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KEY NOTES

Blockchain and digital currencies

CREMADES & CALVO-SOTELO ABOGADOS

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Graduated in Law from the University Autónoma de Madrid (2001). Master in Corporate Legal Consultancy at the Business Institute (IE) in Madrid (2002). His professional carrier began in the Corporate department of Uría Menéndez law firm (2002 – 2005) and subsequently he was incorporated to the Information Technology and Intellectual Property department.

After three years working in Uría Menéndez law firm in 2005 he joined Cremades & Calvo-Sotelo Corporate department and he currently is Partner and Coordinator of the area of Intellectual Property rights and Competition Law.

Director General of International Financial Litigation Network (2013-2016); Director General of Euro Latam Lex (ELLEX) (2015); And Eisenhower Fellow Multinational Program.

Distributed Ledger Technology (DLT), commonly known as Blockchain, is the underneath technology Bitcoin and other digital currencies such as Ethereum. Due to the emerging of the Internet, it has been a while since we can send a copy of an email in seconds to any server in the world, that is why scholars would name the Internet "democratization of information". But, in regard to assets (money, art, a car, a house…) it doesn't quite work the same way, and, sadly, sending a copy in seconds does not work. Since, if I send you an asset it is important that I no longer have it, and it is for that purpose that we generally rely on third-parties, intermediaries we trust to authentify the transaction (banks, government, big social media companies). However, these intermediaries have certain drawbacks: they are centralized, they can be hacked, they exclude people who cannot have a bank account and they slow down any transaction.

Blockchain can transform the Internet of information into the Internet of value by using a global ledger run of billions of computers that will allow us to store and exchanged assets without the intervention of intermediaries.

In this scenario, the role of attorneys is key to ensure that the technology provides enough security and certainty to all players concerned. During my fellowship I engaged with several attorneys from well-known international law firms (DLA Piper, Goodwin Procter or Holland & Knigth) involved in this disruptive technology. After paying close attention all the inputs and insights, I would highlight the following as the main points to be dealt with by lawyers:

- Liability: the risk for customers regarding properly settled trades, security and confidentiality.
- Money laundering: despite the countless benefits arising from digital currencies and the Blockchain, there is a risk of bitcoins being used for money laundering.
- Smart contracts: since smart contracts are prewritten computer codes, their use present enforceability questions.

During my Fellowship I had the opportunity to meet with members of the Uniform Law Commission (ULC) whose main project is to provide states with nonpartisan, well-drafted legislation that brings clarity and stability to critical areas of state statutory law. It happens to be that ULC has approved a Regulation of Virtual Currency Businesses Act, he prior study of the text along with ULC insights about how digital currencies should be regulated will be extremely helpful in my future projects. This Regulation relates with a very controversial discussion about the legality of Initial Coin Offers (ICOs). Companies and individuals are increasingly considering ICOs as a way to raise capital. While these digital assets, and the technology behind them, may present new and efficient means for carrying out financial transactions, they also bring increased risk of fraud and manipulation. I discussed these issues with Legislative Director for Representative Jared Polis, Hilary Gawrilow or attorneys from Securities Exchange Commission the Cyber Unit, Philip Moustakis and Pamela Sawhney.

Although a unanimous consensus has not been reached on these issues between attorneys, the blockchain community and the regulators, my conclusions after several interviews is that ICOs – whether they represent offerings of securities or not – can be an effective way for entrepreneurs and others to raise capital, even for innovative projects. However, any such activity involving an offering of securities must be accompanied by the important disclosures, processes and other investor protection standards that our securities laws require. The right balance between investor protection and new funding opportunities using blockchain is a topic I will definitely tackle in the near future.

Artificial Intelligence

My interest in Artificial Intelligence and Robotics started with The Economist issue from May 2015, that took this subject directly to its cover. Soon I started to understand the potential of this technology and exchange views with a variety of professionals belonging to different industries, such as health care, automobiles or customer services.

Many legal and ethical issues are an ongoing debate within the European Union . These discussions and paper inspired some colleagues and I to incorporate a formal association named "Lawbotics" with the purpose of promoting the debate and discussions on the legal issues arising from the development of artificial intelligence and robotics.

Happily, a few days before starting my Fellowship I learnt about the We Robot Conference in Stanford. Thanks to the flexibility and hard work of my Program Officer, Jack Schneider, I was able to attend that major event on law and artificial intelligence. For two days I had the chance to discuss and exchange inputs about a wide variety of issues regarding ethics and law on Robots and AI with several Stanford and Yale Law professors.

A few weeks later, and thanks to my friend and Chicago Eisenhower Fellow, Jeffrey Singer, I had a meeting with legal counsel at Hyundai and Kia. We spent over four hours on an ultimately enlightening debate that really connected with what I had discussed several weeks before in Stanford. Somehow, the pieces of my puzzle started to fit together since artificial intelligence discussions with ethics and law professors had a great resemblance with the issues that concerned major autonomous car manufacturers.

Data protection in the Artificial Intelligence is certainly an important question that I want to tackle. In Spain, and most countries of the European area, data protection is considered an essential right linked to the right of intimacy.

Consequently, whenever there is a situation that has not a clear answer, the right to privacy should prevail. Provided that mainly in China, but in the US also, data protection is not so overprotected, European Union industry has a great disadvantage for obtaining and processing data, since one of the goals of artificial intelligence is to establish patterns based on billions of data. Finding the right balance between technological development and the protection of our privacy will definitively determine the future AI. As a lawyer, I will work together with other European and American colleagues in order to try to find such balance.

By coincidence, I happened to be in Washington DC when Mark Zuckerberg testify before US Congress about Facebook data protection policy. The city was completely focused on this issue, and as a prominent Spanish journalist told me during those days, "if Facebook were a Spanish company, our Data Protection Agency would have ordered its closing on 2007". A couple of days later, I was discussing these issues with others Eisenhower Fellows from my Global Program, when one of them said "data protection is a luxury for developed countries" and that Facebook had had such a positive impact on his country, that what they do with our data is not really an issue. I particularly recall those two conversations because they are a great example of the importance of globally engaging in these discussions and enrich from different approaches to data protection and AI.

Prevention of corruption in arbitration: The exclusion of the nature of the arbitrator as a public official in Italian case law

Last 24th of October 2017, Ms Accurso Tangano, Judge for the Preliminary Investigations at the Tribunale in Milano, decided to dismiss the criminal proceeding opened after the filing of a complaint related to the position of the President of an Arbitration Panel, created to decide about a civil issue with regard to an insurance credit for advanced payments allegedly claimed by a Campania broker, against an USA/UK Insurance Company.

The matter under consideration had originated two different proceedings against the broker A.S.: one, the criminal action before the Tribunale in Torre Annunziata, for the crime of aggravated misappropriation, and the other, the civil one before the Tribunale in Milano, whose resolution had been, then, submitted to an Arbitration Panel of three professionals. With regard to this controversy, the Insurance Company, in the course of the events, had acquired a wire tapping in which the President of the indicated Panel had said he had the possibility to use his influence and get to a positive outcome in many controversies, due to his political and judicial accesses and another wire tapping in which the Campania broker himself bragged about the adoption, by the President of the same Panel, of a favorable decision for him, in the face of the illicit payment of a bribe in the percentage of 10% of the total amount he would have got, when the final arbitration award should have been issued in his favor.

That situation had pushed the representatives of the USA/UK Insurance Company to lodge not only a civil complaint in order to get to the recusal of the President, but also a formal complaint, before the Procura della Repubblica in Milano, presenting all the facts under consideration and assuming the abovementioned professional had committed and was involved in the crime of corruption.

The penal Order of acquittal issued by the Judge for the Preliminary Investigations, starts by considering that, due to what article 813, par. 2, of the Code of Civil Procedure, as introduced by Legislative Decree n.40/2006, states that: “the arbitrator does not have the status of Public Officer or person entrusted with a public service”.

That legal “barrier”, therefore, does not allow the attribution, to the arbitrator, of that status (being a Public Officer, precisely, as indicated in article 357 of the Penal Code) which would permit the configuration of the criminal charge of corruption, since, as above said, in order for the crime to be configured and committed, it is necessary that the offender has the specific, indicated, public qualification.

According to what the Judge writes in her Order, the function performed by the arbitrators have a private nature and private only: “the arbitrators perform their functions and are bound to the private parties by legal private transactions”, which are comparable and similar to a civil mandate, “as well explained by the civil Supreme Court, in the sentence n. 6736/2014….the private capacity and qualification of the arbitrators does not disappear for the fact that their activities are regulated by the Law and are a means of Law enforcement”.

The same result, continues the Magistrate, is achieved also examining the single criminal sentence indicated in the Order, which says that: “the arbitration has a private nature and it represents a waiver of the judicial action and of the jurisdiction of the State, and it is seen as an option for the resolution of the controversy from a private standpoint….the arbitrators who underwrite the arbitration award are not Public Officers authorized by the Law to create public fiduciary documents” (see sentence n. 5901/2013, Cass. Pen., Sez. VI,).

STUDIO ISOLABELLA

Luigi Isolabella
Lawyer and partner at Studio Isolabella

Luigi Isolabella is a criminal lawyer and a partner in the law firm Studio Legale Isolabella. Mr Isolabella has defended clients in numerous proceedings involving charges of false reporting, market manipulation, accounting fraud, bribery, corruption, malfeasance, receipt and illegal exportation of cultural assets. Over the years, Mr Isolabella has also developed a significant expertise in medical malpractice, representing hospital executives, individual doctors and hospitals as a whole.

Matteo Pozzi
Lawyer at Studio Isolabella

Matteo Pozzi is a criminal lawyer. He is part of the Studio Legale Isolabella since 2004. He works mainly in the area of corporate law and criminal liability in medical malpractice.
He has defended clients in numerous proceedings involving bankruptcy and corporate charges, and has defended and defends individual doctors in many medical malpractice trials.
In recent years, he has also specialized in the liability of legal persons, taking part in the drafting of Model 231 for both banks and industrial companies, and in some cases even companies having a head office abroad.

Even if the Law and the Jurisprudence mentioned in the Order seem to be clear, banning the application of the abovementioned criminal offence of corruption due to the lack of public status for the arbitrator, it must be noted that there is other Jurisprudence, also more recent than the one indicated by the Judge, and Doctrine which consider the situation from a different angle and draw a different picture.

With regard to this different view, it has to be underlined that the Corte Costituzionale, in the sentence n.223/2013, has highlighted that: "*with the new Law, n. 40/2006, the Legislator has introduced some procedural rules which confirm the attribution to the arbitration of the qualification of substitute for, and to, the public justice. Even if the ritual arbitration still remains a phenomenon which involves the waiver of the public jurisdiction, it takes from the public jurisdiction some of the mechanisms useful to achieve an outcome of efficacy substantially equal to the dictum of the State Judge*". As stated by the mentioned sentence, therefore, there are many and very evident points of contact between the traditional jurisdictional function and the arbitration alternative one.

A simple example is deductible from the contents of article 824 bis, of the Code of Civil Procedure, which provides that: "*the arbitration award has the same effects of the sentence pronounced by the Judiciary Authority*".

The same result is achieved examining the sentence n.527/2000, pronounced by the Joined Chambers of the Supreme Court, which, precisely, states the similarity of the effects between the public judgement and the arbitration award. It is easily understandable that, the prescription indicated in article 824 bis o the Code of Civil Procedure, shows the clear intent of the Legislator to give a jurisdictional value to the arbitration in itself.

