

# COELUM

COELUM Pronunciation: 'che-l&#228;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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## CONTENTS

Differences Between the Enforcement of Foreign  
Judgments and International Arbitration Awards  
Before the Mexican Courts

Antonio Vázquez P. 01-02

Mexican Airport Privatization

Viridiana Barquín P. 03-04

JUNE NEWS

on Mexican aviation P. 05-06

Contributors P. 07



## Differences Between the Enforcement of Foreign Judgments And International Arbitration Awards Before the Mexican Courts (a civil law system approach) | Antonio Vázquez

In past editions of Coelum we said that the arbitration procedure is becoming more and more accessible within Mexico. In this article we will cover the enforcement of foreign judgments and the enforcement of international awards before the Mexican Courts.

First of all, I will mention that the main procedural rule for enforcement of a foreign judgment or an award is the same in both cases: The Mexican Court is not able to review the matter of the dispute. The Court will only confirm that the foreign Court or the Arbitration Court has not violated some basic procedural rules such as the international principles contained in International Treaties, like the New York Convention of 1958.

Article 1347-A of the Commerce Code (Código de Comercio), which establishes the requirements for execution of rulings issued abroad, stipulates:

*"Article 1347-A. - Judgments and rulings issued abroad may have executory force if the following conditions are met:*

*I.- If the formalities established in treaties to which Mexico is party in relation to letters rogatory issued abroad have been observed;*

*II.- If they have not been issued as a consequence of the exercise of a real action;*

*III.- If the sentencing judge or court has had jurisdiction to hear and judge the matter in accordance with the recognized rules of international law which are compatible with those adopted by this Code;*

*IV.- If the defendant has been served notice or summons personally in order to ensure its guarantee of due process and the exercise of its defense;*

*V.- If the ruling has been rendered final and irreversible in the country in which it was issued or no ordinary remedy exists against it;*

*VI.- If the action that gave rise to them is not the object of an action pending between the same parties before Mexican courts in which the Mexican Court has been cautioned or at least the letter rogatory to serve summons has been issued and delivered to the Ministry of Foreign Affairs or the authorities of the State where notice is to be served.*

*The same rule will apply when a final ruling has been issued;*

*VII.- If the obligation for a performance of which the action has been exercised is not contrary to the public order in Mexico; and*

*VIII.- If the requirements for them to be considered authentic are satisfied.*

*Notwithstanding the fulfillment of the aforementioned conditions, the judge may deny execution if it is proven that foreign jurisdictional judgments or rulings in comparable cases are not executed in the country of origin."*

Therefore, the Mexican judge must consider whether all the requirements established in Article 1347-A, of the Commerce Code for acknowledgment of judgment have been satisfied. If any of the requirements are not satisfied, the judge is obliged to deny acknowledgment and execution of judgment. This process is usually substantiated in the form of a trial, giving the parties the opportunity to present the respective legal arguments and evidence, resulting in prolonged proceedings which usually last for years. As we have said, the Mexican Court may only review some procedural aspects of the judgment, but not the matter of dispute.

On the other hand, if it becomes necessary to execute the award issued in arbitration proceedings, it is important to mention that as in the case of foreign judgments, such execution must be solicited before a Mexican judge, who is obliged to analyze the relevant aspects of its acknowledgment and execution and may deny acknowledgment only in the cases specifically mentioned in Article 1462 of the Commerce Code, which stipulates:

*"Article 1462.- Acknowledgment or execution of an arbitration award issued in any country may be denied only when:*

*I.- The party against which the award is issued proves to the competent judge of the country in which acknowledgment or execution is requested that:*

*a) One of the parties in the arbitration agreement was affected by an incapacity or the agreement is invalid by virtue of the law to which the parties have subjected it or, if no action has been taken in this regard, by virtue of the law of the country where the award was issued;*

*b) It was not duly notified of the designation of an arbitrator or of the arbitration proceedings or has been unable, for any other reason, to exercise its rights;*

*c) The award refers to a dispute not contemplated in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. Notwithstanding the foregoing, without allowing the provisions of the award that refer to the issues submitted to arbitration being separable from those that are not, the first-mentioned may be acknowledged and executed;*

*d) The composition of the arbitration panel or the arbitration proceedings have failed to conform to the agreement between the parties or, lacking such an agreement, have failed to conform to the laws of the country where the arbitration was conducted; or*

*e) The award is not yet mandatory for the parties or has been annulled or suspended by a judge of the country in which or under whose laws the award has been issued; or*

*II.- The judge proves that the object of the dispute is not eligible for arbitration under Mexican laws or that acknowledgment or execution of the award are contrary to the public order."<sup>1</sup>*

As we can see, the causes for annulment of an award deal with procedural aspects of the arbitration proceedings and not legal matters relevant to the matter submitted to arbitration. This makes the process of acknowledgement and execution of an arbitration award simpler than with a foreign court ruling.

