

INDEPENDENCE AND OBJECTIVITY: THE ROLE OF THE CORPORATE LAWYER IN POLITICAL CRISIS, FERNANDO PELÁEZ-PIER

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A political crisis presents a significant challenge to corporate lawyers, says International Bar Association (IBA) Vice President, Fernando Peláez-Pier of Hoet Peláez Castillo & Duque in Caracas.

Según comenta Fernando Peláez-Pier, Vicepresidente de la IBA y socio corporativo de Hoet Peláez Castillo & Duque de Caracas, una crisis política se convierte en un reto importante para los abogados de empresa. Ya que comporta una incertidumbre, tanto política como jurídica – devaluando el imperio de la ley y la confianza en los sistemas judiciales. Ante este panorama, la comprensión de los objetivos estratégicos empresariales de los clientes a corto, medio y largo plazo resulta clave para poder ofrecer posibles soluciones frente a tales incertidumbres.

Political change is not uncommon, especially in my own part of the world. Such a scenario brings

with its economic as well as legal uncertainty – undermining the rule of law, and confidence in judicial systems.

Depending upon the specific jurisdiction and/or region of the world, the external factors and influences that companies may encounter while conducting business include, among others, economic, political, social and labour issues, and the lack of a stable legal framework.

A political crisis will clearly have a major impact on a client's business, although this is a topic not often discussed by corporate lawyers. I believe that those lawyers who have an understanding of their clients' short, medium and long-term strategic business goals will continue to have an important role to offer in constructing a route through such uncertainty.

Managing uncertainty

It is clearly a challenge to advise and assist businesses doing business in a jurisdiction affected by an intense political environment.

The main issues faced by our clients in these and similar circumstances are:

- constant changes in the legal framework – which bring economic, commercial and legal uncertainty;
- an absence of judicial independence – resulting in a lack of trust in judicial decisions (courts in this scenario rarely decide against the government and/or public agencies or corporations);
- the imposition of new regulations with the potential to have a significant impact on clients' business and activities – which place a heavy burden on their compliance, and an increase in operational costs;
- the burden of new legislation frequently passed without an open and public discussion of the draft bill – a lack of information is one of the critical aspects under this scenario.

In times of political crisis, it is political objectives, rather than the rule of law, that become more important when passing new statutory laws. It is not uncommon that new legislation is often in contradiction with the Constitution and general legislation in force.

Guidance

Normally, the influences resulting from a political crisis and or hostile political environment cannot be ignored, nor prevented, and there is very little room for amendment.

As outside legal counsel, we can however still play a vital role and assist our clients in dealing with these influences. Particularly when it comes to advising foreign clients, we can be instrumental and an asset in helping them to understand these influences and their causes; the different possible scenarios, and the potential or likely impact on their business, and ultimately help to identify possible alternatives and solutions.

We can assist our clients in providing contacts with key representatives within the public and private sectors, but primarily to assist them in understanding the new rules of the game, as well as to analyse alternatives for the protection of their business.

Under these difficult circumstances, it is of utmost importance to obtain and provide our clients with accurate information. Therefore, it is of paramount importance to know and understand our clients' short, medium and long-term business objectives in order to provide the most accurate and effective advice.

As outside counsel we can, I believe, continue to play the role of a confident counsel, but we must

be totally objective in order to play it well and efficiently. We must keep in mind all of our client's priorities and objectives and provide them with the advantages and disadvantages to create the foundations of the right decision, but always keeping in mind our role as independent outside legal counsel.

Fernando Peláez-Pier is a corporate partner with Hoet Peláez Castillo & Duque in Caracas. He is currently Vice-President of the International Bar Association (IBA) and a founding member of their Latin American and Caribbean Forum.