

APIS and PNR data transmission.
An obligation that applies different to
equals?

by Misael Arellano
P. 01-02

JANUARY AND FEBRUARY NEWS on
Mexican Aviation

P. 03-04

Contributors

P. 05

sierra

February 15, 2016 year 10 | No. 10

Monthly Digital Publication by
ABOGADOS SIERRA

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.



APIS and PNR data transmission. An obligation that applies different to equals?

by Misael Arellano.

In this edition, we will make a short analysis of the relevant issues in regards to the transmission of passengers data required in Mexico, i.e. Advance Passenger Information System (APIS) and Passenger Name Record (PNR); and the specific issues in regards to the obligation on the PNR data transmission.

Precedents.

With the main objective of identifying high risk passengers, drugs and weapons traffic, and the transportation of cash above the limits stated by law; on December 30, 2002, the Secretariat of Finance and Public Credit¹ (hereinafter SHCP, by its acronym in Spanish) published an amendment to the Customs Law, in which Article 7 states the obligation for the transmission of data in regards to passengers, crew and vehicles used for the transportation of passengers to international maritime, rail and air carriers through the terms and opportunity declared by the Tax Administration Service² (hereinafter SAT, by its acronym in Spanish) under the specific rules published by the authority. On the other hand, Article 46 of the Immigration Law, published on May 25 2011; and Articles 42 section I, 43, and 44 of the Regulations to the Immigration Law, published in September 28 2012, states that air and maritime carriers, as well as private aircraft and ships, conducting the international transport of passengers must conduct the electronic transmission of the information about passengers, crew and vehicles used for the transportation for entering or leaving the country.

For such purposes, the National Immigration Institute (NII) published, on November 8 2012, the Agreement³ on the issuance of the general rules for the transmission of electronic lists of passengers, crew and vehicles used for the transportation to the NII, stating the applicable terms, conditions and technical specifications for the transmission of required information; and on November 14 2013, the NII published a Notice⁴ to the carriers performing scheduled and non-scheduled international air transport services, informing the electronic and coordination mechanisms for the reception and processing of the information concerning passengers, flight crew and vehicles used for the transportation entering or leaving the country; for the compliance of the obligations stated in Article 46 of the Immigration Law.

On the other hand, the SHCP publishes, on a yearly basis in the general rules in foreign trade matters, the mechanism for the reception and processing of the information concerning passengers, flight crew and transportation means entering or leaving the country in accordance with article 7 of the Customs Law.

1.- "Secretaría de Hacienda y Crédito Público".

2.- "Servicio de Administración Trinitaria".

3.- "ACUERDO por el que se emiten los Lineamientos generales para la transmisión de listas electrónicas de pasajeros, tripulantes y medios de transporte al Instituto Nacional de Migración".

4.- "AVISO por el que se da a conocer a las empresas de servicios de transporte aéreo internacional regular y no regular de pasajeros, el mecanismo electrónico y de coordinación necesario para la recepción y procesamiento de la información relativa a los pasajeros, tripulación y medios de transporte que entren o salgan del país, conforme al artículo 46 de la Ley de Migración."

“Under the general principle of equality of the law, the obligation of APIS and PNR data transmission is targeted to any carrier providing international air transport services of passengers to/from any Mexican airport...”

Effective as of November 15 2013, the immigration authority through the National Immigration Institute stated the obligation for the transmission of APIS by the services provider ARINC Incorporated, as the exclusive company assigned by the immigration authority to operate and coordinate the technological mechanism for the reception and processing of the APIS data under the UN/EDIFACT PAXLST exchange. For its part, the customs authority, through the annual general rules in foreign trade matters, stated that all carriers providing international air transport services of passengers must conduct, in addition to the APIS, the transmission of PNR data, which includes an extensive amount of personal data e.g. date of flight reservation/issuance of ticket; names under the same reservation; payment form/invoicing/credit card information; travel agency, if case; etc., which entered in full force as of November 01, 2012.

The relevant issue.

Under the general principle of equality of the law, the obligation of APIS and PNR data transmission is targeted to any carrier providing international air transport services of passengers to/from any Mexican airport; however, the Mexican authority did not consider the restrictions that could have foreign carriers in their home state about restrictions or prohibitions for the transmission of sensitive personal data to third parties and/or authorities of third countries.

