

COELUM.

Ready to fly? New regulations affecting passengers during the Pandemic.
by Misael Arellano



MAY 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 25

celebrating twenty-five years of paramount aviation legal services in Mexico

Ready to fly? New regulations affecting passengers during the Pandemic.

by Misael Arellano.

As we all know, a novel coronavirus (nCoV) was identified on January 7, 2020 by the World Health Organization (WHO). Originally tagged as “2019-nCoV”, it was subsequently named as “COVID-19 virus” and, on March 11, 2020, the WHO announced the COVID-19 outbreak as a pandemic. As from that moment, airlines around the world started to reduce or suspend international flights from, and to countries with high risk of contagion.

The pandemic is now reaching a phase in which some airlines are resuming operations under a called “new normality”, so what are passengers, airports, airlines and all stakeholders of the air transport services to observe and what requirements, if any, are mandatory?

Medical certificates, health questionnaires, mandatory or desirable quarantine upon arrival to specific destinations, contact forms informing where to be reached if necessary, boxed meals even in first class seats, four hours prior to departure time to make the check-in, the use of face masks, dealing with airports’ health measures like infrared thermometers for boarding and disembarking procedures, customs and immigration systems are some examples of the new requirements that may be applicable to passengers flying during the pandemic.

It is worth mentioning that safety has always been the primary concern of civil aviation authorities (CAAs) and, in that sense, the International Civil Aviation Organization (ICAO) published on May 11, 2020, the Doc 10144 “*Handbook for CAAs on the management of aviation safety risks related to COVID-19*”¹ intended to support CAAs with the management of aviation safety risks, which fall under their responsibility, during the coronavirus disease (COVID-19) by the development of the main tools for

the handling of safety risks, based on the cooperation, collaboration and communication as vital functions exercised by the States in tackling global crises.

The WHO also published on March 18, 2020 the interim guidance “Operational considerations for managing COVID-19 cases or outbreak in aviation”² which, of course, should be implemented as a complement to the WHO’s Handbook for the Management of Public Health Events in Air Transport. As a document issued by an international organization the WHO’s documents are referred and linked to the ICAO’s Standards and Recommended Practices (SARPs). These are intended to assist States in managing aviation safety risks, in coordination with their air transport service providers.

“The pandemic is now reaching a phase in which some airlines are resuming operations under a called “new normality”, so what are passengers, airports, airlines and all stakeholders of the air transport services to observe and what requirements, if any, are mandatory? ”

With regards to specific international travel regulations, the International Air Transport Association (IATA), in addition to the publication of COVID-19: Resources for Airlines and Air Transport Professionals³ about operational recommended practices and resources, implemented an Interactive Coronavirus (Covid-19) Travel Regulations Map to enable airlines and other

1- <https://www.icao.int/safety/SafetyManagement/Doc10144/Doc%2010144.pdf>

2- <https://www.iata.org/contentassets/7e8b4f8a2ff24bd5a6edcf380c641201/who-2019-ncov-aviation-2020.pdf>

3- <https://www.iata.org/en/programs/covid-19-resources-guidelines/#tab-1>

aviation partners to securely manage the passenger document verification process⁴.

“In addition, the real problem so far is that rules and/or information provided to the passenger are not the same during the entire process: airports, carriers and even involved authorities are following the same general rules but not under the same specificities or procedures.”

By all the afore described documents, it is a fact that the air transport will be affected by all and novel health measures applied by airports, airlines and authorities involved. However, which and how many of directives stated are addressed to the passenger and which will still be mandatory for passengers for post-pandemic travel? Unfortunately, as the authorities around the globe are working in accordance to the pandemic’s development in a reactive way, there is no chance to harmonize the applicable requirements from a state to state or even amongst domestic airports.

So far, the answer to such question will depend on several factors related to: **i)** flight origin – destination; **ii)** airports involved; **iii)** domestic regulations about provisional and/or urgent health measures ordered, and, of course, **iv)** the airline contract of carriage--which, as a result of the pandemic--should be amended to state all new requirements and amended conditions for the observance of health measures applied by the pandemic.

In addition, the real problem so far is that rules and/or information provided to the passenger are not the same during the entire process: airports, carriers and even involved authorities are following the same general rules but not under the same

specificities or procedures. Therefore, the passenger has no certainty with regards to the applicable requirements for travel.

In Mexico, unfortunately, actions of the government have been taken late, and for the most part, have been very vague and unenforceable. The AFAC did start with the updating applicable rules to public health events; unfortunately, a mess occurred with the publication of the document “*Carta Política CP AV-01/20*” on May 20, 2020, establishing the requirement of an Operations Reactivation Plan with an enforceability as of May 18, 2020. Complaints from the aviation industry and the Air Transport National Chamber (CANAERO) resulted in AFAC’s decision to eliminate it from its web page. After such botch, and as of the date this article has been written, the efforts of AFAC continue with the third revision of the Mandatory Circular CO SA-09.1/13 “Which states the civil aviation contingency plan during public health relevant events”.