It must be also underlined that, in addition to the provisions indicated in the mentioned sentences issued by the Supreme Court and the Corte Costituzionale, various Authors have underlined the importance of overcoming the formal frame of the arbitration function, focusing, on the other hand, on the objective characteristics of the activities effectively carried out by the professional. From this standpoint, some Authors have written and noted that the Law provides different procedural rules which indicate that the arbitration function is objectively comparable to the public jurisdiction: from the faculty, for the arbitrator, to raise Constitutional issues (see article 819 bis of the Code of Civil Procedure), to the faculty to refer and submit cases to the European Court, up to the necessity to respect the obligations and rules related to the statute of limitation and the transcription of the arbitration award, which are the same as those which are in force for the public sentences. It's easy to see, then, that those rules effectively equate the arbitration award to the sentence issued by the judge and the arbitration function to a jurisdictional one.

That being the case and under these circumstances, therefore, even though the article cited in the Order (813 par, 2 of the Code of Civil Procedure) formally bans the application of the penal provisions to the arbitrator, who, also according to the Judge in Milano, won't be prosecutable for the crime of corruption, there's enough food for thought to reconsider the effective position of the professional and of his effective function, in the light of the issues indicated above. We can only stress the fact that this situation shows a concrete lack of protection for the citizens and a regulatory gap which eventually ends up wrongly benefiting a professional who effectively and substantially performs a jurisdictional function at the expense of the justice.

Enhancing multilateralism from the tax perspective: Paraguay signs OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Paraguay's participation in the international tax arena has risen since it joined the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and the OECD/G20's Inclusive Framework on BEPS, both during 2016. Recently, on 29 May 2018 the Finance Minister subscribed the OECD's Multilateral Convention in order to boost international tax transparency and fight cross-border tax avoidance schemes.

Although the Paraguayan Congress did not introduced the Multilateral Convention into the national legal order yet, this is expected to happen in the near future.

In a moment where financial information of the taxpayer is becoming a very precious "asset" for tax authorities worldwide, the accurate decision of Paraguay's government to sign the Multilateral Convention proclaims a clear message: Paraguay is committed to combat tax avoidance and evasion through implementation of common standards and enhancing its treaty network with several other jurisdictions.

The effective enactment and entering into force of the Multilateral Convention demonstrates Paraguay's seriousness, competitiveness and investment-friendliness towards the international community of nations. This would optimistically enhance the country's image as a positive destination for investment and value creation, due to its adherence to fair and investment-protectionist policies.

For the time being, the legal community can expect many benefits from the Convention. Yet legal challenges are to be addressed as well. The Convention provides the possibility for Tax Administrations to perform bilateral cross-border audits and tax collection procedures based on the exchange of sensitive information from certain individuals and companies. Although the international fiscal transparency is a greater good to be achieved, the rights of the taxpayers to privacy and due process shall be protected as well.

Moreover, the Paraguayan Constitution provides the basic procedural rules that must be respected, and this cannot be overviewed neither by the Paraguayan Tax Administration nor by foreign tax bodies. In this sense, we strongly believe that an adequate implementation of the Multilateral Convention will have great benefits to offer, and the legal community shall act as guardian of the taxpayers' rights when the time of simultaneous tax audits and/or tax collections occur. The transfer of fiscal sovereignty to foreign tax administrations to perform and/or collect taxes from taxpayers located in Paraguay should strictly follow our constitutional mandates and abide by our local rules.

Livieres Guggiari Law Firm celebrates the big step taken by Paraguayan authorities to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and hope that Congress will introduce it into our domestic legislation rather sooner than later. We will be very glad to assist taxpayers and financial institutions to comply with the reporting and informative obligations that will derive from the enforcement of this international legal regulation.

LIVIERE LG GUGGIARI

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Lawyer since 2013

Practice Areas: Tax Law, International Tax Law, Commercial and Corporate Law.

Education: Catholic University "Our Lady of the Assumption": Lawyer; Ruprecht-Karls-Universität Heidelberg, Germany (2018): candidate for Master in Law (LL.M. - Magister Legum).

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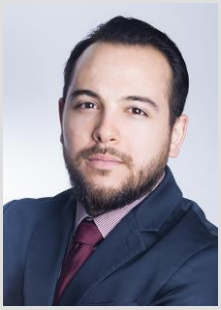
Fair and Equitable-Treatment and Legitimate Expectation on the Energy Arbitration Cases Against Spain.

The electricity sector has always been a key point in the different States since it is a highly regulated sector, and public interest for the reason it directly affects the citizens of the countries. This sector is in constant evolution as all the regulated sectors due to the new technologies that are appearing both in the world and in the different markets.

With the Energy Charter Treaty (ECT), the European Union tried to unify the electricity sector of the European Community, with the countries of Eastern Europe and that all try to follow and play with uniform rules.

CREMADES & CALVO-SOTELO ABOGADOS

Fawzy Ayubi Albornoz



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Spain, since 1997 with the appearance of the Law of the Electricity Sector, tried to evolve its electric legal framework through the enactment of Royal Decrees and Royal Decrees-Law. At the beginning of the year 2000 seek to encourage foreign investment in what they considered the future, that is, renewable energies, which entail a high economic investment, together with a high risk for investment due to the regulation that this sector can be due to different circumstances that may appear.

Given the economic circumstances arising from the international economic crisis, the State was forced to make cuts to the first incentives offered but always, in its opinion, in a manner consistent with the economic situation and without disproportionately harming the investors they were receiving the remuneration regimes that Spain was offering.

Due to what happened in Spain, lawsuits were filed for investments through International Arbitration, before the International Center for Settlement of Investment Disputes (ICSID) and the Stockholm Chamber of Commerce.

Investment Disputes (ICSID) and the Stockholm Chamber of Commerce. And all this, based on the Energy Charter Treaty, in application of 2 international principles, such as Fair and Equitable Treatment (FET) and Legitimate Expectations that was originate in the investors at the time of making their investment and considered injured.

These Arbitrations against the State end up being more than 30 and in which at this time most of these continue. Since 2013 awards have been issued that can change the direction of most of these.

The Article of the Energy Charter Treaty that is the focal point of all disputes is 10 (1), which states that:

> "*Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party*".

It is one of the key principles of International Investment Law. These principles do not have a specific regulation, but they are concepts that are evolving, that are shifting with the decisions that the Courts are taking, and that are creating different currents and doctrines that polarize the world of International Investment Arbitration.

Although clearly, the cases are more advanced than the doctrine itself, the awards that are issued are more than the time allowed to study the doctrine, it can be said that these principles are already well known in the world of international law, that they have their own importance and at the same time a rigorous application of them, so we must be heedful to the following failures that are issued in the International Investment Arbitration to see how this development continues and what new additions may be made.

Is the Venezuelan Petro a Cryptocurrency?

I. Introduction

Money essentially is a mechanism through which people can pay. Thus, thanks to it, people can create, modify or extinct contractual or legal obligations. The basis of such mechanism of payment is as many other social instruments, people's confidence. Confidence, not in the payer, but in the instrument of payment is what underpins the material transactions between creditor and debtor: confidence in that the mechanism of payment is a legitimate, accepted and lawful instrument for any kind of commercial transaction.

A recent, and rather important, question is whether cryptocurrencies can be considered economically, but also legally, money. Controversies in this respect are intense and, as of today, no conclusion has been reached. Nevertheless, for purposes of this article, we are of the opinion that, as long as cryptocurrency is (i) a mechanism of payment, (ii) a medium for measuring value of goods and services, and (iii) it is backed by the confidence of the market, it might be considered money, at least economically, even though no legal recognition exists. The vital aspect, however, as to the cryptocurrencies is that (iv) neither a Central Bank nor government authority is behind its creation, issuance, development in certain market: the blockchain, the system in which cryptocurrencies are based upon, enables the parties to a transaction to interact each other without the intervention of a Central Bank - that precisely is what makes a cryptocurrency a cryptocurrency.

Therefore, based upon the presumption that cryptocurrency might be money, the question is: might the Petro, which is planned to be used as money by the Venezuelan Government, be a cryptocurrency as well?

Only a meticulous analysis as to the features and characteristics of the Petro, the first digital currency issued by a Government, can provide us with an answer to the previous question.

II. "El Petro", the First Digital Currency Developed by a Government.

In December 2017, the Venezuelan Government officially announced the creation of the Petro, a digital currency which is supposed to be guaranteed by Venezuela's natural resources and would be used for purposes of paying government fees, public contracts, public services and so forth[2].

The issuance of such a digital currency by a Government constitutes an unprecedented scenario in today's world. This fact, however, must be analyzed within the context of the Venezuelan economy: an enormous public debt, lows in the international prices of oil, shortage of food and medicines and a major political crisis in the country's history. Furthermore, international sanctions to the Government which have taken place (i.g. U.S sanctions to the Maduro's government over the Government's bonds and digital currencies) also play a crucial role in the financial circumstances of issuance of the Petro. With this context, it is easy to see why some analysts have suggested that the Petro is no other thing than a financial instrument to the Maduro's government.

Nevertheless, what is a matter-of-fact is that the Government has planned, as said, to use the Petro as a mechanism of payment in the Venezuelan territory, regardless of the accusations of being a financial instrument for it rather than a mechanism of payment and measuring goods and services.

III. The Characteristics of the Petro

In order to determine whether the Petro is a cryptocurrency in today's terms, it is important to highlight its following features:

1. It is the first digital currency created, issued and controlled by a Government;
2. It is the first digital currency guaranteed by an internationally traded commodity (principally, Venezuelan oil and mineral reserves);

This text represents the personal opinion of the author, but not necessarily the official opinion of the law firm he represents.

[2] On December 8th, 2017, the Decree N°3.196 was published in the Official Gazette N° 39.610. Through such Decree, the President of the Republic authorized the creation of the Superintendence of the Cryptocurrencies and Venezuelan related activities.
It is important to mention that, on February 23rd, 2018, the Decree N° 3.292 was published in the Official Gazette N° 41.347, whereby the President of the Republic established the potential development of 5.342 MMBN of original-oil-in-place (OOIP) – of heavy and extra-heavy density – located in the Ayacucho Block 01 of the Orinoco Oil Belt, as guarantee for the execution of financial and commercial exchange operations performed by means of crypto-assets.
In addition, on March 6th, 2018, the Constituent Agreement in support of the release of the Petro Cryptocurrency was published in the Oficial Gazette N° 41.354.

3. As indicated above, it shall be used to pay certain public services, tariff, fees, contractual and legal obligations in which the Government is a party, etc.;
4. Although neither the parliament nor the Venezuelan Central Bank took part into the issuance or development of the digital currency, two government bodies (Ministry of Finance and the Superintendence of Cryptocurrencies) will have authority and therefore will rule in this regard.

It is possible to observe that most of the elements of the Petro are contrary to the basic notion of cryptocurrency. Certainly, what makes a cryptocurrency a potential mechanism of payment, as well as a medium for measuring value of goods and services (and thereby money), is a genuine confidence in the coin itself; that is, its capacity for being received and accepted as an instrument of payment, but most important of all, without the support of a government body which guarantees or backs the value of the currency (as it happens with sovereign currencies) –in other words, it is a result of the sole confidence in the blockchain system and other users.

Precisely, cryptocurrencies were developed, essentially, in order to be a parallel mechanism of payment which can freely flow in the market without restrictions, regulations or a third-party control (especially, government control). That is not the case with the Petro, which shall be controlled and it is highly regulated by the Venezuelan Government.

On the other hand, the mere existence of a guaranty in order for backing the Petro (that is, Venezuelan natural resources) speaks against the Venezuelan digital currency itself, as it is a measure which main goal is to obtain an artificial confidence of the market, created by illegal disposing on the part of the Government of natural resources giving the existence of a regulatory authority behind the Petro.