In practice it seems to be easier to enforce an international award before the Mexican Courts than enforcing a foreign judgment, basically because there may be great differences between the formalities of the legal procedures between the common law systems and the latin ones. In the case of the arbitration procedure, its rules are more flexible and are mostly the same between the different International Institutions with some little differences that in many cases are not related with the aspects that the Mexican Court are able to review.

Moreover, in the Mexican experience, the enforcement of awards before Courts is becoming a common procedure, which is not the case for foreign judgments. In later Coelum editions, we will review some specific aspects of the requisites of articles 1347-A and 1462 of The Commerce Code.

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<sup>1</sup> This Article is identical to Article V of the Convention on Acknowledgment and Execution of Foreign Arbitration Rulings, executed in New York in 1958.

## Mexican Airport Privatization | Viridiana Barquín

Airports are an essential component of any nation's economic infrastructure. Increasingly, airports are being viewed as enterprises, rather than as public services which are expected, at best, to break even. Around the world, governments in both developed and developing countries are turning to the private sector for airport management and development as a means of attracting needed investment capital and management expertise for their airports, but they have been unable to raise the funds necessary to keep pace with growing aviation demand.

The international legal framework of airports is basically governed by the Chicago Convention of 1944 and some of its technical annexes, from which numerous regulations have been derived. Airport development has originated new aspects that shape a peculiar problematic, such as the operational safety. Here are a number of factors which must be considered when deciding on the regulatory approach:

- *Will the government require active or passive economic oversight of third party operators?*
- *What burden of expense can the aviation system support in funding economic regulation?*
- *What is the tradeoff that the government should accept between regulation and the value of the investment?*
- *What is the level of independence of the regulator?*
- *What is the level of historical information available to evaluate the performance of a third party operator?*
- *How does the government establish quality of service standards where there have been none in the past?*

In Mexico, one of the primary problems has been a lack of information from the government to evaluate the financial performance of its airports, and thus to realize the "value" of its airports.

Specific airport tariffs have no relationship to the actual costs of providing services, and there is a high level of cross subsidization between airports, further complicating the evaluation of airport performance and value.

Another important issue to consider is the economic regulation of private airport operators. Once privatized, how would the government be able to protect airport users (principally the airlines) from monopolistic tendencies of an airport operator?

The current airport tariff structure in Mexico was developed outside of the airport system by the national treasury (Secretaría de Hacienda). There is no functional link between tariffs and the costs incurred by airports to deliver these services.

The most common forms that the privatization can adopt are the following:

- *Contracting out management of the airport on a relatively short-term basis.*
- *Total or partial sale of assets, across bidding or direct sales.*
- *Long-term leases or sale of the airport. Larger economic benefits can generally be obtained, increasingly common overseas.*
- *To create new airport facilities (or entirely new airports), the private sector can be granted either a long-term or perpetual "concession" to finance, design, own, and operate those facilities. Tax-exempt bonds may remain in place when an airport is privatized, and in some cases tax-exempt financing can be used for new airport privatization projects.*

The benefits of a more entrepreneurial approach to airport management include increased operating efficiency, increased airport revenues, improved airport amenities, possible new revenue streams for state and local governments, and reduced risk of developing uneconomic (white-elephant) projects. Airlines, passengers, private-plane owners, and taxpayers can all benefit from this new approach to airport management.

The fundamental choice in the privatization process is how the government should sustain the public interest in open access to and fair rates for airport services. The major alternatives are between:

- *Government regulation, an inherently adversarial process; or*
- *Government ownership and partnership in the development of airports, a more collaborative approach.*

The partnership approach, seems to be the best for assuring the public interest in fair operations and permitting the local community to express its need for sufficient airport capacity.

## News | June

### Extract of Mexican Aviation News

#### Consultants report to Mexicana

Financial consultants to Mexicana said that to achieve financial stability, Mexicana needs savings in the order of 25 million dollars. This would mean modifications to the Collective Work Agreement of the Asociación Sindical de Sobrecargos de Aviación (Association of Flight Attendants).

