

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

October 15, 2014 year 09 | No. 06

Relocation of the Mexico City
International Airport.

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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.

Relocation of the Mexico City International Airport.

by Misael Arellano.

One day after the Federal Administration Second Yearly Report in which the President of Mexico confirmed the construction of the new airport for Mexico City as “the largest infrastructure project in recent years for our country and the world”; the new airport project was announced by Mr. Enrique Peña Nieto in an official act conducted before the most significant businessmen and his closer members of the Mexican government.

The project for the new airport was presented through a video, produced like a TV commercial, in which the 3D blueprint was shown and remarked upon by the esthetics of the proposal made by the British Norman Foster, one of the most prolific architects in the world, who was responsible of the design and building of Beijing and Honk Kong airports. The project is in collaboration with a Mexican architect, who, among other relevant projects, was in charge of the building and opening of the Soumaya Museum in Mexico City.

“... the government must provide more information and present other issues in respect to the undertaking, competitive conditions, and especially a real transparency of the entire project...”

The Mexican government opened the website called “Mexico City New Airport Project” “Proyecto del Nuevo Aeropuerto de la Ciudad de México”¹ in which certain matters involved with the project such as the new airport location, building stages, financing, regional development, environmental master plan and hydraulic plan, among others are described in a very user friendly way. Nevertheless, this author considers that the government must provide more information and present other issues in respect to the undertaking, competitive conditions, and especially a real transparency of the entire project with the participation of external auditors and the publication of complete information, including legal documents and official assignments of work. For example, based on the available information, this author considers it a little suspicious that the Mexican architect winner of the design project is the son-in-law of the owner of one of the most relevant companies looking to obtain the agreement for the building of the airport.

In the following paragraphs this author will make a brief analysis of the legal implications about this project in respect to a first fundamental question: How it must be properly and legally called; is this really a plan for a new airport or it will be just a relocation of the current airport?

PRECEDENTS.

Prior to this investment opening for the Mexican airport system, Aeropuertos y Servicios Auxiliares (ASA), a decentralized public entity, was in charge of the administration and operation of all airports in Mexico, including the Mexico City International Airport (MEX). The Disincorporation Inter-secretariat Commission (“Comisión Intersecretarial de Desincorporación”), through some statements issued on August 20th and 25th, and October 1st in 1997, approved the plan to conduct the investment opening process by the formation of four airport groups covering thirty-five airports as follows: i) Mexico City Group: One airport; ii) Center North Group: Thirteen airports; iii) Pacific Group: Twelve airports; and iv) Southeast Group: Nine airports.

On May 28, 1998, the Federal Government and Mexico City Group S.A. de C.V., incorporated the company called Aeropuerto Internacional de la Ciudad de México S.A. de C.V. (AICM) with the corporate purpose of conducting

1.- <http://www.aeropuerto.gob.mx>

the administration, operation, building and/or using of one or some civil airdromes and airports located in Mexico City as well as providing complementary airport services; in order to observe the legal requirements stated in the Airports Law, which regulates the building, administration, operation, and use of civil airports as an integral part of the general communications ways², and states that the Secretariat of Communications and Transport (SCT) may grant concessions for its use of airports as Federal goods³.

On June 29, 1998 the Federal Government, through the SCT, granted the Concession for i) the administration, operation and use of the international airport of Mexico City, as well as conduct buildings with the purpose of providing airport and complementary services in the airport; and ii) for the use of concessioned goods in accordance with the General Law of Domestic Goods which entered in full force on November 1st, 1998 and will be in force for 50 years. The original title of concession granted by the SCT stated a validity of 50 years from November 1st 1998; nevertheless, on November 14th, 2000 the validity was reduced to 12 years; and finally, on March 9, 2005 the validity was extended for 38 years as from the expiration of validity stated in the first amendment, in order to restate a validity of 50 years from November 1st, 1998.

THE LEGAL TERM: AIRPORT RELOCATION.

“When an airport relocation is ordered by public interest, the concessionaire of this airport will have right to obtain the new concession in a direct way ...”

The reference made in the President’s Second Governance Report, in the official announcement of the project one day after, and the information published in the official website, all refer to this project as a new airport. If however we analyze applicable legislation and the available information in regards to the project, the correct legal term for this project must be a “relocation of the airport” instead of “a new airport”. One of the Aviation Law principal objects is to regulate the building of civil airports as an integral part of the general communications ways; and for such purposes it states the specific procedure for the relocation of an operating airport as occurs with MEX.

When an airport relocation is ordered by public interest, the concessionaire of this airport will have right to obtain the new concession in a direct way for the building, administration, operation and use of the airport⁴. In that sense, the airport concession will not be open for bidding and all rights of the current concessionaire are secured.

If the project is operated in any different way than a relocation, then all legal requirements stated in the Aviation Law must be followed: i) the project must be open for bidding and ii) a concession title must be granted in favor to the company in charge of the building. For such purposes the Federal government and involved authorities/entities must conduct the analysis and approval of all technical, administrative, financial and legal requirements, under the specific procedures stated in the Airports Law, General Law of Domestic Goods, Aviation Law, Federal Law of Administrative Procedure, Federal Law of Metrology and Standardization, National Development Plan, and any other norms and regulations involved.

2.- Article 1 of the Airports Law.

3.- Article 20 of the Airports Law.

4.- Article 12, last paragraph.

Article 12, section II of the Airports Law states that:

“The SCT could grant concessions, without the observance of the open bidding process in the following cases:

...

