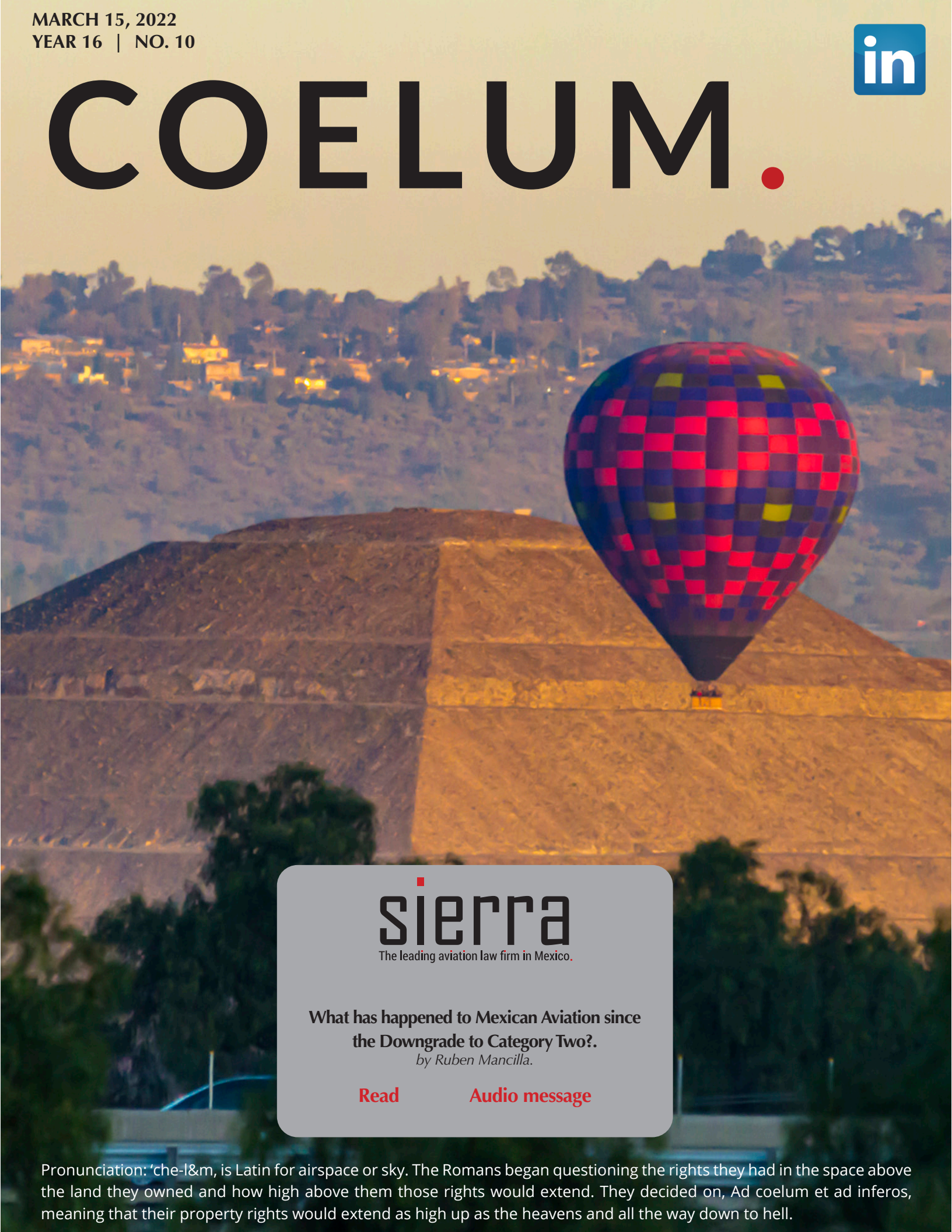
MARCH 15, 2022
YEAR 16 | NO. 10

COELUM.



sierra
The leading aviation law firm in Mexico.

What has happened to Mexican Aviation since the Downgrade to Category Two?.
by Ruben Mancilla.

Read Audio message

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.

What has happened to Mexican Aviation since the Downgrade to Category Two?

by Ruben Mancilla

Following up with our June 2021 COELUM edition, in which the audit process performed by the U.S. Federal Aviation Administration (FAA) that resulted on the determination of the U.S. Department of Transportation (DOT) to downgrade Mexico´s safety rating to Category 2 was explained this paper will serve as a continuation. Thus, this paper will explore the actions that have been taken since Mexico's downgrade and the Mexican Civil Aviation Authority's (AFAC) challenges to regain its Category 1 status. The deterioration of Mexican aviation has been the result of the authorities' inability to regulate international dispositions, said Angel Dominguez, treasurer of the College of Aviators[1]. Although Mexican aviation is not unsafe, as declared by the FAA, the problem is the ineffectiveness of the authorities in monitoring its compliance with international dispositions set forth by the International Civil Aviation Organization (ICAO). Mexico as a participant of the Convention on International Civil Aviation (Chicago Convention), must abide by and comply with them, the multiple infractions and short comings that were identified on this audit process were with regards to the provisions of Annexes 17 and 18 of the Chicago Convention. It should be noted that the downgrading to Category 2 is a preventive act by the United States, the purpose, then, is to restrict new operators, or those who already have routes, flying into U.S. air space without specifying the surveillance regulations.

