

WHITE-COLLAR CRIME

Iberian Lawyer presents the Spanish Top Ten lawyers of this practice

VINHO VERDE

Patrícia Pais Leite, head of Legal at the Vinho Verde Commission

MATTER OF TRUST

Gustavo Caiuby Guimarães from Dunas Capital on Wealth Management

TAKING A STAND

Tiago Geraldo, from Morais Leitão, is November's Young and Unstoppable

SPECIAL
IBERIAN
LAWYER
FORTY
UNDER 40
2020
WINNERS
GALA NIGHT
IN LISBON



BRUNO FERREIRA:
A MODERN LEADER
FOR THE NEW TIMES

Iberian Lawyer

These events refer to Iberian Lawyer and they reward the best lawyers and law professionals in Spain and Portugal.

| | |
|--------------------------|-----------------------------------|
| Gold Awards | New Date, Web Edition, 26/11/2020 |
| Labour Awards - Portugal | New Date, Lisbon, 11/03/2021 |
| InspiraLaw | Madrid, 08/04/2021 |
| Forty under 40 Awards | Madrid, 23/09/2021 |
| Gold Awards | Madrid, 4/11/2021 |
| Labour Awards - Portugal | Lisbon, 02/12/2021 |

The Latin American Lawyer

The event aims to highlight the excellence of the lawyers of firms, experts in the sector of energy and infrastructure in Latin America.

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|--------------------------------|-----------------------|
| Energy & Infrastructure Awards | Sao Paulo, 21/10/2021 |
|--------------------------------|-----------------------|

INHOUSECOMMUNITY AWARDS

This event intends to reward the best professionals within companies: from legal affairs, HR, financial to tax departments.

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|---------------------------------------|-------------------------|
| Inhousecommunity Awards - Italy | Web Edition, 09/11/2020 |
| Inhousecommunity Awards - Switzerland | Web Edition, 12/11/2020 |

LEGALCOMMUNITYWEEK

The international week of events for the legal business community in Milan.

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|---------------------|---------------------|
| Legalcommunity Week | Milan, 7-11/06/2021 |
|---------------------|---------------------|

FINANCECOMMUNITYWEEK

LC PUBLISHING GROUP

The Global Annual Event for the Finance Community.

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| Financecommunity Week | Digital, 16-20/11/2020 |
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LC

They are the events that are addressed to all the communities of the Group: legal, inhouse, finance and food.

| | |
|-------------------------|-------------------|
| Corporate Music Contest | Milan, 09/06/2021 |
| Save the Brand | Milan, 24/06/2021 |
| Sustainability Awards | Postponed to 2021 |

LEGALCOMMUNITY AWARDS

These awards refer to Legalcommunity, our digital title, and they reward the best law firms and lawyers by area of expertise in Italy. There are 10 Legalcommunity Awards each year.

| | |
|-----------------------------|-----------------------------|
| Italian Awards | New Date, Rome, 03/12/2020 |
| Marketing Awards | New Date, Milan, 15/12/2020 |
| Forty under 40 Awards Italy | Milan, 25/03/2021 |
| Tax Awards | Milan, 15/04/2021 |
| Energy Awards | Milan, 29/04/2021 |
| IP&TMT Awards | Milan, 13/05/2021 |
| Finance Awards | Milan, 27/05/2021 |
| Corporate Awards | Milan, 10/06/2021 |
| Labour Awards | Milan, 09/09/2021 |
| Litigation Awards | Milan, 16/09/2021 |

LIFE IS BEAUTIFUL

by desiré vidal

WWW

We have recovered Roberto Benigni's film title for November, in which we are releasing *State of Alarm (Part 2)* and *Curfew*, and unfortunately, we are not talking about the film's billboard. We remember the story of that father who plays an imaginary game to protect his son in a Nazi concentration camp, and we do so in the hope of replicating his example and chasing away the shadows that cloud our daily lives and that seek to distract us from the real truth; how beautiful it is to live.

And because we have to keep on living, at Iberian Lawyer we do it with enthusiasm, and we

went to Lisbon, to the great festival of the legal sector that is the *Forty under 40*, where, once again, representatives of the greatest of the Iberian legal profession met. These awards are, by tradition and recognition, the best witness to the hope of a better future that comes from having such strong profiles in all areas of Law within the peninsula. With the wonderful soundtrack of this film in the background, we looked in this issue at a great Spanish lawyer (also an international figure), Pilar Menor, who talked with us about how true leadership, so important at this time, is exercised. Pilar takes stock with us of a brilliant career that she has been able to combine with a full family life and in which she has reaped important results such as the new title of *Lawyer of the Year* in the Iberian Lawyer Labour Awards 2020, awarded last October.

From Portugal, Bruno Ferreira, co-managing partner of PLMJ, is the cover of the English version. From this emblematic firm, Ferreira stands for the new model of Portuguese Law and, as such, has recently been highlighted by the Financial Times as one of the leaders who have taken advantage of the current circumstances to make successful changes in their companies. This month's young and unstoppable man also comes from the neighbouring country. He is Tiago Geraldo, a 35-year-old lawyer, managing associate of the Criminal and Compliance department, and co-director of the Innovation Committee of Morais Leitão.

Speaking of leaders, we brought together, for the first time in this magazine, the Top Ten lawyers of the White-Collar Crime practice in Spain. A practice that is gaining prominence due to the fact that the pandemic has also promoted new types of financial crime, especially in the area of cyber-crime. This is precisely what one of these tops, Jesús Santos, partner head of the Criminal Procedure Department at Baker McKenzie, tells us.

In the context of this issue, we reviewed the new anti-fraud regulations with Fernando López Muñoz from Ayuela Jiménez, the new registration law for passenger control with Juan Carrasco from Santiago Mediano Abogados and we talked about the creation of the so long-awaited Fintech sector sandbox with Alejandro Varo from EJASO ETL Global. With Ignacio Delgado, a lawyer from Legisfund, we talked about unusual investments such as swaps and with Gustavo Caiuby Guimarães, from Dunas Capital, about Wealth Management.

Without a doubt, what a great heritage the Portuguese Vinho Verde has. Patrícia Pais Leite, legal manager of the Commission of this Denomination of Origin, introduced us to the captivating world of wine and its legal ins and outs. And from exceptional wines and women, we move on to talk with extraordinary guys, like Carlos Menor, a convinced in-house lawyer, who joined Renault España in October and who is equally agile in mind and word. Menor speaks with us from the maturity of an already consolidated career and from the optimism that characterises him and that he justifies by quoting Churchill, quite rightly, "it does not seem to be much use to be anything else." Energy and optimism also come to us from another great man that we knew travelling to Chile, the country that played a leading role in voting this month in favour of drafting a new Constitution. He is Tomás Acosta, resident partner of Uría Menéndez at PPU Chile, a Spaniard with an adventurous spirit who enjoys the opportunities that life gives him "learning other ways of doing and thinking and meeting people from diverse backgrounds and meeting new situations."

And from Chile, we went to Africa to talk about "Energy and infrastructure financing", in the second meeting of the Special Focus in which top law firms from the Portuguese legal market and prominent general counsel from the EMEA area participated.