IV. Conclusion

In conclusion, even though the Petro might be used as (i) a mechanism of payment, (ii) a medium for measuring value of goods and services, and (iii) might be backed by the confidence of the market, the fact that it (iv) is subject to the control and the regulations of the Government for its issuance and development, makes of it an anything but a cryptocurrency. In other words, it lacks the essential element of a cryptocurrency: independence from a third party. As a result, the Petro cannot be considered as a cryptocurrency.

TORRES PLAZ & ARAUJO ABOGADOS

Juan Domingo Alfonzo Paradisi

An owner and managing Partner of Torres Plaz & Araujo, Juan Domingo has focused his professional practice on the areas of Administrative, Antitrust, Constitutional, Consumer Protection, Foreign Exchange, Tax, Financial, Telecommunications and International Trade (antidumping and subsidies).

He is also member of the International Bar Association (IBA) and member of the Confederation of Venezuelan Industrialists (Conindustria) strategic committee.

He is a former member of the Board of Directors of the Association of Graduates of the National Public Administration Institute (INAP) of Spain; of the Venezuelan Tax Law Association (AVDT); member of the Administrative Law Foundation (Funeda), and of the Venezuelan Law & Economic Association (VELEA).

Jean Paul works as a Law Clerk in the Administrative-Economic Department. His activity is mainly focused on the review, oversight and control of the files in the areas of contentious-administrative, administrative-economic and constitutional law, and the preparing of research, reports and bulletins of legal interest.

He has also worked at leading companies on the market, such as the Cisneros Organization, holding the office of Law Clerk in the areas of intellectual and industrial property, labor, civil, commercial and contentious-tax law. His excellence in academics has also earned him several awards from Universidad Católica Andrés Bello and the Law School of such institution during his career. Currently, he teaches as Assistant Professor of International Private Law at the Universidad Católica Andrés Bello and as Administrative Law Professor at the Universidad Central de Venezuela.

Jean Paul Simon Arismendi

TORRES PLAZ & ARAUJO ABOGADOS

Dilemmas on the binding of guarantor insurers in the processes of fiscal responsibility. A 'Kafkaesque' dilemma.

Presentation.

The fiscal responsibility processes advanced by the General Comptroller Office of the Republic, District and Departmental Comptrollerships, against "tax managers" who are in charge of public resources' administration with the purpose of determining if damage to public heritage was caused due to the conduct (action or omission) that is imputable to the tax manager by way of fraud or serious fault and, in consequence, bring to effect the compensation of the patrimonial damage to the public treasury, due to a fiscal management that does not fit the purposes of the higher order.

Without a shadow of doubt, fiscal responsibility processes in Colombia constitute a noticeable advance in fighting corruption and are prone to achieving the purpose of correct employment and destination of public resources by tax managers to whom its custody and administration is entrusted.

Notwithstanding this, much preoccupation is placed in the adoption within these types of processes of extremely controversial decisions with regards to resolution of controversies arising from insurance contracts that lead to Guarantor Insurers being bound in this type of controversies, which, converges without any doubt, in a kafkian process that, not only ceases to know the technical, economic and legal principles of the Insurance Institution, but can also bring severe consequences for reinsurance and, as a result, can drive to the contraction of the insurance supply placed in the national market, which, could consequently impede access to assurance against multiple contingencies that gravitate over public goods and resources.

Public resources protection, the integral management of risk and Insurance.

However, minimizing contingencies associated to public resources' administration demands a correct strategic planning and an integral risk management that involves the phases of identification and measuring the multiple variables that can objectively lead to the probability of damage being caused to public heritage.

In this scenario, the Insurance Institution constitutes the last step of an adequate management of risk, since through that mechanism – in exchange of a premium payment – the pecuniary consequences of the "risk" realization are transferred to a solvent Insurer that is duly authorised by law to undertake that activity, being subject not only to the agreed contractual terms, but also according to technical, economic and actuarial criteria, without which, it would not be feasible to specify the protection of interests exposed to risks of an analogous nature or similar trough the creation of a common fund made up by the rest of insured people through their contribution by the means of paying the respective premiums.

Brief outline of the controversial decisions regarding the insurance contract in the fiscal responsibility processes.

Within the processes of fiscal responsibility Insurers tend to be bound as guarantors of those involved, based on policies of various kinds, including: compliance, management, civil liability of public servants, professional responsibility, among others.

At this point it is necessary to clarify that the indemnification commitment of the Insurer is not unlimited, and even less comparable to the liability in which the fiscal manager may incur.

On the contrary, the liability of the Insurer is limited with regards to the in the terms that govern the insurance contract, therefore, its entailment as guarantor, does not change at all, the insured sums in the contract, time limits applicable per event or validity, exclusions, co-insurance clauses, temporary limits and modalities of temporary delimitation of the risk under the systems of occurrence, claim or claims made and, even, discovery in all its modalities and other applicable contractual clauses.

In that sense, it has become quite usual for questioned determinations to be adopted within the framework of these processes, such as, among others: a) Ignorance of the regulatory regime that governs the extinction of rights and actions derived from the insurance contract; b) The misrepresentation of the terms of validity contracted by the

decree excessive seizures in the law due to inappropriate accumulation of insured sums and contractual validity; c) Undue interpretation of the insured risk and of the contracted coverage and; d) nonobservance of agreed exclusions and other forms of risk delimitation, etcetera.

Conclusions.

The resolution of disputes arising from the binding of Insurers within the processes of fiscal responsibility imposes the need to harmonize the legal aspects of the Insurance Institution, as well as its technical and economic foundations, when establishing, in a specific case, whether the budget submissive to the enforceability of the Insurer's conditional obligation in case "the insured risk takes place", in accordance to the guidelines for the subscription of an insurance policy in a specific branch in light of the General and Particular Conditions, as well as in the other Annexes or Certificates that are part of the Policy.

Accordingly, we believe that it is not appropriate for the iudex of the liability process to replace the appointment of the contracting parties and minimize the production of precedents that constitute, in the last instance, "perverse" incentives for the insured or beneficiaries or, even, for it to crystallize outbreaks of legal insecurity that can gradually discourage the supply of insurance or, prevent, an efficient distribution of risks through Reinsurance in its different modalities.

Under this scenario, not only do the insurers lose, but also, the net losses will ultimately be transferred to society itself. This becomes effective insofar as Colombia demands, among other aspects, the development of important infrastructure projects, efficiency in state contracting processes, the protection of public patrimony, among others, whose risks - in the worst scenario - will not be able to be assumed by the Insurance Institution, resulting in a serious breakage in integral risk management. Therefore, the public interest and social welfare could suffer a serious impairment if access to insurance is impeded or severely limited.

Addendum: It could be said then that the situation of the Insurer in fiscal responsibility judgments resembles the position of young Josef - the main character of the work 'The Process' - in which in the end the [administrative-jurisdictional] process turns into an absurdity that generates a deep malaise and hopelessness in the face of the impotence of fully exercising the safeguarding of its legitimate interests, to the point of forcing the Insurer to assume obligations outside the agreed contractual framework.

Ricardo Vélez Ochoa

VÉLEZ GUTIÉRREZ ABOGADOS

Partner and co-founder of the Firm. Lawyer from Javeriana University. He has extensive experience in litigation and national and international arbitration. He has represented insurance and mining companies at arbitration tribunals in Shanghai, Singapore and London. He represents Allianz, Suramericana, Mapfre, AIG, ACE, BBVA, RSA, Generali and other insurance companies in court proceedings regarding contractual and non-contractual liability. He was member of the Drafting Commission of the national and international arbitration law (Law 1563 of 2012). He is professor of Civil Liability and Civil Liability Insurance courses in undergraduate and postgraduate programs at Javeriana University. He is currently the Director of the Specialization and Masters of Insurance from the same University. He is national and international arbitrator of the Chamber of Commerce and member of the subcommittee of the ICC.

Investments in Innovative and Technology-based Companies in Brazil

Innovative and technology-based companies that have a consistent cash flow generation, a business model scalability and a good internal governance over its intangible assets and liabilities, often receive proposals for purchase (cash-out) or injections of financial resources (cash-in). These ouers are made by investment funds, investment banks or corporate groups that see strategic acquisitions as part of their expansion plan.

Such ouers may vary in many ways. For instance, the investor may identify the founders as a key asset to the company and want the founders to remain as shareholders of the business. In this case, usually the investor ouers to purchase part of the founders' shares in the company (cash-out) and, cumulatively, to invest in the company (cash-in), raising in its capital stock through the issuance of new shares for the investor. If there is no such interest in the founders, the ouer may be to purchase the whole company.

Whenever an investor chooses to invest in a Brazilian company, it is common that it may also require a limited liability company (sociedade empresária limitada – LTDA.) to be transformed into a corporation (sociedade anônima – S.A.) prior to the closing of the transaction. This requirement is made in order to cope with taxation issues and, in some cases, with Brazilian Securities Exchange Commission's regulations (Comissão de Valores Mobiliários – CVM).

It is instrumental for the investors, purchasers and founders all to be assisted by law firms with solid experience in investments, mergers and acquisitions transactions, notably in connection with technology and innovation industries. When talking about transactions with innovative tech companies, this expertise must cover a variety of law practices, including M&A, taxation, intellectual property and data protection, in order to guarantee a deep analysis of the transaction as a whole.

In the first step of the transaction, the M&A attorney shall provide assistance to the parties involved on the negotiation regarding initial documents, such as Non-Disclosure Agreements (NDA), Term Sheets, Letters of Intent (LoI), and Memorandum of Understanding (MoU). These documents shall contain basic terms and conditions of the transaction, like price, payment method, confidentiality, closing date and business premises.

On the due diligence phase, the company's most important assets, liabilities and contingencies shall be assessed and well discussed. Previously to this step, innovative tech companies must take into account its specificities and be more cautious than companies from other industries. Patenting of inventions, trademark registration, special Non-Disclosure Agreements with employees and service providers, assessment of R&D (research and development) and intellectual property agreements – which in Brazil are often related to investment and tax benefits applicable to technology devices manufacturers
– are some of the previous actions they must take in order to protect their intangible assets.

One of the most important steps of a transaction is the negotiation of the master agreement. Whether it is an Investment Agreement, a Subscription Agreement or a Share Purchase Agreeent (SPA), the document shall contain the main terms and conditions to the transaction. Among these terms and conditions are: (i) the amount of money involved in the transaction and its relevant allocation (cash-in and/or cash-out); (ii) representations and warranties given by the founders regarding the accounting, operating and legal situation of the company or by the investor regarding its financial capacity to perform the transaction; (iii) each parties covenants and liabilities, representations and warranties; and (iv) rules for compensations between the parties themselves.

It is also possible to set forth in the agreement earn-out payments, holdback or escrow account provisions. The earn-out is generally applied when there is dissent between the parties regarding the future development and profitability of the company. In these cases, the parties set up some criteria to define whether the founders will be suitable to receive the earn-out, normally based on EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) and gross revenues. On the other hand, holdback is applied in order to guarantee provision for contingencies which are not materialized at the time of the closing.

During the negotiation, founders can propose to replace holdback for other less risky safeguard mechanisms, such as escrow accounts. Besides these terms and conditions, many others issues, including non-compete and lock-up provisions (requiring the sellers to remain in the company) will be brought up to discussion.

Whenever the sellers remain in the company after the transaction, a Shareholders Agreement shall also be negotiated, along with the company's new Bylaws. The Shareholders Agreement will govern the future relation among the shareholders, including matters related to the appointing of members of the Board of Directors and Oflcers – which, usually, grants the investor the right to appoint the Chief Financial Oflcer –, restrictions to the sale and encumbrance of equity interest, such as preemptive, tag along and drag along rights.