II. To the concessionaries that requires a complementary airport, with the purpose to satisfy the increased demand and provided that: such increasing is necessary to expand the capacity with another airport; the operation of both airports by the same concessionaire will be more economically efficient compared to other options to ensure a better coordination and provision of services; the obligations stated in the concession title has been observed and requirements have been met for the new concession.

...”

By the reading of this article 12, section II of the Airports Law, the concession for the building and operation of a complementary airport involves that the airport operated under the first concession should continue working in conjunction with the new airport; as mentioned before, the new airport project must be made as an airport relocation, under the faculty stated in the last paragraph of article 12 of the Airport Law which states that:

“When for public interest reasons an airport relocation is ordered, the concessionaire thereof, shall be entitled to receive the new concession in a direct way, if it meets the requirements stated”

In that sense, the operation of the first airport is crucial for the designation as an airport extension or airport relocation.

As conclusion, it seems that Mexican government planned to conduct the building of the Mexico City new airport based on prerogatives described in last paragraph of article 12 of the Airport Law to avoid extensive procedures related to the public biddings, complete transparency of the project, intervention of external auditors, and the most relevant issue: protect and secure all rights of the current concessionaire for the for the building, administration, operation and use of the airport; bearing in mind that its concession expires until October 31, 2048.

Mexico Announces New International Airport.

The long heard rumors surrounding a new airport in Mexico City have now become official. The president of Mexico Enrique Peña Nieto, has announced the construction of a totally new International Airport for the Mexican Capital. The new one terminal airport will allow the augmentation of operations attending an estimate of 120 million passengers every year. The project, designed by worldwide acclaimed airport architect Norman Foster will create 600,000 new jobs to become one of the leading airports of the world. *CNN EXPANSIÓN. September 6, 2014.*

Airport and Flight Disasters in Los Cabos.

The International Airport of Los Cabos in the California Peninsula was utterly destroyed as a result of the climatic conditions, specifically Hurricane Odile. The airport suffered major damage as a result of the tropical storm and flights to and from this touristic destination where cancelled for four continuous days. The physical damages of the airport are so substantial that the Secretary of Communications and Transportation has informed that the airport will be ready by October in order to restart operations as over 144 airlines have been obliged to suspend their operations and over 30 thousands flights have been cancelled. *El Informador. September 23, 2014.*

Airbus A320neo Takes Flight.

Airbus flew its new A320neo on its first test mission on Thursday, marking the start of a 3,000-hour flight-test program scheduled to lead to certification and entry into service in next year's fourth quarter. Powered by a pair of Pratt & Whitney PW1100G geared turbofans, MSN6101 took off from Toulouse-Blagnac Airport in France at noon local time. The airplane lifted off from Blagnac at around 60 metric tons. During the flight, which took the aircraft around southern France, the crew explored the aircraft's flight envelope and systems operation, while experts on the ground monitored progress in real time via a direct telemetry link. *AIRonline. September 23, 2014.*

Seabury Group Joins ALTA as 41st Affiliate.

The Latin American and Caribbean Air Transport Association (ALTA) announced today that Seabury Group, a Global Advisory and Financing organization for the aviation industry, has become its 41st Affiliate. ALTA, which safeguards the interests of the region's industry by facilitating the development of safer, more cost-efficient and environmentally friendly air transport, now has a total of 74 members, including airlines from the region and around the world. *ALTA. September 25, 2014.*

Mexico International Airport is saturated according to the SCT.

Secretariat of Communications and Transport (SCT) published in the Official Gazette of the declaration airfield saturation of “Benito Juárez” International Airport of Mexico City (AICM). The document says that the Navigation Services in the Mexican Airspace (Seneam) presented technical and statistical information about the landing and takeoff operations performed in the terminal. This, abounds to support the determination of the saturation of air operations assigned to the same, in the period September 2013 to August 2014 schedules. From this, exposes, it follows that to ensure safe and efficient operation in the AICM is considered the least number of strategic capability Services Air Traffic Control. *Terra News. September 29, 2014.*

Air France Pilots Back On The Job. Pilots’ Union Still Has No Firm Deal With The Carrier

The union representing Air France pilots has ended its 14-day strike against the airline that the prime minister of France described as a “selfish” walkout. The pilots had walked off the job to protest plans by Air France to expand its low-cost Transavia carrier into non-French markets. The union said it was not opposed to the expansion per se, but had concerns that the labor conditions outlined with the proposal would erode job security and reduce the number of jobs for French pilots. Air France said it was scrapping its plans to expand Transavia, and called on the pilots to immediately go back to work. The New York Times reports that while the two sides held a 15-hour negotiating session over the weekend, there is still no firm agreement between the airline and the SNPL union. However, the union said that the strike is “not an end in itself” and that pilots would go back to work in the interests of the company and the passengers. *Aero News. September 30, 2014.*

Colorado Company Designs ‘Dream Chaser’ Airplane. Described As An ‘Affordable High Altitude Long Endurance’ Aircraft

A company in Colorado is designing an aircraft it is calling the “Dream Chaser” and no, it’s not Sierra Nevada Corp’s space system. This Colorado Company Dream Chaser Aircraft, hopes to change aviation by building a “high altitude long endurance (HALE) airplane at “an affordable price.” They have turned to the crowdfunding site “FundAnything” in an effort to raise money for the project. The Dream Chaser would use conventional engines as well as hybrids that burn diesel fuel or operate on electric power. It would have the ability to fly non-stop from continent to continent with ample room for baggage and/or science and research equipment. The company wants it to be able to fly high enough to get over most weather with a “military grade” oxygen system, and be comfortable, quiet, and fast. *Aero News. September 30, 2014.*

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