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In this number of Coelum. We have the pleasure to host Julie McLean as a guest author of the article featured this month. Julie is an experienced and prominent attorney practicing law at Conyers Dill & Pearman in Bermuda. We are proud and thankful for her contribution to our publication which we are pleased to share with all our readers.

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Bermuda: The Ideal Jurisdiction for Aircraft Finance and Registration.

by Julie McLean.

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Bermuda is a key offshore financial centre with strong IDR ratings (Fitch AA, S&P AA-; Moody's Aa2). Its political and economic stability, its respected and consistent judicial system, a favourable legislative framework and tax regime and the absence of exchange control and currency restrictions, make Bermuda the ideal jurisdiction in ownership, financing and securitisation structures. When linked with a commercial aircraft registration capability, Bermuda is a leader in the international structuring and ongoing oversight of aviation linked transactions.

Bermuda is also a well regarded participant in international financial transparency and information exchange. Bermuda has thirty (30) tax information and exchange agreements ("TIEAs") in place including with all the G7 countries. Of particular note is the TIEA with Mexico which came into force on 1 January, 2011. As a result of such TIEA (which is listed in Annex 10 of the Miscellaneous Tax Regulations in Mexico), we understand that payments made to residents of Bermuda are exempted from the 40% withholding tax. Companies formed in Bermuda for asset finance transactions would be considered residents of Bermuda.

The Legal Framework

Lenders and leasing companies are very comfortable using Bermuda as a jurisdiction. Such financiers want to hold assets in international well respected jurisdictions which clearly recognise their ownership rights based on common law principles. Financiers involved in asset based finance transactions require the possession rights of a borrower as well as the security rights of a lender to be clearly and consistently applied. Financiers require that their rights in moveable equipment such as aircraft be registrable in a universally understood and recognised manner. They want to deal with a jurisdiction familiar with, and prepared for, sophisticated finance and leasing structures. Bermuda meets all of these needs.

The legal framework of Bermuda is known, stable, consistent and based upon the common law with the highest court of appeal in Bermuda being the Judicial Committee of the UK Privy Council.

A unique feature of Bermuda for aircraft financing structures is the use of the special purpose trust. Often the financiers do not wish to have a financed aircraft on their balance sheet nor do they want it on the operator's balance sheet in case the operator goes bankrupt and the aircraft falls into the hands of general creditors. Using a Bermuda special purpose company (SPV) as the borrower who then leases the aircraft onto the operator (often indirectly through a jurisdiction which the operator has a double taxation treaty with) gives lenders the additional protection of bankruptcy remoteness. The Bermuda SPV is owned by a special purpose trust which has been formed purely for the "purpose" of the financing structure. There is no need to establish a charity as a beneficiary and indeed, the special purpose trust has no beneficiaries.

Registering Security

In Bermuda the Mortgaging of Aircraft and Aircraft Engines Act 1999 and related regulations have been in place since 1 July 1999. Under this legislation, it is possible to register security interests on the Register of Aircraft Mortgages and/or the Register of Aircraft Engine Mortgages (as the case may be) in both aircraft and aircraft engines which are owned by or otherwise in the lawful possession of a company incorporated in Bermuda. It is also possible to establish priority of a yet to be executed mortgage by filing a priority notice with the BDCA pursuant to which the priority of such yet to be executed mortgage can be fixed for a 14 day renewable period.

It is also possible to register a charge over the shares of a Bermuda company or assets of a Bermuda company with the Registrar of Companies in Bermuda. Such registration is not needed for enforceability purposes but does establish priority over unregistered charges and subsequently registered charges.

Bermuda Aircraft Register

The Bermuda Aircraft Register (the “Register”) has been in existence since 1931. Currently there are just over 700 aircraft on the Register and the majority of these are low age assets with significant value. Aircraft are registered in the private or commercial categories. Many of the private registrations relate to large executive jets such as the Boeing 747 SP, Boeing Business Jet, Gulfstream GV, Falcon 900B, Bombardier Global Express and Airbus Corporate Jetliner or commercial type craft such as the Boeing 777, Boeing 757 and Boeing 737 registered for private use. Commercial craft operated by international airlines and presently registered in Bermuda include the full range of Airbus, Bombardier and Boeing aircraft.

