

COELUM

COELUM Pronunciation: 'che-l&m, is Latin for air space 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.

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Coelum News

ABOGADOS SIERRA Y VAZQUEZ

We all at COELUM would like to wish you a Joyful Holiday and a Healthy and Prosperous New Year 2008.



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Are concession-deriving rights subject to attachment?

Antonio Vázquez

The issue currently under analysis relates to the possibility of attaching administrative concession-deriving rights. That is: are concession-derived rights subject to attachment? To the naked eye, the immediate response is negative. However, below are some legal details and arguments, to reflect on an answer to such question (under the best scenario):

In accordance with our Mexican legal system, the Code of Commerce is the legal ordinance regulating property attachment on commercial matters. Such law provides the Federal Civil Code and the Federal Civil Procedure Code as supplementary laws, among other. The Code of Commerce in itself fails to specifically establish what kind of property may be subject to attachment, but regulates the order of preference of certain property for their attachment. Thus we have that the property to be attached must always be in the following order of preference:

- I. Goods for trade;*
- II. Easy and prompt collection loans, at creditor's satisfaction;*
- III. Debtor's all other personal property;*
- IV. Real estate;*
- V. All other shares and rights in possession of defendant.*

As we may observe, rights are included as assets that may be subject to attachment. A clear and common example are collection rights.

Now, when the debtor is the holder of a concession granted by the authority, are rights deriving from such concession subject to attachment? May such rights be awarded in favor of creditor?

Prior preparation of this study, I reviewed Mexican court precedents on the issue and surprise caught me when I found no court precedent on such matter, which fact increased the level of my questioning on the matter: how is it possible that no court precedents exist on such a plain issue? Is it so evident that it does not require any? Let's review thoroughly, from the general terms to the particular case:

It seems that it would be appropriate to first determine what property or rights are within the sphere of Commerce. It is evident that if a property or right may be commercialized or disposed of to a third party, then such property or right may be subject to attachment. In Mexico, the ordinance regulating such matter is the Federal Civil Code. This law provides that any and all things not excluded from commerce may be subject to attachment. Article 748 of such Federal Civil Code provides that those items that due to their nature or by provision of law are off Commerce may be excluded. By virtue of nature those things that may be excluded from Commerce as provided by the Federal Civil Code are those which cannot be held by any individual on an exclusive basis. The sea, or air, as an illustration.

Now, as example of property that due to legal provisions are not within Commerce, we have the following: Another federal Law, the General Law of National Property contains a number of provisions specifically regulating, limitedly, those property which are publicly owned by the Federation, that is, those property which may only be used by the Mexican Federation. In accordance with article 13 of this law, property subject to Federal public domain regime may be inalienable, are not subject to statute of limitations and cannot be attached.

This is a clear example of property that by virtue of the law is not within Commerce. It should be pointed out that none of the property regulated by the General Law of National Property includes concessions or rights deriving therefrom, therefore at least with regard to this legal ordinance, those rights are not deemed as not subject to attachment. Again, the Federal Civil Code contains interesting provisions as the one contained under article 770, which literally reads:

Article 770.- Property destined for public service and own property belong entirely to the Federation, to the States or to the Municipalities, but the former are inalienable and essential, while the public service for which they have been destined continues being rendered.

Transcribed article refers to property destined to a public service, not to rights exercised for the rendering of public service, which is the outline of this brief analysis; furthermore, the referred to legal provision does not provide that such property may not be subject to attachment. Interesting, isn't it?

Above we said that an important criterion to determine whether a property may be attached is to first define if such property is within the sphere of Commerce.

If found within Commerce without there being any legal provision prohibiting such fact then, in my opinion, such property may be subject to attachment.

