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**Redefining Mexican Airspace: How Mexico's New Amendments to
Laws Could Impact Aviation.**

- By Natalia Deschamps.



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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 how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

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Redefining Mexican Airspace: How Mexico's New Amendments to Laws Could Impact Aviation.

by Natalia Deschamps.

The aviation landscape in Mexico is experiencing significant shifts. Recent amendments to the legislative framework promise to reshape the country's air industry's structure and operation. This article explores these changes, analyzing their objectives and potential implications. Taking into account the resurgence of a state-owned airline and the concerns about competition, this text examines what these new developments could represent for Mexico's position on the aviation stage.

New regulations

On May 3, amendments to the Civil Aviation Law and the Airports Law were published in the Official Gazette of the Federation (DOF), which have several objectives. The first and most important is for our country to recover its Category 1¹ in aviation. In addition, the amendments include the figure of allocation (*asignación*), which allows any state-owned company to be involved in the administration of airport facilities, as well as airlines operations.

Pursuant to the amendments to the Airport Law, the Head of the Ministry of Infrastructure, Communications and Transportation (SICT) may grant allocation titles to state-owned entities without being subject to the public bidding process for the administration, operation and, if applicable, construction of airports, a process to which companies interested in obtaining a concession title pursuant to the Airport Law must be subject.

“Although the enforcement of the amendments to these laws are under analysis by the Supreme Court, their eventual application has triggered the alarms of the Federal Economic Competition Commission (COFECE), particularly about its impact on competition and antitrust in the Mexican aviation industry.”

In the same way, in the field of civil aviation, the amendments include the concept of allocation to allow the Head of the SICT to grant allocation titles to state-owned companies to provide regular domestic air transportation services, without the need to prove the technical, administrative, legal and financial capacities established by the Civil Aviation Law for a company to hold a concession for the rendering of regular domestic public air transportation services. The allocation will be granted for an indefinite period and will be terminated when it is reliably proven that there is no longer a cause of public interest, public benefit, general interest, social interest to be safeguarded, or for reasons of national security.

Currently, the Mexican federal government, --through the Ministry of National Defense (SEDENA) and its Airport, Railway and Auxiliary Services Group Olmeca-Maya-Mexica (*Grupo Aeroportuario, Ferroviario y de Servicios Auxiliares Olmeca-Maya-Mexica, S.A. de C.V.*)- is the owner of the Felipe Ángeles International Airport (AIFA) and the Tulum Airport by way of allocation titles, as well as of the recently established Mexicana de Aviación airline.

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1.-FAA (2023), “Federal Aviation Administration Returns Mexico to Highest Aviation Safety Status”. <https://www.faa.gov/newsroom/federal-aviation-administration-returns-mexico-highest-aviation-safety-status>. According to FAA's web site, on May 25, 2021, the FAA downgraded Mexico's International Aviation Safety Assessment (IASA) rating to Category 2 after finding the country did not meet International Civil Aviation Organization (ICAO) safety standards. From 2021 to 2023, the FAA helped the Mexican aviation authority improve its safety oversight system to comply with ICAO standards by providing the AFAC with expertise and resources to resolve issues identified in the IASA process. Finally, on September 14, 2023, the FAA returned Mexico's aviation safety rating to Category 1, allowing Mexico to add new service and routes to the U.S., and U.S. airlines can re-sume marketing and selling tickets with their names and designator codes on Mexican-operated flights. The following is noted on this web page: “To obtain and maintain a Category 1 rating, a country must adhere to the safety standards of ICAO, the United Nations' technical agency for aviation. ICAO establishes international standards and recommended practices for aircraft operations and maintenance”.

COFECE's Opinion

In March, COFECE issued an opinion² outlining several risks that would occur with the active participation of the government in the administration of airports and airlines at the same time. The following are some of the risks to competition identified by COFECE:

a) Unfair Competitive Advantage in the rendering of airport services. The state-owned company that owns the airport could designate to its competitors more distant waiting rooms, less office space, distant counters for passenger check-in, reserve slots with higher demand for its own uses, among others.

b) *Margin squeeze*³. The company that owns the airport could increase or introduce new fees for the use of the airport, which could lead competitors to increase the price of their tickets or reduce their profit margins.

“Another critical aspect of the amendments to both the Airport Law and the Aviation Law is that it does not establish who will be the entity or person that will have to reliably prove the non-existence of the cause for the termination of the allocation title. It appears that this will be determined by the Mexican state itself, thereby allowing the Mexican state to become both “judge and party”.

COFECE also expressed its concern regarding the fact that the amendments do not offer equal treatment. On the one hand, with respect to the causes for revocation of concessions and permits granted in favor of private companies and, on the other hand, regarding to allocations granted to state-owned companies.