The current policy of the Bermuda Department of Civil Aviation (“BDCA”) is that aircraft may only be registered by a Bermuda exempted company which either owns or has a valid lease hold interest in the aircraft to be registered.

The BDCA has entered into a number of agreements with foreign jurisdictions regarding the transfer to operator states of certain regulatory oversight functions and duties relating to commercial category aircraft only under Article 83 bis of the Convention on International Civil Aviation (Chicago, 1944) to which the United Kingdom (representing Bermuda) is a party. In this way, certain functions and duties normally carried out by a state of registry are transferred, under strict guidelines, to an operator’s state. The aim of this highly successful operational initiative is to ensure on the spot safety oversight and allow for greater efficiencies at both the government and operator level.

Presently an active bis agreement is in place with the government of Russia such that there are approximately 550 aircraft operated by Russian commercial airlines on the Register. Additional agreements are in place with Uzbekistan, Azerbaijan and Austria.

The commercial operators of Bermuda registered aircraft must maintain high levels of operational safety. A commercial operator wishing to operate a Bermuda registered aircraft for the first time must apply to the BDCA for approval as only aircraft operated by accepted operators will be considered for registration.

Benefits of Registration in Bermuda

Owners and operators enjoy a Bermudian administration which is rated as a Category 1 Aviation Regulatory Authority by the US Federal Aviation Administration. The BDCA is prepared to accept more than one internationally recognised set of airworthiness requirements and various flight crew licences for validation. The Bermuda registration marks VP-B and VQ-B with two subsequent letters are seen as a low-profile, neutral mark of high standard which is internationally accepted. This is especially valuable when the aircraft is operated in areas of the world subject to security risks or political instability.

Owners and operators have expressed satisfaction with the high level of responsiveness of the BDCA when dealing with enquiries and requirements. This is made possible by the absence of the degree of administrative bureaucracy often encountered when dealing with other key aviation jurisdictions. Bermuda does, however, offer the full range of professional and administrative services necessary to ensure that all legal and other requirements are properly met and to ensure the BDCA and the Register retains a high level of international respect and confidence.

Registration in Bermuda is not subject to any requirements that demand the aircraft be based in or operated through Bermuda. Bermuda registered aircraft may be operated anywhere in the world, excluding war zones and the like or practically, areas restricted by its insurances.

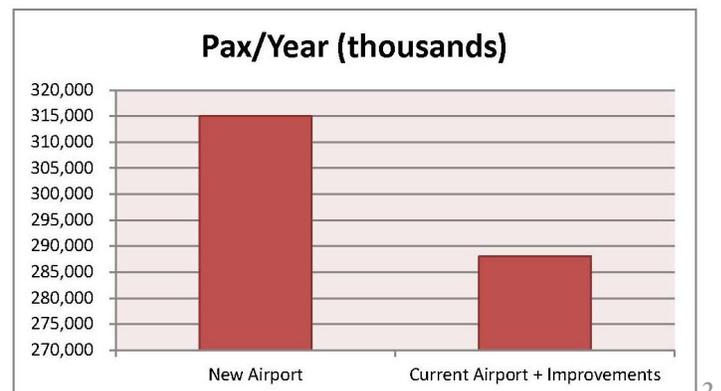
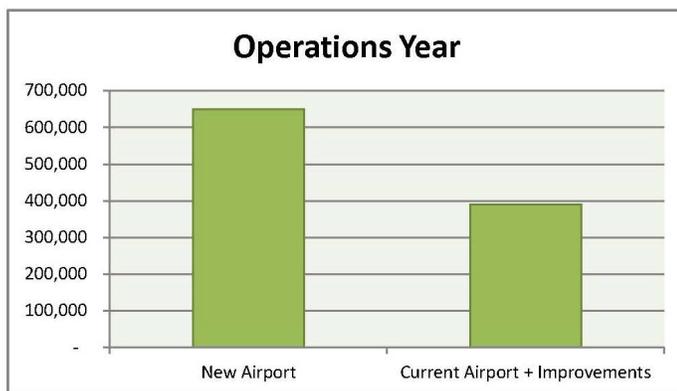
Conclusion

For all of the reasons stated above, Bermuda is an ideal jurisdiction to structure financing of aircraft. In addition, registration in Bermuda of aircraft in either the private or commercial categories offers many benefits.

