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Airport view

Public-Private Partnerships in Airports

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Find below sample relevant laws, policies, and regulations, a checklist that highlights the key legal issues that need to be considered in relation to airport concessions, sample airport concession agreements and reading materials related to PPP airport projects.

Airports provide access to and interlink between regional, national and international markets. This makes investment in existing or new airport infrastructure essential to economic development. Traditionally, airports were owned, managed and operated by governments but there has been a worldwide trend towards increasing private sector involvement to varying degrees, including through the use of public-private partnerships ("**PPPs**").

A number of different models have been used for airport PPPs:

- **Concession arrangements** – the private operator pays a concession fee to the contracting public authority and recovers its costs (plus a return on investment) through collecting various charges from airport users (e.g. service charges by airlines, rent from retail tenants inside the airport, parking fees, etc). This arrangement largely shifts revenue and demand risks associated with the infrastructure to the private operator, although the public authority may retain a degree of revenue risk through minimum revenue guarantees to the private operator.
- **Availability model** – the contracting government has authority to make regular payments to the private contractor based on the availability of the airport facilities. This has sometimes been used where the associated demand / revenue risk is perceived as too high by the private contractor (e.g. during the initial phases of a new airport in a developing country, where revenue forecast is uncertain).

A key issue in airport PPPs is the regulation of airport charges. As airports typically occupy a natural monopoly position, normal market forces have limited effect over the setting of airport charges. A delicate balance would often need to be struck between ensuring that the public can access the airport at a reasonable cost and protecting the airport's profit margins. The private developer's flexibility in setting and collecting tariffs has a significant impact on its assessment of the attractiveness of the project and the level of revenue / demand risk it is prepared to assume.

Laws, Policies & Regulations

Australia

Most airports in Australia are leased by the federal government to operating companies. Their development and operation are regulated under the Airport Act 1996 (Cth). A key requirement under the Act is that each airport must have a 20 year master plan approved by the responsible federal minister, which sets out the airports' development and operational activities over period covered by the plan.

India

Airports in India can be either owned, developed and operated by State entities, such as the Airports Authority of India ("**AAI**") or by private companies. A key requirement for private airport operators is that

they must have obtained a license to operate airports as required under Rule 133A of the Aircraft Rules 1937 ("**Aircraft Rules**"). They must also enter into an Operation, Management and Development Agreement with the AAI.

Spain

In general terms, the regulation of airports in Spain is mainly implemented through Royal Decree Law 13/2010, 3 December, approving tax and labor measures and measures to foster investment ("**RDL 13/2010**") and Law 21/2003, of 7 July on Air Security ("**Law 21/2003**").

Furthermore, the general Spanish policies for the development of airport infrastructures and the adequate rendering of basic airport services are contained in the Document of Airport Regulation ("**DORA**") for the period 2022-2026 approved by the Spanish Ministry of Transport.

AENA, S.A (formerly Aena Aeropuertos, S.A.) ("**AENA**") is the state-owned company that manages general interest airports and heliports in Span.

Being a state-owned company, the applicable legal framework for AENA is private, with certain specificities as regards contracting for works and services in the Spanish general interest airports managed by AENA.

Such specificities for AENA in its contracting process for works and services in general interest airports, may be summed up as follows:

- In general terms, the contracting processes are subject to the principles of publicity, transparency, confidentiality and competitiveness and may elect subject to certain requirements, to apply open, restricted or negotiated procedures.
- AENA, as a state-owned company has to fulfil the requirements of Royal Decree-law 3/2020, 4 February ("**RDL 3/2020**"), transposing Directive 2014/25/UE and Directive 2014/23/UE, which mainly regulates contracting for certain entities that operate in water, energy, transportation and postal services, being public sector entities and public companies which are not, *stricto sensu*, Public Administration.
- For those contracts not subject to RDL 3/2020, AENA has approved its own internal rules for contracting which also contains publicity, transparency, confidentiality and competitiveness principles. These internal rules for contracting are also applicable to those contracts subject to RDL 3/2020 on a subordinated basis, together with private law.

Further information of the different bidding processes and tenders published by AENA can be found in the tender section of its website.

Checklist Airport BOT & Concession Agreements

- Checklist of legal issues to consider when developing airport Build-Operate-Transfer (BOT) or concession agreements: This checklist highlights the key legal issues that need to be considered in relation to airport concession agreements (assuming single site airport projects), covering both due diligence issues regarding the host country's laws, as well as commercial and regulatory considerations.

