

COELUM. ●

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by Carlos Sierra.



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.


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Outsourcing in Mexico, (lights and shadows of the newly approved legal reform).

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Only a few weeks ago, on April 20 of this year the Mexican congress approved the controversial reform to regulate outsourcing activities. The reform, which amends several provisions of the Federal Labor Law, the Social Security Law, the Law of the National Institute of the Workers Housing Fund, the Federal Fiscal Code, the Income Tax Law and the Value Added Tax law, among other regulatory laws associated with government employment, imposes substantial limits to the practice of subcontracting personnel through the use of companies, created specifically in some cases, to supply workers to other companies which, in turn, avoid hiring employees and hence avoid the costs associated with seniority, pension plans, social security payments, profit sharing and other responsibilities that the law imposes on employers for the benefit of employees.

"The practice of outsourcing mechanisms became so widespread that the limitations now imposed will have severe repercussions on the profitability of certain labor-intensive businesses that use to staff their operations with outsourced personnel."

The reform in question however has been largely debated. The practice of outsourcing mechanisms became so widespread that the limitations now imposed will have severe repercussions on the profitability of certain labor-intensive businesses that use to staff their operations with outsourced personnel.

No one can deny that any person employed must be provided the benefits to which it is entitled in accordance with law. In that regard, while outsourcing could be practical for several reasons and, when conducted appropriately could be beneficial to companies that avoid having to deal with the large

administrative burden of managing hundreds and in many cases thousands of employees outside of their core activity, it is also true that its widespread practice was also used to dodge the compliance of benefits to which the workforce is entitled by law.

By outsourcing employees, certain companies prevented the workers, which were employed by a separate company, to receive the 10% of profit sharing, known as PTU or 'Workers Participation in Profits', that workers would be entitled to receive from the company for which they actually conduct the work. If the actual employer of these workers (company B) did not turn out a profit -which in many occasions they were designed to avoid-, while the company that retained the outsourcing service (company A) did turn out a profit, the employees of company B would not receive a share of the profits produced by company A since they did not actually work for the latter.

In addition to this, certain outsourcing companies would charge a lumpsum to supply a determined number of workers, while paying these workers merely a portion of such amount and to avoid providing social security and other benefits by constantly changing the company that supplied the outsourced work to prevent the workers from accumulating seniority at any individual company.

Employers in Mexico are also obliged by law to contribute one third of the amount payable for each employee for social security and workers housing benefits¹, this contribution was dodged by several companies by outsourcing their labor force, or at least was diminished by causing the outsourcing company to register such workers at very low salary levels to reduce the amounts payable for social security in each case. This resulted in the negative impact on the accumulation of retirement benefits of the workers and substantially reduced the amount withheld for income tax that the workers would have paid with higher salaries.

1.- Under Mexico's social security system, the contributions payable to the Mexican Social Security Institute, which are based on a percentage of a person's salary are paid one third by the workers as a withholding of its salary that the employers must make; one third by the employer; and one third by the government.

In summary, these abusive practices resulted in the tarnished reputation of the outsourcing practice at large, which without seeing its benefits was recently regarded as a form to prevent the compliance of obligations and benefits that all workers are entitled to receive.

"Employers in Mexico are also obliged by law to contribute one third of the amount payable for each employee for social security and workers housing benefits¹, this contribution was dodged by several companies by outsourcing their labor force, or at least was diminished by causing the outsourcing company to register such workers at very low salary levels to reduce the amounts payable for social security in each case."

On the positive side, the outsourcing of workers, when compliant with the law, has been an efficient form to manage large numbers of employees allowing companies to concentrate on their core activities rather than on complex human resource management. Professional outsourcing companies provided flexible staff distribution and supply, training of workers on specific areas and the ability to retain a specific number of workers to develop a particular project for a limited period. Outsourcing is also the adequate form to retain a labor force with specialized skills or training to conduct a certain task, to launch a product, operate a call center, to conduct certain market or production activities, etc.

While the recently implemented reform then attempts to more profoundly resolve a problem that was only partially addressed in the previous reform to the Federal Labor Law that was enacted in 2012. The extent of this reform could have a negative effect on companies that provide healthy and law compliant outsourcing services, as well as on companies that provide specialized services that other companies

need. In this modern globalized world, no company alone can have all kinds of employees for every single activity it performs. Companies should be able to dedicate to their core business efficiently, while being able to outsource the conduction of ancillary tasks to outside suppliers that can perform a better and more specialized job at lower costs. For example, an airline, which core business is the provision of air transportation services for passengers and/or cargo, should be able to outsource non-core activities such as aircraft maintenance, ground handling or reservations, for instance, from specialized companies that can conduct a better job at lower costs and in full compliance of all legal obligations towards all workers involved.