Let us refer to a more particular case: Civil Aviation Law regulates concessions under a particular chapter. Article 15 of such law provides the cases when a concession-permit may be revoked. Fraction V, reads as follows:

Article 15. Concessions or permits may be revoked due to the following causes

(...) V. Assignment, mortgage, encumbrance, transfer or disposal of concessions, permits or rights thereon conferred in favor of other persons whether nationals or foreigners, without Department's authorization;

On the other hand, article 16 of the Civil Aviation Law, reads:

Article 16. The Department will authorize total or partial assignment of rights and obligations established under concessions or permits within a term of ninety calendar days as from the filing of application, provided assignee commits to perform any pending obligations assuming the conditions established by the Department to such effect.

From the above, we may affirmatively state that concessions may be transferable, provided with the authorization of the authority originally granting them. Then, within the above referred to limitation, concessions are found within Commerce. Some additional information: The Civil Aviation Law or its regulations contain no legal provision establishing that rights deriving from the concession or the concession itself may not be subject to attachment.

In virtue whereof, I truly believe that there are legal arguments to not bluntly affirm that rights deriving from a concession are not subject to attachment but, at least, to doubt that these may not be subject to attachment.

The Official Mexican Norm that sets forth Technical Aircraft Acquisition Rules | Misael Arellano

In October of 2007 the Undersecretary of Transport of the Transportation Ministry (and President of the National Consulting Committee for the Normalization of Air Transport (Comité Consultivo Nacional de Normalización de Transporte Aéreo), presented to the principal Mexican air carriers, through the National Air Transport Chamber (CANAERO), the Official Mexican Norm Draft "PROY-NOM-083-SCT3-2001, that set forth the aircraft acquisition rules in order for aircraft to be leased, subleased or purchased by authorized operators". The purpose was to allow the main airlines to make comments or suggest amendments to comply with current market needs and to propose improvements, that would make the Official Mexican Norm Draft more effective.

The Official Mexican Norm Draft hereinafter referred to as "PROY-NOM-083-SCT3-2001", sets forth technical aircraft acquisition rules for the lease, sublease or purchase of aircraft. The "PROY-NOM-083-SCT3-2001" is intended to be applicable to sellers, lessors and air transport operators which acquire foreign or Mexican aircraft, as well as foreign air carriers, which acquire Mexican registered aircraft.

In summary, rules will be applicable to all vendors, lessors or civil aircraft operators and civil aircraft operated by the State, which are fully authorized by the Transportation Ministry through the Directorate General of Civil Aviation (DGAC); and aircraft operators that operate commercial transport services according to the Civil Aviation Law which acquire aircraft irrespectively of whether they carry Mexican or foreign registration marks.

Furthermore, the "PROY-NOM-083-SCT3-2001" sets forth that every official air carrier or operator attempting to acquire aircraft bearing foreign registration marks for commercial transport needs to be authorized to do business by the Transportation Ministry through the DGAC.

Relevant issues of the "PROY-NOM-083-SCT3-2001" setting forth the acquisition of aircraft are as follows:

Acceptance of Type Certificate.

Determines the validation of the aircraft type certificate and any amendment thereto which is authorized by the Civil Aviation Authority of the State in which the aircraft is registered.

Maintenance Program.

Determines that the maintenance program is authorized by the Civil Aviation Authority of the State in which aircraft is registered, considering differences between maintenance requirements as well as compatibility of implemented programs by the Civil Aviation Authority of the State in which aircraft is registered and Civil Aviation Authority of the operator's State.

Maintenance records.

Determines that aircraft acquired by an official Air Carrier or operator must have maintenance and operation records as from the date that the aircraft was manufactured.

Sublease.

Even though sublease provisions are similar to lease provisions for the transfer of aircraft, it is determined that in the case of an aircraft registered in Mexico, the Civil Aviation Authority of the sublessee must accept the supervision and maintenance supervision responsibility in written form in respect of the subleased aircraft. In the event that the Civil Aviation Authority of the sublessee does not accept that responsibility, the Transportation Ministry in coordination with the DGAC will be responsible to assume this supervisory role.