As always, we have the usual contributions; from Women in a Legal World, this month by the president of the young women's group (WLWY), Marta Campuzano, who talks about the important mentoring work carried out by this network, by Elisa Turullols from the World Compliance Association, who reminds us of the ten things not to do as a Compliance Officer, and by Marí González Marrodán, member of the Association of Corporate Counsel, who talks about "Corporate Lawyers and COVID-19". 



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EVENTS



INTELLIGENCE



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4th Edition

Gold Awards

● ● ● ● ● by Inhousecommunity

The **Gold Awards** by Inhousecommunity recognises the excellence of in house legal and compliance professionals and teams in Spain & Portugal

For more information please visit www.iberianlawyer.com
or email awards@iberianlegalgroup.com

SAVE THE NEW DATE

26 November 2020

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Sociedade de Advogados

M
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& ASSOCIADOS

PL
MJ

VdA VIEIRA DE ALMEIDA

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LEADERSHIP

Andersen appoints two Spain co-managing partners

Andersen has appointed **José Vicente Morote** and **Íñigo Rodríguez-Sastre** as co-managing partners of the firm for the Madrid, Valencia and Seville offices, and will also lead Public Law and Regulatory and Litigation and Arbitration practices, respectively.

Jaime Olleros, who is a member of the Global Board of Directors of Andersen Global, will remain in the position as managing partner until January 1, 2021, when the new co-managing partners will take up their duties in order to continue promoting the growth of the firm.

The appointment is part of the firm's succession plan, which began with the creation of the Board of Directors in January 2020.

José Vicente Morote (pictured left) has a PhD in Law from the University of Bologna and has been a partner of the firm since 2013. He specialises in Administrative, Urban and Real Estate Law and heads the Public and Regulatory Law area. During his long professional career, he has advised numerous private companies and public administrations on matters related to Administrative Law. He holds different responsibilities as the European Legal Coordinator and is a member of the European Regional Board of Directors. In addition, he is a university professor and has produced a large number of legal publications.

Partner Íñigo Rodríguez-Sastre (pictured right) is also a lawyer and joined the firm in 2013 as head of Litigation and currently leads Arbitration practice. He has significant professional experience acting in Contentious proceedings before ordinary courts as well as representing companies from various sectors, such as construction, in both national and international arbitrations. He is also a professor at various universities and business schools, such as Instituto de Empresa Business School, and has collaborated in numerous legal publications. Additionally, Íñigo is recognised by prestigious international legal directories.

Independent and international

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ABOGADOS

ARAOZ & RUEDA



RRP promotes three to partner

RRP Advogados has reinforced Corporate, Capital Markets and Banking areas with the promotion of **Rodrigo Falcão Nogueira** (pictured left), **Manuel Cordeiro Ferreira** (pictured centre) and **Carlos Vaz de Almeida** (pictured right) to new partners.

RRP Advogados managing partner Ricardo Reigada Pereira considers that “these promotions are a testament to the firm’s rapid growth in the Portuguese market, enabled by an outstanding team of lawyers that serve the firm and its clients with distinction.”

Rodrigo Falcão Nogueira heads the Corporate and M&A department since he joined the firm in 2016. His professional activity is focused on the areas of Commercial Law, with particular expertise in Corporate and Securities Law. He has been working mostly on M&A transactions, Private Equity investments, Corporate restructuring and providing legal advice in Corporate Governance and Corporate finance matters. He also has extensive experience in Securities operations and commercial contracts. He was part of Linklaters LLP’s Corporate Finance team in Lisbon, from 2007 to 2016, and during this period he also integrated Linklaters LLP’s Corporate team in London from 2010 to 2011.

Manuel Cordeiro Ferreira heads the Capital Markets and Financial Services department since he joined the firm in 2017. He also integrates the firm’s Corporate and M&A, Banking and Finance and Real Estate teams. His professional activity is mainly focused on Corporate Law, mostly in the areas of Companies and Securities Law. He has been working in Mergers and Acquisitions, in Corporate Governance and Corporate finance matters, as well as in public (takeover and distribution) offerings of securities, and the setting up and distribution of collective investment schemes (Mutual and Real Estate funds). Manuel also has extensive experience in the area of Financial Regulation, having advised foreign and domestic financial institutions in several matters of strategic importance. Before joining RRP Advogados, he was a lawyer at Uría Menéndez-Proença de Carvalho in Lisbon, working in the Capital Markets team. Between 2014 and 2015 he was assigned for one year to the London office of Uría Menéndez.

Carlos Vaz de Almeida heads the Banking and Projects department since he joined the firm in 2016. His professional activity is focused on advising clients on Public Law matters, notably in the fields of Public Procurement, Energy and Natural Resources, Transportation and Health. His practice also includes banking and finance in general, in particular project finance. Carlos provides advice to public and private entities, both in national and cross-border transactions. Before joining RRP Advogados, he was a lawyer at Linklaters LLP and Uría Menéndez-Proença de Carvalho. He was also a deputy to the Portuguese Minister of State and Finance and deputy director and senior consultant of the Portuguese PPP/PFI Unit (Ministry of Finance). In this context, he was a member of various commissions appointed by the Portuguese Government to renegotiate and launch public-private partnerships.



BDO: PROMOTIONS & LATERAL

BDO adds ex-PwC partner and promotes two partners

BDO Spain has hired **Antonio Puentes**, former PwC Tax & Legal partner, to lead its Tax Controversy area. Antonio Puentes (pictured left) is a former PwC Spain Tax Controversy & Dispute Resolution partner. He has broad experience in domestic and international proceedings and is an EU Tax Law subject matter expert in the field of Tax Litigation.

Antonio's experience involves the areas of all Tax Controversy issues: international, state, regional and local Tax. Between 2005 and 2019 he was involved in more than 100 projects with PwC's European Direct Tax Group, working together with PwC's International Tax Services network assisting clients who were defending proactively the refund of taxes paid in breach of EU Law. He has broad experience in giving assistance in Tax Audit, Tax Litigation and judicial proceedings from a domestic and international point of view throughout the complete controversy lifecycle.

He is a Law graduate from Universidad Autónoma de Madrid and holds a diploma in Tax proceedings from the same university. He took an EDP in Business Administration & Management at ESADE and holds a Master's degree in Tax Law from Centro de Estudios Financieros.

The firm has also promoted **Montse Rodríguez** to Labour partner and **Eugenio García** to International Tax partner. The two new partners reinforce the Labour Legal department and the International Taxation department.

Montse Rodríguez (pictured centre) has been Spain BDO Abogados head of Labour since 1997. Specialised in senior management and Corporate Labour relations, she is a reference in Legal matters and Labour legislation in the press and national media, as well as in the early identification of Labour problems in companies and trends in Labour relations and Compliance. Montse holds a double degree in Law from Universidad Internacional de Cataluña and UNED, holds a Master's degree in Labour Law from ICAB and is an active member of associations and working groups on women and leadership in business schools, such as IESE.