The company's Bylaws, at its turn, will govern the company function as a whole. Particularly, it will provide the company's management structure, manager's responsibilities, general meeting's quorums to approve certain resolutions, and, usually, the implementation of a Board of Directors, which will be in charge of the strategic management of the company.

A good negotiation of these steps and provisions is key to maintaining a good relationship among the founders, investors and other stakeholders. If under the assistance of lawyers with sound experience in M&A and the tech industry in Brazil, the discussion of the relevant issues may prevent from leaving on the table an important part of the value captured by investors, sellers and purchasers in the initial valuation of the innovative tech company.

da Fonte, advogados

Rodrigo Guimarães Colares

Rodrigo Colares has more than 10 years of experience in operations of sale, procurement and investment of companies, international negotiations and technology contracts. Provides advisory to clients in the structuring of enterprises, licensing and protection of intellectual property, as well as business contracts.

For 3 and a half years, responsible for the DFA office in Madrid, Spain, and negotiated international transactions in countries such as England, Portugal and Angola. Responsible for the coordination of the specialized area of Intellectual Property and New Technologies Law and one of the area's specialized areas of Business Law.

da Fonte, advogados

Gisela Burle Cosentino

Gisela provides legal consultancy in corporate issues and business contracts. She has experience in corporate transactions, incorporation and winding up of companies, and business structuring.

Before dedicating her full time to the firm's Corporate Law practice, Gisela worked at the firm's Administrative Law and Environmental Law practices, where she accrued experience in advising companies on bidding procedures, administrative contracts, permitting procedures and administrative and court proceedings. She is also a member of the Young CAMARB - Câmara de Arbitragem Empresarial Brasil (Brazil Chamber of Corporate Arbitration).

Distributed Generation of Electricity in IBrazil –Development Expectations

Regulated for the first time through ANEEL's (Agência Nacional de Energia Elétrica – the Brazilian National Regulatory Authority for Electric Energy) Resolution 482/2012, the distributed generation (DG) of power had a timid expansion until 2015, when the Brazilian energy segment turned its gaze to Resolution 687/2015, approved on 11/24/2015, revising Resolution 482/2012.

Resolution 687/2015, which came into force on March 1, 2016, offers to energy consumers the final incentive to leverage DG in Brazil. Among the incentives brought by Resolution 687/2015, we highlight the expansion of the power compensation system through the following innovations:

- **Raise of the power generation limits**: the distributed minigeneration plant had its installed power limit increased from 1 MW, as previously predicted in the original resolution, to up to 3 MW, regarding hydropower, and 5 MW, regarding generation from other renewable sources;

- **Enterprise with Multiple Energy Consumer Units**: use of DG by a set of autonomous energy consumer units gathered in the same condominium, administration or enterprise, provided that the consuming units are in the same or adjacent property(ies). The units must indicate the percentage of power compensation intended for each unit;

- **Shared Generation**: energy consumers pertaining to the same area of energy distribution may gather via a consortium or a cooperative entity to generate power from a unit located at a remote site. The consumer units will benefit from the compensation of the exceeding power generated by that remote distributed generation unit. The units must indicate the percentage power compensation intended for each unit;

- **Remote self-consumption**: a certain legal entity or individual may generate power from a remote plant. The consumer units will benefit from the compensation of the exceeding power generated by that remote distributed generation unit;

- **Connection Simplification**: so that the consumer may generate and inject energy into the network, instead of the celebration with the local energy distributor of use and connection agreements (Contrato de Uso do Sistema de Distribuição and Contrato de Conexão ao Sistema de Distribuição, respectively CUSD and CCD), the local distributor will issue a document named Relacionamento Operacional (Operational Relationship), in the cases of microgeneration, or the consumer will celebrate with the local distributor an Acordo Operativo (Operating Agreement), in cases of minigeneration;

- **Term for Credit Compensation**: the credits coming from distributed power generation that exceeds the amount consumed may be offset within up to 60 months. In the previous text of Resolution 482/2012, the term was of only 36 months.

  The data regarding energy consumption, active power injected into the system and credits available for power compensation will be detailed by the local Distributor in the energy bill itself or in a website.

  Despite of the compensation of power, the cost regarding energy availability, for consumers in group B, or the cost regarding the hired energy demand (demanda contratada), for consumers in group A, will be charged.

  As a negative point in Resolution 687/2015, we mention the maintenance of the impediment for Free or Special Consumers to adhere to the power compensation system.

  In line with the changes brought by Resolution 687/2015, the Brazilian Federal Government and the Federative States, yet in 2015, implemented incentives in order to leverage the development of DG such as:

  - increase in the number of laboratories that are

able to assay the inverters used in mini and micro solar generation;

- the exemption of PIS and COFINS over the power credits compensated in DG (Act 13.169/15);

- the exemption, by all the Federative States of the ICMS over power credits compensated by DG; e

- the creation of financing and incentive projects, such as Pernambuco's program for micro and minigeneration of solar energy (PE Solar), whereby the financing line at "Banco do Nordeste" for DG in that State was made possible;

With the innovations brought by ANEEL's Resolution 687/2015, the distributed generation becomes especially attractive for the medium and large energy consumer, due to the raise of the limit to generate power to up to 5 MW.

Besides, the remote self-consumption and shared generation open a range of new possibilities for distributed generation. The remote self-consumption will enable consumers to explore areas with a greater potential for generation of renewable energy, mostly located at sites distant from the major urban centers and, consequently, from the industrial plants or large commercial centers.

The shared generation, in its turn, will enable the establishment of partnerships between consumers gathered in consortiums or cooperative entities, which will allow the participant to share the involved costs and risks.

Therefore, in light of the regulatory innovations, financing lines, tax exemptions and incentive projects, the Brazilian energy segment expects a consolidation of the distributed generation in Brazil in the next few years, enabling greater savings and safety, not only for the energy consumers directly benefitting from it, but also for the Brazilian electric system as a whole, which will become cheaper, more efficient and decentralized.

Guilherme de Sá Cavalcanti

da Fonte, advogados

Guilherme de Sá Cavalcanti works with asset and corporate reorganizations, M&A operations, contractual and investment corporate structuring, including private equity operations, resolution of corporate conflicts, as well as power generation and transmission projects. He is responsible for the coordination of the area of Energy Law and one of the office's specialized area in Business Law.

Before dedicating exclusively to the office's Business area, worked with business litigation in strategic processes and contractual consulting. He is an office's member since July 2011. Participated in the Leadership Program of AMCHAM - American Chamber of Commerce for Brazil, in 2007.

da Fonte, advogados

Lucas Cortez Pimentel works in the area of Corporate Law and corporate contracts, as well as in the guidance and analysis of regulatory and contractual issues in the electric power area. Experienced in corporate operations, M&A, corporate reorganizations, investment funds, succession planning and structuring of projects, with emphasis on companies connected to the electric power industry.

Before dedicating exclusively to the office's Corporate Law area, Lucas advised clients in the area of Real Estate, Corporate Reorganization and Corporate Succession Planning Law, garnering experience in the protection, planning and organization of assets of corporate and family groups.

Lucas Cortez Pimentel

The protection of personal data: reality or fiction?

Compliance will soon gain another important boost in Brazil. On the night of May 29, 2018, the Chamber of Deputies approved the text of the Bill 4.060 of 2012, which provides for the protection of personal data. It is true that there are already rules that deal in a general and superficial way with the protection of personal data, such as the Consumer Protection Code, but none of them deals specifically with protection of personal data. The voted Bill has already been idealized considering the technological advances, whose uses surround us in daily personal and professional tasks. The concern is with the effective protection of the data and can be noticed by the severe penalties that the Bill impinges to the violators, ranging from mere warning to prohibition of the exercise of the activity, as well as the elimination of the improperly treated personal data and a fine of up to R$ 50 million.

The Chamber of Deputies and the Federal Senate fought a race (although this is officially denied) to see who would regulate the matter: the Chamber of Deputies went ahead and now the Bill was sent to the Federal Senate for discussion and approval, together with the other bills on the matter that were already processed in the Federal Senate. However, we are still piggybacking international law. As is well known, Regulation (EU) 2016/679 of the European Parliament and of the Council, dated 27 April 2016, entered into force in the European Union on 25 May 2018. Such regulation is better known as the General Data Protection Regulation (GDPR).

Personally, I've received countless emails in the last few weeks and updates have been made on various privacy policies. This reflects the entry into force of the GDPR, which, in view of its provisions, has an impact on non-European companies and citizens, for example, if data were collected on European soil. Moreover, the text of the Bill is in perfect harmony with the GDPR's precepts, including its scope and protection also to non-Brazilians, provided that the data has been processed or collected in Brazil.

Multinational companies, especially those focused on the digital economy, have already gone ahead with their personal data protection policies, as they have already been obliged to follow international protection standards (especially American and European standards, which have been updated by the GDPR).

However, the effectiveness of such protection, even for large corporations, does not yet appear to be a reality. It is sufficient to remember cases like Facebook and Uber (and others) on personal data leak. Add to these examples the investigation that has been conducted by the Federal District's Prosecution in Brazil about a scheme for the sale of personal data of Brazilian citizens by the Federal Data Processing Service (Serviço Federal de Processamento de Dados), better known as Serpro, published by the media (June 4, 2018). All such cases may give rise to civil liability and award of damages to those who have had their data unduly leaked and, once the Bill is converted into law and comes into force, violators may also be subject to strict administrative sanctions (in addition to civil redress to the citizen). It should be borne in mind that, as is the case with the anticorruption programs, it is no use merely writing policies if there is no effectiveness, if there are no ways to guarantee its effectiveness, to avoid leaks, improper treatment of information, selling data, etc.

The need for effective data protection is a reality. Certainly, personal data is entitled to a robust protection by the legal system, since, in practice, the processing of such information and its use by websites, programs and applications directly influence the social interactions, choices and offers of products and services; that is, it directly affects people's daily lives.

Thus, a serious data protection policy and its effectiveness will certainly be a differential of competitiveness between companies. We, the consumer citizens, will preferentially seek to interact with those who care about the protection of our data, to the detriment of those who pass beyond protection.

Finally, it remains to be seen whether in practice the protection of personal data is reality or fiction. Only time will tell!

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Elisa Junqueira Figueiredo

Responsible for the areas of private law with focus on contracts, civil litigation, arbitration, real estate, family and succession law.

- Bachelor's degree in Law from Pontifícia Universidade Católica of São Paulo – PUC/SP (1996)
- Specialization in Civil Procedural Law by COGEAE-PUC/SP (1998 and 1999).
- "Master en Derecho Internacional y Relaciones Internacionales", from Universidad Complutense de Madrid (2001 and 2002).
- International experience in Madrid, in law offices J. Y. Hernandez-Canut Abogados (2002).
- Specialization in Contract Law, by CEU IICS Escola de Direito (2005)

Civil Procedural Reform in Chile: What's new/What's yet to come

The current civil procedural system in Chile is by now collapsed. Indeed, +1.000.000 of judicial collection trials drown the civil courts each year, amounting to +60% of the total civil cases being litigated. Judges are overworked and cannot devote enough time to issue well-founded decisions in complex commercial litigation. Consequently, citizens cannot solve quickly and effectively the conflicts that affect their businesses. At least not before state courts.