The Challenge of a New Airport for Mexico City: The Regulatory Role of the Mexican State and the International Rules.

by *Viridiana Barquín.*

The topic of a new airport for Mexico City has been under discussion from about the year 2000, when the airport “Benito Juárez” was already reporting saturation problems. Much controversy and related social mobilizations were caused a few years ago by proposals for a new airport in an area that was not only the worst because of instability, as the land was originally lakeside, but also for the resistance of the farmers, who as owners, alleged that the price offered by the federal government was offensively low and who refused to give up their land because of attachment to their culture. The project was therefore cancelled and the solution was then to expand the existing airport to at least give some time before its imminent collapse. Notwithstanding, no progresses were made during the administration of Felipe Calderon other than more studies. In that sense, the report of one of the companies surveyed offered two scenarios: (i) the construction of a new airport and (ii) the operation of the current with only small increases in the number of operations. The first plan offered the possibility of 650,000 operations per year and the second up to 390,000. In terms of passengers carried, a new airport would raise the figure to 315 million passengers per year, compared to 288 million passengers if the current airport remains being the sole option. In both cases, the projections were estimated up to 2040.¹



“In terms of passengers carried, a new airport would raise the figure to 315 million passengers per year, compared to 288 million passengers if the current airport remains being the sole option.”

Nowadays, the project seems to be closer to reality, as it is part of the commitments of the current President and although nothing has been confirmed by any authority, it is widely known that the land on which the new airport will be construed has already been not only identified, but acquired. If this is the case, the requirements and procedures specified by the General Law of National Assets³ (“LGBN” by its acronym in Spanish) must have been fulfilled. The aforementioned LGBN is the applicable law by which the public administration, that is to say, the Federal Government, its entities, agencies, offices and/or departments (collectively the “Federal

1.- <http://www.eluniversal.com.mx/nacion/184187.html> Consulted on March 15, 2012.

2.- Figures contained in the Cost-Efficiency Investment Program Procurement 2011, provided by the Air Navigation Services Office (SENEAM by its acronym in Spanish).

3.- Published in the Official Gazette of the Federation (“DOF” for its acronym in Spanish) on May 20, 2000, most recent amendment on January 16, 2012

Government”) is entitled to acquire, through acts of private law, the real estate property necessary to provide public services⁴; pursuant to Article 3 of LGBN, such property is catalogued as “national property” (hereinafter “federal real estate property”) and pursuant to Article 4, is subject to the regime of Public Domain. In addition, the Federal Government is authorized in Article 54 to carry out the necessary negotiations with the legitimate owners of the real estate intended to be acquired. It is mandatory to integrate a report of the negotiations conducted including the relevant valuations and documents. For purposes of determining the value of the property, the Ministry of Public Service must provide a valuation, but credit institutions can be consulted for that purpose also, and once the price is agreed, any form or scheme of payment can be used in terms of the Civil Law. After the execution of the corresponding agreement, the documents evidencing the property rights of the Federal Government must be filed for registration before the “Public Registry of Federal Property”⁵