Eugenio García (pictured right), the new International Taxation partner, joined BDO in 2011 and leads the German desk in Spain. His profile and international experience have allowed him to develop this area at BDO, advising both multinationals and foreign investment funds with interests in Spain, as well as Spanish companies in international expansion. He acts as a liaison on Tax matters at an international level. Eugenio is also a BDO Spain Real Estate Committee member and a BDO Spain Innovation and Technology working group member. Besides, he is also part of BDO's Global Real Estate & Construction Group. Eugenio collaborates as an external lecturer in the Master's degree in Tax Consultancy and International Business Law of the School of Legal Practice at the UCM, as well as in the Master's degree in Law of the European University.



REAL ESTATE PORTUGAL

Abreu reinforces Real Estate area at Porto office with a new partner from CCA

Abreu Advogados announced the reinforcement of its Real Estate, Commercial, Corporate and M&A teams by integrating **Maria Santa Martha** (pictured). The hired partner joins from CCA where she was a partner and coordinated the Oporto office since 2018. She will consolidate the seniority of Abreu's Porto team in key areas for the firm.

With extensive experience in Corporate Real Estate operations and advice on major Real Estate projects, Abreu's most recent hired partner has more than 20 years of experience in providing legal advice to domestic and foreign clients. Maria Santa Martha has extensive experience in Corporate Real Estate operations, assets purchase and sale and sale & leaseback. Also on development of Commercial Real Estate projects, housing, services and logistics, and the execution of expansion plans for retail units, especially for multinational companies, institutional investors and family offices. Besides, she is an expert in Corporate and M&A operations, where she has regularly provided support to significant domestic and foreign business groups in various sectors of activity, including Israeli investors.

At Abreu Advogados, she will contribute to the reinforcement of Real Estate activity in Porto with partner Rui Peixoto Duarte. This practice area is also co-led in Lisbon by partners Patrícia Viana and Tiago Mendonça de Castro, who recently joined the firm.



TMT

Fieldfisher JAUSAS adds TMT partner

Fieldfisher JAUSAS has hired **Vanesa Alarcón-Caparrós** as a partner to lead its Barcelona office TMT area.

Vanesa Alarcón-Caparrós (pictured) is an expert in advising start-ups and technology companies. She is also a delegate for Data Protection in various companies and a specialist in development contracts, brand defence, Intellectual Property protection and e-commerce.

She joins from Avatic Abogados, where she was director. Vanessa graduated in Law from the Universidad Autónoma de Barcelona, with a Master's degree in New Technologies and Intellectual Property Law from Esade. She has been a practising lawyer since 2003 and co-founded Avatic Abogados in September 2013.

As she explains, she is passionate about the world of social networks, communication, ICT and entrepreneurship in general. She advises start-ups and companies with technological projects or those related to Intellectual and Industrial property. She also teaches at ARTIDI and ENTI, the Video Games University.

»»

16-17-18-19-20.11.2020



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IN-HOUSE SPAIN

Indra appoints new head of Legal

Fabiola Gallego (pictured) has been appointed secretary-general, head of the Legal department, vice secretary to the Board of Directors, and a member of the Management Committee. She replaces Carlos González in this post, who was interviewed by Iberian Lawyer in April issue, and is leaving the company after 24 years to devote himself to new projects. The Board has expressed its gratitude for his dedication to the company during all this time.

Fabiola Gallego, a Law graduate from Universidad Complutense de Madrid, is a State Attorney and has built up extensive professional experience both in the public and private sector, having held positions of great responsibility in bodies such as the Ministry of Development, the Attorney-General's Office, the Ministry of Foreign Affairs, Adif and Renfe. She currently holds the post of secretary-general to the Board of Directors of the Empresa Nacional de Residuos Radioactivos (National Radioactive Waste Company -Enresa).



EU COMPETITION LAW

PwC T&L nabs Competition Law head partner from Baker McKenzie

PwC Tax & Legal has hired former Baker McKenzie's partner **Alberto Escudero** to lead the same area at PwC T&L.

Alberto Escudero (pictured) is a Law graduate from Universidad San Pablo CEU in Madrid, with specialisation in EU Law. He holds a postgraduate diploma in European Union Law from the University Paris I Panthéon-Sorbonne and another in EU Competition Law from the King's College in London with honours. For fifteen years, he worked as a lawyer specialising in Competition & EU Law at the Garrigues Madrid office, and also at the Garrigues Brussels office for one year. After that, he joined Baker McKenzie as the partner head of the Competition Law department, where he spent seven years before joining PwC T&L. He is a specialist in Spanish and EU Competition Law regarding the preparation of self-assessment reports on contracts and trade policies to ensure Compliance with Antitrust regulations, implementation of Competition Law Compliance programmes as well as representation and defence in sanctioning cases on restrictive practices before the Competition authorities and in Contentious-Administrative proceedings before the courts.



DISPUTE RESOLUTION

Simmons & Simmons lures partner from Deloitte

International law firm Simmons & Simmons has announced that its Dispute Resolution offer will be bolstered by the arrival of **Santiago Hurtado** as a partner in the firm's Madrid office. He joins existing Litigation partners Andrés Mochales, Fernando Aizpún and Raquel Ballesteros effective October 5.

Santiago joins the firm from Deloitte Legal, where he has been head of Litigation and Insolvency since 2013. In addition to this role, he is also a Commercial Law associate professor at Universidad Complutense de Madrid. He is a State Attorney on leave of absence, and was general counsel and Technical Secretary-General of Spain's Ministry of Justice.

Santiago (pictured) is a very distinguished practitioner in Restructuring and Insolvency, and his expertise in Dispute Resolution ranges from Commercial and Civil issues to M&A disputes, Competition Law, tortious liability and shareholder-company conflicts. Listed in prestigious international rankings, he is the second partner to join the firm's Madrid office in less than a month.

On welcoming Santiago to the firm, Litigation partner Andrés Mochales said: "It is great to have Santiago join the Simmons Dispute Resolution team in Madrid. His arrival futureproofs the Spanish DR offering out of Madrid, and offers our clients in the Financial sector further nuance in the Litigation advice that we can provide."

On joining the firm, Santiago commented: "With its international network, Simmons' Dispute Resolution team is ideally placed to carry out the cross-border work that will become the norm in the post-COVID global context. Having now joined the firm, I look forward to lending my expertise to the matters that will arise as a result of the pandemic, and beyond."



COMMERCIAL

CMS Spain adds Commercial partner from Baker McKenzie

CMS Albiñana & Suárez de Lezo has added **Elena Aguilar** as partner of the Commercial department, currently formed by 12 partners.

Elena Aguilar (pictured) is a specialist in Commercial Law, with a particular focus on M&A at national and international level, being, in recent years, particularly active in advising Private Equity funds. Aguilar joins from Baker McKenzie, where she was team director at the M&A department for nine years, which included a secondment at Siemens S.A. Previously, she developed her career between 2005 and 2011 with Uría Menéndez. During this time she stayed at the Buenos Aires office, focused on advising foreign investors on their investments in Latin America.

She graduated in Law and Business Administration & Management from ICAI-ICADE, and teaches in the Master's Degree in Access to the Practice of Law at the Universidad Carlos III de Madrid. This new incorporation adds to those recently announced partners: Guillermo Muñoz-Alonso to lead the Markets and Financial Services department, Jaime Bofill to lead the Insurance, Reinsurance and Innovation area and Alfonso Codes to integrate Public and Regulatory practice.