Sample Airport Concession Agreements

Large Airports

Costa Rica

- Concession Agreement: Daniel Oduber Quirós International Airport's New Passenger Terminal (document in Spanish with summary of key features in English) - Concession agreement for the design, construction, operation and maintenance of a new passenger terminal of the Daniel Oduber Quirós Airport, entered into by and between the Government of Costa Rica, Coriport S.A. and the Coriport Consortium. The concession agreement is based on the Ley General de Concesión de Obras Públicas con Servicios Públicos (Concession of Public Work with Public Services).

Bulgaria

- Sofia Airport Tender Documentation - Tender Document for the Designation of a Concessionaire and Awarding a Works Concession for Airport in Sofia of 5 July 2018 as amended on 29 March 2019 published by the Republic of Bulgaria, Ministry of Transport, Information Technology and Communications. Bidding document contains low carbon incentives.

India

The Government of India has developed new airports or modernized existing airports in several cities on a PPP basis:

- Delhi, India: Operation, Management and Development Agreement between the Government of India and Delhi International Airport, 2006 (brownfield)
- Mumbai, India: Operation, Management and Development Agreement between the Government of India and Mumbai International Airport, 2006 (brownfield)
- Hyderabad draft concession agreement, India: Concession Agreement for the Development, Construction, Operation and Maintenance of the Hyderabad International Airport between the Government of India and Hyderabad International Airport, 2004 (greenfield)

Small Scale Airports

South Africa

- Skukuza Airport - Public-Private Partnership Agreement for the Management and Operation of Skukuza Airport in the Kruger National Park (sample draft agreement of October 2008 with annotations) - Model agreement for a PPP involving the management and operation of a single runway small scale airport.

Further Reading and Resources

Private Investment in Airport Infrastructure

- Main elements of the concession model for the Madrid-Barajas and Barcelona-El Prat airports (Principales elementos del modelo concesional de los aeropuertos de Madrid-Barajas y Barcelona-El Prat), Clifford Chance, Client Briefing June 2011 (English and Spanish)
- La experiencia española en concessiones y APPs: Puertos y Aeropuertos, by Andrés Rebollo, Programa para el Impulso de Asociaciones Publico-Privadas en Estados Mexicanos (PIAPPEM), October 2009.
- Developing Best Practices for Promoting Private Sector Investment in Infrastructure - Airports and Air Traffic Control,Asian Development Bank (ADB) 2001: This is one volume of a five-volume set presenting the findings of an ADB regional technical assistance study which developed sector-specific best practices for promoting private sector participation in key infrastructure sectors in ADB's developing member countries. The best practices cover the role of government, institutional reform, strategic planning, legal and regulatory frameworks, unbundling and competition, contractual

arrangements, sources of financing, and the allocation of risk. This volume examines the underlying economics and alternative models of private sector participation in the airport sector, and recommends approaches to encourage successful private sector participation.
- The Airport Ownership and Regulation Guidance Booklet and Balanced Concessions for the Airport Industry published by the International Air Transport Association ("IATA") sets out a useful overview of different ownership and operating models for airports and best practice guidelines for implementing PPPs for airport projects.

Airport In-Terminal Concessions

- Guidebook for Developing and Leasing Airport Property, Report 47, Airport Cooperative Research Program (ACRP), 2011 - This Guidebook discusses the key issues associated with developing and leasing available airport land and summarizes best practices from the perspective of the airport sponsor. The guidebook presents a diverse set of case studies that show several approaches airports have taken to develop and lease property for both aeronautical uses (e.g., aircraft maintenance facilities, fixed-base operator facilities, hangars, training centers, and cargo facilities) and nonaeronautical uses (e.g., light industrial and commercial facilities). A glossary of terms is also included. This guidebook will therefore be of interest to anyone desiring a better understanding of the process for developing and leasing airport property.
- Resource Manual for Airport In-Terminal Concession by the Airport Cooperative Research Program. This manual provides guidance on the development and implementation of airport concession programs. The report provides information on the airport concession process; concession goals; potential customers; developing a concession space plan and concession mix; the Airport Concessions Disadvantaged Business Enterprise (ACDBE) program; and concession procurement, contracting, and management practices.

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Additional Resources

- Selected World Bank Tools
- Municipal Public-Private Partnership Framework
- World Bank Group Climate Toolkits for PPPs

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