What liability for the airport concessionaire?

Isabelle Lelieur
Partner - Chevrier Avocats

McGill University/PEOPIL Conference on INTERNATIONAL AVIATION LAW
Dublin – October 2018
Liability of Airports, ANSPs and Maintenance Providers
The concession: a worldwide picture
The concessionaire “at risk”

- Contracting authority
- Full transfer of activities
- Full transfer of liabilities
- Economic operator

OPERATING RISK
An overall liability

A systemic approach

- all airport stakeholders and the airport operator are inter-connected
- if one chain link fails, it impacts the whole chain

High legal exposure of the airport
An overall liability

- Public grantor
- AIRPORT CONCESSIONAIRE
  - Airlines
  - Retail concessionaires
  - Passengers
  - Ground-handlers, security companies, etc.
  - States services
  - Third parties
  - ...

Concession definition

Overall liability Insurance
## Typical allocation of responsibilities

<table>
<thead>
<tr>
<th><strong>The grantor</strong></th>
<th><strong>The concessionaire</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Owns the asset</td>
<td>Takes care of the asset and develops it</td>
</tr>
<tr>
<td>Defines and maintains the policies</td>
<td>Implements the policies</td>
</tr>
<tr>
<td>Sets the economic regulation</td>
<td>Optimizes the asset performance and shares the value</td>
</tr>
<tr>
<td>Provides a favorable contractual / institutional background</td>
<td>Raises private funding (debt and equity)</td>
</tr>
<tr>
<td>Adapts to external necessities and national constraints</td>
<td>Proposes solutions</td>
</tr>
<tr>
<td>Monitors and benchmarks the performance</td>
<td>Reports and analyses</td>
</tr>
</tbody>
</table>
High legal exposure in case of breach

Exemples of abusive termination by the grantor

Philippine court sets $510.3 M payment to airport builder Piatco

US$271M paid by the government of Maldives in damages to Indian infrastructure firm, GMR
Insurance

Legal obligation
in most jurisdictions

Contractual obligation
- Mandatory insurance policies
  i.e. Property liability insurance, Third-party liability insurance

- Warranties
  Several beneficiaries

  All concession risks, reasonably foreseeable, shall be covered

  Reliable insurers of international standing are required

19-20 October 2018
Thank you for your attention

Isabelle Lelieur
Partner
Avocat au barreau de Paris

CHEVRIER Avocats - 1 rue Brémontier - 75017 PARIS
Tél : 33 (0) 1 53 41 81 01 - Fax : 33 (0) 1 53 41 81 09
email : isabelle.lelieur@chevrier-avocats.com