IN-HOUSE SPAIN

Renault Spain names new Legal director



Carlos Menor, former ThyssenKrupp Elevator Iberia and Africa head of legal, is, since October 1, new Legal director of Renault Spain. Carlos Menor (pictured) is a lawyer since 1998 and specialises in Business Law regarding Litigation, Negotiation and Contracting Law.

During his career, he spent eight years working for law firms, where large corporations were his clients. He has been head of Legal of ThyssenKrupp Elevators SEAME since 2007, covering Southern Europe, Africa and the Middle East. His work has effectively facilitated in-house and external contracts in hundreds of Legal cases, preventing, from a Legal perspective, all type of risks and revenue losses and maintaining control of constituents. Beyond this, he executed and supervised all external lawyers that worked for the company.

As he acknowledges, Legal work is his passion, so he also teaches at Saint Louis University, Madrid, where he is a faculty member in the Business Management Department since 2010. He teaches a course on Legal Environment in Business to a group of 30 international students each semester.



PROMOTIONS PORTUGAL

Sofia Galvão promotes Luís Moitinho de Almeida to partner

Sofia Galvão has promoted **Luís Moitinho de Almeida** (pictured) to partner after five years in the firm. The firm, launched in 2014, welcomes Moitinho de Almeida on his joining to founding partners **Sofia Galvão** and **Hugo Nunes**. This promoting is an expected development in recognition of Luís Moitinho de Almeida's fundamental contribution to the work developed in the firm, and the consequent consolidation of SGA's leadership position in the legal market in all matters relative to the Territory (Planning, Real Estate, Tourism & Leisure, Environment, etc.).

Luís Moitinho de Almeida graduated in Law and holds a Master's degree from the Universidade Católica Portuguesa and, before joining SGA worked at LCA Advogados in Lisbon and as a deputy for the Portuguese administration.



REAL ESTATE

Dentons counsel jumps to Pérez-Llorca

Pérez-Llorca has lured another lawyer from Dentons as part of the series of lateral hires that have been recently taking place, including the one of its managing partner **Jesús Varela**, along with two other partners and an associate.

Arancha Barandiarán (pictured), who was until now Litigation & Arbitration counsel at Dentons, joins the Real Estate team of Pérez-Llorca as counsel.

Arancha has a Law degree from Universidad Complutense de Madrid and took postgraduate PhD courses in Private Heritage Law from Universidad Autónoma de Madrid. For the last 12 years, she has worked at Dentons, where she became counsel in April 2020. Previously she worked at Baker McKenzie.

Although at Dentons she concentrated on complex Civil and Commercial Litigation and domestic Arbitration including shareholder/company law disputes, product liability and insolvency, she also has experience advising on procedural management of Financial and Real Estate asset portfolios characterised by situations of particular conflict and technical complexity, Due Diligence processes and strategic analysis on Litigation and follow-up of portfolios. She holds significant experience in the areas of Real Estate and Construction, representing national and international investors in Insolvency proceedings, termination actions, interim measures, Arbitrations and mortgage foreclosures among others. She teaches at the Master's degree for Access to the Legal Profession at the Universidad Autónoma de Madrid and is an Arbitrator of the European Association of Arbitration.

LEGALDAY



3 DECEMBER 2020



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GALVÃO TELES, SOARES DA SILVA
& ASSOCIADOS

PL
MJ

V&A VIEIRA DE ALMEIDA

LEGALDAY – PROGRAM*

| Time | Topics | Speakers | Partners |
|-------|---|--|--|
| 9.00 | Greetings | Aldo Scaringella (Founder & Managing Director LC Publishing Group) | |
| 9.05 | Face to face with Alexandra Reis , Senior Counsel, <i>Philip Morris International - Tabaqueira II S.A.</i> and Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | | |
| 09.25 | Session 1 Building a culture of sustainability. SDGs 2030 European Agenda <ul style="list-style-type: none"> Covid-19 frame and the new mandatory sustainability rules. How to land this into the legal world? | Speakers: Patricia Fonseca , Head of Legal of <i>Novo Banco</i> Stéphanie Silva , General Counsel, <i>TAP*</i> Paolo Quaini , General Counsel <i>Alitalia</i> Moderator: Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | EVERSHEDS SUTHERLAND NICEA PL MJ |
| 10.45 | Keynote speech GC Sustainability and LegalTech | | |
| 11.00 | Face to face with Luís Graça , Head of Legal Department, <i>Indra</i> and Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | | |
| 11.20 | Session 2: <ul style="list-style-type: none"> How can traditional sectors adapt to the new digital environment? Data Protection & Cybersecurity in an uncertain scenario | Speakers: Mohamed Elmogy , General Counsel Middle East and North East Africa <i>Siemens, UAE</i> Sandra Mori , DPO Europe, <i>Coca-Cola</i> Moderator: Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | VdA VIEIRA DE ALMEIDA |
| 12.30 | Closing keynote speech | | |
| 12.45 | Q&A session | | |
| 13.00 | Break | | |
| 14.45 | Face to face with Isabel Fernandes , Head of Legal, <i>Grupo Visabeira</i> and Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | | |
| 15.00 | Session 3: Sustainability and Renewable Energies <ul style="list-style-type: none"> Renewable energies as a way to make life better and gain sustainability Flexibility and control of resources | Moderator: Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> Speaker: Mahmoud Shaarawy , Group Legal Director, <i>Elsewedy Electric, Egypt</i> | M L MORAIS LEITÃO GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS C'M'S/ Rui Pena & Arnaut Sociedade de Advogados |
| 16.00 | Q&A Session | | |
| 16.15 | Closing Remarks for the partners | Moderator: Desire Vidal , Chief Editor, <i>Iberian Lawyer</i> | |
| 17.00 | End of the conference day | | |

*in progress
All the sessions will be held in English

For information and registrations: jon.bustamante@iberianlegalgroup.com
For sponsorship opportunities: carlos.montagnini@iberianlegalgroup.com