Taking into consideration the assumption that the land for the construction of a new airport has been already acquired and bearing in mind that the public services are the activities performed by public entities or private companies in order to satisfy the public interest subject to a regime of public or private law, the LGBN establishes that the public office in charge of the administration of a federal real estate property shall be entitled to grant to private companies or individuals, by means of concession, the right of use of such property for the accomplishment of economic, social or cultural activities, without prejudice to the specific laws⁶. In this case, pursuant to Article 10 of the Airports Law⁷, a concession is required for the operation, management and construction of airports⁸ and such concession will be granted by public bidding (“licitación” as defined in Spanish)⁹; notwithstanding, an exception is considered by Article 12, Section II of the Airports Law, by which a concession may be granted without public bidding to current concessionaries requiring a complementary airport in order to meet an increase in the demand in so far as there is evidence that this increase is necessary to expand the capacity with the other airport and the operation of both airports by the same concessionaire will be economically more efficient in comparison to other options, to achieve a better coordination and provision of services. In this field, the International Civil Aviation Organization (“ICAO”) has a specific manual (“Airport Planning Manual”) which includes the criteria for planning and construction of airports¹⁰. The planning process as specified by ICAO, includes the establishment of certain general and particular principles together with plans and programs to ensure the viability of the airport. Obviously, the most important criteria for this kind of infrastructure is the requirement to coordinate the installation and provision of air navigation services, the use of the space and adequate procedures of security and for air traffic control. One of the points that complement this approach is that ICAO considers that it is necessary to seek the best use of land and airspace that are, indeed, inherently limited in some areas of Mexico City and surrounding areas. For the social point of view, among the criteria that ICAO is concerned to point out, is the existence of efficient State agencies to be responsible for the implementation of a comprehensive plan that leads to the success of the airport facility under the established guidelines and also advice the existence of long term state and regional plans that a project of this size should have. According to ICAO, a ranking in the funding of public services within the budget of the state and federal agencies should be also included.

Moreover, Chapter 5, section 5.1.1 of the Airport Planning Manual, literally specifies: *“The construction of a new airport or the expansion of an existing one, requires an important capital investment. To avoid becoming*

4.- For further reading: “Mexican Airport Privatization” Coelum July 2007 edition, by Viridiana Barquin.

5.- Article 42 section I of LGBN.

6.- Article 72 section I of LGBN

7.- Published in the DOF on December 22, 1995, most recent amendment on December 21, 2009.

8.- Pursuant to Article 42, section VI of LGBN, the concessions constituted on federal real state must be registered at the Public Registry of Federal Property.

9.- For further reading regarding public biddings: “Legal Implications of Aircraft Acquisition and Lease by the Mexican Government” Coelum November 2009 edition, by Viridiana Barquin.

10.- http://portal.aerocivil.gov.co/portal/pls/portal/%21PORTAL.wwwpob_page.show?_docname=8014629.PDF consulted on March 25, 2013.

prematurely obsolete and the waste of financial and material resources, it is important that its useful life-limit will be as long as possible. For this purpose there should be enough area to carry out the progressive expansions at the same growth rate as the air traffic demand. In order for investment to yield the maximum benefit, in addition of having enough land, it is also necessary to ensure the safety of operations and avoid danger or nuisance to the neighboring towns, without limiting the growth and efficiency of the airport". In this context, important is to note that due to the perpetuity of this kind of concessions, considering that pursuant to Article 15 of the Airports Law, they will be granted for a term of fifty years, and may be extended, in one or more occasions, for subsequent additional similar terms; difficult is to understand that there can be real planning, not only in terms of the budget of the State and Federal agencies but in terms of the industry conditions, relevant technological improvements and air traffic demand that will prevail at the end of that term. Can there be predicted how the world will look like in fifty or hundred years?

“...if Mexico wants to stop being a country of the “discretion” to become a truly competent country in terms of its airport system, it is essential that the planning and construction (and therefore the granting of concessions and operation) of airports, take a serious consideration of the criteria and rules that have been internationally established and proven in practice.”

Long seems the process that has to be faced, the point is that if Mexico wants to stop being a country of the “discretion” to become a truly competent country in terms of its airport system, it is essential that the planning and construction (and therefore the granting of concessions and operation) of airports, take a serious consideration of the criteria and rules that have been internationally established and proven in practice. Even the applicable law should be reviewed to be a more investment promoter, but it would be very important that the concession titles clearly stipulate the provisions and purposes to ensure that the necessary up-dates and amendments are accomplished from time to time so that the airports can be a significant part of the economic regional and national development.

More Resources are required for Air Navigation.

The continuity of service provided by SENEAM for air navigation is not secure due to budget cuts that inhibit the growth of important programs for the modernization of air-nav infrastructure. The modernization of two programs is particularly important for SENEAM because of the failures of these old systems in 2011. The most important of these failures happened on September 28, 2011, when the Control Tower of Mexico City Airport lost electric power. This was mainly because the power generator was installed in 1982 and has had little maintenance. It is reported that over 200 million pesos are now being considered as part of the next federal budget for this purpose. *Economista*. 01/March/13.

