

coelum.

Monthly Digital Publication by Abogados Sierra

May 15, 2019
year 13 | No. 12



The Federal Agency of Civil Aviation. Could it be really created and be working soon?

by Misael Arellano

APRIL NEWS on
Mexican Aviation

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.

sierra

The Federal Agency of Civil Aviation. Could it be really created and be working soon?

by Misael Arellano.

On recent weeks, the Federal Government through The Secretariat of Communications and Transports (SCT)¹ has announced its plan to finally incorporate the Federal Agency of Civil Aviation (AFAC)² which will uphold the attributions currently held by the long-outdated General Directorate of Civil Aviation. This project, which has now been seen in motion, is expected to be completed during the course of this year³, and while its enactment does not constitute a novel regulatory proposal (the project has been in dormancy for at least 6 years), it is expected that the administrative and operative autonomy as well as the independence that will be vested in the AFAC will result in the strengthening of the civil aviation regulatory body which will have the ability to enforce a more thorough and adequate supervision of the industry; intending to fully guarantee the safety and security of all stakeholders.

Amongst others, the main attributions that will be exercised by the AFAC will be the following⁴:

- a) Accident investigation;
- b) Propose the policies and programs related to air transport;
- c) Regulate, coordinate, monitor and control national and international air transport services, airport and complementary services, as well as their facilities and equipment;
- d) Promote the coordination of air transport with other modes of transport to form a comprehensive system; and
- e) Process concession requests, and grant permits and authorizations for the provision of scheduled, non-scheduled, international, domestic or private domestic air services, and, if applicable, non-commercial air services.

“...it is expected that the administrative and operative autonomy as well as the independence that will be vested in the AFAC will result in the strengthening of the civil aviation regulatory body...”

Now, despite the evident need of having an independent organ which independently regulates all civil aviation activities within Mexico, and regardless of the fact that the Federal Commission for the Regulatory Improvement (COFEMER)⁵ has already approved (since 2014)⁶ a preliminary draft of the decree which will amend the Internal Regulation of the Secretariat of Communications and Transports (RISCT)⁷ stating, among other modifications, a definition of the AFAC as an administrative body deconcentrated from the SCT with functional, technical, operational, administrative and management autonomy; all public information relating to the project suggests that its actual coming into being is still distant.

As previously mentioned, the initial amendment approvals made to the RISCT will not in itself create the AFAC, but rather, these pave the way and set the required foundations for the drafting and execution of a new regulatory decree which effectively provides the legal basis to constitute this deconcentrated administrative body as well as the required internal regulation needed to set the boundaries and scope its authority.

1.- Secretaría de Comunicaciones y Transportes.

2.- Agencia Federal de Aviación Civil.

3.- See <https://www.gob.mx/sct/prensa/anuncia-el-subsecretario-de-transporte-creacion-de-la-agencia-federal-de-aviacion?idiom=es>

4.- See <http://www.cofemersimir.gob.mx/expedientes/20389>

5.- Comisión Federal de Mejora Regulatoria.

6.- See <http://www.cofemersimir.gob.mx/portales/resumen/42900>

7.- Reglamento Interior de la Secretaría de Comunicaciones y Transportes.

As stated in the first transitory article of the Decree issued by COFEMER:

“ ...

FIRST.- *This Decree will come into effect thirty business days after the one in which it is published in the Federal Gazette in order to, within such period, allow the publishing and the subsequent enter into full force of the Decree that created the deconcentrated administrative body called the Federal Agency of Civil Aviation, and its respective Internal Regulation.*

...”

Further to the above, the approved draft of article 41 Bis of the RISCT states the following:

“ ...

Article 41 BIS. *The Federal Agency of Civil Aviation is a deconcentrated administrative body of the Secretariat, with functional, technical, operational, administrative, with expenditure and management autonomy, which has the purpose to regulate, coordinate, monitor and control the air transport services, domestic and international, airports and complementary services, its facilities and equipment, as well as the services of air traffic control and information and air navigation safety, and in general, of the activities related to civil aviation, which will have the exclusive attributions that, in order to exercise authority within its jurisdiction, the Civil Aviation Law, the Airports Law, their Regulation, the Decree by witch is established the deconcentrated administrative body, dependent on the Secretariat of Communications and Transportation, called the Federal Agency of Civil Aviation, the Internal Regulation of this deconcentrated administrative body and any other applicable and related provisions, as well as those faculties granted to it by the head of the Secretariat.*

...”

