COELUM.

Monthly Digital Publication by
ABOGADOS SIERRA

Find us in

Audio Message

Challenges of the Mexican Aviation Industry – A Summary .

- By Jessi Saba

sierra
LATAM



December 15, 2022
Year 17 No. 07

NOVEMBER NEWS ON MEXICAN AVIATION

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.

Challenges of the Mexican Aviation Industry – A Summary.

by Jessi Saba

The Mexican aviation industry has faced many of the challenges that the aviation industry worldwide has faced during the last couple of years, as a result of the COVID-19 pandemic and its implications, but it is no secret whatsoever that the Mexican aviation industry has been especially affected by the reckless, disorganized, and irresponsible decisions made by the government, as well as the lack of proper systems and electronic protection.

Let's start at the beginning. The current Mexico City International Airport ("AICM") has been saturated for years. On March 3, 2022, it was published in the Official Gazette of the Federation a resolution declaring the official saturation of the AICM terminals. As explained in such resolution, during the past 10 years, the fleet of airlines has shifted to wide body aircraft (from 65% to 85%) which has shown an increase in the number of passengers that can be transported. Therefore, the same airport had to accommodate an increase of 47% in passengers transported between 2014 and 2019. The AICM is saturated in airspace, operations, and on terminals space[1]. Given this saturation which has been evident for several years, there was an urgent need to find a viable alternative for the connectivity and infrastructure in Mexico City. Therefore, the past administration announced and started the construction of the New Mexico City International Airport ("NAICM"), a project that represented the largest infrastructure project in Latin America and the second largest airport in the world[2].

Fast forward to 2018, President Andres Manuel Lopez Obrador formally announces the cancellation of the NAICM, and the intention to redesign the Mexico City airspace with the promise of simultaneous operations of three different airports, these being, the AICM, the Felipe Angeles International Airport ("AIFA), and the Toluca International Airport ("TLC"). The construction of the AIFA was a very controversial project that was awarded directly to the Ministry of Defense ("SEDENA"), who have no experience whatsoever in the construction of civil airports and the very specific needs of these. The requirements of a military air base widely differ from those required for a civil airport to operate. This was one of the most critiqued points since Mexico's president, Andres Manuel Lopez Obrador, announced the construction of AIFA.

The cancellation of the NAICM is a very regrettable decision that had a giant cost for Mexico and the industry as whole. It is estimated that between the bonds that had to be paid to investors, the money invested in the construction of the NAICM which was actually 30% completed by the time it was cancelled, the amounts payable to contractors, and the actual cost of building the AIFA – around 13 billion dollars were lost. Completely wasted.

As if the above was not enough challenge for the industry, the COVID-19 pandemic hit during 2020 caused worldwide implications and the Mexican industry was no exception. Interjet, one of the largest airlines in Mexico with a fleet of approximately 85 aircraft went bankrupt, causing the connectivity in Mexico to be further reduced and many users were directly affected. In addition, Aeromexico, the largest in Mexico, had to seek a restructure under a Chapter 11 proceeding, which they exited just a few months ago.

> ***"The cancellation of the NAICM is a very regrettable decision that had a giant cost for Mexico and the industry as whole."***

Right in the middle of the pandemic, with a reduced connectivity, and a huge debt by the Mexican government due to the cancellation of the NAICM, the industry suffered one more hit. The Federal Aviation Administration ("FAA") conducted an excruciating audit to the Mexican Civil Aviation Authority between October 2020 and February 2021. The result of such audit was devastating, as the U.S. Department of Transportation determined that Mexico had several infractions identified in the International Aviation Safety Assessment process regarding Annexes 17 and 18 of the Convention on International Civil Aviation. Therefore, Mexico's safety rating according to the FAA was downgraded form category 1 to

1.- DOF - Diario Oficial de la Federación
2.- http://www.aeropuerto.gob.mx

category 2[3]. The industry rapidly requested the government to treat this as a priority, but the response of the government was very poor, leaving the industry stakeholders to deal with the consequences of the downgrading. Among these consequences, is the prohibition for Mexican airlines to add or initiate new services, aircraft, or routes to the US, maintenance and repair facilities will only be authorized to provide service to Mexican registered aircraft (unless they have a separate FAA certification), and additional scrutiny of Mexican operator's flights to the US.