The Opening- up of Air Space of is necessary, although not sufficient.

Last Friday Victor Valdez, an expert on liberalization of air space, stated that even though an open sky policy would be beneficial for the country, it might not be sufficient because of infrastructure issues. "Flights could be scheduled, but there wouldn't be enough space for them to land". He also declared that further studies are required, especially one concerning low-cost airlines. "We don't fully understand the effect of this kind of airline in our market, and in order to be able to increase the number airlines, we must modify the way landing slots are assigned". *Economista*. 04/March/13.

Air tickets prices dropped 3.5% over three years.

According to Guillermo Heredia, president of CANAERO, ticket prices dropped around 3.5% from 2010 to 2012, thanks to marketing strategies and competitiveness on main routes. "Each airline uses a different marketing strategy and this being added to the great competitive market that is Mexico today, which results in better prices for consumers" he stated. On this subject Valeria Romo, an analyst from Monex, stated that the inclusion of Low-Cost airlines and Mexicana's exit from the market had increased the real competition between the Low-Cost carriers and Aeromexico, forcing a reduction of prices while generating more efficiency. *CNN Expansion*. 05/March/13.

GAP increases passenger traffic by 1.2%.

The airport operator group, Pacific Airports Group (GAP) announced that passenger traffic at its terminals increased by 1.2% in February, an increase driven by domestic travelers. GAP said domestic passengers increased by 2.5% in the second month of the year, while international decreased by 0.7%, when compared to February 2012. *Economista*. 07/March/13.

Research on Boeing 787 battery still without positive results.

A regulator from U.S. Air Security on Thursday published hundreds of pages of details of its investigation into the fire of a battery on a Boeing 787, but the information did not reveal what caused the incident. The U.S. National Transportation Safety Board. (NTSB) will conduct a public hearing in April on the design and certification of the Boeing 787 aircraft battery system and will also convene a technology forum on lithium-ion batteries the same month. The NTSB report also noted an abnormal function of the battery before it was reported on fire. *Excelsior*. 08/March/13.

In this month extract was prepared by Jessi Saba, Raúl Barrios, Mauricio Castillo and Diego García.

Cancun International Airport is the best in Latin America.

For the fourth consecutive year the Airport of Cancun operated by the Southeast Airport Group (ASUR) has been recognized by the International Airport Counsel as the best in Latin America because of the quality of service. The reward is the product of the Airport Service Quality Program (ASQ) of the above organization, whereby they measured the performance of the 250 most important airports in the world in the quality of the services they provide to their passengers. *Economista. 12/March/13.*

Airlines register lower profits.

The price of fuel, lack of competition among providers of airport services and the rising cost from public agencies as SENEAM have caused airlines to have lower profits, according to an analysis of the National Chamber of Air Transportation (CANAERO). CANAERO ensures that the authorities promote efficiency in areas such as fuel supply, which is made by tank truck rather than pipeline, as is already done in Mexico City International Airport. *Reforma. 19/March/13.*

Traffic growth decreased in AICM.

The saturation at the Mexico City International Airport and the consequent opening of the air routes that by-pass this airport has caused the growth of passenger traffic to be less during the first two months of this year respect with the first two months of the same year in 2012. In January, for example, the growth was 7.7 percent, putting the total number of passengers transported at 2 million 472 thousand. In February it was the same, because the growth was only 5.8 percent as detailed by the General Management of Civil Aeronautics (DGAC). *Reforma. 22/March/13.*

Queretaro opens more classrooms for Aeronautics specializations.

The state of Queretaro will have a second education institution specializing in aeronautic themes, with the official inauguration in May of a CONALEP Campus. The Minister of Education of the State of Queretaro, Fernando de la Isla Herrera, advised that this new institution will be located in the zone near the International Airport of Queretaro and will offer high school studies and college studies related to aviation. He also mentioned that the new campus has already been joined by the students that were studying in provisional facilities. *El Financiero. 26/March/13.*

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