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Legal Aspects of cancellation
of the NAICM.
by Vera García

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COELUM: 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.

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Legal Aspects of cancellation of the NAICM.

by Vera García.

As addressed in a previous edition of Terrum¹, the elected president, Andres Manuel Lopez Obrador has expressed in several occasions his position against the construction of the New Mexico City International Airport (for its acronym in Spanish “NAICM”). Unfortunately for those who are in favor of its construction, the cancellation of the NAICM is within the discretionary faculties of the Federal Government and could be exercised unilaterally by the President.

The now elected President has also announced that he will make a referendum in respect to the construction of the NAICM this year². However, it is important to bear in mind that for a referendum to be effective in Mexico, there are various conditions that should be met, among them are that it would have to be proposed by the President, organized by the INE³; endorsed by Congress and have 45% of citizen participation⁴.

The cancellation of the NAICM would derive in several financial, social and legal consequences. For purpose of this article, only the legal concerns will be addressed.

“After the concession was granted, GACM entered into several commercial agreements and public work contracts with various Mexican/Foreign service providers and construction companies as a result of: I) direct adjudication; II) public tenders; and III) invitation to three participants, pursuant to the Law of Acquisitions, Leases and Services of The Public Sector (LALSPS).”

The Federal Government has granted a concession in favor of Grupo Aeroportuario de la Ciudad de Mexico, S.A. of C.V. (“GACM”) for the construction, administration, operation and exploitation of the New International Airport of Mexico City. Clause 10.15 of the Concession and article 27 of the Airports Law establish the causes by which the Secretary of Communications and Transports can revoke the Concession. These causes are all related to the breach by the concessionaire of any of the obligations or conditions established in the airports law, its regulations and the respective concession title.

After the concession was granted, GACM entered into several commercial agreements and public work contracts with various Mexican/Foreign service providers and construction companies as a result of: I) direct adjudication; II) public tenders; and III) invitation to three participants, pursuant to the Law of Acquisitions, Leases and Services of The Public Sector (LALSPS). It is worth mentioning that in the case of direct adjudication, the government is not obliged to provide the information related to the invitation to tender, meeting of clarifications, opening and reception of proposals, and the certificate of issue of the Judgment according to article 40, 41 and 42 of the LALSPS⁵.

Commercial Agreements and Public Work Contracts

Such commercial agreements and public work contracts are sure to have included penalty clauses establishing

1.- https://asyv.com/images/coelum/2016/TERRUM_JUNE_2018.pdf

2.- <https://news.culturacolectiva.com/politica/consulta-ciudadana-sobre-naicm/>

3.- national electoral institute

4.- Article 5 and 12 of the Federal Law on referendum

5.- <http://gacmda.gacm.mx:8880/files/opendata/opend/18021-021-AD-SE-SCSYRP-2018/8-%20CC/8.pdf>

high compensation amounts in case of unilateral termination. Therefore, in case of termination of contract due to the cancellation of the NAICM, the Federal Government is likely to face lawsuits and claims for damages as a consequence of the penalty clauses included in said commercial agreements and public work contracts.

Furthermore, and as mentioned, such agreements and contracts were also entered with foreign stakeholders in which compensations could be higher due to various commercial treaties.

Public Tenders in Process

If the cancellation of the public tenders would be cancelled, is highly probable that the bidders participating in such tenders, would appeal against the Federal Government, either through an Amparo or a non-conformity resource ("*Recurso de Inconformidad*"),^{6,7} before The Secretariat of the Public Function or through another administrative procedure.

Labor Contracts

Another cost that the federal government would have to face is workers' compensation depending on the work relationship according to article 50 of the Federal Labor Law.

TUA income which has been encumbered

Through the TUA Issuer Trust⁸ the right to collect passenger charges at the Mexico City Airport System (for its acronym in Spanish, *TUA Tarifa de Uso Aeroportuario*) was sold and transferred as a collateral to obtain the resources needed to conduct the construction of the NAICM. On October 7, 2015, the TUA issuer Trust entered into a certain amended and restated assignment agreements with the existing airport and GACM (jointly, the "Sponsors"), pursuant to which each Sponsor assigned to the TUA Issuer Trust all of its rights, title and interests in and to all amounts due or to become due in respect of passenger charges collected and to be collected from airlines operating at the existing Airport and the NAICM (jointly, "Mexico City Airport System"), respectively, among other assets and rights⁹.

Furthermore, the TUA issuer Trust entered with Banco Invex, S.A., Institución de Banca Múltiple, Invex Grupo Financiero, as trustee of the TUA Security Trust ("TUA Security Trust Trustee") into certain Amended and Restated Irrevocable Guaranty, Administration and Payment Trust Agreement No. 2172, dated October 29, 2014, as amended September 29, 2016 (the "Security Trust") to which the TUA Issuer Trust contributed the right to collect passenger charges at the Mexico City Airport System to secure, and serve as a source of payment for, the existing debt financing obtained for the construction of the NAICM¹⁰.

The partial or complete interruption of the NAICM would constitute an event of default under the financing documents and the TUA Issuer Trust's secured creditors would be entitled to exercise of any rights or remedies in respect of the TUA Collateral including i) all proceeds of insurance payable; ii) indemnities in connection with certain exportation events affecting Mexico City Airport System; and iii) all proceeds of security bonds payable by the airlines in connection with their collection of passenger charges at the Mexico City Airport System.

Considering the mentioned legal aspects, there are many consequences that should be reviewed in more detail by the Federal Government before proceeding with the cancellation of the NAICM in the meantime the construction of the new capital airport continues under previously established plans and programs.