Since downgrading, US airlines have gained at least 10% of market share due to increased number of flights and routes to Mexico[4], as Mexican airlines simply cannot operate more flights. Since the downgrading, Mexico has been working in the training of air traffic controllers and aeronautical personnel, as this was one of the reasons for the downgrading which is caused mainly by the lack of budget by the government. As of the date of this article, Mexico has not been able to recover the category 1.

After discussing all these challenges, we are brought back to March 2022, when President Lopez Obrador formally inaugurated the AIFA. The redesign of the airspace to accommodate simultaneous operations has been widely criticized, arguing that it is not possible to safely operate both AIFA and AICM simultaneously without compromising the safety of crew and passengers. Plus, if we add to the mix the lack of training of air traffic controllers and aeronautical personnel, in addition to all the breaches in safety identified by the FAA in their audit, the result might easily be fatal. Some news reports have also been issued insisting that the new redesign has caused more than twenty aircraft to almost collide on air, causing the emergency systems of the aircraft to be activated[5]. As if all the above was not enough, President Lopez Obrador recently announced that Terminal 2 of the AICM is facing structural problems both at the terminal and on the runways. Potholes have been spotted on the runways making takeoff and landings difficult for pilots.

Even after all these challenges, the airlines have been recovering since the hit from COVID pandemic and have been working hard to work around all the limitations imposed to them by the FAA downgrading and the airport system itself, although it seems that the Mexican government simply cannot catch a break. In October 2022, speculations on social media reported a hacking on the system of the Ministry of Infrastructure, Communications and Transports ("SICT"), which was later formally confirmed by the government. It is official – the SICT has suffered a breach of security. It is not the first breach suffered by the Mexican government, as SEDENA was also hacked, and confidential information was revealed just a month before.

The hacking of these systems caused the AFAC to suspend all procedures until December 31, 2022, as an effort to contain any vulnerabilities with the information, which in most cases is confidential. Considering of course that the confidentiality of the information of vital, this hacking implies much more for the industry players. The suspension of procedures includes all renewals, permits, licenses, maintenance revisions, etc. The industry players reacted fiercely demanding for the government to lift this suspension as this could create a serious problem for the operators, as many of them will have irregularities for not being able to finalize processes within the AFAC.

All of the above just exemplifies the lack of control, the recklessness in the decision-making process of the government, and the serious decline in the quality of the aviation regulation in Mexico. The challenges that the industry players have had to face for years now are not simple, and the recovery of the airlines has been astonishing considering all the facts, but this should not deviate our attention from the deep structural challenges that Mexico is facing now, which do not seem to improve, but rather worsen rapidly.

3.- https://www.faa.gov/newsroom/federal-aviation-administration-announces-results-mexicos-safety-assessment?newsId=26142
4.-https://a21.com.mx/index.php/normatividad/2022/05/25/degradacion-de-mexico-categoria-2-que-ha-pasado-en-un ano#:~:text=MediaKit%202022-,Degradaci%C3%B3n%20de%20M%C3%A9xico%20a%20Categor%C3%ADa%202%2C%2 %C2%BFqu%C3%A9,ha%20pasado%20en%20un%20a%C3%B1o%3F&text=Hoy%20se%20cumple%20un%20a%C3%B1o,en%20la%20se-guridad%20a%C3%A9rea%20nacional.
5.- https://www.elfinanciero.com.mx/opinion/dario-celis/2021/12/14/documentan-24-incidentes-por-rediseno-de-espacio-aereo/

Federal Civil Aviation Agency suspends procedures due to 'cyber incident' until Dec. 31.

The Ministry of Infrastructure, Communications and Transportation (SICT) and the Federal Civil Aviation Agency (AFAC) have suspended all procedures, licenses, and formalities until December 31, due to a "cyber incident" that affected their computer equipment. Among the procedures before the AFAC that will be 'in trouble' are authorizations and permits, programs and accreditations and issuance of licenses and capacity certificates. The SICT added that "the holders of permits, licenses or certificates of competency will be able to continue exercising their attributions even when their respective certificate has expired". This incident comes after the Ministry of National Defense was the target of a cyber-attack by the Guacamaya group. *www.elfinanciero.com.mx/nacional/2022/11/01/agencia-federal-de-aviacion-suspende-tramites-por-incidente-cibernetico-hasta-el-31-de-diciembre/* 01/11/2022.