Unfortunately, there is nothing different to the faculties and current operating of the General Directorate of Civil Aviation (DGAC)⁸; so, the AFAC looks like just the change of the official name of the civil aviation authority in Mexico; instead to the creation of a new regulatory body with new professionalized areas with individualized faculties to pursue the development of the industry.

In addition to the above, among additional complications that the incorporation of the AFAC entails is the need to assign substantially more resources as opposed to the material, financial and personnel resources that are currently being assigned to the DGAC. The granting of such resources is of the essence in order to effectively guarantee and insure that the AFAC will have the ability to materially improve the regulatory procedures which are currently in place for of DGAC, which as mentioned, has an evident shortage of aviation personnel and a lacks the infrastructure required for the proper attention of an ever developing and growing industry.

From a regulatory standpoint, it is important to mention that the incorporation of the AFAC and its regulatory framework will be based on articles 13 and 18 of the Organic Law of the Federal Public Administration (LOAPF), which states that the President of Mexico has the authority to, at his own discretion, issue internal manuals and regulations for the better organization of all the federal Secretariats, this authority is of course extended to the creation of deconcentrated administrative bodies such as the AFAC. Thus, considering that a Presidential position is required, it is unavoidable for us to contrast the approach of former Presidents and their public policies related to Mexico’s aviation industry, which that of the present. As the latter has clearly evidenced his lack of understanding of the industry. This is more relevant when we see that the current President has vowed to reduce federal expenses and the budget of federal entities, and moreover, in line with such policy, has cancelled the plans for the New Airport of Mexico City (NAICM)⁹ which was meant to be a cornerstone for the development of not only the aviation industry, but Mexico’s economy as a whole.

It is because of the above that I unfortunately do not foresee the incorporation of the AFAC as a tangible reality in the near future. The consequence being that we will remain with the outdated structure that currently constitutes the foundations of our aviation authority, which moreover, has to deal with a regulatory framework stated more than 70 years ago when the aviation was abysmally different as well as with the lack of sufficient resources to take duly care of the industry in Mexico.

8.- Dirección General de Aeronáutica Civil.

9.- Nuevo Aeropuerto de la Ciudad de México.

New airport under consideration for San Luis Potosí.

President López Obrador is in favor of a proposal to build an airport in the Huasteca region of San Luis Potosí. This is a project that is expected to boost eco-tourism and positively impact the finances of local communities. <https://mexiconewsdaily.com/news/new-airport-under-consideration/> April 01, 2019.

EASA & IATA team up against unruly behavior on flights.

Due to the rise in serious unruly behavior, and the prospective consequences that passengers and safety hazards that crewmembers can face, EASA has joined forces with IATA to promote a new campaign with the slogan "Not On My Flight". Aggressions that create unnecessary risks and emergency landings, will be taken care by focusing on the penalties for failing to adhere to safety regulations. "Flying should be an enjoyable and safe experience," said Patrick Ky, Executive Director of EASA referring to the launch of the initiative. <https://aviationvoice.com/easa-iata-team-up-against-unruly-behaviour-on-flights-201904031413/> April 03, 2019.

Flight Training: A Guide to Aviation Education.

From flight training to aviation management and mechanics, colleges are gearing up to meet labor challenges faced by airlines. Over the next 20 years, according to a 2018 study made by aircraft manufacturer Boeing, the aviation industry will need 790,000 new pilots across the globe, an additional 206,000 new airline pilots in North America alone. Similarly, 754,000 technicians and 890,000 new cabin crew members. While those numbers are unattractive for airlines, they're a positive sign for aviation majors looking to land a job after college. So, in order to draw students in and fill shortages in the workforce, airlines are partnering with colleges to reinforce flight training programs. <https://www.usnews.com/education/best-colleges/articles/2019-04-05/flight-training-a-guide-to-aviation-education> April 05, 2019.

World's largest aircraft has taken its first flight.