In that sense, Mexican authorities faced the most relevant issue with the European carriers because the legal protection on the transfer of personal data to third countries, which impedes the transmission of the PNR data to Mexican customs basically because the authority does not ensure an adequate level of protection; this legislation states that a European Commission shall enter into negotiations with the objective to repair the situation resulting from the finding made pursuant to the lack of an adequate level of protection of personal information by Mexican authorities.

“...the SHCP determined that the provision of PNR data will be effective to European carriers as of the entry into force of the EU-Mexico PNR Agreement.”

In attention to the above, the Mexican authorities, apparently unknowing the circumstances and the legal prohibitions of the European carriers to observe the obligation for the transmission of PNR data, received pressure from many carriers requesting for the cancellation of the transmission of PNR data obligation. After a couple of extensions to the term stated for the observance of the obligation; finally, on July 14 2015, the Head of the SAT and the European Commissioner for Migration, Home Affairs and Citizenship, met to formally to launch the negotiations towards a bilateral agreement between

Mexico and the European Union for the transfer of PNR data to Mexico for the purposes of preventing terrorism and transnational organized crimes.

As result of the negotiations referred in the previous paragraph, the SHCP determined that the provision of PNR data will be effective to European carriers as of the entry into force of the EU-Mexico PNR Agreement. In the meantime, the European carriers will continue to transmit the APIS data in accordance with international conventions.

The equity matter.

As referred previously, the obligation of APIS and PNR data transmission is referred to any carrier providing international air transport services of passengers to/from any Mexican airport regardless the nationality of the carrier; so, if no European carrier is obliged to observe the transmission of PNR data requirement, is the Mexican authority treating differently all other non-EU carriers? Are the low cost carriers from any Asian, African or South American country, or even the Mexican carriers which are not IATA members or carriers that do not have an agreement with the systems services providers or the required infrastructure; and which must incur in extra expenses to observe this legal requirement able to request for same treatment that the European carriers receive in regards to the effective date of the PNR data provision? The Mexican legislation, under the legal principle of equity, provides the right to act against a law applying different to equals.

“...if no European carrier is obliged to observe the transmission of PNR data requirement, is the Mexican authority treating differently all other non-EU carriers?”

It is worrying that the Mexican authorities require the observance of a commercial rule or normativity implemented by international associations to entities of third countries, which has not been properly stated through international agreements with the involved states.

Japan gambles on the Mexican Aeronautic Industry.

The Japanese aircraft market had a value for 17.328 billion dollars in 2015 and an estimate of 14.9 billion dollars in local production according to the Department of Commerce of the United States of America. Japan is U.S.'s third largest supplier to the aeronautic sector after France and Canada, and now needs to increase its supply networks; and Mexico is their best option. Given Mexico's qualified labor force and location along with Japanese investment and know-how, an incredible joint venture is being established for the Aeronautic market. www.eleconomista.com.mx January 25, 2015.

Lifting Sanctions... Lifting Flight.

A few days after the economic sanctions against Iran were lifted on the past month of January, the industry has apparently discovered a booming and attractive paradise for the Aeronautic Industry. Days after the economic sanctions disappeared, Iran makes public massive amounts of orders and aircraft investments. Orders for 500 aircraft in the next five years, 200 deliveries in the next few months were announced by the Iranian government. Iran, a country of 82 million people, has been an outsider in international air transport for almost four decades and are now a massive and potential market. www.aviationweek.com January 29, 2015.

Shares on pledge for Mexican Airports.

Mexican airport operator OMA said on Tuesday it had sold more than 33 million shares that had been pledged as collateral under a credit agreement between a subsidiary of embattled construction firm ICA and Germany's Deutsche Bank. OMA said in a statement that the sale of 33,162,600 Series B shares, more than 8 percent of the company's shares, was carried out by Deutsche Bank's brokerage. Last week, Reuters reported that ICA subsidiary Aeroinvest, which holds ICA's valuable OMA stake, filed a criminal complaint against employees of Deutsche Bank in a bid to prevent the bank from seizing the collateral for a now-defaulted loan to the construction firm. ICA defaulted in December after a crash in the peso made its hefty dollar-denominated debt load more expensive. www.airlines.einnews.com February 02, 2015.