Our Civil Procedural Code was enacted in 1903, a year when the Wright brothers discovered how to fly and Henry Ford founded the Ford Motor Company. Needless to say, no computer existed at that time. Nowadays we have reached outer space and the digital world is nearly combined with reality. Economic development and globalization have brought massive contractual activity, which added to every day's easier access to credit amounts to an everlasting mountain of trials before the state courts. Still, our civil procedural laws are more or less the same as they were more than a century ago.

These procedures take place before the state civil courts (we have 30 of them in Santiago), where the procedure is dominated by written submissions. Moreover, most of the time attorneys are not even able to directly interact with a judge, whose main task is to decide the complaints based upon written pleadings and without personally intervening during the discovery period.

In general, aside of preliminary measures, these procedures have four stages -the discussion, the conciliation, the discovery and the decision periods- notwithstanding the eventual judgement execution period, as the case may be. The final decision of a civil lawsuit in Chile can last an approximate time of three to five years. Undoubtedly, too long.

However, the Congress and the Judiciary itself have been implementing a few recent changes in order to solve the problem. In this regard, a first step was the migration of the system's support from paper to the cloud. Before 2016, every civil procedure was recorded on paper, forming a vast array of sewed documents that were difficult to read and, if lost, almost impossible to reconstruct adequately. Today, there is a website that allows digital briefs, the use of digital signatures to verify the identity of the parties is spreading through the country and the entire procedure is uploaded to the internet. The system is better, but still ineffective. The procedure keeps on lasting too long and their main support is written. Witness depositions must be reduced to a paper copy by a certifying officer (they are read by the judge several months later).

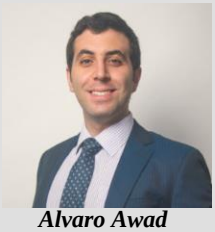
In any event, a final solution might be finally at grasp. President Piñera, in his annual accountability address issued on June 1st, has promised to wake up a bill that has been sleeping in Congress since 2012. This bill promotes a brand new Civil Procedure Code. In this legal project -which driving ideas are currently supported by the Supreme Court- the civil process will be grounded on the principles of orality, immediacy (i.e. direct contact with the judge), concentration and publicity. These principles have already been included in the Chilean criminal, labor and family procedures. Emulating Spain's civil procedure laws, the bill includes two oral hearings. The first one is intended to file motions prior to the reply on the merits and to offer supporting evidence of the complaint. The latter is addressed to effectively submit the evidence previously offered. The process is aimed to end with a final award issued only 10 days after the conclusion of the procedural activity of the parties at the second hearing. Other novelties of the reform might be to exclude the instruction of executive collection procedures (thereby unlocking the greatest burden of the civil courts today) from ordinary courts as well as to amend the burden of proof laws, to alter the procedure regarding appeal motions and to include alternative dispute resolution methods. A Presidential Commission with academics, practitioners and judges is currently at work to address all of these topics.

The question of whether Chile will be able to meet the requirements of a modern and efficient civil justice is still open.

CONTRERAS VELOZO

Oscar Contreras Blanco

His professional practice is mainly focused on corporate law and international investment, complex civil litigation, arbitration and antitrust. In his career of almost 30 years of professional activity, he has participated as an expert litigator in international arbitration and highly complex civil and commercial cases, including construction disputes, unfair competition, shareholders' conflicts, and actions and defenses before the Chilean securities authority. In 2015 he associated with Francisco Velozo to form Contreras Velozo.



Alvaro Awad

Álvaro has focused his professional practice in civil and commercial litigation and arbitration (both national and international), participating as counsel and arbitrator in arbitral proceedings in the construction, financial and energy industries. Furthermore, Álvaro has issued legal reports in multiple civil and commercial matters and has advised clients in several legal matters (including especially public-private partnerships, distribution and representation contracts, construction, unfair competition, consumer protection and data privacy).

Recent legislative changes promise benefits for foreign and local businesses operating in Guatemala

During the first half of 2018, the Guatemalan Congress enacted three pieces of legislation, which seek to improve the country's business climate, giving more legal certainty to both national and foreign investment and commercial activity.

The first piece of legislation, Decree 1-2018, the Factoring and Discounting Contracts Act (Ley de los contratos de factoraje y de descuento), intends to promote access to liquidity, especially for small and medium-sized businesses. It sets basic rules for these types of contracts and rights and obligations for the parties to them, their public registration and fiscal effects, as well as some procedural rules for their enforcement.

The second piece of legislation, Decree 4-2018, contains amendments to the country's Chattel Mortgage Act (Ley de Garantías Mobiliarias), mainly focusing on expediting public registration and enforcement.

Lastly, the third piece of legislation, Decree 7-2018, approves Guatemala's adhesion to the United Nations Convention on Contracts for the International Sale of Goods (CISG), a very important step towards providing a friendlier legal environment for international trade.

These acts are part of a wider legislative agenda aiming to make Guatemala more attractive to business and investment. This effort included last year's Decree 18-2017, which introduced amendments to the country's Commercial Code (Código de Comercio), making it easier to create and register a business entity. Further amendments to the Commercial Code are currently being discussed that would create a new special type of business entity aimed at promoting startup companies, providing fiscal incentives as well.

Another important law for business and investment that could soon be enacted is the Competition Act (Ley de Competencia). Unlike most other countries, Guatemala currently lacks specific regulation and authorities on matters of competition and antitrust. The Bill is being discussed as part of the country's obligations within the framework of a trade agreement with the European Union.

The practical effects of the recent legislation are yet to be seen. The legislative reforms come at a moment of political tension and institutional transformation. This has caused a decline in the business opportunities available in the Guatemalan market and, as a result, fewer entities enter and take advantage of the new reforms. Furthermore, the legislation is still very new and not a sufficient amount of time has passed for us to analyze how the legislation will be received on a practical level. Nonetheless, we are optimistic that the legislation will have an overall positive impact for businesses with operations in Guatemala and will strengthen the state of law in the country.

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Juan Pablo Gramajo

Lawyer and Notary, Lawyer in Legal and Social Sciences for the Francisco Marroquín University (2009), Master in Property Intellectual by the University of San Carlos de Guatemala (2015). Doctorate in History from the Francisco Marroquín University. Currently Director of Knowledge Management and specialist in legal research in Mayora & Mayora, S.C., and Director of Drafting of IURISTEC. Lead monthly seminars jurisprudence IURIStaller.

Full Professor of Economic Analysis of Law and, previously: assistant Roman Law, Legal Logic, Philosophy of Law and Economic Analysis of Law (University Francisco Marroquín); holder of Law and Communication and of History of the West, invited professor of Philosophy of Law (University of the Isthmus). He has given conferences and courses in the College of Lawyers and Notaries of Guatemala and the Institute Guatemalan Notarial Law.

Notification of security breaches of personal data

The new General Regulation of Data Protection (GRPD) UE 2016/679 of April 27th, regarding individual's protection with regards to personal data processing and its free circulation, and repealing the 95/46/EC Directive, came into force in May 2016 and will be applicable as of May 2018.

Therefore, in order to comply with the terms of this regulation on the date of its mandatory application, those handling and responsible for personal data treatment have had a transition period of two years to progressively adopt the necessary measures so as to be able to benefit from the new regulations. The GRPD contains a series of measures that those in charge and responsible must apply to back up the fact that all the data processing acts performed are in accordance with the Regulation, these are the so-called "active responsibility measures". Within these, notifications of violation to security of personal data can be found.

One of the primary obligations that the RGPD requires from those responsible for personal data treatment is to notify any violation to security that can affect the data handled. The GRPD defines data security violations, commonly denominated "security breaches", as: "all violation of security resulting in the destruction, loss or accidental or unlawful alteration of personal data transmitted, conserved or otherwise processed, or the unauthorized communication or access to the mentioned data". These security breaches can be harmful, not only to people in their personal capacity, but also to companies that can immediately see their credits being damaged, given the speed of the transmission of communications today through social networks or digital media.

Previously, the LOPD obliged to communicate these security breaches to telecommunication companies and Internet access providers, and in general to all companies in the electronic communications sector, but with this new European regulation to which we must adjust, a person responsible for data processing is also included.

Therefore, in case of breach both the competent control authority, which is Spain's case is the "Agencia Española de Protección de Datos", and the affected parties must be notified.

In the first case, when there is a breach in security of personal data, the competent authority must be informed by the person responsible for data treatment in a prudent period of time that must be held within 72 hours after the stated violation has been notified. In the event of taking a longer period of time than that required, the notification must be accompanied by a detailed explanation of the reasons for the undue delay. The purpose of this period of time is to allow them to take measures to protect themselves against the consequences so that the affected party can react as quickly as possible.

The mere suspicion of a security breach having taken place should not give rise to notifications, since there is no way to determine with certainty the existence of risks for the rights and freedoms of the interested parties, which is precisely the purpose of such notification. Therefore, in this sense it will be necessary to have sufficient knowledge and a certain firmness of its nature and reach. Hence, the objective is to establish to what extent the incident can cause such damages and this will be determined through an assessment of the risk of bankruptcy, which must be different from the risk analysis prior to all treatment. With regards to the notification to the interested parties, it will not be necessary in certain circumstances, like those cases where the person responsible for the data had already taken technical or organizational measures prior to the security breach, or even afterwards, when these certify that there is no longer a possibility for the existence of high risk, or also when there are other means of notification that do not lead to a disproportionate performance.

In conclusion, in case of breach of this obligation to notify security breaches by the person responsible for data treatment, this is classified as a serious infraction which may determine fines that range between 10 million euros or 2% of the total global annual turnover resulting from the previous financial year and 20 million euros or 4% of the total global annual turnover resulting from the previous financial year. This way we see the importance of notification in this type of violations, not only on a personal level by the interested parties, but also due to the economic and prestige implications for companies, which must take care of the treatment of their data so as to reflect good quality in its client's confidentiality.

Carmen Diez Fernández

CREMADES & CALVO-SOTELO
ABOGADOS

Carmen Diez prepared the oficial public exams- Judicial and Fiscal Careers between 2012 to 2017. She is Degree in Law and Business Administration and Management. She is currently pursuing a Master in Business, Telecommunication, Internet and Audiovisual Law at the European University of Madrid. She works at Cremades & Calvo-Sotelo principally on corporate área, M&A, Contracts, draft of contracts and private law.

Commitment to the promotion, protection and defence of Human Rights

The promotion, protection and defence of Human Rights constitutes a commitment that concerns all sectors of society. Not only is it a duty of the States and a requirement for its citizens, but it is also a structural part of the commitment of the legal profession to the dignity of human beings.

From the legal community we have the unwavering duty to monitor and guarantee the exercise of Freedoms and Fundamental Rights. The creation of a Human Rights Department in Cremades & Calvo-Sotelo is an effort that we share with all Euro Latam Lex's members, so as to encourage them to join this commitment of social leadership within the legal profession.

The Defense of Human Rights in Venezuela, Bolivia, Nicaragua or Turkey, have centered some of the most important actions undertaken, even through pioneering work of pro bono and altruistic nature; actions that tackle different national and international instances, including those that make up the most relevant American and European systems for defending Human Rights.

A powerful international network that brings together prominent Lawyers in the legal profession will also boost its prestige by its commitment to the promotion, protection and defense of Human Rights. This effort would include, among other aspects, undertaking consulting and advisory activities in sensitive sectors of society, the training of young lawyers with an eminently practical vision, direct assistance to victims or participation as Amicus Curiae in different proceedings before national and international instances, the promotion of academic activities, and the improvement of legal instruments for the guarantee of Human Rights.