6.- Article 65 of LALPS

7.- However, article 67 of LALPS establishes that the non-conformity resource is inadmissible when "(...) III. when the contested act cannot have legal or material effect since the object or the matter of the contracting procedure derived from has ceased to exist (...)"

8.- The special purpose trust created under the Amended and Restated Irrevocable Administration and Payment Trust Agreement No. 80460, dated September 29, 2016, among the Nacional Financiera, S.N.C, Institución de Banca de Desarrollo, as trustee, Banco Inbursa, S.A., Institución de Banca Múltiple, Grupo Financiero Inbursa, as settlor, and each Sponsor, as first place beneficiary.

9.- http://www.aeropuerto.gob.mx/doc/Offering_Memorandum.pdf

10.- http://www.aeropuerto.gob.mx/doc/Offering_Memorandum.pdf

PROFECO performs more than 7 thousand conciliations by Civil Aviation Law.

Since the amendment of the Civil Aviation Law have been carried out 7,513 alternative dispute resolutions, with an amount recovered of more than 80 million pesos in favor of the consumer population. www.grupoenconcreto.com/realiza-profeco-mas-de-7-mil-conciliaciones-por-ley-de-aviacion-civil/ September 07, 2018.

ICAO will implement a new audit to the Member States as of 2019.

The International Civil Aviation Organization (ICAO) could begin to apply a new audit to its member states, in order to verify its compliance with the guidelines of Annex 19 regarding operational safety, as part of the Universal Safety Oversight Audit Programme (USOAP), which only contemplated two types of verification: air navigation and airport security and facilitation. This new audit has the intent to regulate the certification and implementation of the operational Safety Management System (SMS), as well as information and radar data among Member States and its actions and results in safety and security. <https://a21.com.mx/normatividad/2018/09/13/implementara-oaci-nueva-auditoria-los-estados-partir-de-2019> September 13, 2018.

AICM International traffic rises 10.4% in 2018.

During this year, the International Airport of Mexico City (AICM) has attended around 11.4 million passengers on international flights, an increase of 10.4% compared to the 10.3 million registered users in the same period during last year. With regards to the cargo operations, around 380 thousand 549 tons were transferred from January to August, 9.95% more compared to the same period of 2017; international goods increased 12.43% while domestic goods decreased by 0.48% year-over-year. <https://a21.com.mx/aeropuertos/2018/09/17/se-eleva-104-trafico-internacional-del-aicm-en-2018> September 17, 2018.

Mexico's president-elect grounded on commercial plane for hours.

Mexico's President-elect Andrés Manuel López Obrador has insisted that he still plans to sell the presidential jet despite spending three hours grounded on a commercial plane.. <https://www.bbc.com/news/world-latin-america-45596480> September 21, 2018.

Emirates withdraws plans to operate Dubai-Mexico flights.

Emirates has dropped plans to operate flights between Dubai and Mexico City, after earlier announcements that it was looking forward to expanding its network in Latin America. It was supposed to fly from Dubai to Barcelona then to Mexico City, benefiting both consumers and businesses between the two cities. Emirates stated that it will no longer be commercially viable to go ahead with the plan, since it only managed to secure rights to operate three flights a week, not daily. <https://gulfnews.com/business/aviation/emirates-withdraws-plans-to-operate-dubai-mexico-flights-1.2281940> September 25, 2018.

Canceling the NAICM would mean a delay of six years.

Cancel New Mexico City International Airport (NAICM) construction would involve a delay of at least six years to consolidate another solution to the problem of saturation that affects the actual International Airport of Mexico City (AICM). Experts have stated that although the location of the NAICM in the Valle de Texcoco is not ideal because its geological challenges will result in high maintenance costs, it is preferable to continue with the progress. <https://a21.com.mx/aeropuertos/2018/09/25/cancelar-el-naicm-significaria-un-retraso-de-seis-anos> September 25, 2018.

63% support the airport in Texcoco.

The support to continue the construction the New International Airport in its current location in Texcoco increased in the last month, according to the most recent national interview of El Financiero. <http://www.elfinanciero.com.mx/nacional/63-respalda-el-aeropuerto-en-texcoco> September 25, 2018.

Mexico City International Airport Leads Latin America Region in International Connectivity for Second Straight Year, According to OAG's 2018 Megahubs Index.

Mexico City International Airport (MEX) is the most connected airport in Latin America, ranking 20th in International Connectivity and 12th in low-cost carrier connectivity. <https://www.businesswire.com/news/home/20180926005098/en/Mexico-City-International-Airport-Leads-Latin-America> September 26, 2018.

CANAERO and United Kingdom celebrates cooperation agreement.

With the objective to give strength to the bilateral cooperation between Mexico and United Kingdom, the National Chamber of Air transport (CANAERO) and the United Kingdom embassy in Mexico signed a cooperation agreement. <https://a21.com.mx/aeronautica/2018/09/26/canaero-y-reino-unido-firman-acuerdo-de-cooperacion> September 26, 2018.

U.S. Air Force May Use Artificial Intelligence for Pilot Training.

The USAF is testing new educational technologies the service believes may help its airmen to learn faster while also improving retention. Lt. Gen. Steven Kwast, commander of Air Education and Training Command hopes the results of current testing, scheduled to be completed next year, will show technologies such as artificial intelligence and virtual reality, all funneled through super computers, can improve the speed and effectiveness of the adult brain. If the Air Force testing is successful, it's not farfetched to imagine civil pilot training one day using some of those same proven technologies in its training. <https://www.flyingmag.com/news> September 27, 2018.

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