The approved air carrier or operator of an aircraft registered in Mexico attempting to

sublease an aircraft with its crew to a foreign air carrier will continue to be the operator of the aircraft under the Civil Aviation Law.

The supervision and maintenance responsibility of the aircraft must not be transferred to the Civil Aviation Authority of the foreign air carrier or operator. When a Mexican approved air carrier or operator attempts to sublease an aircraft with its crew, the aircraft sublessee must exercise functions and responsibilities under the Civil Aviation Law.

Acquisition agreement.

The agreement to acquire aircraft that must include, at least, the following: (i) precise identification of the parties, (ii) precise identification of the aircraft subject to the agreement; (iii) term of the agreement; (iv) state in which aircraft is registered; (v) aircraft reception conditions; (vi) aircraft maintenance procurement; (vii) aircraft return conditions.

The agreement to acquire aircraft is the essential point of "PROY-NOM-083-SCT3-2001", because the Transportation Ministry in coordination with the DGAC must agreed upon conditions between parties under the terms of the agreement and determine the legitimacy of documentation.

Apart from a regulatory need, it is likely that the "PROY-NOM-083-SCT3-2001" is also intended to cover a requirement by the International Civil Aviation Organization which was brought up during the audit made by the supervising authority to the DGAC, in Mexico City, which was carried out from November 21 through November 30 of this year. Derived from this audit, the DGAC may have to proceed to immediately implement the rules stated under the Official Mexican Norm Draft of PROY-NOM-083-SCT3-2001, by means of an official notification (circular) and publish the same in the PIA Manuals (Publication of Aeronautical Information) that the operators must acquire and must comply with according to the obligations stated in their corresponding operating certificates. In this way, subsequent to such implementation, the required administrative proceedings will be carried out on a timely basis, under the Federal Law of Metrology and Normalization (Ley Federal sobre Metrología y Normalización) for the formal implementation of this draft as an Official Mexican Norm.

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Extract of Mexican Aviation News

[Airport service quality to be measured](#)

During the Mexican Congress of Property and Tourist Investment 2007, organized by the National Fund of Development for Tourism (Fonatur), Luis Téllez, Transportation Minister announced that there will be a system of quality measurement in the airports so that the traveller that arriving into the different tourist destinations of the country can assign a quality score for that airport.

El Financiero, 08/ November / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=88819&docTipo=1&orderby=docid&sortby=ASC>

[Mexicana unable to save by reducing employee benefits](#)

Mexicana will not be able to realize the expected savings of from 36 and 40 million dollars that it expected to gain by reducing the benefits of its flight attendants. The tenth collegiate tribunal notified the airline of the suspension of the award dictated by the Federal Board of Conciliation and Arbitration (JFCA) that allowed them to reduce operational costs by reducing flight attendants' benefits.

Milenio, 09/ November / 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=566374&sec=5>

[The aeronautical industry accepts audits](#)

The Mexican authorities in the aeronautical sector will take into account the Operational Safety Audit (ISOA) Programme that is carried out by the International Air Transport Association (IATA) in order to evaluate their operation.

El Universal, 12/ November / 2007

<http://www.eluniversal.com.mx/finanzas/61140.htmlmgr.cfm?docId=83544&docTipo=1&orderby=docid&sortby=ASC>

[The Mexico City Airport's second terminal will begin operations](#)

Aeromar and Delta will operate this Thursday from the New Mexico City Airport's second runway. The terminal work is 98 per cent complete, according to Transportation Minister, Luis Téllez. In January of next year Aeroméxico-Connect (formally Aerolitoral), Lan Chile, and Continental will move into the New Airport.

Reforma, 14/ November / 2007

<http://www.reforma.com/negocios/articulo/414/827491/default.asp?Param=4&PlazaConsulta=reforma&EsCobertura=false&DirCobertura=&TipoCob=0>

[New airport for Mexico City in 2008](#)

The decision to build a new airport for Mexico City will be taken in the first quarter of 2008, explained the Transportation Minister, Luis Téllez. The routes that will allow the access to the new airport will be defined in the first quarter of 2008 and it will relieve traffic. He considered that the investment will be recovered in eight years.