One of these areas is related to the exercise of freedom of conscience in those cases where serious limitations are currently registered, if not the open violation of its exercise. In some countries, a conception prone to the strong interference of public power in the field of the exercise of freedom of conscience is advancing. Frequently this interference is accompanied by situations in which freedom of conscience is openly pursued in different latitudes. In this regard, we are currently advancing in a series of strategies that allow moving forward in the defense of freedom of conscience in different circumstances and places in the world.

In any case, as we have indicated, the promotion, protection and defense of Human Rights constitutes a structural part of the commitment and effort of the legal profession to the dignity of human beings. A commitment and effort that we want to share with all Euro Latam Lex's members, and invite those who wish to, to be an active part of this commitment to social leadership of the legal profession.

Gabriel Fernández Rojas

CREMADES & CALVO-SOTELO
ABOGADOS

Gabriel Fernandez Rojas was President of the School Council of the Community of Madrid; Member of the State School Board; Vice Minister of Immigration, Cooperation and Volunteering of the Community of Madrid; General Director of Immigration of the Community of Madrid; Member of the National Forum for the Integration of Immigrants; Consul of Colombia in Spain; Partner of Heraclio Fernández Sandoval Abogados and lawyer recommended by the Embassy of the United States for its citizens in Colombia. He is currently a Partner of Cremades & Calvo-Sotelo Abogados.

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Juan Carlos Gutiérrez is the main defense lawyer of Leopoldo López, political prisoner of the Venezuelan regime. He is currently a Partner of Cremades & Calvo-Sotelo and his areas of practice are criminal law and human rights. During his long career, he has worked for the Public Ministry of Caracas, Criminal Courts and Prosecutor's Offices and he has served as Ombudsman in Caracas.

Juan Carlos Gutiérrez

Competition/Antitrust Leniency: Global Challenges & Upgrades

Leniency (a.k.a. amnesty) programs are a well-known cartel detection tool, whereby any cartelist may voluntarily disclose the cartel and cooperate with relevant competition (a.k.a. antitrust) authorities in return for a fine reduction or immunity. Leniency has so far proven the most successful and effective enforcement strategy tool, leading to its widespread adoption worldwide. At the same time, the business community and competition authorities currently face a number of critical challenges to ensuring the continued incentivisation and effectiveness of leniency programs:

- **Proliferation, cooperation and discontents in public enforcement**: Leniency programs are in place in more than 60 jurisdictions to date, ranging from the United States, to the European Union, Brazil, Mexico and Japan, among others. Leniency program proliferation raises opportunities for international cooperation and for levelling the global playing field. In the context of international cartels, however, undertakings face challenges due to differences across leniency jurisdictions and the absence of a mutual recognition or one-stop shop mechanism (similar concerns arise in multi-jurisdictional merger control). Non-harmonised proliferation of leniency programs therefore prompts (i) companies to re-assess the risks, pros and cons of applying for leniency, and (ii) governments to pursue efforts towards enhanced cooperation and consistency in cartel detection, e.g. through the OECD, ICN, UNCTAD and regional networks. Progress towards coordination and/or harmonisation is all the more urgent as business, hence cartel risk, is increasingly driven by e-commerce, big data, algorithms and the blockchain, that is multi- or meta-jurisdictional factors.

- **Public v. private competition law enforcement**: Public enforcement refers to action by public competition authorities, leading to public sanctions upon undertakings and/or individuals, including fines, disqualification and/or jail time. Private enforcement refers to litigation by cartel victims (e.g. consumers charged a cartel-induced price premium) seeking compensation in court, often in the form of follow-on damages. Private compensation or restitution is, in a few jurisdictions (e.g. the US), a condition for leniency in public enforcement – in practice, it remains rare and governments are reflecting on how to promote private action further. While both public and private enforcement are essential and complementary in fighting cartels and rendering justice, potential private actions may also disincentivise undertakings to disclose a cartel and self-incriminate in the first place. The 2014 EU Damage Directive opens solution paths pertaining to liability and evidence limitations. At national and international levels, striking the balance between fair treatment of leniency applicants and promoting victim compensation proves a delicate endeavour calling for cautious legal strategy.

- **Competition law v. other fields**: Corporate wrongdoing can, in practice, trigger various legal qualifications and realms of enforcement, e.g. antitrust, corruption and fraud. The Petrobras, Odebrecht, LIBOR and FOREX scandals are telling examples. In other instances, collusion may qualify simultaneously as a cartel falling under administrative competition enforcement and as a conspiracy falling under criminal prosecution. Leniency in competition policy includes both self-incrimination and blowing the whistle against other wrongdoers. Anti-fraud and anti-corruption policies, by contrast, tend to distinguish between self-reporting and whistle-blowing procedures. Could or should competition leniency evidence be used for non-antitrust wrongdoings? Shall leniency evidence carve out self-incrimination? What level of cooperation is desirable, even within the same jurisdiction, among e.g. the competition authority, anti-fraud office and public prosecutor? Some jurisdictions address the challenge through statutory law (e.g. Brazil), others through litigation before the Supreme Court (e.g. Chile), or through de facto non-referral (e.g. France). Leniency in the wider 'corporate crime' context calls for a holistic approach to risk assessment and for consistent detection and enforcement solutions.

These challenges highlight two major transversal trends. On the business side: the compliance & ethics revolution. On the enforcement side: the exploration of new detection methods.

The compliance revolution builds on cross-field synergies in preventing, detecting and remedying corporate misconduct. There is no successful business absent a coherent, multi-disciplinary and collaborative risk management strategy. Tools used in antitrust may prove useful in anti-bribery; data protection rules may prove challenging to anti-fraud principles. Complexity calls for dialogue and breaking silos created by over-specialisation.

While fully supporting the relevance and effectiveness of leniency programs, competition authorities are exploring additional detection tools, less dependent on cartelists' decision to come forward. New tools include e.g. market screening, big data analytics, e-discovery and algorithmic radars. The LIBOR-FOREX scandals were detected that way. As the competition community is exploring how competition laws apply to algorithms, modern LegTech solutions shall further support the detection of anticompetitive conduct.

GOVERN & LAW

Mona Caroline Chammas

She is an international attorney and integrity director advising businesses and governments worldwide through GOVERN&LAW, the firm she founded. She is an expert in Governance, Anti-corruption, Competition, Data Protection, Ethics, and International Cooperation. She contributes to compliance & integrity strategies and law reforms as tools for sustainable growth and innovation.
Driven by the relationship between government, business conduct and their socioeconomic impact, Ms Chammas offers a rich career experience shared between the private and public sectors.

The new Mexican Fintech Law: The great challenges in the legal sector outside and inside the country.

The financial system, the technology and the information society services, finally have had converge through the Fintech, thus the past 1st of March 2018 in Mexico was approved the Financial Technology Institutions Law, best known as "Fintech Law", this represents a huge progress inside the Financial Policy in the whole Latin America, because Mexico is one the first countries to develop a law of this nature, taking the lead in the continent due the numbers of Fintech entities it has, followed by Brazil.

Nowadays only Great Britain, Singapore and China have an advance Regulatory Policies in relation with Fintech, hence it represents a great challenge inside the legal sector and an opportunity for the traditional lawyers, aim to innovate into the current market.

The Fintech as a part of the digital revolution, owe its existence by the problems inside the current financial industry, such as the lack of trust in financial institutions, the emergence of "start-ups" as new information society services and without doubt the most important, thanks to the use of the Smartphones. This new tool has favored widely to the consumers, granting endless benefits like the immediacy, the flexibility and the profitability by the elimination of the financial intermediary decreasing the cost, but consequently many challenges in the legal sector, whom apparently have not been settled at all in every country neither in all the sectors it converge.

Firstly one of the main challenges maybe the most difficult that the legal sector deals in relation to the Fintech is the regulation of the current business models, either through the creation of new laws or through the amended of the existing laws, at national and community level to Europe, that requires an exhaustive analysis.

For these adjustments in addition we have to consider the amendments from the subsidiary laws, in some cases they can take up 2 years, such the case of Mexico framework that envisage the amendments of at least 15 laws related with this subject.

The most of Fintech entities operate in an irregular way due the legal loopholes, whereby it must be necessary make a study to determinate under what laws the financial entities are working and which activities or new services are susceptible to be regulate.

In this respect, the counties with a Legal Fintech framework have created the denominated "Regulatory sandbox" which is an experimental regulation who allows the functioning of a product before it processed as definitive, focused in innovative start ups, thereby is how the Europe starts ups are working, they prefer to go abroad, to get an authorization into the community counties as the first step to achieve the European passport.

Some countries as Spain has had several amendments into their laws to include the new Fintech services such as the Payment Service Law accordind to the European DSP2 to ensure the access into the operations, the control of the agents involved and the consumer protection, followed from the others counties initiative.

Similarly in too many countries, the governments foresee the creation of a new law to regulate the cryptocurrencies such as the Bitcoin, Ethereum or Ripple, due the big boom of them into the markets, targeted to control the speculation and the lack of transparency, to fight against the money laundry, fraud or in other cases to prevent the funding of criminal groups.

Some considered that this was the main reason to rush the bill in Mexico, even the IRS in the United States keeps under observation the principal operator of Bitcoin in the country.

However the major concern from the Banking System in relation with the virtual assets, is the lost of effectiveness into the Monetary Policy in long term, because the reference rates for the finances services are established by the Central Bank, then if there are

more activity into the digital platforms, it is going to be very difficult to determinate the reference rates, creating distortion at the Monetary Policy,

Furthermore another consideration is the fiscal situation framework, either there is not tax control from the crowdfunding activities or any guarantee to those who use it as investment, even the sending remittances through other classic payments methods have been excluded from this compliance.

For the Mexican case, the government has included certain obligations including the submit of audited financial statements, tax rules, protections and reimbursement from crowdfunding.

Another serious issue that face the Fintech´s world is the liability arising by the use of Artificial Intelligence in the provision of services, from the most elemental such as the Personal Data Protection, the use of Blockchain, as well as the use of Big Date and Machine Learning, this could be civil, criminal or even labor liability.

It means, how can we know who is liable when a machine through the algorithm processes information and suggest about financial services, What happen in case of robot advisor fault? How determinate the contractual relation by a software? Shall we continue using the civil law rules and commercial law rules? What are the guarantees for the consumer?

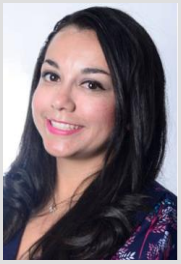
Likewise the cybersecurity and the crime are other subjects that worry too much in the legal sector, the technology development has advantages but also has disadvantages, leaving outdated and useless the current legislation, due the new and witty criminal methods.

For example an attack to the payment providers or even a system failure could risk all the company´s assets or the investment of somebody, Who is gonna be the supervisory authority in those cases and what are gonna be their functions? Are they special crimes? What kind of punishment they gonna have?

In addition to the above it exists other issue, the Consumer Financial Protection Bureau in the United States has shown that thanks these kind of automatic management systems, it exists a remarkable discrimination towards the minorities in credit rating process. On this basis it should be necessary the implementation of parameters y standards at global level like ISO to enable that the provision of services are impartial and neutral.

Finally the challenge is about the dispute settlement, is it possible the problem resolution by the traditional Jurisdiction or through the Arbitration, or is it possible by special procedures? How determinate the rules to establish the competent authority? What are the means test? Shall we use the same as Private International Law when is an Indian developer, with a Swedish provider and a Spanish consumer?

As we can see Fintech is an area with endless possibilities whereby it is necessary to have technic guide and strong legal knowledge, followed by the agility of the authorities, to face these new services and technology that have arrived to remain, generating a fintech culture and speeding up the bankable people, as is already in China, where the people pay with using any cash.