A precise communication to passengers which properly informs them of all new protocols and requirements is key. In addition, the marketing assurances, and materials to keep passengers informed and safe is pivotal. Also, an important consideration is that states, and even cities in a same country, have not reach the same phase/level of the pandemic, and requirements and regulations on air travel may defer. Unfortunately, rules issued by the WHO, ICAO, IATA and even ordered by civil aviation authorities are not strictly mandatory; the main problem of new rules in addition to the lack of harmonization and consistency, is their lack of enforceability.

In that sense, and in addition to all measures ordered by the involved authorities, the first step to consider to flight during these shocking circumstances, is to review all the information provided by the airline thoroughly. Review the conditions of carriage, and then, review all notices, warnings and special notifications that may be issued from time to time by the airline and applicable authorities.

4.- <https://www.iatatravelcentre.com/international-travel-document-news/1580226297.htm>

ALTA calls for prioritizing recovery of the airline industry in Mexico.

The Latin American and Caribbean Air Transport Association (ALTA) asked the Mexican government to prioritize support for tourism and the airline industry to reduce the impact that the pandemic will have on the national economy. "Mexico is going to be one of the hardest hit countries in tourism and the aviation sector. Tourism provides 17.2% of the Gross Domestic Product (GDP) and 17.8% of total jobs in Mexico", Luis Felipe de Oliviera, ALTA's CEO, asserted in an interview with A21. www.a21.com.mx/aeronautica/2020/05/04/pide-alta-priorizar-recuperacion-de-industria-aerea-en-mexico May 04, 2020.

EASA to set out 'safety protocol' for restoration of air transport.

Europe's aviation safety authority will set out in the following weeks the technical operational guidelines to facilitate the air transport industry, while adopting a coordinated approach to restore airline travel. The measures will be undertaken by the European Union Aviation Safety Agency and the European Centre for Disease Prevention and Control. Its aims will be to set out a baseline aviation health safety protocol which must include different measures on hospital-grade air filtering, strengthening ventilation and vertical airflow; and also, it would focus on limiting the spread of the virus by prioritizing electronic payment and documentation, avoiding passenger concentration and managing passenger flow, limiting interaction on board, etc. www.flightglobal.com/airlines/easa-to-set-out-safety-protocol-for-restoration-of-air-transport/138355.article May 13, 2020.

IATA sets out biosecurity roadmap to restarting flights.

After the global pandemic, airlines and passengers will face radical changes in the process of restarting the Aviation Industry. Therefore, IATA has set out recommendations the association hopes that airports, airlines and governments adopt as a middle ground to allow passengers fly safely while enabling the industry and the economy to open up. That is why IATA is proposing a "layered approach" to biosecurity, which will impact the customer experience even before passengers arrive at the airport. For instance, travelers will face temperature-screening and social distancing, and will be required to wear masks for the length of their journeys. www.flightglobal.com/strategy/iata-sets-out-biosecurity-roadmap-to-restarting-flights/138445.article May 19, 2020.

Passenger movement at the AICM had its worst drop in history.

The Covid-19 pandemic has caused 90% of aircrafts in Mexico to remain on the ground and there is a 95% drop in air movement. Consequently, April 2020 became the worst month in the history of Mexican aviation and has caused uncertainty for more than 1.400.000 employees: the National Chamber of Air Transportation (CANAERO) and the International Air Transport Association (IATA) have rated the COVID-19 crisis as "the most catastrophic one in memory". The Mexican government has not yet presented an economic package of aid or government incentives to counteract the fall caused by the coronavirus pandemic in the country. Canaero and IATA have called on the country's authorities and airport groups to provide support that would contribute to the swift return of airline operations. www.infobae.com/americas/mexico/2020/05/19/movimiento-de-pasajeros-en-el-aicm-tuvo-su-peor-caida-en-la-historia/ May 19, 2020.

Pandemic will cause new air regulation.

The new legal standard of health operational safety for the Mexican air industry will have to be reconsidered from the terms of a public Mandatory Circular and even through the creation of a Mexican Official Standard (NOM). The Ministry of Communications and Transportation published on March 30, 2020 the mandatory circular CO SA-09.1/13 R2, which establishes the civil aviation contingency plan for events of public health importance. The pandemic represents a national security problem because it harms the health of Mexicans and, by forcing the limitation of economic activities for three months, it affects the development and integrity of the State, generating repercussions on public security issues. www.a21.com.mx/index.php/aeronautica/2020/05/24/pandemia-provoca-nueva-regulacion-aerea May 24, 2020.