Reforma, 15/ November / 2007

<http://www.reforma.com/negocios/articulo/414/827975/default.asp?Param=4&PlazaConsulta=reforma&EsCobertura=false&DirCobertura=&TipoCob=0>

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Expansion Plans for Baja California & Quintana Roo airports

In the next few years there will be three new international airports: Puerto Peñasco, Ensenada and Riviera Maya, said Fernando Gómez, a specialist in the aeronautical sector. The Budget of the Federation has an item of 49 million pesos for upgrading of international airports, and in accordance with Gómez those announced by this administration would be initiated.

Milenio, 20/ November/ 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=569382&sec=5>

4,000 million pesos will be invested in GAP airports

For period of 2005 to 2009 they will have made an investment of more than four thousand million pesos in the improvement of its twelve airports. He explained that as part of the Master Plan of Development, GAP (Grupo Aeroportuario del Pacifico) has been working specifically on the expansion of the international airports of Los Cabos and Puerto Vallarta.

El Financiero, 23/ November / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=91421&docTipo=1&orderBy=docid&sortby=ASC>

Deputies dedicate 2008 funds to aviation projects

The Minister of the Commission of Transport of the Deputies Chamber, Jesus Ramirez Stabros, informed that in the budget of the Federation for next year, Government had dedicated 2 thousand, 430 million pesos for aviation projects. He highlighted that 2 thousand million pesos will be for the construction of a new terminal at Toluca International Airport, and another 200 million to upgrade the studies for the new runway at Mexico City Airport.

Excélsior, 25/ November / 2007

http://www.exonline.com.mx/diario/noticia/economia/dinero/destinan_diputados_2_mil_430_mdp_a_la_aeronautica/57812

More airline competition in 2008

At the beginning of 2008, Mexicana will offer a reduction from 6 to 9 percent on the price of short business flights. This is caused by a bigger presence and the dynamism of the low-cost airline sector. This may only be a temporary reduction, due to the increasing cost of jet fuel.

El Financiero, 27/ November/ 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=91857&docTipo=1&orderBy=docid&sortby=ASC>

Flights Attendants Union to strike against Click Mexicana on December 1

The Union of Flight attendants advised that they will strike Click Mexicana early on December 1 to back up their demand of salary increase of 4.9 percent

La Crónica, 28/ November/ 2007

http://www.cronica.com.mx/nota.php?id_notas=335350

Contributors



ANTONIO VÁZQUEZ

Attorney at Law: Admitted to practice law in 1991. Mr. Vázquez of Mexican nationality obtained his law degree at the Universidad Nacional Autónoma de México (UNAM). Mr. Vázquez attended post-graduate studies in Civil Law, Corporate Law, "Amparo" Financial and Procedural Law, Civil and Commercial matters. Mr. Vázquez has been Professor of "Amparo" in UNAM and Lecturer at various universities throughout Latin America. Currently Mr. Vázquez is member of the International Bar Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Arbitration, Civil Law, Civil Litigation, Amparo, Corporate Law and Foreign Investment. e-mail: avazquez@asyv.com



MISAEAL ARELLANO

Attorney at Law: Admitted to practice law in 2006. Mr. Misael Arellano, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Monterrey , Mexico City and attended studies in Social Sciences Program 2003 by Universidad Antonio de Nebrija, Madrid , Spain . LANGUAGES: Spanish and English. PRACTICE AREAS: Aviation Law, Industry Affairs with Aviation Authorities, Real Estate and Corporate Law. e-mail: marellano@asyv.com

ABOGADOS SIERRA Y VAZQUEZ

Prol. Reforma N° 1190 Piso 25
Santa Fé México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com
mail@asyv.com