

COELUM.

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COELUM Throughout 2023.

- By Rubén Mancilla




sierra
L A T A M

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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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Audio Message



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In 2023, Abogados Sierra has actively engaged with key issues in the aviation industry, offering a legal perspective aimed at providing both clarity and a nuanced understanding of dynamic events. The focus has extended beyond mere information, encompassing in-depth analyses of legislative changes and their impact on the industry's legal landscape. Recognizing aviation's continuous evolution, we have explored the challenges and opportunities embedded in the shifting legislative framework, aiming to offer a comprehensive overview of the issues that have shaped the aviation agenda during this year.

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CABOTAGE

In February, President Andrés Manuel López Obrador's intention to authorize cabotage in Mexico was analyzed through the proposal to reform Article 17BIS of the Civil Aviation Law¹, which expressly prohibits cabotage by foreign permit holders, considering that, under the Mexican Constitution, as per Article 42, Section VI, the airspace is part of the Nation's domain². This reform was not implemented, putting an end to an unnecessary controversy, since had it been accepted, it would not only affect domestic airlines, but would contravene Mexico's obligations under bilateral international treaties with several countries, in which cabotage is strictly prohibited, for example, the Chicago Convention, signed and ratified by Mexico, which in its article 7 mentions the following:

"Each Contracting State has the right to refuse to aircraft of other Contracting States permission to embark in its territory passengers, mail or cargo for carriage, for remuneration or hire, to another point in its territory. Each Contracting State undertakes not to enter into agreements specifically granting such privilege on an exclusive basis to any other State or airline of any other State, and not to obtain such exclusive privilege from another State."³

CATEGORY 1

The implementation of certain reforms to the Civil Aviation Law was a key piece for the recovery of Mexico's Category 1. On September 14, 2023, the Federal Aviation Administration (FAA) granted to Mexico the return to Aviation Safety Category 1, thus allowing Mexican carries to add new services and routes to the United States and US airlines to resume the marketing and sale of tickets with their designation codes on flights operated by Mexican airlines⁴.

This achievement was accomplished by addressing the non-conformities identified by the FAA, starting with the modification of laws to improve the regulation and continuous supervision of aeronautical personnel medical evaluations, investigating every aviation accident and incident and granting regulatory authority to issue medical certificates and also with the update of the Electronic Notification of Differences (EFOD) system⁵.

1.- <https://www.diputados.gob.mx/LeyesBiblio/pdf/LAC.pdf>

2.- Mexican Constitution. Article 42 <https://mexico.justia.com/federales/constitucion-politica-de-los-estados-unidos-mexicanos/titulo-segundo/capitulo-ii/>

3.- <https://media-aifa.s3.us-east-2.amazonaws.com/CONVENIO-SOBRE-AVIACION-CIVIL-INTERNACIONAL-CONVENIO-DE-CHICAGO.pdf>

4.- <https://www.gob.mx/afac/es/articulos/entrega-eu-a-mexico-categoria-1-en-seguridad-aerea?idiom=es>

5.- <https://www.gob.mx/sct/prensa/pasos-finales-para-recuperar-categoria-1-en-seguridad-aerea>

Some of the legislative changes included the introduction of a regulation known as Civil Aviation Medicine⁶, designed to ensure compliance with operational safety, focusing on studying the psychological and pathological effects of exposure to altitudes and conditions prevalent in the aeronautical environment. Similarly, the law governing the issuance of permits, licenses, and certificates of competence for aeronautical technical personnel was amended, prioritizing their psychophysical condition.

TRANSFER OF CARGO OPERATIONS FROM AICM

In March edition of COELUM was analyzed the Decree issued by President Andrés Manuel López Obrador, which establishes the closure of the Mexico City International Airport (AICM) for cargo operations by September 1 at the latest⁷, forcing airlines to migrate, the first but not the only option being the Felipe Ángeles International Airport (AIFA) as it is located at a more considerable distance. This decree was used as an argument to alleviate the saturation condition of the AICM, but the reality is that it was implemented to activate the operation of the current government's project, the AIFA.

As of September, the AIFA ranked third nationally in cargo movement, this growth is due to the entry into force of the decree, which leaves out the AICM. The definitive and real growth will not be seen until 2024, since AIFA has not consolidated the services required by logistics operators, which has generated cost overruns for companies. Beyond representing a real growth for AIFA, it is important to note that there was not really a significant reduction in AICM traffic, and it is even said that the problem is on the ground, not in the sky.

"The aeronautical industry, always at the forefront of innovation and change, is preparing to face the challenges ahead with resilience and anticipation, with the certainty that collaboration between the public and private sectors will be key to the future development and success of this crucial sphere of our society."