Gabriela Berenice Jurado

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Graduated from the Autonomous Metropolitan University in Mexico and Jean Moulin Lyon III University in France.

Her practice of 8 years, is based on Administrative Law, Telecommunication Law, Audiovisual, PI and International Law. She is currently pursuing a Master in Business, Telecommunication, Internet and Audiovisual Law at the European University of Madrid, to deepen her knowledge on New Technologies compliance and data protection regulation.

State aid in Energy on the table of the International Arbitration Tribunals

According to statistics of the International Centre for Settlement of Investment Disputes (ICSID), arbitrations that invoke the Energy Charter Treaty (ECT) have, in recent years, increased in a significant manner, leaping from 9% up to 18.7% in 2016.The reason? Arbitration claims filed against Spain as a consequence of the energy reforms implemented between 2008 and 2013 with regards to the loss of the premium or the subsidies granted by the Spanish government so as to promote the use of renewable energies and cogeneration for the production of electric power.

Spain was one of the world's leaders in the promotion of these energies. However, the serious deficit found in the electrical system led to a reduction of these premiums that ultimately caused their elimination in the case of new installed power by the Royal Decree-Law 1/2012 and that was prolonged until approval to a new incentive system was reached between July and December 2013. The policy of premiums' reduction was criticized, but the successive reforms were also denounced before the Supreme Court and the Constitutional Court as investors defended the principles of legal certainty, of legitimate expectations, of non-retroactivity of legal regulations and the principle of reasonability of profitability of premiums for the use of renewables.

However, the 2015 International Energy Charter focused its objectives on 1) the protection of foreign investments, based on the treatment received by nationals of the State, based on the treatment derived from the application of the most-favored-nation clause, and protection against non-commercial risks; 2) the establishment of non-discriminatory conditions for materials and energy products' trade, growth to ensure reliable cross-border transits through pipelines, networks and other means of transport stipulated in the Community Regulations; 3) the resolution of investor-state disputes; and 4) the promotion of energy efficiency and the effort to minimize the environmental impact of the use and production of energy.

Where does conflict reside? For affected investors, it relies on the modification made to the Regulation determining the emoluments to the retroactive reduction of the premiums constitutes a breach of the applicants' legitimate expectations deposited in the law of the regulatory framework of appliance when their investments were undertaken, so part of their claim for damages looks forward to seeing all gross payments being returned by constituting State aid or in other cases, maintaining a reasonable return of 7.39% for investors, which would eliminate the insecurity and risks that have been existing so far. But, was there really a legitimate expectation on the investors' side for the regulatory framework to remain unchanged throughout the entire useful life of the plants? Has it been arbitrary? Is it an unbecoming retroactivity? These statements allow us to question ourselves, as lawyers, the normative procedures and their margin of interpretation, according to the parameters in which the administration can proceed when circumstances prevent normal procedures from being followed and when the administrative action cannot accommodate the principles that are currently applicable to regular situations; this should be evaluated within the range of risks that allow predicting economic impact, making it possible to alter the initial conditions and maintaining a (FIT) that prevents the imbalance of the initial objective (investment promotion). Or, in other words, the regulation activity pursues for the changes to be regular, for them to be provided in the normative.

This situation, was brought to attention as a consequence of the global economic crisis that led to the regulatory modification that altered the initial conditions of investments, which could compromise the State's responsibility, in the context of the obligations assumed in the Energy Charter Treaty and that ended in lawsuits of liability on the investors' side before the national courts and the international arbitral tribunals. These considerations are important because this situation does not only affect Spain, there are more EU countries that are also awaiting arbitral awards or arbitration in the field of energy, such as Germany, Poland, the Czech Republic or Romania, among others, and, but it is also affected by the multilateral and global connotation of the Energy Charter. What has been the predominant criterion of failure in these arbitral awards? Under the premise that energy has peculiar characteristics that demand differentiated treatment, which also happens to other goods and services within the framework of the World Trade Organization, given that the Energy Charter aims to push and treat reality collectively designing solutions that ensure economic growth from clean, efficient and safe supplies, and keeping in mind favouring investors, the Charter and the signatory States are given an important weight, as the subject of matter it is not a mere reference of defence for investors.

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Katherine Castaño

Lawyer with corporate vision, Master in Business and Energy Law (Gas, combined cycles, Renewables, Electric power and Hydrocarbons). Extensive experience in oil & gas- "midstream"; in particular contractual, regulatory, tariff and core business aspects, expert in adapting Engineering Projects in accordance with current regulations and Industry standards. As well as on strategic issues: internal control under international standards (COSO 2017) compliance, legal consulting in corporate and commercial law.

Immigration and Europe: the knots to untie…

Demographic growth, climate change, the search for better life opportunities and the conflicts troubling the Middle East and large areas of the African continent are contributing to generate migratory flows that are putting a serious strain on Italy, Greece and EU Member States' capacity (in 2015 more than 1.5 million people entered, fortunately this number has fallen drastically in 2017, registering around 171.000 people entered). Europe can hardly succeed, in a phase of prolonged stagnation, to socially and economically integrate the masses of individuals who will pour over the next 20 years to the European continent also, unfortunately, increasing social tensions.

The demographic dynamics present us with future scenarios in which, in the absence of an effective control of access and incisive actions to limit the structural causes behind migration, serious phenomena of rejection, ghettoization and ethnic / religious polarization can be generated, to which a militant Islam could provide ideological cover with all the associated security risks.

To tackle the problem at its roots, the European Union has set up an Emergency Fund for the African Continent (Emergency Trust Fund for Africa) with a budget of around € 2.5 billion. The fund is largely devoted to job creation and economic development, especially for young people and women in local communities. The European Commission has also published an Agenda for Migration (European Agenda on Migration) which indicates among the measures to be implemented, the fight against criminal networks that manage human trafficking, the inclusion of migration issues among the components of the security and defense missions in Africa and the strengthening of Frontex (the European Agency for External Borders).

It is necessary to substantially increase the endowment of the Fund for Africa (and to control its effective use), increase the operations to combat criminal networks that organize trafficking, achieve the Integrated Border Management (IBM) through the establishment of a Private European Public Partnership that, by involving the industrial sector and institutional actors, can implement both a technological research plan and allow the development and acquisition of advanced skills to combat illegal immigration.

Does Europe have to fight immigration?

Migrations are a constant in history and will continue to be so in the future. Between 1860 and 1885, for example, more than 10 million departures from Italy were registered. While it is an obligation to welcome refugees from war zones, this does not apply to economic migrants, who are the majority of those arriving in Italy, mainly from West and Sub-Saharan Africa.

These generally have very low levels of education and, not finding a job, sometime these are forced to beg or commit crimes to survive. Immigrants are estimated at 21% of the European prison population and prisons often turn into training academies for jihadists. On the other hand, the predictions of an exponential increase of the population in Africa are very alarming for which it is expected that the phenomenon will seriously aggravate in the coming years. (According to UNHCR data, between January 1 and April 30, 2017, 37.142 people have landed in Italy).

The European Union seems at the moment unable to find a solution to this problem and this generates a growing sense of insecurity among citizens.

Bur the Joint Statement "Europe – the continent of solidarity", on the occasion of the International Migrant Day on December 17 stated that progressively, a more united approach to dealing with migration is emerging, internally and externally. Internally, work has been intensified on the reform of the Common European Asylum System to put in place a more effective and fair approach, based on solidarity and responsibility, alongside continuous support to the Member States most exposed and reinforced cooperation

progressively put in place a genuine external dimension of its migration policy, complementing and reinforcing its actions within the Union. The 2030 Agenda on Sustainable Development recognizes the positive contribution of migrants for inclusive growth and sustainable development.

Immigration indeed should be controlled by allowing the entry of those who actually escape from dramatic situations but by seriously selecting those who enter for economic reasons (for example by defining a European list of "safe countries of origin" much wider than the current one). The EU also is working on opening up safe and legal pathways through resettlement – to allow those in need of protection to come to Europe without having to risk their lives in the desert and at sea. It is also essential to implement the necessary measures to integrate those in our society who will be given the opportunity to settle in Europe.

Italy for example launched the National Integration Plan. Rather than targeting all migrants, the plan is aimed specifically at people holding refugee or subsidiary protection status, of which there are almost 75,000 in Italy. In return for agreeing to respect Italian values and play an active part in their new communities by working, volunteering, and socializing, migrants in this group will be put on waiting lists for homes and jobs. The plan has been financed with EU funds and put together with collaboration from various government ministries, local authorities, and non-governmental organizations.

It is also clear that integration takes time and is only possible in the presence of "manageable" numbers. Finally, it is evident that Italy, as the country of migration, cannot sustain the impact of this flow alone. Legislative tools and operational solutions are needed to enable integrated European management of the phenomenon. As the former Italian Prime Minister Massimo D'Alema said during a conference in Prague in 2017: the EU "cannot tolerate countries that do not respect the law that is based on our fundamental values and those values are to respect human rights". He added: "The only way to solve the crisis is to share the burden. It is not acceptable for Germany to take 1 million refugees and for some EU states to simply say no. In that case, sanctions are needed."

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Francesca Villani is mastered in International Mediation (MIM) at the Università Ca' Foscari Venezia (Venice), Universitat Autònoma de Barcelona (Barcelona) and Université Paul-Valéry Montpellier(Montpellier) with high-level competences in the field of mediation and cooperation, focused on Mediterranean exchanges and integration.

She currently assists Mrs. Benita Ferrero-Waldner, former EU Commissioner for External Relations and Neighborhood Policy, at Cremades & Calvo Sotelo, Madrid.

Francesca Villani

Ochoa + Lorca, "Painted Music", exhibits the work of Enrique Ochoa at the Cervantes Institute of New York

As Trustee of the Enrique Ochoa Foundation I have had the pleasure of being involved with the organization of the "Ochoa + Lorca, Painted Music" exhibition, who´s opening event was held at the Cervantes Institute in New York, on June 14. The exhibition was motivated by the commemoration of the 120th anniversary of the birth of Lorca, and the 40th anniversary of the death of the painter, and enjoyed the institutional collaboration of the Cervantes Institute, and the Embassy of Spain in the United States, and support from private entities like Air Europa, or Cremades & Calvo-Sotelo Foundation.

The opening Exhibit, was very successful, being able to fill up the Cervantes gallery, attracting, many attendees, amongst which the president of the Pintor Enrique Ochoa Foundation and grandson of the artist, José Estévez, the Ambassador and Permanent Representative of Austria to the United Nations in New York Jan Kickert, the ex- European Commissioner for External Relations and Neighbourhood Policy, Benita Ferrero Waldner, the Spanish Consul in charge of Cultural Affairs in New York, Juan José Herrera de la Muela and the Hispanic Society of America Director of Public Relations, Programs and Special Events, Mencía Figueroa, among other personalities.

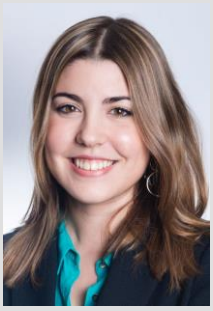
Ochoa is a universal painter that has strong roots and relations with Andalusia. Born in Cadiz, in El Puerto de Santa María, he spent his childhood and youth between Toledo, Cadiz and Seville. His close companions and friends also had links with his native Andalusia. His circle was composed, among others, of Picasso, Alberti or Federico García Lorca, whom he portrays on several occasions.