There is no debate that the abusive practices that have tarnished the reputation of outsourcing should be prevented and eliminated by restricting the same and imposing hefty penalties. No practice that attempts to prevent workers from receiving legal benefits should be allowed. The controversial aspect of this reform however has been its extent and its potential effect on healthy outsourcing practices. The perverse side of it as well results from the ill conception that the current administration has of private businesses and the extensive regulation that it intends to impose on private endeavors that under this left-wing administration are regarded as "neoliberal", "capitalist" and "greedy".

It is no secret for instance that this reform was largely promoted by the leader of the mining workers who seeks to cause the thousands of employees that work in the mining industry to become affiliated to its labor union, which was not a requirement to the extent that these workers were largely outsourced from other companies by the large mining companies that operate in Mexico. The effect of this new reform in this case is likely to cause a severe impact on the mining industry and in the investment of foreign companies in this field.

The outsourcing reform has been highly debated since the first initiative was sent to congress by president Lopez Obrador in December of 2020. Its final version resulted from an agreement reached on April 5, 2021 between the government and the private sector among other stakeholders. The

government's original intent was to ban outsourcing practices altogether. The result under the agreement reached with the private sector, while permitting the outsourcing of specialized services or activities and ad-hoc projects, is still far from ideal is confusing in its implementation and imposes severe penalties and requirements that can be gravely damaging for companies and workers alike.

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Since its approval by the Mexican congress, the reform package, has been enacted by presidential decree published on April 23, 2021. The Ministry of Labor, still has a few days left of a 30 day period within which it is required to publish the guidelines under which companies that conduct outsourcing activities must become registered and obtain approval from the ministry to conduct their activities as such. Companies will have a *vacatio legis* period of slightly over three months (through August 1, 2021) from the date of publication of the presidential decree to formally hire any employees that are being outsourced and to make any other applicable adjustments; certain other aspects will become effective from January 1, 2022. To comply with this reform, every company that provides services to another must register to be authorized. To register, it must demonstrate that it is in full compliance with its tax, social security and other obligations. Companies that wish to outsource certain activities from others would only be permitted to do so when such activities would not be contemplated in their social purpose², and when such activities would be specialized or would not be possible to be conducted by the companies themselves at a certain location or facility.

The fines for breaching these new obligations can be imposed on both, the company seeking the outsourcing and the company that could provide such services and can reach up to MXP \$4,400,000 (approximately USD \$220,000) per occurrence.

Any company that retains the services of any other company that fails to become registered in accordance with the law and the Labor Ministry guidelines (to be issued soon -hopefully-) will not be able to deduct the payments made to this company for tax purposes, in addition to the fines and other sanctions that could be imposed.

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It remains to be seen whether the implementation of this reform can result in the benefit of thousands of workers that were deprived of benefits by the abuse of illegal outsourcing activities. It remains to be seen as well whether this reform might have a negative effect on legal and productive outsourcing practices that are essential for the cost-effective integration of services and productivity around the world.

2.- The social purpose ('objeto social') of any Mexican company is contemplated in the company's bylaws and is generally written in broad sense to contemplate the conduction of several activities or services.

Government sharpens airspace redesign.

The federal government will not only redesign the airspace of the Valley of Mexico so that the Santa Lucia airport can operate but is also working to overhaul the airspace of the entire country within three years. In the first phase of the plan, changes were made for the coexistence of the Mexico City, Toluca, Cuernavaca, Puebla, and Guadalajara air terminals. The second phase will come into operation with the inauguration of Felipe Angeles International Airport in March 2022. In the third stage, the air space of the Yucatan Peninsula will be redesigned, where the airports of Campeche, Merida, Chichen Itza, Cancun, Cozumel, Chetumal and, in the future, Tulum will be inaugurated in 2023, according to the federal government. www.milenio.com/negocios/gobierno-afina-redisen-integral-espacio-aereo April 06, 2021.

Mexico neglects 42 destinations due to pandemic.