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The concept of allocation would place Mexican airlines at a disadvantage, since SEDENA, together with the Mexican government, would grant subsidies and benefits to its airline, such as control of departure and entry slots, use of airports, fuel, payments for the use of air navigation services and even exemption in the payment of taxes, resulting in unfair and unbalanced competition.

The New State Owned Airline - (Mexicana de Aviación)

On May 18, the Ministry of Finance and Public Credit (SHCP) published in DOF the Resolution authorizing the creation of the company Aerolínea del Estado Mexicano, S.A. de C.V., ascribed to SEDENA⁴.

2.- This opinion is available at the following link: <https://www.cofece.mx/CFCResoluciones/docs/Opiniones/V198/0/5907877.pdf>.

3.- According to the Organization for Economic Co-operation and Development (OECD) “margin squeeze occurs when there is such a narrow margin between an integrated provider’s price for selling essential inputs to a rival and its downstream price that the rival cannot survive or effectively compete. A first step in margin squeeze investigations is a detailed inquiry into the nature of competition in both the upstream and downstream markets. A common requirement is that the firm allegedly squeezing margins has market power in the upstream market. In most jurisdictions, a negative margin (a downstream price below the price at which the incumbent sells the essential input to its rivals) would constitute a breach of competition law”. Policy Roundtables, Margin Squeeze (2009). <https://www.oecd.org/regreform/sectors/46048803.pdf>.

4.- The Resolution is available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5689088&fecha=18/05/2023#gsc.tab=0.

The purpose of the airline is “to improve the quality and coverage of air services, as well as to promote connectivity in the market where demand exists, which will represent an incentive for growth, development and national and international competitiveness, in addition to strengthening the collection of foreign currency and domestic and foreign investments”.

“The main concerns are related with determining where the money that will be granted to the project will come from, which is not a minor amount (approximately 4,000 million pesos), as well as the leasing of 10 Boeing 737-800 aircraft. The price for this model of aircraft is between 80 and 120 million dollars, without adding the financing costs related to the leasing of the aircraft”.

According to the terms of this resolution, the incorporation, organization and functioning of the Mexican airline will be that of a corporation (Sociedad Anónima) with variable capital, in terms of the General Law of Commercial Companies and the Federal Law of State-Owned Entities. It is essential to note that, even though state-owned companies are legal entities that are part of the public administration, they are subject to the provisions established in the General Law of Commercial Companies and its interaction in legal relations with other companies must be the same as any other private company. This entails that, despite being a state-owned company, the new Mexican airline must comply with the same terms and regulations that govern commercial and legal relations between private companies.

In the short term, one of the new Mexican airline's targets is to obtain a 6% market share, focusing on domestic routes from the AIFA. In this first stage they will seek to connect business centers, such as Tijuana, Monterrey, Guadalajara and Mérida, in addition to the main tourist destinations in México.

In the medium term, the goal is to have national coverage, which will depend, to some extent, on whether the terminals have the capacity to handle the type of aircraft that will be available. Additionally, the airline intends to venture into foreign flights, mainly to North, Central and South America. The intention is to grow at a rate of 2 or 3% per year.

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It is important to highlight that SEDENA has a different regime for the procurement of goods and services than other Mexican entities, since, considering the nature of their activities, SEDENA may reserve information on their expenses for national security reasons and therefore, SEDENA may argue national security reasons to not disclose the services and expenses related to Mexicana de Aviación, among other transactions.

While Mexican President's proposal to create a state-owned airline seems to be a positive idea as it appears favorable for the Mexican population, this initiative may bring more drawbacks than benefits for consumers from a competition point of view. And from the point of view of national economy, it would put the government's coffers in a tightrope due to the millionaire cost that the creation of this new airline will have for the public Treasury.

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Attorney at Law: Admitted to practice law in 2010. Natalia obtained her law degree at Universidad Panamericana in Mexico City, and holds a master degree in Administrative Law by the Universidad Panamericana, and a Diploma Program in Aviation Law by the Instituto Tecnológico Autónomo de México. Natalia has more than 15 years of experience advising clients in aviation finance transactions involving Mexican airlines, operators and governmental entities, as well as other providers of air transportation services. She has participated in multiple transactions related to the acquisitions, leasing and financings of private and commercial aircraft, helicopters and engines, representing lenders, lessors and owners, in the structure and implementation of guarantee schemes and regulatory work before Mexican authorities. She has participated in restructurings, insolvency and default situations of Mexican airlines. Furthermore, Natalia has more than 7 years of teaching experience at the Instituto Tecnológico Autónomo de México (ITAM) and the Universidad Panamericana (UP). Currently, she holds the position of Coordinator and Professor of the Diploma Program in Aviation Law at ITAM.

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PRACTICE AREAS: Aviation Law, Aircraft Finance & Leasing and Corporate Law.

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