Since his earliest beginnings, Ochoa was considered an exceptional portraitist in the context of the first quarter of the twentieth century, noted also for his masterful drawing technique as an illustrator of books (among which figure the complete works of Rubén Darío) or in the main magazines of the time such as La Esfera, Blanco y Negro or Mundo Latino. At the end of the 40s Enrique Ochoa moved to Mallorca and spent some years living in the cell that Chopin occupied in the monastery of the "Cartuja de Valdemossa". It is in this place where he creates his "Painted Music".

These two hilly relevant Spanish artists have a particular story, of mutual admiration and influence on each other's work. Lorca and Ochoa first met at Café Pombo in Madrid, where artists and intellectuals of their times met every Saturday night at the gathering organized by the journalist Ramón Gómez de la Serna. In fact, they openly declared their mutual admiration: Lorca dedicated a poem to Ochoa, who in turn assumed the challenge of translating the verses of his "Gypsy Ballads" to the canvases and walls and who painted one of his most famous portraits. Ochoa, known as "The Music Painter", also took to "his field", painting, the poems of Rubén Darío and the scores of several classical musicians.

In this context, the exhibit commemorates the 120th anniversary of the birth of Federico García Lorca and the 40th anniversary of the death of Enrique Ochoa and in it included works that the painter dedicated to the author of "La Casa de Bernarda Alba" but also to several musicians, such as Beethoven or Stravinski. Hence, the exhibition in New York is made up of a significant sample of 14 works by the painter, and does not rest solely upon the figure of García Lorca and his Romancero, but also includes famous compositions such as "El Pájaro de Fuego", "La catedral sumergida" and "La Novena sinfonía" where the author leaves his personal mark and creative genius, transcribing musical notes to the brush.

The exhibition will remain opened and can be visited until July 14 of this year, at the Cervantes Institute in New York (www.cervantes.es).



Adriana Estévez

Adriana is an Attorney, specialized in Commercial Law, currently developing her activity in the Firm´s Madrid headquarters. Before joining the firm, she has developed her practice in several top international law firms in Madrid as well as the United States, within the Commercial or Competition Department.

Lawyer at Cremades & Calvo-Sotelo and Trustee of the Enrique Ochoa Foundation

Exhibition "Enrique Ochoa: The Painter of Music"

Place: The Cervantes Institute in New York (United States)
Address: 211 E 49th Street, New York, NY 10017
Dates: June 14 - July 14, 2018.
Free admission

Organized by: The Enrique Ochoa Foundation and the Cervantes Institute New York
Collaborators: Embassy of Spain in the United States
Sponsors: Air Europa, Cremades & Calvo-Sotelo Foundation, Redondo Iglesias y Carrillo Decoración

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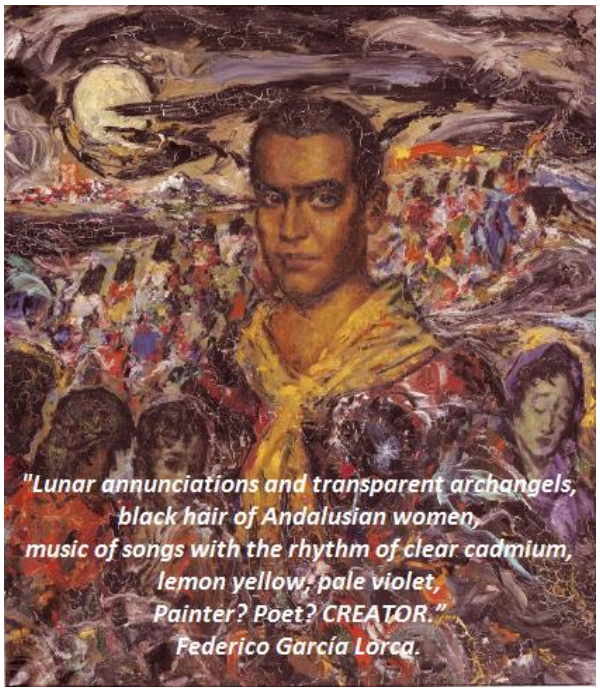

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Studio Legale Menichetti

Two new partners at Studio Legale Menichetti.

Attorneys Gilda Pisa and Simone Brun have joined as Partners in Studio Legale Menichetti. Both are labourlawyers, and in the course of their professional experience they have dealt with all kinds of labour law litigation, both public and private, addressing issues of significant interest on the most salient issues in this field.

Over the years, Atty. Pisa, a former Associate of the firm, has gained extensive experience in particular in social security law and civil service, whilst Atty. Brun has acquired significant experience in business reorganisation operations. With these new partners, the number of partners in Studio Legale Menichetti rises to 8.

The expansion of the Governance of the Studio is accompanied by another asset: on May 31, 2018 in Milan at Palazzo Mezzanotte, Atty. Claudio Damoli, was awarded the "Lawyer of the Year - Boutique Excellence - Contracts - Labour Law prize, on the occasion of the VIII edition of "Premio Le Fonti".

SOLINES & ASOCIADOS has conceived the professional practice as an instrument at the service of its clients, where ethics, knowledge and innovation are the basis for provide legal advice with the highest quality standards.

SOLINES & ASOCIADOS provides its services in Quito (capital of Ecuador) and in the main cities of the country, in addition to having a wide network of correspondents in LATAM, the US and Europe, which makes it a modern firm, able to respond to the demands of a globalized market and in constant movement.

SOLINES & ASOCIADOS has a platform of highly qualified professionals to serve in the four sectors and their respective areas in which it has focused its services: CORPORATE; ENERGY & NATURAL RESOURCES; ENTERTAINMENT & SPORTS; INFORMATION TECHNOLOGY & COMMUNICATION.

SOLINES & ASOCIADOS has been providing, for more than four decades, comprehensive support to dozens of important corporations and multinationals, as well as medium-sized companies and new ventures, turning it into a strategic partner that helps meet the aspirations of its customers and where social responsibility, technology and environment, have a special importance.

In the last year SOLINES & ASOCIADOS has been ratified as a relevant law firm in Ecuador, thanks to the positioning in the different sectors that it has opened.

These are some of the achievements

Latin American Corporate Counsel Association (LACCA) has included SOLINES & ASOCIADOS in its list of five leading law firms in Ecuador in energy law, through one of its partner lawyers, Santiago Solines, who is responsible for the energy sector.

SOLINES & ASOCIADOS is one of the four founding law firms in Ecuador of the World Compliance Association WCA chapter Ecuador, in harmony with its conviction that compliance must be incorporated by small, medium and large-sized national companies, as well as in the public sector.

SOLINES & ASOCIADOS was once again considered in the Leaders League directory as one of the two most important law firms in Ecuador in the area of Telecommunications & IT, through one of its lawyer partners Juan Carlos Solines.

Below is a detail of the sectors and areas in which it provides its advisory and support services SOLINES & ASOCIADOS

Corporate Sector

This is a complex sector, since it requires the incorporation of various areas of law (corporate, labor, tax, migration, civil, international trade, contracts, arbitration, procedural, securities, among others), so that the client can count on an integral support, both for its establishment, and for its operation. And for this SOLINES & ASOCIADOS takes advantage of the diversity and professional complementarity that it has and that allows it to provide permanent advice with innovative solutions.

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- Government Procurement
- Immigration And Foreigners
- Labor, Employment and Social Security
- Mercantile and Commercial
- Real Estate

Energy & Natural Resources Sector

In Ecuador, as in the rest of the world, energy is a transversal axis for all activities. SOLINES & ASOCIADOS understands this sector as one of the most relevant, not only for the oil wealth and the mining potential that the country possesses, but also for the need that exists to incorporate clean and renewable energies into the energy matrix (energy conventional and not conventional).

Practice Areas

- Electricity
- Oil and Gas
- Mining
- Renewable Energy

Entertainment & Sports Sector

The cultural and creative industries (ICC) have, at present, a special relevance in the world economy. The important growth of sectors (audiovisual, videogames, music, software, literary, advertising, among others), whose development has gone hand in hand

with technological evolution and new business models, requires the support of a specialized legal consultancy in the area of the right of entertainment. SOLINES & ASOCIADOS is a pioneer firm in Ecuador for providing these services.

Since the sport and all the businesses that revolve around it, became a powerful industry, the specialization in sports law has become necessary in these times, in order to provide adequate legal advice to the different actors. SOLINES & ASOCIADOS is one of the few firms that offer specialized services in this area.

Practice Areas

Entertainment	**Sports**
Intellectual and Industrial Property	Comprehensive Legal Advising
Cinema & Audiovisual	Contracting, Image Rights, and Representation
Music	Legal Counsel
Software & Videogames	Sporting Arbitration and Mediation
Advertising & Media	

Information Technology & Communication Sector

Technological advancement, the widespread use of the Internet and innovation in the development of business and services through digital platforms, has brought a new paradigm in social relations, in the way of communicating, doing business, even exercising rights. SOLINES & ASOCIADOS is considered one of the most relevant Firms in Ecuador in the ICT sector.

Practice Areas

Data Protection and Privacy	e-Commerce
e-Government and Electronic Administration	Internet, Information and Communication Technology
Telecommunications	

For more information about SOLINES & ASOCIADOS, your team, etc., you can access our website: www.solines.ec.

MAYORA & MAYORA, S.C.

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"'Excellent firm'
Mayora & Mayora, S.C. delivers 'very good work in the corporate arena' both on M&A transactions and day- to-day corporate matters."

-THE LEGAL 500

Mayora & Mayora, S.C. is a Central American law firm that covers the most relevant practice areas that affect business. We have handled clients' most pressing legal needs for over half a century and continued to grow alongside our clients, now with offices in Guatemala, Honduras, and El Salvador. Unlike competitors in the region, we are an entirely integrated law firm, the synergies and cost-effectiveness of which is directly passed onto our clients.

At Mayora, we assign specialists to our clients' cases, offering services in the following practice groups:

1. Corporate and M&A
2. Banking and Finance
3. Administrative
4. Labor and Immigration
5. Litigation and Arbitration
6. Tax and International Trade
7. Commercial

8. Civil

"This strong showing is driven by Mayora & Mayora's widely respected top partners. They have built a multidisciplinary firm that has serious legal clout in corporate law, banking and finance and disputes work."

-LATIN LAWYER 250

Our team of 34 attorneys help international and local clients conceive cutting edge solutions that stand the test of time. We truly understand our clients' industries and keep them abreast of new regulations that affect their business.

Mayora was recently recognized as the most innovative law firm of the year for 2017 by leading legal ranking agency, IFLR 1000, evidencing our passion to set precedents in our industry. We are also the exclusive member in Guatemala of Lex Mundi, the largest global network of private law firms in the world. Our firm and its attorneys are consistently chosen as some of the best and brightest in our field by legal ranking agencies such as Chamber & Partners, The Legal 500 and Latin Lawyer, just to name a few.

At Mayora, we focus on our clients' legal issues, so they can focus on what really matters–their business. We are a regional leader in our industry, so our clients can be a leader in theirs.

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CONTRERAS VELOZO

Contreras Velozo is one of the few Chilean firms specialized in both complex civil and criminal litigation, which has led it to be consulted and required by clients from diverse industries throughout Chile to resolve issues of national relevance.

Thanks to its consistent growth, Contreras Velozo has been making its way internationally, generating alliances with leading global firms in order to advise important transnational companies with presence in Chile. Likewise, the lawyers from Contreras Velozo nowadays participate in various international teams that handle cases in foreign jurisdictions, also extending their practice by giving professional advice to different Latin American governments.

The long-standing career of its lawyers, added to the characteristics of the cases they handle, make Contreras Velozo one of the firms with the best projection in the areas of complex civil and criminal litigation, which is complemented by the legal services they provide in arbitration, antitrust law, corporate law, administrative law and labor law.

For more information, visit www.covel.cl

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