A total of 42 destinations that had routes from Mexico have lost air connectivity, some of them permanently and others temporarily, because of the Covid-19 pandemic crisis. Mexico City International Airport (AICM) has totally lost connectivity to 18 destinations, three of them domestic (Morelia, Poza Rica and Saltillo); internationally, Mexico has lost connectivity mainly with Canada, due to the decision of the Canadian authorities to suspend travel as a measure to mitigate the risks of contagion. In April 2019, Mexico was connected to 21 Canadian airports. Currently, there are only regular flights with Toronto. www.a21.com.mx/aeronautica/2021/04/18/desatiende-mexico-42-destinos-por-pandemia April 18, 2021.

What does the reform to the Civil Aviation Law consist of?

Air cargo movement in the country experienced an annual rate increase of 9.1% during the first month of 2021, as The President of Mexico, Andrés Manuel López Obrador, presented before the Chamber of Deputies an initiative with a draft decree to amend the Civil Aviation Law, to respond to the findings made by the Federal Aviation Administration of the United States (FAA), during its audit of Mexican aviation. The reform proposal seeks to add provisions to achieve uniformity between the Civil Aviation Law and its Regulations, the Regulations for the Issuance of Permits, Licenses and Certificates of Competency of aeronautical technical personnel, and the Regulations of the Mexican Aeronautical Registry, according to international standards. The FAA audit began in October 2020, and Mexico must demonstrate that it complies with the aviation safety guidelines required by the International Civil Aviation Organization (ICAO). www.a21.com.mx/normatividad/2021/04/22/en-que-consiste-la-reforma-la-ley-de-aviacion-civil April 22, 2021.

Santa Lucia Will Reach Overcapacity in Five Years: Almaguer.

The Felipe Ángeles International Airport in Santa Lucia has been subject to multiple criticisms during its development. The most recent issue pointed out is that the airport is expected to be saturated in five years. "There is no denying that the airport can be operated, but it's useful life will be limited to five years. Once it starts operating, it will be very limited because it will not allow more than three runways, which will not allow simultaneous operations," said David Almaguer, President of the Board of Directors of the Association of Aeronautical Engineers, in an A21 Article. There have been multiple studies done since the 80s that track the growth of the aeronautical sector in Mexico, particularly in Mexico City, which shows an exponential growth trend. The limited capacity of this airport presents a problem. Almaguer also stated that AICM would have to carry out around 600 daily operations to maintain optimal security levels, while today the realistic number is 900 operations. www.mexicobusiness.news/aerospace/news/santa-lucia-will-reach-overcapacity-five-years-almaguer?tag=aerospace April 23, 2021.

SENEAM asks the AFAC for airspace noise reports.

The Mexican Airspace Navigation Services (SENEAM) requested reports from the Federal Civil Aviation Agency (AFAC), regarding the noise that is being caused over the southern and western neighborhoods of Mexico City because of the redesign of the airspace. In the last weeks, the National Air Traffic Controllers Union (SINACTA) has reported that the air redesign and the lack of training to the Air Traffic Controllers (CTA) represent a risk to air safety. They made public a near-collision incident between two aircraft flying over the new routes that met head-on at the same altitude and had to make an evasive maneuver upon activation of the Traffic Alert and Collision Avoidance System (TCAS). "It is imperative to immediately stop the redesign in order to rectify it, test it and check it sufficiently before putting it back into operation," commented the secretary general of the union. www.a21.com.mx/aeronautica/2021/04/25/pide-seneam-la-afac-reportes-de-ruido-en-espacio-aereo April 25, 2021.

In this month extract was prepared by A. Fragoso, P. Arandia, A. De la Fuente, R. Nerio, R. Mancilla, J. García.

Mexican airlines recover passenger numbers.

During March, Mexican airlines carried three million 169,991 passengers, up from the same period last year, just as the covid-19 pandemic wreaked its initial havoc on the country's airline industry, according to data from the Secretary of Communications and Transport (SCT). In March 2020, Mexico's then eight operating airlines carried three million 142 thousand passengers. Now, there are only seven airlines operating domestic commercial flights in the country. In the international segment, Mexican airlines carried 473,242 passengers, 15% less than what they carried in January of this year and 64% less compared to pre-pandemic levels in March 2019. www.a21.com.mx/index.php/aerolineas/2021/04/26/recuperan-aerolineas-mexicanas-numero-de-pasajeros April 26, 2021.