In this month extract was prepared by A. Fragoso, A. De la Fuente, P. Arandia, R. Nerio, R. López, R. Mancilla, M. Castro.

Automation, the new reality in the Air transport.

The impact that the coronavirus pandemic is having on the global air transportation industry will last for a long time, and it will force changes in the way in which travel is carried out, implementing new technologies to maintain security. For instance, the automation of processes will play a fundamental role in the protocols prior to boarding passengers. The implementation of self-service technologies that offer minimal contact experiences, thus mitigating the risk of COVID-19 contagion, will certainly be implemented. The aforementioned, together with the usage of biometric technologies that allow passengers to go through airport security filters in which only a photograph will be taken without the need to exchange documentation. <https://a21.com.mx/aerolineas/2020/05/25/automatizacion-la-nueva-normalidad-en-el-transporte-aereo> May 25, 2020.

Latin America, the region with the least government support.

According to the International Air Transport Association (IATA), Latin American governments have given the least financial support to airlines in the region. In fact, globally, governments have committed to provide up to \$ 123 billion in financial support for airlines. Of this total, however, Latin American governments have promised only \$ 0.3 billion. As Alexandre de Juniac, General Director of the IATA stated, many governments have supported with financial aid packages, however, in places where governments have not responded quickly, or have done so with limited support, there are already bankruptcies. www.a21.com.mx/aerolineas/2020/05/26/america-latina-la-region-con-menos-apoyo-gubernamental May 26, 2020.

Airline debts to increase 28%: IATA.

The International Air Transport Association (IATA) reported that the debt of airlines worldwide can increase 28% by the end of this year and reach around 550 billion dollars. So, if this occurs it would imply that in 2020, the airlines would have an increase of 120 billion dollars in their debt levels, as a result of the current Covid-19 pandemic and the crisis that has affected the demand for air transport. As Alexandre de Juniac, General Director of the IATA stated, Government aid is allowing the industry to stay afloat; and the next challenge will be to prevent airlines from sinking under the weight of the debt that this aid is creating. www.a21.com.mx/aerolineas/2020/05/26/deudas-de-aerolineas-incrementaran-28-iata May 26, 2020.

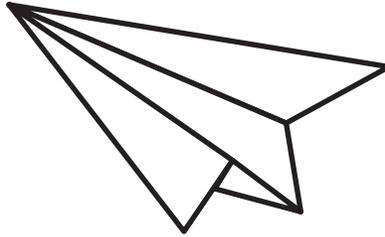
FAA approves halting of services to 75 American airports.

The United States Department of Transportation, in a statement issued on Friday, May 22nd, declared that it had granted a provisional permission for 15 airlines to suspend their services temporarily to 75 U.S. airports due to the Covid-19 global pandemic. Furthermore, the U.S. government requires that airlines must maintain minimum service levels to receive government assistance through the Payroll Support Program for airlines under the Coronavirus Aid, Relief and Economic Security Act (CARES). However, several airlines have collectively bargained to stop service to airports with chronically low passenger counts that would only further drive their unsustainability with current air travel demand. www.aerotime.aero/aeronewsx.1/25065-faa-approves-halting-of-services-to-75-american-airports May 27, 2020.

IATA asks for support to airport groups in Mexico.

The International Air Transport Association (IATA) asked airport groups to extend their support for airlines for another three months, due to the current crisis caused by the Covid-19 pandemic. With this in mind, "in Mexico, airport groups were the first to give airlines a financial break; we are going to approach them as an industry and ask for an extension of this aid for another three months," said Peter Cerdá, IATA's regional vice president for the Americas. In April, Grupo Aeroportuario del Centro Norte (OMA) announced that airlines would be exempt from 100% of the charge for landing, use of boarding and disembarking platforms and prolonged parking of equipment. In turn, the Pacific Airport Group made a similar exemption for aircraft parking and 50% for vehicle parking. So far, the Mexican government has not announced support measures for airlines despite the rapprochements both of IATA and other organizations such as ALTA, Canaero, FEMIA and the airlines themselves. <http://a21.com.mx/aerpuertos/2020/05/28/pide-iata-apoyo-grupos-aeroportuarios-en-mexico> May 28, 2020.

In this month extract was prepared by A. Fragoso, A. De la Fuente, P. Arandia, R. Nerio, R. López, R. Mancilla, M. Castro.



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, earned with distinction, the International Air Law Diploma; Certificate of International Air Law for Lawyers and Legal Professionals; Certificate of Aircraft Acquisition and Financing; Certificate of Airline Contract Law; and Certificate of 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 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 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.