Nine Nominated For 2015 Collier Trophy

Airbus A35 XWB, Blue Origin New Shepard Team On The List, As Is One Head-Scratcher.

The National Aeronautic Association announced Tuesday that nine aerospace projects and accomplishments will compete for the 2015 Robert J. Collier Trophy. For 104 years, the Collier Trophy has been the benchmark of aerospace achievement. Awarded annually "... for the greatest achievement in aeronautics or astronautics in America", it has been bestowed upon some of the most important projects, programs, individuals, and accomplishments in history. Past winners include the crews of Apollo 11 and Apollo 8, the Mercury 7, Scott Crossfield, Elmer Sperry, and Howard Hughes. The Selection Committee will meet on Tuesday, March 8th in Arlington, Virginia, and the winner will be announced that evening at the NAA Spring Awards Dinner held at the Crystal Gateway Marriott. The formal presentation of the Collier Trophy will take place at a later date and location to be determined. www.aero-news.net February 03, 2015.

Flight Design USA Secures Second-Source Production

U.S.-Based Company Inks Production Agreement With AeroJones Aviation In Taiwan.

Flight Design USA has contracted for a second source of completed airframes for import into America. Aircraft availability for new customers will benefit from this new arrangement. Flight Design USA signed a production and distribution agreement with AeroJones Aviation of Taichung, Taiwan to supply Flight Design aircraft and spare parts for the U.S. market. AeroJones is a licensee for the CTLS and CTLSi series with Flight Design of Germany. The process of approving AeroJones' facility, production equipment, and personnel has been managed and audited by staff from both Germany and Ukraine where Flight Design continues the original production line for the their aircraft. AeroJones' production facility has passed numerous audits including the awarding of a Production Certificate by the Chinese CAAC at the end of last year (certificate below). A 2015 FAA audit of Flight Design included discussions regarding airplanes from the Xiamen facility coming to the USA. www.aero-news.net February 03, 2015.

Todd May Named Marshall Space Flight Center Director

NASA Administrator Charles Bolden has named Todd May director of the agency's Marshall Space Flight Center in Huntsville, Alabama. May was appointed Marshall deputy director in August 2015 and has been serving as acting director since the retirement of Patrick Scheuermann on Nov 13, 2015. Since its inception in 2011, May led the Space Launch System (SLS) program through a series of milestones, including a successful in-depth critical design review. SLS, now under development, is the most powerful rocket ever built, able to carry astronauts in NASA's Orion spacecraft on deep space missions, including to an asteroid and ultimately on a journey to Mars. May earned a bachelor's degree in materials engineering from Auburn University in Auburn, Alabama, in 1990. His many awards include NASA's Exceptional Achievement Medal, the Presidential Rank Award of Meritorious Executive, NASA's Outstanding Leadership Medal and the John W. Hager Award for professionalism in materials engineering. He has been named a Distinguished Engineer by Auburn. In 2014, he received Aviation Week's Program Excellence Award, as well as the Rotary National Award for Space Achievement Foundation's Stellar Award in recognition of the SLS team's many accomplishments. www.aero-news.net February 03, 2015.

Boeing 737 MAX maiden flight roars off the runway.

Renton, Washington "It flew beautifully. We worked through checks but there were no issues." That was the proclamation delivered today by Captain Ed Wilson upon the successful completion of the maiden flight of Boeing's 737 MAX in Seattle, taking the program a step closer to its Entry Into Service (EIS). The fourth generation of this family of aircraft comes to compete directly against the Airbus A320neo family aircraft in an ongoing battle to dominate the global narrow-body market segment. After type certification, it'll go to launch customer Southwest Airlines -- the world's largest 737 operator -- in the third quarter of 2017. This would be the second time Southwest launches a 737 variant, as it did in 1981 with the 737-300 program, which entered service in 1984. www.aero-news.net February 03, 2015.

COELUM

Monthly Digital Publication by ABOGADOS SIERRA

CONTRIBUTORS

MISAEAL ARELLANO

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.