Downgrading of Mexican aviation to category 2 would be chaotic for the country.

The Federal Aviation Administration (FAA) concluded their air safety audit of the Federal Civil Aviation Agency (AFAC) and within 30 days, starting on May 3, they will decide whether Mexican aviation will retain its category 1 or be downgraded to category 2. The second choice would be chaotic: domestic airlines would not be able to open new routes, flights by Mexican companies to the U.S. would not be possible and code-sharing would become ineffective. Because of U.S. tourism it is important to maintain the category, which represents around 6 out of every 10 international travelers arriving to Mexico. FAA inspectors found deficiencies in the structure of the AFAC due to a lack of personnel in the verification and inspection area and poor training. www.elfinanciero.com.mx/empresas/2021/04/27/aviacion-en-mexico-esta-en-peligro-de-ser-degradada-de-categoria-lo-cual-seria-caotico/ April 27, 2021.

Safety guaranteed in the redesign of Mexican airspace: SCT.

The redesign of Mexican airspace has been carried out in a professional manner, so the public should be certain that there is a full guarantee of safety in air operations, stated Carlos Moran, Undersecretary of Transport of the Ministry of Communications and Transport. Accompanied by the heads of the Federal Civil Aviation Agency, and the Mexican Airspace Navigation Services (SENEAM), they highlighted the relevance of the redesign to make air traffic management more efficient, thereby reducing flight delays and increasing aircraft fuel economy. www.eleconomista.com.mx/empresas/Seguridad-garantizada-en-rediseño-del-espacio-aereo-mexicano-SCT-20210427-0017.html April 27, 2021.

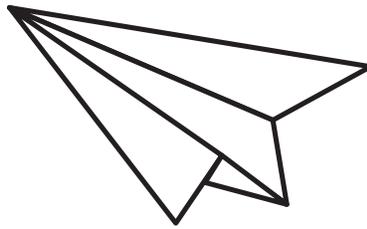
The Airports Council International has arranged a visit to Santa Lucia Air Terminal.

As part of the construction work on the Santa Lucia air terminal and in search of partnerships, the Mexican government will present the project to the Airports Council International (ACI) on Wednesday, May 2, 2021. During the summit of the World Travel and Tourism Council, the general Director of ACI, Luis Felipe de Oliveira, announced that he will make a visit to Mexico City in order to review President Andrés Manuel López Obrador's project. According to the authority, the construction of the Santa Lucia International Airport will cost more than 79 billion pesos, a project that was awarded to the Secretary of National Defense. www.milenio.com/negocios/visitara-santa-lucia-consejo-internacional-aeropuertos April 27, 2021.

Mexican aviation recovery will be the fastest in Latin America: ALTA.

The Latin American and Caribbean Air Transport Association (ALTA) forecasted that the sector's recovery from the coronavirus pandemic will be in 2025; however, for Mexico it will be faster, reaching positive levels in 2023. Ricardo Botelho, president of ALTA, informed that, like Mexico, Brazil and Chile were two other nations that did not block their borders in the face of the coronavirus pandemic, so they will also have a more advanced recovery scenario. www.milenio.com/negocios/recuperacion-de-la-aviacion-mexicana-sera-la-mas-rapida-de-al April 28, 2021.

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Attorney at law by the 'Universidad Nacional Autónoma de México' (UNAM), has coursed post-graduate studies in civil and commercial law at the 'Escuela Libre de Derecho', international law courses imparted by Duke University and the 'Universite Libre de Bruxelles', aviation contracts law at IATA and LLM studies in Air and Space Law at Leiden University in the Netherlands. Mr. Sierra has been a professor of contracts law at UNAM and after being in-house counsel for Mexicana Airlines, he has been in private practice for eighteen years advising lessors and financiers in transactional work related to the leasing and finance of aircraft and the enforcement of their rights during default, liquidation and bankruptcy proceedings. Mr. Sierra has written several articles related to aircraft finance and leasing, the Cape Town Convention and Protocol, repossession of aircraft, aviation law and Mexican commercial law. He is currently chair of the legal advisory panel of the Aviation Working Group, officer of the Aviation Committee of the International Bar Association and member of the international advisory committee of the Leiden Foundation of Air and Space Law. Mr. Sierra is also an instructor for the International Air Transport Association (IATA) on aircraft leasing and acquisitions and has been named by Chambers as the most prominent aviation attorney in Mexico for the past three years.

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