

COELUM

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ABOGADOS SIERRA Y VAZQUEZ

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modify article 54 of the
Mexican Civil Aviation Law.

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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 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.

Flight Delays, Initiative to modify article 54 of the Mexican Civil Aviation Law.

by Vera García.

On April 2014, the congressmen of the Mexican senate submitted a law initiative to modify article 54 of the Mexican Civil Aviation Law (the “Initiative”). The law initiative pretends to regulate in a more detailed way the air carrier’s responsibility and the compensation for passengers affected by a delayed flight.

As it is, the current Article 54 establishes:

“In connecting flights, the concessionaire or permit holder shall be responsible, when applicable, for the damages caused to passengers and their luggage during transit or for delay on the air transport service, if the connecting flight is part of the agreement entered into and between the concessionaire and the passenger.”

“The law initiative pretends to regulate more in detail way the air carrier’s responsibility and the compensation for passengers affected by a flight delayed”.

According to the congressmen that proposed the initiative, the existing Mexican regulations on civil aviation do not fulfill the needs of the users, or the responsibility of the permit or concessions holder; the above because the Civil Aviation Law says nothing about the delays on flights that are not related to connecting flights. In this publication we will first analyze the reform proposal and further review the problems that the initiative may pose if approved.

I. The initiative.

The attempt for proper regulation does not exclusively reside on the nature of the air carrier business under the Mexican legal administration structure. The Initiative suggests the proper legal basis derived from other federal laws. Thus we are to analyze the legal arguments of the congressman that suggests the Initiative and further clarify and detail the Initiative.

a) The Legal support

The Initiative is sustained by the proposing members on two central issues: first, a legal argument for the protection of consumers; and second, a sociological argument relevant to the nature of the business. According to the Initiative, the Federal Law for Consumer Protection (“FLCP”) bestows the obligation of the legislative power to regulate and prevent abuses from any economic provider. Furthermore, the initiative analyzed article 92 Bis and 92 Ter of the FLCP, which states:

“Article 92BIS- Consumers shall have the right to obtain a compensation, when the service provided has been deficient, not provided or fulfilled by causes attributed to the service provider, or other cases foreseen under the law”.

“Article 92 TER- The compensation to which Article 92 refers may not be less than twenty percent of the paid value. The payment of such compensation shall be effected without any prejudice of the indemnity for the corresponding damages”.

Thus, the Civil Aviation Law does not grant users the proper rights that are granted to any consumer, arguing on behalf of the initiative proposed.

In addition to a pro-consumer protection as the legal argument to enforce the approval of the modification to the Mexican Aviation Civil Law; the Initiative suggests that the nature of the aviation business generates major harms, damages and costs, which are evidence of a breach of certainty and clarity among the terms agreed. The repercussions of a delay in aviation service are so diverse, as the initiative explains: “a flight delay may cause a person to miss medical attention, an important business meeting which rebuttals in work stability and life quality (...) among others that may cause adverse major and transcendent consequences on the passenger”.

b) The proposal

The modification of article 54 of the Civil Aviation law suggests three main conditions: first, the delay of any air transportation service. Second the reimbursement of a certain amount subject to; third, a time lapse. Thus, the new article is proposed to be read as follows:

“Article 54. When there is a delay in the air transportation service, the concessionaire or permit holder, shall reimburse to the passenger 10% of the total cost of the air ticket for each hour of delay after the original time of arrival. Each incomplete hour shall be reimbursed proportionally.

“... such Initiative is ambiguous in its form to be applied and could differentiate from the delayed provisions of the Montreal Convention.”

II. The problems to face if approved.

The Initiative is still a law initiative and has not been enacted, nor discussed by the Senate. However, if it is to be approved by the terms proposed herein described, such Initiative is ambiguous in its form to be applied and could differentiate from the delayed provisions of the Montreal Convention.

First, the ambiguous and limitless compensations initiative, forgot to regulate the process that the same article suggests. Who is to decide when the delay is actually occurring and counting? When does the airline have to reimburse the passenger? Is the airline also obliged to pay compensation if they can prove that the delay is caused by extraordinary circumstances beyond the carrier's control¹? The refund is also applicable when the arrival of luggage is delayed? These questions among others are not contemplated or answered properly.

Second in contrast with international law, the initiative proposes a high economic sanction to the carrier in case of delay, whose direct beneficiary is the passenger. Although no fixed parameter is set as the amount to pay, there is a fixed percentage that admits numerous amounts and possibilities. The 10% to be paid is fixed, however it is subject to the cost of the air ticket.

Thus the amount could be either very low or extremely high. The lack of a fixed amount may, in occasions be in struggle with the obligations bestowed by the Montreal Convention for the Unification of Certain Rules for International Carriage. The Convention in its article 22 established a fixed maximum amount for delays attributed to the carrier.

“Article 22.- 1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights²”.

In conclusion, passengers affected by a flight delay are entitled to fixed levels of compensation. However, the Initiative does not have a real fixed amount or a fixed maximum amount for delays attributed to the carrier. The compensation could vary greatly depending on the rate of flight and not on the damage caused to passenger as the Initiative pretends. The Initiative does not conflict with the delayed provisions of the Montreal Convention, yet the amount established on the Montreal Convention could vary widely than the amount resulting from the calculation amount according to the initiative. Finally the Initiative has a good purpose and it is based on the provisions established on the FLCP, but it is still a badly designed initiative that does not regulate properly the form of its application.