Reforma. 05 / June / 2007

<http://www.reforma.com/negocios/articulo/776304/>

#### Mexico attracts aeronautical industry: Economy Ministry

In 2007, 12 manufacturing companies that produce aeronautical components have come to Mexico. Mexico already has 141 such companies, making to country one of the most attractive zones for investment in this sector of the industry, said the Economy Ministry. Mexico is already number 10 worldwide as added-value producer in this industry and exports product worth 500 million dollars annually. Recent investments reached 370 million dollars.

Milenio. 14 / June / 07

<http://www.milenio.com/mexico/milenio/nota.asp?id=519277&sec=5>

#### Boeing: Air traffic will treble in 20 years

Boeing, the world's leading aerospace and defence company, yesterday predicted that the global air traffic will treble in the next 20 years. They also estimate that the traffic will grow by 5% and that loads will grow 6.1% annually. This in spite of the increasing worries as regards the impact of environmental pressures and the lag in updating airport infrastructure.

El Universal. 14 / June / 2007

<http://www.eluniversal.com.mx/finanzas/58338.html>

#### Ebrard goes for to the third runway in the airport

The Distrito Federal (Federal District) government made a proposal to the Secretaría de Comunicaciones y Transportes (Transportation Ministry) to obtain the concession and all assets of the Mexico City International Airport (AICM). If granted they would invest a billion pesos in the construction of a third runway. The construction of this runway would take less than a year and it would give the airport 23 per cent more capacity.

El Financiero. 15 / June / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=63513&docTipo=1&orderBy=docid&sortby=ASC>

#### First Mexican aircraft unveiled

At International Paris Air Show - Le Bourget, Hydra Technologies of Mexico unveiled the first aircraft designed and built in Mexico. It is called Ehécatl (God of the Wind). Its main function is to enter service as national security support for the Armed Forces, as well as civil defense and in case of a disaster.

Reforma. 19 / June / 07

<http://www.reforma.com/negocios/articulo/780966/>

## News | June

### Extract of Mexican Aviation News

#### Passenger flow increases at Mexico City Airport.

The Mexico City International Airport (AICM) handled 10 million 350,000 passengers in the first five months of 2007. AICM's year-to-year total influx of passengers grew 3.3%, as reported Transportation Ministry.

El Economista. 20 / June / 2007

<http://www.economista.com.mx/impreso/articulos/06256D5C00046629862572FF00756329>

#### Líneas Azteca new start-up date

The new Líneas Azteca management team calculates that they will restart their flights in about three weeks, or when the Civil Aeronautics Headquarter (DGAC) concludes their inspections. The Secretaría de Comunicaciones y Transportes (Transportation Ministry) said that the operating and management reviews of the company are about 50% complete.

Reforma. 22 / June / 2007

<http://www.reforma.com/negocios/articulo/782121/>

#### Airfreight Carriers see bankruptcy ahead with opening of Mexico's skies to American companies

Mexican Airfreight Carriers expressed their concern about the eventual "total opening" of Mexican skies to the American aviation industry. This is a situation that might force them into bankruptcy. Because of this, they requested Transportation Minister, Luis Téllez, (Secretario de Comunicaciones y Transportes) to cancel the binational meetings until such time as the Mexican government and the national airlines have agreed on an aviation policy.

Milenio. 22 / June / 2007

<http://www.milenio.com/mexico/milenio/nota.asp?id=521815&sec=5>

#### Aeromar reaches agreement with Pemex

Aeromar obtained a trading agreement to move Pemex's employees between the Federal District and Ciudad del Carmen, Campeche, Minatitlan and Poza Rica, Veracruz, as well as from Poza Rica to Villahermosa, Tabasco.

El Financiero. 25 / June / 2007

<http://www.elfinanciero.com.mx/ElFinanciero/Portal/cfpages/contentmgr.cfm?docId=65154&docTipo=1&orderBy=docid&sortBy=ASC>

#### The tax impact on the air sector will be analyzed

Luis Téllez, Transportation Minister (Secretario de Comunicaciones y Transportes) asked the air sector representative to carry out an analysis on the impact that tax reform would have in this sector.

El Economista. 28 / June / 2007

<http://www.economista.com.mx/impreso/articulos/06256D5C00046629862573080005A56C>

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