SICT prepares changes to the Civil Aviation Law to return to Category 1.

The Ministry of Infrastructure, Communications and Transportation (SICT) plans to amend the Civil Aviation Law to obtain the return of Category 1. This is planned to be achieved through a change in the Federal Civil Aviation Agency (AFAC) entity, seeking for it to become a deconcentrated body and obtain the attributions it implies. Mexico has been in Category 2 since 2021, which has caused a halt due to the inability to increase frequencies and flight routes. Due to this, the reform and modification of the AFAC's attributions through the separation of the SICT is being sought. *www.eleconomista.com.mx/empresas/SICT-prepara-cambios-a-la-Ley-de-Aviacion-Civil-para-volver-a-Categoria-1-20221109-0141.html* 09/11/2022.

Mexico, Brazil, and Panama, the most competitive in air transportation.

In Latin America, the three most competitive countries in air transportation are Mexico, Brazil, and Panama, according to the Latin American and Caribbean Air Transport Association (ALTA). Mexico stands out for its level of connectivity in terms of the number of international destinations, the number of flight frequencies and the number of airlines operating in the country, as well as the number of markets a Mexican citizen can access without the need for a Visa. "We have shown countries during the pandemic that an airport is the gateway to a country, and we have an international goal set by the International Civil Aviation Organization (ICAO), so fees or costs can generate a market and competitiveness problem in any country. When a country imposes costs unrelated to the airline there is an impact on connectivity," said José Ricardo Botelhho, executive director and CEO of ALTA. In terms of airport costs, Mexico ranks number four in the ranking. *www.eluniversal.com.mx/cartera/mexico-brasil-y-panama-los-mas-competitivos-en-transporte-aereo* 23/11/2022.

Domestic airlines raise their voices against foreign-operated local routes at AIFA.

The National Chamber of Air Transportation (CANAERO) stated that cabotage and fifth freedoms, that is, foreign airlines covering domestic routes from the Felipe Angeles International Airport (AIFA), are not the correct path for development of the new terminal, considering they violate the national industry. However, the interest in considering the opening of air freedoms to encourage the operation of AIFA is considered not to be the appropriate mechanism for this purpose and violates the position of the national airline industry. CANAERO pointed out that the sector is going through a key moment due to the downgrading of its category by the Federal Aviation Administration of the United States, so the recovery of Category 1 must be the main priority of the government and industry. *www.forbes.com.mx/aerolineas-nacionales-levantan-la-voz-contra-rutas-locales-operadas-por-extranjeras-en-el-aifa/* 28/11/2022.

CDMX receives 100 million pesos to rehabilitate Terminal 2.

The Federal Administration reallocated 100 million pesos to the government of Mexico City, resources that will be applied to the structural reinforcement of Terminal 2 of the Mexico City International Airport (AICM) and its complementary works. Claudia Sheinbaum, the head of Government, informed that the rehabilitation of Terminal 2 will have a total cost of 400 million pesos and will be carried out over a period of 10 months. The budget estimated by the technicians who studied the situation of T2 terminal building, is 600 million pesos, so the remaining 200 million pesos will come from the Federal Expenditure Budget (PEF). *www.a21.com.mx/aeropuertos/2022/11/29/recibe-la-cdmx-100-mdp-para-rehabilitar-la-terminal-2* 29/11/2022.

In this month extract was prepared by P. Arandia, R. Nerio, J. García, A. Pérez, P. Nava, J. Mora.

COELUM.

JESSI SABA

Admitted to practice law in 2013. Ms. Jessi Saba, of Mexican nationality obtained her law degree at Universidad Iberoamericana, México. She has been admitted at the secondment program for the Aviation Working Group, and holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

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

e-mail: jsaba@asyv.com

sierra
LATAM

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 Terrum 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.