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Downgrading of Mexico's Safety Oversight System: Concerns and Required Actions.

by Juan Manuel Estrada.

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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.

Downgrading of Mexico's Safety Oversight System: Concerns and Required Actions.

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As a consequence of an excruciating audit which took place between October 2020 and February 2021, whereby the U.S. Federal Aviation Administration ("FAA") reassessed the compliance of Mexico's safety oversight system's with the minimum international safety standards put forward by the International Civil Aviation Organization ("ICAO"), the U.S. Department of Transportation ("DOT") determined to downgrade Mexico's safety rating from Category 1 to Category 2¹. This arising from the multiple infractions and shortcomings identified in the International Aviation Safety Assessment ("IASA") process with regards to the provisions of Annexes 17 and 18 of the Convention on International Civil Aviation ("Chicago Convention")².

Despite the appalling downplayed rhetoric of Mexico's President, Andres Manuel López Obrador³, several industry stakeholders have raised their concerns asking the Federal Government to address this situation as a matter of "State Priority", fearing that the repercussions will substantially hamper the recovery of our national industry⁴. While the effects of this de facto sanction will continue to unwind in the near future, the preliminary consequences can be resumed as follows:

- Mexican airlines will be authorized to continue with the operation of current flights to the United States, however they will not be allowed to add or initiate any new services, aircraft, or routes. This will likely have the same implications to any newly leased aircraft bearing foreign registration marks (even if such will be used to operate previously authorized routes).
- Codeshare agreements will no longer be effective for US carriers on Mexican operating carriers.
- Scrutiny of Mexican operators' flights to the United States will increase.
- Maintenance and Repair facilities (MROs) will not be authorized to provide maintenance services to foreign registered aircraft, unless these MROs have a separate foreign authorization (such as an FAA certification).

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Actions required to regain the Category 1 classification

In order for the Federal Civil Aviation Agency ("Agencia Federal de Aviación Civil" or "AFAC") to achieve the minimum compliance with ICAO safety standards, several actions have to be taken. Such actions have been

1.- It is important to highlight that the audit limits the assesses to the compliance of international standards, and not the applicable FAA regulations.

https://www.faa.gov/news/press_releases/news_story.cfm?newsId=26142

2.- <https://www.faa.gov/about/initiatives/iasa/>, access on May 20, 2021.

3.- "AMLO desestima degradación en calificación de seguridad aérea mexicana", available at <https://www.jornada.com.mx/notas/2021/05/27/economia/amlo-degradacion-en-calificacion-de-seguridad-aerea-mexicana/>

4.- "Prioridad de Estado" en México, recuperar la categoría 1: IATA, available at <https://www.jornada.com.mx/notas/2021/05/27/economia/prioridad-de-estado-en-mexico-recuperar-la-categoria-1-iata/>

addressed by the Ministry of Communications and Transportation (*“Secretaría de Comunicaciones y Transportes”*) who made public a comprehensive plan of action which include the execution of a collaboration agreement with the FAA and a comprehensive amendment to the provisions of the Civil Aviation Law (*“Ley de Aviación Civil”*).

“The main objective of the reform is to achieve uniformity between the Civil Aviation Law and its Regulation (“Reglamento de la Ley de Aviación Civil”), the Regulations for the Issuance of Permits, Licenses and Certificates of Capacity of aeronautical technical personnel, and the Regulations of the Mexican Aeronautical Registry (“Reglamento del Registro Aeronáutico Mexicano”), with ICAO’s international standards.”

As of the date in which this article has been written, the only action that has been effectively adopted is the amendment to the Civil Aviation Law. The main objective of the reform is to achieve uniformity between the Civil Aviation Law and its Regulation (*“Reglamento de la Ley de Aviación Civil”*), the Regulations for the Issuance of Permits, Licenses and Certificates of Capacity of aeronautical technical personnel, and the Regulations of the Mexican Aeronautical Registry (*“Reglamento del Registro Aeronáutico Mexicano”*), with ICAO’s international standards, while also adopting higher safety standards and incorporating safety oversight regulations

A summary of the relevant amendments included in such Amendment Decree are as follows:

a) Incorporation of the Commission for the Investigation and Assessment of Aviation Accidents

The amendment gives way to the incorporation of the Commission for the Investigation and Assessment of Aviation Accidents (*“Comisión Investigadora y Dictaminadora de Accidentes Aéreos”*). This commission will be composed of members of the Ministry of Communications and Transportation (*“Secretaría de Comunicaciones y Transportes”*) along with a select group of experts in the field of aviation as well as accident and incident investigators and analysts⁵, which will have the authority and autonomy to investigate aviation accidents and incidents.

The main authorities of the Commission for the Investigation and Assessment of Aviation Accidents are the following⁶:

- Coordinate, request and receive information, and carry out the investigations of any incident or accident;
- Conduct a medical examination of the person or persons who have been directly or indirectly involved in the operation of an aircraft involved in an accident or incident and, if applicable, to the passengers;
- Classify information deemed essential to properly conduct an accident and incident investigation assessment while the investigation is on process.

5.- Article 2 subsection XIV of the Civil Aviation Law.

6.- Article 81 of the Civil Aviation Law.

- Coordinate the investigation in civil aeronautics at the accident site, with accredited representatives, investigators and technical experts; and
- Issue a final accidents and incidents report.

b) Costs associated with Accident and Incident Investigations

Article 80 of the Civil Aviation Law is amended in order to incorporate the obligation of all concessionaires and permit holders to assume the costs of any rescue and salvage operations, despite the fact that such will be conducted under the supervision and oversight of the Ministry of Communications and Transportation⁷.

c) Cabotage

Despite the previous existence of an express prohibition of cabotage practices by foreign operators, the Civil Aviation Law is further amended to include Article 17 Bis, which restates the prohibition of cabotage practices by foreign permit holders within Mexican territory.