Mexican aviation authorities face a huge task in their goal to reactivate the growth of bilateral connectivity by domestic airlines. After failing to comply with the minimum requirements established by the ICAO in terms of regulation, certification, and safety, the AFAC signed a Memorandum of Understanding at the end of July 2021. This Memorandum served as a proactive approach to solve the aforementioned issues. The Memorandum provides that a group of specialists selected by the FAA will provide up to ten visits to the AFAC for technical assistance in the operational safety matters. A task, that the FAA has complied with, although it is unclear if all the visits have already been fulfilled.

> ***"Although Mexican aviation is not unsafe, as declared by the FAA, the problem is the ineffectiveness of the authorities in monitoring its compliance with international dispositions set forth by the International Civil Aviation Organization (ICAO)."***

Despite these efforts by the AFAC to facilitate the return to Category 1, such as their collaboration with the FAA, the AFAC has been unable to meet certain requirements that had been notified by the FAA due to lack of budget support. Thus, the AFAC has been unable to adequately train their personnel and aeronautical inspectors so that they meet international standards and expectations.

Training for air traffic controllers and aeronautical personnel

As mentioned, due to the lack of budget, a big problem is the change and evolution of the training given to air traffic controllers and the personnel involved in the aeronautical industry. There have been accusations by the aeronautical workers deeming the training that they're receiving as "useless" which could lead us to believe that the recovery of Category 1, which bases a section of its audit on the improvement of training, is becoming a difficult obstacle to overcome.

The AFAC, which oversees air safety, must provide the necessary resources for aeronautical inspectors. These aeronautical inspectors stated that the training had been useless as it was not adequate, as they were receiving courses in human resources and other disciplines that are not related to their work as aeronautical technical personnel. Lack of commitment by the AFAC to provide adequate and specialized training has caused about 60% of the deficiencies found to be related to training technical personnel and improving air operator surveillance tasks.

1.- Redacción (2022). Degradación a la aviación es a la autoridad mexicana por su incapacidad de regular: experto. Nacional, El Financiero. https://www.elfinanciero.com.mx/nacional/2022/02/06/degradacion-a-la-aviacion-es-a-la-autoridad-mexicana-por-su-incapacidad-de-regular-experto/

Furthermore, another change that has significantly altered the quality of the training has been that the International Civil Aviation Training Center (CIAAC) as is well known no longer falls under the ICAO supervision, but rather under the AFAC umbrella, which as we have seen has been incapable of meeting international standards. So, although the CIAAC has the goal to train personnel with the international standards they are not complying with this commitment.

> ***"Despite these efforts by the AFAC to facilitate the return to Category 1, such as their collaboration with the FAA, the AFAC has been unable to meet certain requirements that had been notified by the FAA due to lack of budget support. Thus, the AFAC has been unable to adequately train their personnel and aeronautical inspectors so that they meet international standards and expectations."***

Deficiencies are related to basic, recurrent and specialized training; at different levels, of flight inspectors, of medical personnel who issue certificates of competency to pilots, flight attendants and aeronautical technicians; compliance with surveillance programs for centers that issue English certificates; and surveillance control for commercial airlines and air taxis. Progress on these failures has been compromised by the change that the CIAAC underwent, and thus, is another hurdle that must be overcome to achieve Category 1 classification.

In process to recover Category 1.

Although the Ministry of Infrastructure Communications and Transportation (SICT) enthusiastically stated that the lost category would be recovered by the end of 2021, the inspections have not been fully completed and there is a risk of repeating the same errors that led to this setback. Heriberto Salazar, president of the Pilots Association, said that the long-awaited return to Category 1 would not be recovered soon since the authorities are changing the rules without understanding that their main function is to supervise and fulfill international standards. This is mainly due to the fact that individuals holding high level positions at AFAC are no longer individuals with a specialized background in civil aviation, rather they are military men with no knowledge on commercial flights or civil aviation, that have been appointed by the President[2]. This lack of specialization and ignorance of the system could prove to be another delay in Mexico's ability to regain its Category 1 status.

In conclusion, the downgrading makes it clear that the Mexican government lacks adequate solid oversight to maintain its aviation safety. This could eventually be the cause of a crisis in the Mexican aviation market. Mexico had its first downgrading by the FAA in July 2010 as it was deemed that Mexican aviation was unable to guarantee continuity in the safety oversight to which commercial airlines are subject, lacking personnel with competent profiles, internal manuals, procedures to formalize operating certificates and international technical training standards. Similar issues to the ones that resulted in this most recent downgrade. However, Category 1 status was regained within 4 to 6 months. This was due mainly to a significant budget allocation that allowed for the acquisition of new systems, and a building that would allow the centralized operations of what is now AFAC, as well as proper and specialized training and hiring of new pilots and inspectors. Mexico is obviously capable of regaining its Category 1 status, as they were able to do in 2010, however unlike this last time, it is estimated by the Mexican aviation authority that it would be until the end of December 2022 that Mexico could regain its status.