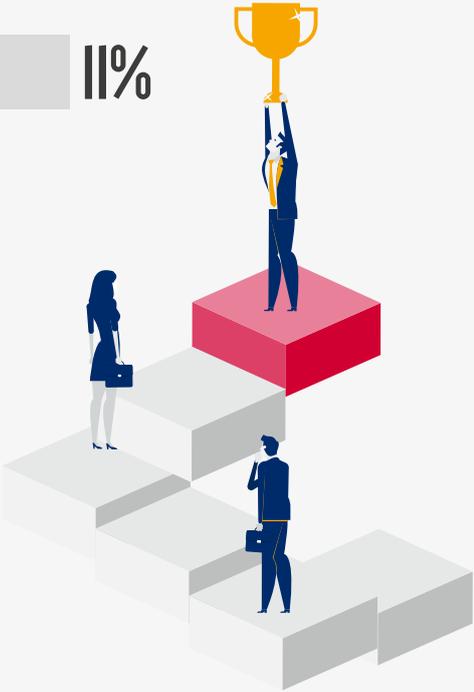
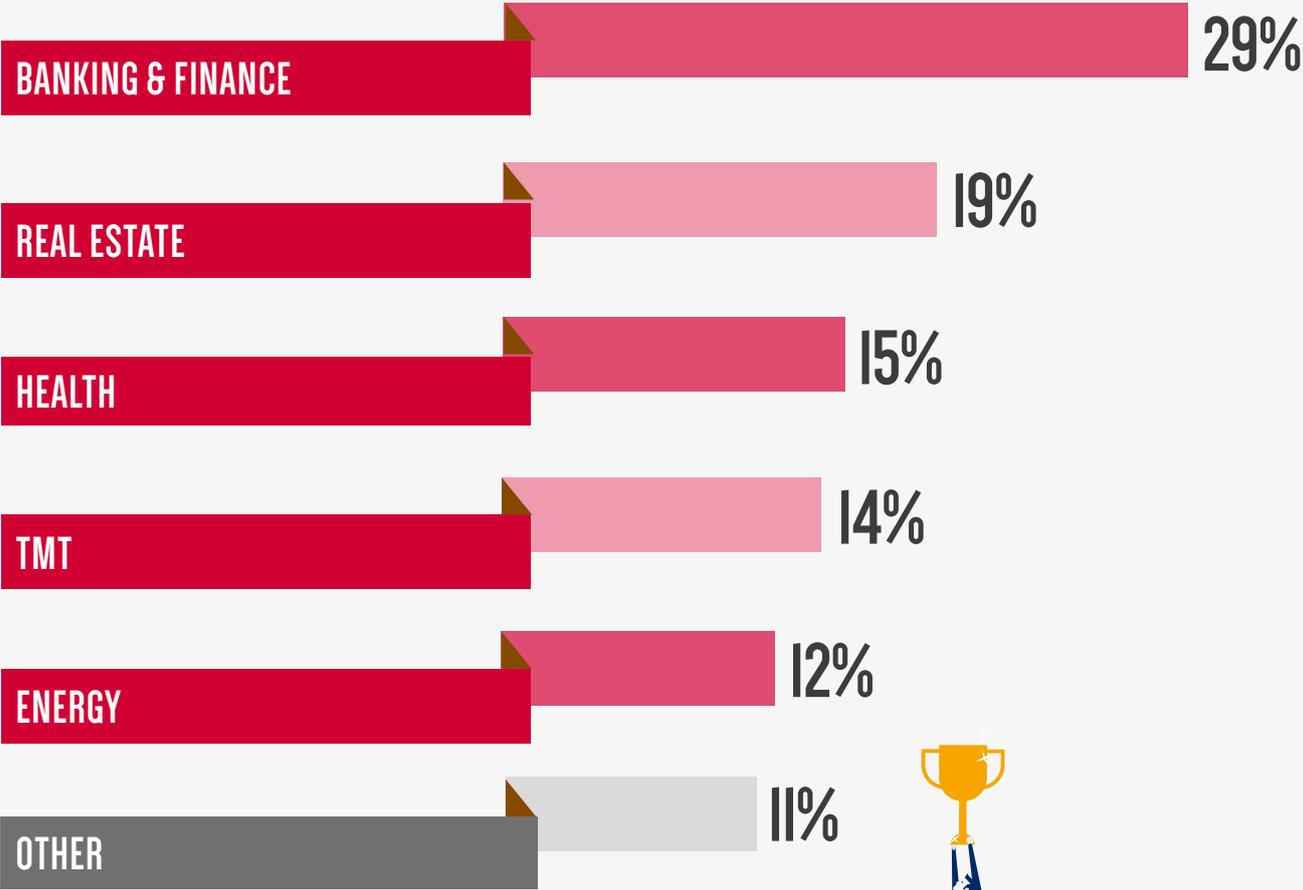
RESTRUCTURING THE BANK SECTOR



M

Mergers and Acquisitions provide a way to cut costs as well as to achieve economies of scale and synergies. The need for consolidation and restructuring of the Spanish financial system, which involves a significant reduction in the number of competitors and the creation of larger financial institution is not something new, but a process that started in the 90´s after Spain joined the European Economic Community. Both the number of big banks controlling the majority of the country´s banking resources and smaller retail banks and savings banks have been significantly cut, in a raft of mergers & acquisitions aimed at trimming costs and improving efficiency and profitability. The merger of two of Spain's biggest banks, Caixabank and Bankia, pushed together by a need to weather tough economic times comes as Europe's financial sector braces for lean times,

IBERIAN DEALS: **KEY SECTORS**



Period: September 20 - October 19 2020 (source: Iberianlawyer.com)

with banks' profitability in recent years already dented by low interest rates, which squeeze their profits on loans, they are battling a steep economic downturn as well as uncertainty about the future due to the coronavirus pandemic. The banks expect to make annual savings of €770 million as they seek economies of scale and further development of online banking and will create the largest lender in the country, with assets of more than €664 billion. Large mergers usually imply the assistance of heavyweight law firms. In this case, Garrigues and Uría Menéndez, two of the top 3 law firms in Spain by revenue, advised Bankia and Caixabank respectively and steered the merger since the very beginning of the talks, with Davis Polk acting for Caixabank on US Law matters.

The merger between CaixaBank and Bankia seems to have sparked a wave of consolidation in the Spanish banking sector, reviving moves by other banks to gain scale or strengthen their business models. This is the case of the Spanish lenders Unicaja and Liberbank, that kicked off formal merger negotiations to create Spain's fifth biggest lender, with over €100 billion in total assets, after hiring the same advisors that acted for them last year, where the merger was called off following a failure to agree on a share swap. Unicaja's board hired Uría Menéndez as legal adviser while Liberbank instructed Ramón y Cajal Abogados.

Abanca's Acquisition of Bankoia is another example of bank restructuring at the regional level, in which Crédit Agricole Group, majority owner of Bankoia, advised by Cuatrecasas. With this deal, Galician Abanca will consolidate its position as the sixth-largest Spanish financial entity in terms of assets and will grow in the Basque Country.

We have also witnessed Singular Bank's acquisition of Belgravia Capital fund, a deal that completes the Spanish private bank financial offer with a high degree of specialisation.

The new corporate game in the financial sector, initiated with the merger of Bankia and CaixaBank, seems to be joined in the coming months by other participants, such as Unicaja-Liberbank, Sabadell with BBVA or Kutxabank, or other possible combinations, which will lead to a greater concentration of the assets under management in the hands of the banks.

GARRIGUES, URÍA MENÉNDEZ STEER BANKIA-CAIXABANK MERGER

After talks initiated in September about a possible merger, the Boards of Directors of both entities approved the operation, to be executed as a merger by absorption of Bankia by CaixaBank.

The new entity, which will maintain the CaixaBank brand, is to be founded with the aim of adding value to customers, improving profitability for shareholders and continuing to support Spain's economic recovery. It will be the leading bank in Spain with more than 20 million customers, a 25 and 24 per cent share in loans and deposits respectively, and a diversified and balanced geographic presence.

The operation is expected to close during the first quarter of 2021, once all the relevant regulatory authorisations are received from the Ministry of Economic Affairs and Digital Transformation, the National Commission of Markets and Competition, as well as non-opposition confirmed from the Directorate-General for Insurance and Pension Funds, the Spanish Securities and Stock Exchange Commission (CNMV) and the Bank of Spain for CaixaBank's acquisition of significant holdings in a company subject to their supervision.