This article further provides that Foreign owners of non-Mexican registered aircraft destined for private use are barred from performing cabotage practices. This particular amendment was introduced as a consequence of certain accidents that took place within Mexican territory with foreign registered aircraft. Which impaired the Mexican authorities from having an adequate safety oversight of such aircraft, despite being used within Mexican territory.

d) Revocation of licenses

Article 90 is amended in order to state that the aircraft commanders will have their license revoked in the following cases:

- If they operate an aircraft under the influence of alcohol or any drug.
- If they traffic or facilitate the trafficking of illegal substances.
- If they presents forged documentation associated with the operation of the aircraft.

As mentioned, the amendment to the Civil Aviation Law represents only an initial step that must be undertaken by the Mexican authorities towards regaining the Category 1 rating of the FAA. However, despite the substantial economic implications arising as a consequence of such degradation, I do believe that the main concern for all should be the possible safety implications arising from the lack of compliance of our Civil Aviation Authority with ICAO's minimum aviation safety oversight standards. It should therefore be, of the essence that Federal Government endows substantial technical, human and budgetary resources to the AFAC, in order to both, achieve the compliance with the minimum safety requirements of ICAO and to revitalize the AFAC, an institution that has seen its deficiencies increase in recent years due to the lack of technically capable personnel and budgetary cuts.

7.- Article 80 of the Civil Aviation Law

Vaccination campaigns to accelerate airline recovery.

The aviation industry consulting firm Cirium predicts that if vaccination campaigns accelerate worldwide, the airline industry could return to pre-pandemic levels sooner than expected. According to a study presented by the consulting firm, there is an optimistic scenario in which airlines would regain the global traffic levels they had in 2019 by 2023, rather than initial forecasts that this would be until 2024 or later. The basis for this hypothetical recovery requires vaccination campaigns to accelerate their pace and governments to remove travel restrictions, so that global passenger traffic could grow at an annual rate of 16%. www.a21.com.mx/aerolineas/2021/05/24/campanas-de-vacunacion-aceleraran-recuperacion-aerea May 24, 2021.

Another audit is coming in December, now from ICAO.

In December, the International Civil Aviation Organization (ICAO) will conduct its Universal Security Review Audit (USOAP) in Mexico, which is carried out every ten years. The last time this audit was conducted in Mexico was in 2012, and the country obtained a rating of 85.06 out of a maximum of 100. Furthermore, a failure to comply with the standards during the ICAO audit will generate a red flag on the reviewed country given the low levels of compliance and effective implementation of its standards. A21. www.a21.com.mx/normatividad/2021/05/26/en-diciembre-viene-otra-auditoria-ahora-de-la-oaci May 24, 2021.

Press Release – Federal Aviation Administration Announces Results of Mexico’s Safety Assessment.

The U.S. Department of Transportation’s Federal Aviation Administration (FAA) today announced that the Government of Mexico does not meet International Civil Aviation Organization (ICAO) safety standards. Based on a reassessment of Mexico’s civil aviation authority, the FAA has downgraded Mexico’s rating to Category 2 from Category 1. So, while the new rating allows Mexican air carriers to continue existing service to the United States, it prohibits any new service and routes. Also, U.S. airlines will no longer be able to market and sell tickets with their names and designator codes on Mexican-operated flights. www.faa.gov/news/press_releases/news_story.cfm?newsId=26142&omniRss=press_releasesAoc&cid=102_P_R May 25, 2021.

Downgrading to Category 2 will have serious effects on industry: CANAERO.

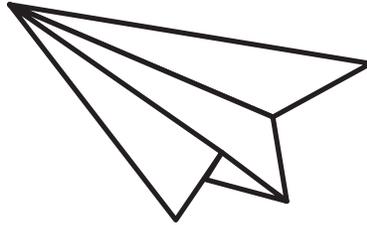
The National Chamber of Air Transportation (CANAERO) pointed out that the downgrading of Mexico's aviation authority by the Federal Aviation Administration (FAA) will have serious consequences for the recovery of national airlines and trade between the two countries. Although the current operation of Mexican airlines in the United States will not be impacted, this is happening in the middle of the most important recovery period of the international market for the country. As such, CANAERO made an urgent appeal to the Federal Agency of Civil Aviation (AFAC) and the federal government to take the necessary technical, human and budget measures to recover Category 1 and reduce the serious impact on national industry. www.a21.com.mx/aerolineas/2021/05/25/caida-categoria-2-tendra-graves-afectaciones-en-industria-canaero May 25, 2021.

Mexico increases aeronautical budget after downgrading; hiring personnel and English classes to be offered.

Mexico's Federal Civil Aviation Agency obtained a budget increase of nearly 40 percent more and will hire 180 new inspectors. The agency's director acknowledged that the U.S. downgrade of its aviation safety rating was due in part to budget cuts. The increase of approximately 150 million pesos will also be used to increase salaries and train personnel in English, according to Carlos Antonio Rodríguez Munguía, director of Mexico's Federal Civil Aviation Agency (AFAC). The U.S. Federal Aviation Administration (FAA) found both areas to be deficient. www.elfinanciero.com.mx/bloomberg/2021/05/27/mexico-aumenta-presupuesto-aeronautico-tras-degradacion-habra-contrataciones-y-clases-de-ingles/ May 27, 2021.

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