Successfully completing its first flight on April 13, 2019, the carbon-composite plane "Stratolaunch Roc", built by Stratolaunch Systems, has performed a variety of flight control maneuvers to calibrate speed and test flight control systems, and conducted simulated landing approach exercises at a max altitude of 15,000 feet mean sea level. The Stratolaunch aircraft is a mobile launch platform the aim of which is to enable airline-style access to space that is convenient, affordable and routine.

<https://aviationvoice.com/worlds-largest-aircraft-makes-maiden-flight-2-201904151511/> April 15, 2019.

CIASA will teach safety course in airports.

Airports and Auxiliary Services (ASA) will give the TRAINAIR PLUS course of: "CMDN Airport and complementary services and services in the aerodrome certification" carried out at the time by the engineer Roberto Kobeh González, who was president of the Council of the Civil Aviation Organization International (ICAO). The course, which will take place on April 22, has a duration of 40 hours, will be in person and will have 11 modules of instruction. <https://a21.com.mx/organismos/2019/04/22/ciasa-impartira-curso-de-seguridad-operacional-en-aeropuertos> April 22, 2019.

Chetumal airport terminal expansion.

Airport operator Aeropuertos y Servicios Auxiliares (ASA), a federal government-owned corporation, announced a competitive tendering process for companies interested in adding almost 2,500 square meters of space to the terminal in the Quintana Roo capital. <https://mexiconewsdaily.com/news/chetumal-airport-terminal-expansion/> April 23, 2019.

The Mexican Navy, with cutting-edge technology for aeronautical missions.

A stealthy fleet of unmanned aircraft from the Ministry of Defense are now crossing the Mexican sky to carry out missions such as monitoring the Popocatepetl volcano, immigrant caravans, rescue operations, fighting crime and protecting the vaquita marina. The Mexican Navy has its own and latest generation aeronautical technology. It has put three totally Mexican design and manufacturing drones in the air and is currently developing a prototype of an automated vertical take-off and landing aircraft, as a helicopter does. In this case, the plan for the future is to build it and use it on ships, as well as on oceanic patrols and interceptors, said Rear Adm. Abel Trejo, director of the Technological Research and Development Institute of the Mexican Navy. The support of CONACYT has been fundamental for the success of the projects. The Unmanned Aerial System of Vertical Takeoff and Landing seeks greater response capacity and coverage in various operations, making them more accurate, but less risky and expensive. <https://www.milenio.com/policia/semar-desarrolla-avion-para-aterizaje-vertical> April 23, 2019.

AMLO inaugurates the Aerospace Mexican Fair (FAMEX) 2019.

President Andres Manuel Lopez Obrador inaugurated the third edition of the FAMEX, at the facilities of the Military Air Base No.1 in Santa Lucia, State of Mexico. The fair aims to promote the capacity of the Mexican aeronautic industry in a national and international level and the different academic institutes related to the industry. The president stressed that in this edition of the FAMEX, 72 airplanes and helicopters of the federal Government were put in the market and the funds raised will be destined to the development and welfare of the people. <https://noticieros.televisa.com/ultimas-noticias/amlo-inaugura-feria-aeroespacial-mexico-famex-2019/> April 24, 2019.

Historical confiscation of replica articles of luxury brands in the AICM.

The General Administration of Customs confiscated more than 45 tons of counterfeit luxury brand items within the facilities of the AICM. This is the first time that a seizure of this kind has been carried out, since shipments of drugs and money are constantly being secured. According to the General Administration of Customs, the confiscated merchandise reaches the 200 million pesos in the illicit market. Among the luxury brands affected were: Lacoste, Nike, Adidas, Vans, Louis Vuitton, Gucci, Rolex, etc. <https://www.eluniversal.com.mx/nacion/golpe-pirateria-en-aeropuerto-decomisan-toneladas-de-falsos-nike-gucci-y-rolex> April 25, 2019.

coelum.

Monthly Digital Publication by Abogados Sierra

MISAE LARELLANO

Attorney at Law: Admitted to practice law in 2006. Mr. Misael Arellano, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Monterrey, Mexico City; attended studies in Social Sciences Program 2003 by Universidad Antonio de Nebrija, Madrid, Spain; and holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Aviation Industry Affairs, Repossession of Aircraft, Airport Law and Corporate Law.

e-mail: marellano@asyv.com

sierra

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 Terrum 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 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.