Garrigues is advising Bankia with Corporate and Competition Law teams. The Corporate team is formed by Garrigues' executive chairman **Fernando Vives**, partner and co-head of the Corporate department **Álvaro**

López-Jorrín, senior associate Juan González Ortega and associate Carlos Lozano. The Competition team comprises partner Susana Cabrera and of counsel Konstantin Jörgens. Uría Menéndez's team advising CaixaBank is being coordinated by partner and chairman **Luis de Carlos** and Barcelona office partner **Daniel Ripley**, and includes Barcelona Commercial partner Eduardo Bagaría and, from the Madrid office, Competition partner Antonio Guerra, Regulatory counsel Carolina Albuérne, Capital Markets partner Alfonso Ventoso and Insurance & Reinsurance partner Guillermo San Pedro. CaixaBank is also being counselled by Davis Polk on US Law matters with a Madrid office Corporate team including partner **Michael J. Willisich** and associate Jose Lucena-Rebollo.

Practice Area

M&A, Corporate, Competition, Commercial

Deal

Merger by absorption of Bankia by CaixaBank

Law firm

Garrigues, Uría Menéndez, Davis Polk

Lead partner

Fernando Vives, Álvaro López-Jorrín (Garrigues). Luis de Carlos, Daniel Ripley (Uría Menéndez). Michael J. Willisich (Davis Polk)

Value

€630 billion in assets. Share swap: 0.6845 CaixaBank for every Bankia share

CUATRECASAS ADVISES CRÉDIT AGRICOLE ON ABANCA'S ACQUISITION OF BANKOA

Cuatrecasas has advised the Crédit Agricole Group on finalising the sale



Fernando Vives



Álvaro López-Jorrín



Luis de Carlos



Daniel Ripley



Michael J. Willisich



Fernando Mínguez

of Bankoa to Galician Abanca. With the acquisition of Crédit Agricole's retail banking business in Spain, Abanca strengthens its presence on the Cantabrian coast, an area considered a priority in its Strategic Plan. Specifically, the agreement allows it to grow in the Basque Country, a market of great value due to its financial strength (it is the Spanish community with the best rating) and its economic dynamism (it has a GDP per capita 30 per cent higher than the national average). The Galician bank will increase its turnover by €4,374 million (1,788 in credit to customers, 1,575 in deposits and 1,011 in off-balance-sheet funds) reaching €93 billion. Abanca will consolidate its position as the sixth-largest Spanish financial entity in terms of assets, with more than €65 billion.

Abanca and Crédit Agricole have also reached a partnership agreement which will enable Bankoa's clients to benefit from the services of the two groups, both in the Spanish market and in other markets.

The transaction will be closed after the corresponding administrative authorizations are obtained. Abanca will keep Bankoa's current directors on the new Board given their background in the financial sector and their roots in the territory. Cuatrecasas' team was led by partner Madrid office M&A partner **Fernando Mínguez**, alongside M&A partner Marcos García and associate Elena García Martín.

Practice Area

M&A

Deal

Abanca's acquisition of Bankoa

Law firm

Cuatrecasas

Lead partner

Fernando Mínguez

Value

€65 billion in assets

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URÍA MENÉNDEZ, RAMÓN Y CAJAL STEER UNICAJA'S FORMAL MERGER NEGOTIATION WITH LIBERBANK

On October 5, Unicaja and Liberbank announced preliminary talks on a possible merger without the assistance of external advisers. Now, both financial entities have designated external advisers to steer the Due Diligence process for the formal negotiation of the possible consolidation of their business to create the country's fifth-biggest lender with over €100 billion in assets volume.

Both banks have designated the same advisers involved in their previous merger attempt that was called off in May 2019 after they failed to agree on a share swap. Mediobanca, Uría Menéndez and PwC will advise Unicaja while Deutsche Bank, Ramón y Cajal Abogados and Deloitte will counsel Liberbank.

Uría Menéndez team advising Unicaja comprises Competition partner **Antonio Guerra**, counsel Carolina Albuérne and senior associate María Vidal-Pardo, along with its managing partner **Salvador Sánchez-Terán**, expert in Corporate and M&A. Ramón y Cajal Abogados is counselling Liberbank with a team formed by Corporate head partner **Alberto Alonso Ureba**, EU and Competition Law head partner **Pedro Suárez** and Capital Markets partner **Andrés Mas**.

Practice Area

M&A, Corporate, Competition, Capital Markets

Deal

Unicaja-Liberbank merger.

Law firm

Uría Menéndez (Unicaja) and Ramón y Cajal Abogados (Liberbank)



Antonio Guerra



Salvador Sánchez-Terán



Alberto Alonso Ureba



Pedro Suárez



Andrés Mas



Jorge Cantá

Lead partner

Salvador Sánchez Terán, Antonio Guerra (Uría Menéndez), Alberto Alonso Ureba, Pedro Suárez and Andrés Mas (Ramón y Cajal)

Value

€100 billion in assets

CUATRECASAS ADVISES BELGRAVIA ON ITS SALE TO SINGULAR BANK

Belgravia Capital has closed the sale to Singular Bank of 100 per cent of the management company's share capital. Belgravia Capital SGIIC SA, a management company specialising in European equities founded in 2002, will provide the bank with a highly experienced management team and a portfolio of two Spanish investment funds, three Luxembourg sub-funds and an advised pension plan. The operation will be closed after approval by the Spanish National Securities Market Commission (CNMV). Investors in the Belgravia funds will continue to have the same management team and investment philosophy, with the support of Singular Bank.

Cuatrecasas advised Belgravia Capital's shareholders with a team formed by M&A partner **Fernando Mínguez** and Financial Regulatory partner **Jorge Cantá**, assisted by lawyer Natacha Cerdeño, among others.

Practice Area

M&A, Financial Regulatory.

Deal

Singular Bank's acquisition of Belgravia Capital

Law firm

Cuatrecasas.

Lead partner

Fernando Mínguez and Jorge Cantá

Value

Not disclosed

IBERIAN LAWYER FORTY UNDER 40 AWARDS WINNERS

PHOTO GALLERY

VIDEO

MOTIVATIONS

THE WINNERS OF THE IBERIAN LAWYER 2020 FORTY UNDER 40 AWARDS WERE ANNOUNCED AT THE CEREMONY GALA HELD AT THE INTERCONTINENTAL HOTEL IN LISBON ON OCTOBER 29

The award ceremony gathered numerous representatives of prestigious law firms of Spain and Portugal to recognise the most promising young lawyers and teams in the Iberian market.

A select jury formed by general counsel of prestigious companies of Spain and Portugal chose the winners within a highly competitive list of finalists, recognising the achievements of the top 40 lawyers and teams under 40 years of age.

On this year's edition, Aldo Scaringella, managing director of Iberian Legal Group and founder of LC Publishing Group, said: "We want the Forty under 40 Awards to continue to be a remarkable date on the calendar of lawyers in Spain and Portugal and, with this objective, we will continue to be committed to consolidating the position of these Awards as the highest recognition for young people within the legal sector in the Iberian Peninsula. These young people are the ones who will lead the legal profession in the future and deserve to be recognised for their work and dedication in their respective practices."