2.- Redacción (2022). Categoría aérea 1 de México no se recuperará pronto, prevén especialistas. Empresas, El Financiero. https://www.elfinanciero.com.mx/empresas/2022/02/17/categoria-aerea-1-de-mexico-no-se-recuperara-pronto-preven-especialistas/

Mexican Space Agency to launch microrobots, ally with universities.

The Mexican Space Agency (AEM) announced a plan to launch microrobots into the lunar surface this year. The agency also continued its efforts to build alliances with regional higher education institutions. The alliances are already resulting in advances for the Mexican industry, for the nanotechnology development program that aims to provide the moon with oxygen and energy. The original launch date was scheduled for the summer of 2021, but the pandemic delayed the mission. The microrobots will act as independent measurement centers and will send data home for engineering analysis. *www.mexicobusiness.news/aerospace/news/aem-launch-microrobots-ally-universities* February 02, 2022.

Mexican low-cost companies maintain sustained growth despite Omicron.

Despite the resurgence of Omicron variant cases, Mexican low-cost carriers continue to maintain sustained growth and project full recovery to 2019 levels for this year, For instance, during the first month of the year, one of this companies mobilized 2.3 million passengers, representing a growth of 48.7 compared to January 2021, besides demand (measured in revenue per passenger mile) in the domestic and international markets increased by 63.4% and 181.7%, respectively for this company. *www.aviacionline.com/2022/02/las-low-cost-mexicanas-mantienen-un-crecimiento-sostenido-a-pesar-de-omicron/* February 07, 2022.

They want to decentralize SENEAM.

Senators of Movimiento Regeneración Nacional (Morena) will promote the transformation of the Mexican Airspace Navigation Services (SENEAM), into a specialized institute. This implies that the new Institute must have legal personality and its own public patrimony, in addition to the fact that it would no longer depend directly on the Executive Branch. According to Rodrigo Soto-Morales, a lawyer specialized in Aeronautical Law, "decentralization could be very positive for Mexican aviation, as standardization and training procedures could be strengthened, in addition to compliance with international standards." However, there is also the possibility that this proposal has the objective of separating aviation from the now Secretariat of Infrastructure, Communications and Transport (SICT) and militarize the sector. This is due to the fact that the aviation issue is moving more and more towards militarization. At the moment, these are just assumptions; the important thing will be to see the draft law. *www.a21.com.mx/normatividad/2022/02/10/quieren-descentralizar-seneam* February 10, 2022.

Another military officer becomes part of civil aviation.

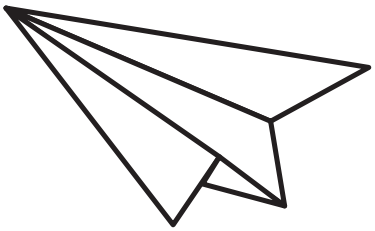
As of Wednesday, February 16 of this year, the new commander of the Mexico City International Airport (the most important in Mexico) will be Rear Admiral José Ramón Rivera Parga, a military member who does not appear in the registers as a retired element. Although there have been military personnel in civil aviation for years, with the arrival of Andrés Manuel López Obrador to the government, the presence of military personnel has increased remarkably. *www.elfinanciero.com.mx/empresas/2022/02/17/otro-militar-a-la-aviacion-contralmirante-de-la-marina-nuevo-comandante-del-aicm/* February 17, 2022.

Felipe Angeles Airport will operate as an international airport.

The Ministry of Infrastructure, Communications and Transportation (SCT) informed that shortly the Federal Civil Aviation Agency will notify the International Civil Aviation Organization, that the Felipe Angeles Airport (AIFA) will operate as an international airport. This declaration was made by President Andrés Manuel López Obrador and became effective as of February 23, 2022, establishing that the airport complex will operate as an international aerodrome. According to the Official Gazette of the Federation (DOF), the SCT states that the AIFA has the infrastructure, facilities, identification signs, equipment, and services adequate to serve aircraft, passengers, cargo and mail of the national and international air transport service, following the guidelines established in the current global framework. *www.forbes.com.mx/negocios-sict-notificara-a-la-oaci-que-el-aifa-operara-como-aeropuerto-internacional/* February 23, 2022.

In this month extract was prepared by A. Fragoso, P. Arandia, R. Nerio, R. Mancilla, J. García, S. Robles, Alexis Pérez.

COELUM.



Ruben Mancilla

Attorney at Law: Admitted to practice law in 2021. Mr. Ruben Mancilla, of Mexican nationality obtained his law degree at Universidad Iberoamericana, México.

LANGUAGES: Spanish and English.
PRACTICE AREAS: Aviation Law, Aircraft Contract Law.

e-mail: rmancilla@asyv.com

sierra
The leading aviation law firm in Mexico.

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

www.linkedin.com/company/asyv

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.