew from Miami Executive Airport to Panama City in three hours, seven minutes. The attendees at the show were mostly from Panama, Guatemala, and Colombia; many of them showed interest in the twinjet. <http://www.ainonline.com/aviation-news/business-aviation/2017-04-25/hondajet-goes-distance-en-route-panama-airshow> April 25, 2017.

Worldwide airport traffic rises.

According to International Airports Council (ACI), during 2016, passenger flows from the world's 20 busiest airports grew about 4.7 percent compared to the previous year. In addition, passenger traffic rose 18 percent globally during the same period. <http://a21.com.mx/aeropuertos/2017/04/25/se-eleva-trafico-aeroportuario-mundial> April 25, 2017.

Ready for take-off? China's answer to Boeing now just needs to sell.

China's answer to Boeing 737 is facing a very challenging phase: selling this jet abroad in a global market dominated by Boeing and Airbus. The COMAC's C919 first flight will be made in the coming weeks, and foreign media and potential buyers will be invited. This is the beginning that shows China wants a share of the global jet sales market worth \$2 trillion over the next 20 years. The C919 has been ordered mainly by Chinese state-backed airlines and leasing companies. The aircraft had 570 firm orders and commitments from 23 customers, compared to the latest version of Boeing 737 that had more than 3,000 firm orders before it flew last January; showing the challenge Commercial Aircraft Corporation of China will have in their entry to the global market. <http://www.reuters.com/article/us-china-aviation-comac-analysis-idUSKBN-17Q2F8> April 25, 2017.

Japanese Inventor creates Drone to pollinate plants.

The researcher is Eijiro Miyako, and he has invented gel that can be used to collect pollen from plants and deposit it on other plants using a micro-drone. The goal of the project is not to replace bees, which have been declining for several years, but to give farmers an alternative way to complement natural pollination. <http://www.aero-news.net/index.cfm?do=main.textpost&id=bf62a28c-bfc8-477f-97cc-d3f0b3064b90> April 25, 2017.

Supersonic flight the next step in GCC aviation leadership.

Boom Technology introduced its supersonic passenger airliner as well as the XB-1 Supersonic Demonstrator, at Dubai Future Foundation premises. The commercial aircraft will connect the GCC to the rest of the world with flights up to 2.6X faster than conventional airliners. For example, a flight from Dubai to Sydney which takes 14:51 today, will take just 8:17 flying supersonic. In the same fashion, Dubai to New York will be 7 hours and 35 minutes versus 14 hours today. https://www.tradearabia.com/news/TTN_324075.html April 26, 2017.

With UberAir Partnership, Dallas Aims to Become a Hub for Air Taxis.

Announcing a number of partnerships, from aircraft companies to real estate developers, Uber vowed to have its app-based regional air travel service testing in the Dallas-Ft. Worth area, as well as Dubai, by 2020. Uber's chief product officer Jeff Holden said that UberAir is the "natural next step" for the company, and lawmakers also believe it is the next step for a region with a rich aviation history. Among the partnerships that Uber has announced are deals with Pipistrel, Embraer, Bell Helicopter and Aurora Flight Services to develop vertical takeoff and landing (VTOL) aircraft. <http://www.flyingmag.com/with-uberair-partnership-dallas-aims-to-become-hub-for-air-taxis> April 27, 2017.

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