The winners of the Iberian Lawyer Forty under 40 Awards 2020 were as follows:

**LAWYER OF THE YEAR
M&A**

JAVIER GÓMEZ
Pérez-Llorca

FINALISTS

Sofia Bobone
VdA

Bosco de Checa
Allen & Overy

Cláudia Santos Malaquias
Abreu Advogados

Margarida Torres Gama
Morais Leitão



Javier Gómez (Pérez-Llorca)

**TEAM OF THE YEAR
M&A**

PLMJ

FINALISTS

DLA Piper
Pérez-Llorca
Uría Menéndez
VdA



Diogo Perestrelo & Teresa Madeira Afonso (PLMJ)

**LAWYER OF THE YEAR
CAPITAL MARKETS**

JUAN MARÍA LAMO

Linklaters

FINALISTS

Javier Gómez

Pérez-Llorca

Marisa Larginho

Morais Leitão

Paula Querol

Davis Polk & Wardwell

Orlando Vogler Guiné

VdA



Juan María Lamo (Linklaters)

**TEAM OF THE YEAR
CAPITAL MARKETS**

VdA

FINALISTS

Allen & Overy

Garrigues

Morais Leitão

PLMJ



Tiago Correia Moreira (VdA)

**LAWYER OF THE YEAR
BANKING & FINANCE**

CARLOS PÉREZ DÁVILA

Pérez-Llorca

FINALISTS

João Dias Lopes

PLMJ

José Marco

DLA Piper Spain

João Santos Carvalho

SRS Advogados

Orlando Vogler Guiné

VdA



Carlos Pérez Dávila (Pérez-Llorca)

**TEAM OF THE YEAR
BANKING & FINANCE**

ALLEN & OVERY

FINALISTS

Clifford Chance

PLMJ

Uría Menéndez

VdA



Vanessa Cuellas (Allen & Overy)

**LAWYER OF THE YEAR
PRIVATE EQUITY**

JOSÉ COSTA PINTO

Costa Pinto Advogados

FINALISTS

Sofia Bobone

VdA

Teresa Madeira Afonso

PLMJ

Diana Ribeiro Duarte

Morais Leitão

Didac Severino

Pérez-Llorca



José Costa Pinto (Costa Pinto Advogados)

**TEAM OF THE YEAR
PRIVATE EQUITY**

PÉREZ-LLORCA

FINALISTS

Costa Pinto Advogados

Morais Leitão

PLMJ

VdA



Julio Lujambio & Carmen Reina (Pérez Llorca)

**LAWYER OF THE YEAR
LITIGATION**

**JOSÉ CARLOS
VELASCO SÁNCHEZ**
Fuster-Fabra Abogados

FINALISTS

Petra Carreira
PLMJ

Carmen Fernández-Hontoria
Ramón y Cajal Abogados

Marta Lalaguna
CMS Albiñana & Suárez de Lezo

Sofia Vaz Sampaio
Morais Leitão



José Carlos Velasco Sánchez (Fuster-Fabra Abogados)

**TEAM OF THE YEAR
LITIGATION**

ONTIER

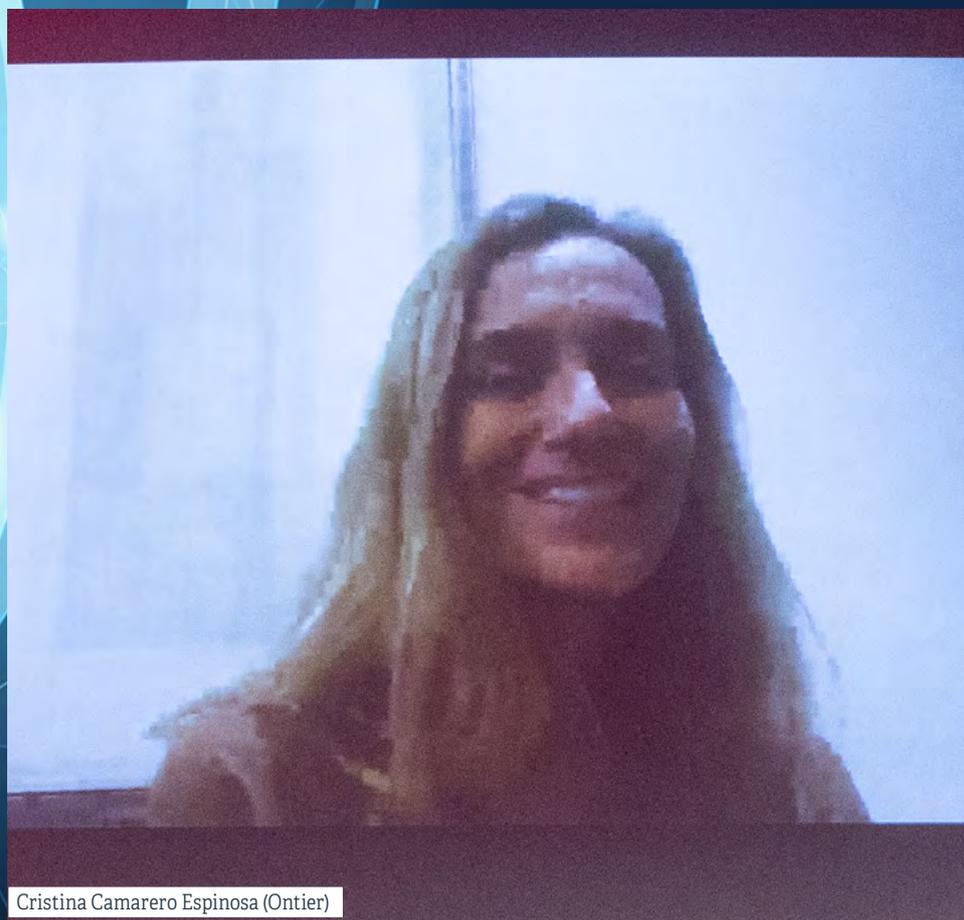
FINALISTS

Gómez-Acebo
& Pombo

Pérez-Llorca

PLMJ

Uría Menéndez



Cristina Camarero Espinosa (Ontier)

**LAWYER OF THE YEAR
ARBITRATION**

FERNANDO BEDOYA

Pérez-Llorca

FINALISTS

Rute Alves

PLMJ

José Luis Cabello Contreras

Ontier

Catarina Carvalho Cunha

VdA

André Pereira da Fonseca

Abreu Advogados



Fernando Bedoya (Pérez-Llorca)

**TEAM OF THE YEAR
ARBITRATION**

VdA

FINALISTS

Allen & Overy

CMS Rui Pena & Arnaut

Morais Leitão

PLMJ



Miguel Pinto Cardoso (VdA)

**LAWYER OF THE YEAR
ENERGY**

JOANA ALVES DE ABREU
Morais Leitão

FINALISTS

Alberto Álvarez
Mariscal & Abogados

Olivier Bustin
VdA

Nuno Serrão Faria
PLMJ

Dídac Severino
Pérez-Llorca



Joana Alves de Abreu (Morais Leitão)

**TEAM OF THE YEAR
ENERGY**

VdA

FINALISTS

Allen & Overy

Herberth Smith Freehills
Spain

Morais Leitão

PLMJ



Ana Luí de Sousa (VdA)