AIRSPACE PROTECTION LAW

The April publication included an analysis of the Airspace Protection Law creation, which was published on March 1, 2023⁸, whose main objective was to empower the Secretariat of National Defense (SEDENA), to supervise airspace and monitor operations to safeguard the country's security. But by creating this law with an invasion of competencies since functions that correspond to the Secretariat of Infrastructure, Communications and Transport (SICT) are transferred, and now the SEDENA will oversee monitoring the operations of the SICT, so the aeronautical industry is monitored by the military sector, and under Mexican Constitution, the militia shall have no authority in peacetime in matters other than military matters:

"Article 129. In times of peace, no military authority may exercise more functions than those that have an exact connection with military discipline. There will only be fixed and permanent military commands in the castles, fortresses, and warehouses that immediately depend on the Government of the Union; or in the camps, barracks, or depots that it establishes outside the population centers for the stationing of troops."⁹

6.- DECRETO por el que se expide el Reglamento de Medicina de Aviación (RMAC)

https://www.dof.gob.mx/nota_detalle.php?codigo=5697355&fecha=02/08/2023#gsc.tab=0

7.- https://www.dof.gob.mx/nota_detalle.php?codigo=5678705&fecha=02/02/2023#gsc.tab=0

8.- http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=&Clave=4362837

9.- <http://www.ordenjuridico.gob.mx/Constitucion/articulos/129.pdf>

This law is iterative and overly regulatory, there already exists laws that regulate and contemplate infractions on the issues addressed by this new Law, such as the Civil Aviation Law or as crimes in the Federal Criminal Code. There still are some legal loopholes that must be regulated through complementary legislation.

STATE-OWNED AIRLINE: MEXICANA DE AVIACIÓN

In May, the allocation dated October 30, 2023, to the government's airline, "MEXICANA DE AVIACIÓN,"¹⁰ was scrutinized for its potential impact on Mexican aviation. The analysis focused on a reform to the Airports Law, in Article 29¹¹, which exempted assignee companies from limitations imposed on other air transport service providers. This exemption raised concerns about economic competition, prompting the Federal Economic Competition Commission (COFECE) to address the issue. COFECE suggested that airport control by an airline should not be allowed and emphasized the need to separate accounting and functional areas between airport activities and airline services¹². The commission highlighted inconsistencies and expressed concerns about the vulnerability of other Mexican airlines when competing with the subsidies and benefits granted directly to the government's airline.

AMENDMENTS TO THE CIVIL AVIATION LAW AND THE AIRPORTS LAW

In November, a publication highlighted amendments made on May 3, 2023, to the Civil Aviation Act and the Airports Act. Notably, these changes introduced the concept of "allocation," (*asignación*) enabling the State to own an airline while participating in the administration of the airport and airline operations. Such airlines, exempt from certain operational criteria, will be established in compliance with the Civil Aviation Law for scheduled air transport service providers. The allocation is granted indefinitely, subject to termination only if it is proven that there is no longer a cause of public or general interest.

These legal revisions have drawn scrutiny from the Federal Economic Competition Commission (COFECE) due to concerns about their impact on competition and trust within the Mexican aviation industry.

LAST OF THE YEAR

On November 1, 2023, Grupo Aeroportuario, Ferroviario, de Servicios Auxiliares y Conexos, Olmeca-Maya-Mexica, S.A. de C.V., was awarded the contract to build and operate the Tulum "Felipe Carrillo Puerto" International Airport in the State of Quintana Roo¹³.

As of today, there are already at least 12 allocations in favor of the aforementioned company, which is constituted 99 percent owned by SEDENA and 1 percent by Banco Nacional del Ejército, Fuerza Aérea y Armada, S.N.C. (National Bank of the Army, Air Force and Navy, S.N.C.).

As we close the year, we reflect on the progress made in the industry, highlighting both achievements and areas where challenges remain. We hope that 2024 will prove to be a year of continued progress in the aviation industry. The aeronautical industry, always at the forefront of innovation and change, is preparing to face the challenges ahead with resilience and anticipation, with the certainty that collaboration between the public and private sectors will be key to the future development and success of this crucial sphere of our society. Abogados Sierra is committed to always presenting clear and accurate information on relevant developments in the Mexican industry and with an impartial opinion.

10.- Allocation (assignment/ assignation) to the company "Aerolínea del Estado Mexicano, S.A. de C.V." <https://www.gob.mx/cms/uploads/attachment/file/872370/titulo-asignacion-aerolinea-estado-mexicano-vpf-aprobada-ct-23112023.pdf>

11.- <https://www.diputados.gob.mx/LeyesBiblio/pdf/LAero.pdf>

12.- <https://a21.com.mx/normatividad/2023/02/14/pide-cofece-aclarar-cambios-en-leyes-de-aeropuertos-y-aviacion-civil>

13.- https://dof.gob.mx/nota_detalle.php?codigo=5707403&fecha=01/11/2023#gsc.tab=0

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