1.- Article 19 of the Montreal Convention established that the carrier is liable for damage occasioned by delay in the carriage of passengers, luggage or cargo. However, the carrier shall not be liable for damage occasioned by delay if proves that he took all measures that could reasonably necessary to avoid the damage or that was impossible to take such measures.

2.- One special Drawing Right is equal to \$20.0043 Mexican Pesos or 1.5 American dollars according to Banxico's official exchange rate.

ALTA Member Airlines Passenger Traffic Increases 4.8% in March.

The Latin American and Caribbean Air Transport Association (ALTA) announced that its member airlines carried 13.5 million passengers in March, up 4.8% from the previous year. Traffic (RPK) grew 4.9% and capacity (ASK) increased 0.4%, bringing up the load factor to 78.1%, 3.3 percentage points higher than in March 2013. The number of passengers carried year-to-date increased 6.4% versus the same period of the previous year, reaching 41.3 million passengers. During the aforementioned period, traffic (RPK) rose 5.8%, capacity (ASK) increased 1.9%, and the passenger load factor reached 79.4%, 2.9 percentage points higher than the previous year. *ALTA. May 08, 2014.*

Emirates SkyCargo adds Mexico City and Atlanta.

Emirates SkyCargo, the freight division of Emirates (Dubai), has added Mexico City and Atlanta to its cargo flight schedule, further expanding its freighter network to more than 50 destinations around the world. The once-a-week service to Mexico City starts in Dubai with a stop en route to Frankfurt, while on the way back the flight makes a scheduled stop in Houston and Copenhagen before heading back to Dubai. *World Airline News. May 15, 2014.*

A400M first visit to Mexico.

The Airbus A400M cargo aircraft landed yesterday for the first time in Mexico, where the aircraft will show benefits in a series of demonstration flights. On board the Spanish test driver Ignacio "Nacho" Lombo, the plane landed at Mexico City International Airport at 13:50 local time. The A400M will stay in Mexico until 23 May. *Aerotendencias. May 16, 2014.*

Mexican recognized for Aerospace developments.

Juan Martinez Vega, has been recognized by the French government for his scientific development on the Aerospace sector. The Mexican with over 25 years of experience and over 260 publications, has become one of the aeronautical industry's most renowned scientists. Among his most renowned developments are the development of electric insulators designed for new generation helicopters. Although Mr. Vega lives in France, he has stated that Mexico could be leader in the development and creation of the aerospace sector including maintenance and design. He invites the Mexican Federal government to promote the aerospace sector within Mexico. *Portal de Noticias de la Secretaria de Ciencia Tecnología e Innovación. May 19, 2014.*

Airbus Confirms Move To Higher Capacity A320 And A321.

Airbus will reveal details next month on how it plans to boost the number of seats on its A320 and A321 aircraft. The manufacturer plans to raise seating on the A320 from 180 to 186 seats. The A321 maximum capacity will go from the current 220 seats to 240, Airbus Chief Operating Officer Customers John Leahy said at the Berlin Air Show. *Aviation Week. May 20, 2014.*

Two Boeing lands in UAQ.

Aeronautical University in Querétaro (UNAQ) are incorporated into his practice pull two Boeing 737-200 from Tijuana, said the principal of the school, Jorge Gutierrez Velasco. The aircraft received in donation and currently in receipt, landed in Intercontinental Airport of Queretaro (AIQ) about a month ago and two Boeing 737-200. They join the fleet of nine aircraft available to the educational institution. *El Economista. May 20, 2014.*

ALTA CCMA Hosts Over 700 Airline and Supplier Delegates from around the World.

The 102nd CCMA Conference (Aeronautical Materials Buyers Committee), held by the Latin American & Caribbean Air Transport Association (ALTA) came to a close yesterday after hosting over 700 delegates in the oldest and largest aviation purchasing conference in the region. The 2014 CCMA was held at the Casa Magna Marriott in Cancun from May 18-20, garnering the participation of over 40 airlines from Latin America and the Caribbean, as well as over 600 representatives from hundreds of aviation provider companies around the world. Airlines and Suppliers carried on business through the well-known and highly anticipated mini-meetings and TableTop Exhibits. *ALTA. May 22, 2014.*

Swearingen mourned.

Renowned aircraft designer and engineer left lasting mark. Edward Swearingen, an aircraft designer who made a lasting mark on aviation, died May 15. Swearingen began dreaming about airplanes as a boy, and displayed an early genius as a mechanic and engineer, largely self-taught. He adapted Bill Lear's groundbreaking F-5 autopilot for general aviation piston aircraft, among many design contributions to GA aircraft from major manufacturers, and went on to design 30 original aircraft. *AOPA. May 22, 2014.*

Four Airlines interested in A380 to Mexico City.

Mexico's Directorate General of Civil Aviation (DGAC) director Alexandro Argudín said four carriers are interested in operating the A380 to Mexico City, including Air France, Lufthansa, Emirates and Turkish Airlines. In order to achieve this runway works to allow the airport to handle the superjumbo are slated for 2014, though a timeframe has yet to be announced. Air France and Lufthansa currently operate daily services whilst Emirates and Turkish Airlines do not currently serve Mexico. *Centre for Aviation. May 23, 2014.*

Qatar Airways to launch Mexico City cargo route.

Qatar Airways is expanding into Latin America with the launch of a twice weekly cargo service to Mexico City from June 11. Qatar Airways Cargo will use Boeing 777 freighter on the service between Doha and Mexico City's International Airport. The schedule is still subject to confirmation. However, Qatar Airways have stated that freighters will depart from Doha's Hamad International Airport on Wednesdays and Sundays, and from Mexico on Mondays and Thursdays. *Gulf News. May 25, 2014.*

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