**LAWYER OF THE YEAR
INFRASTRUCTURE
& CONSTRUCTION**

MAFALDA FERREIRA

DLA Piper ABBC

FINALISTS

Sérgio Antunes Teixeira

PLMJ

Javier Olábarri Azagra

Clifford Chance

Inês Perestrello

VdA

Vasco Xavier Mesquita

Morais Leitão



Mafalda Ferreira (DLA Piper ABBC)

**TEAM OF THE YEAR
INFRASTRUCTURE
& CONSTRUCTION**

PINSENT MASONS

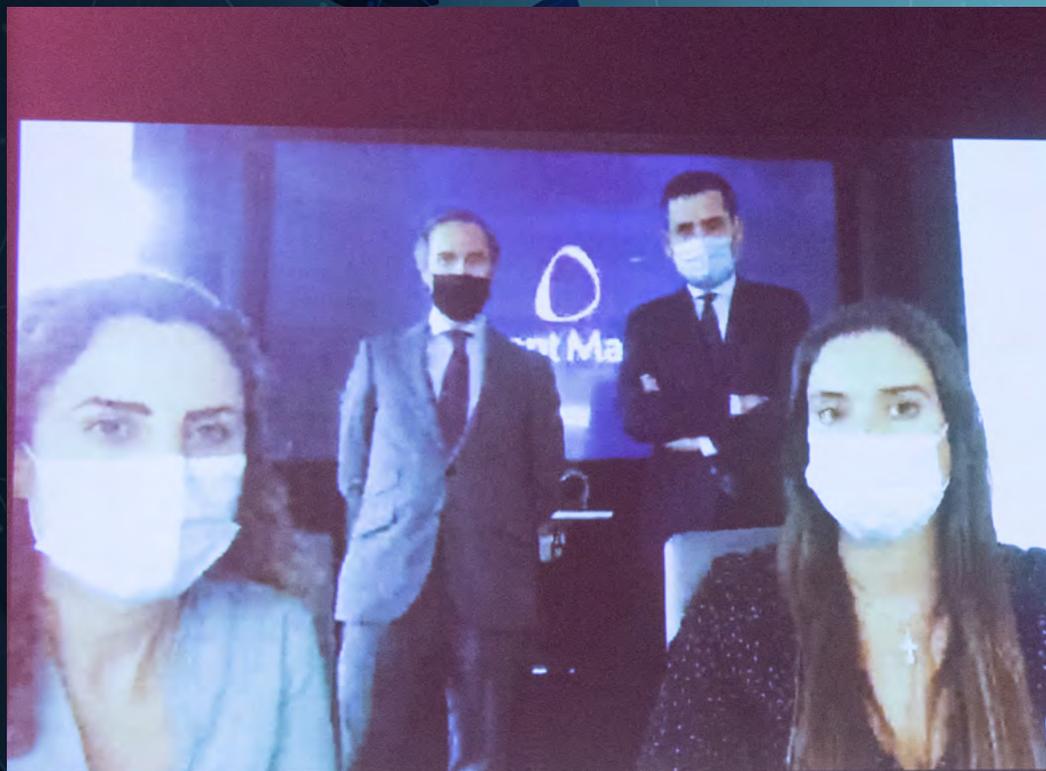
FINALISTS

Clifford Chance

Herbert Smith Freehills

Pérez-Llorca

VdA



Sofía Parra Martínez, Pablo Dorronsoro, Ricardo García Uzcudun & Claudia Fernández López-Areal (Pinsent Masons)

**LAWYER OF THE YEAR
INSOLVENCY
& RESTRUCTURING**

RICARDO SILVA PEREIRA

Linklaters

FINALISTS

José Carles

Carles Cuesta Abogados

Catarina Carvalho Cunha

VdA

Diogo Castanheira Pereira

CMS Rui Pena & Arnaut

Nuno Gundar da Cruz

Morais Leitão



Ricardo Silva Pereira (Linklaters)

**TEAM OF THE YEAR
INSOLVENCY
& RESTRUCTURING**

ALLEN & OVERY

FINALISTS

CMS Rui Pena & Arnaut

Cuatrecasas

Linklaters

VdA



Javier Castresana (Allen & Overy)





**LAWYER OF THE YEAR
REAL ESTATE**

RENATA SILVA ALVES
Abreu Advogados

FINALISTS

Madalena de Azeredo
Perdigão
CCA Law Firm

Ana Julia García
Freshfields

Javier Muñoz Méndez
Pérez-Llorca

Rita Xavier de Brito
Uría Menéndez - Proença de Carvalho



Renata Silva Alves (Abreu Advogados)

**TEAM OF THE YEAR
REAL ESTATE**

**URÍA MENÉNDEZ
PROENÇA DE CARVALHO**

FINALISTS

Ashurst
CCA Law Firm
Freshfields
Pérez-Llorca



Rita Xavier de Brito (Uría Menéndez - Proença de Carvalho)

**LAWYER OF THE YEAR
EU & COMPETITION**

**LUÍS DO NASCIMENTO
FERREIRA**
Morais Leitão

FINALISTS

Marta Flores da Silva
VdA

Joaquín Hervada
DLA Piper Spain

Rafael Piqueras Cuartero
Deloitte Legal

Luís Seifert Guincho
SRS Advogados



Luís do Nascimento Ferreira (Morais Leitão)

**TEAM OF THE YEAR
EU & COMPETITION**

SRS ADVOGADOS

FINALISTS

Clifford Chance

Deloitte Legal

Eversheds Sutherland
Nicea

Pra-Raposo, Sá Miranda
& Associados



Gonçalo Anastácio & Luís Seifert Guincho (SRS Advogados)

**LAWYER OF THE YEAR
LABOUR**

MIGUEL PASTUR

Bird & Bird

FINALISTS

Tiago Cochofel de Azevedo
VdA

Laura Pérez
Pérez-Llorca

Lara Pestana Vieira
SRS Advogados

Isabel Valente Dias
Morais Leitão



Miguel Pastur (Bird & Bird)

**TEAM OF THE YEAR
LABOUR**

VdA

FINALISTS

Ceca Magán Abogados
CMS Albiñana
& Suárez de Lezo
Pérez-Llorca
SRS Advogados



Matilde Horta e Costa collected the award on behalf of Labour Team (VdA)

**LAWYER OF THE YEAR
IP & TMT**

JOÃO LEITÃO FIGUEIREDO
CMS Rui Pena & Arnaut

FINALISTS

Ricardo do Nascimento
Ferreira
Morais Leitão

Patricia Guillén
Baylos

Tito Rendas
CCA Law Firm

Alejandro Touriño
ECIJA

**TEAM OF THE YEAR
IP & TMT**

CCA LAW FIRM

FINALISTS

CMS Albiñana
& Suárez de Lezo
ECIJA
Hogan Lovells
VdA



João Leitão Figueiredo (CMS Rui Pena & Arnaut)



Martim Bouza Serrano & Filipe Mayer (CCA Law Firm)

**LAWYER OF THE YEAR
LIFE SCIENCES & PHARMA**

ELIANA BERNARDO
PLMJ

FINALISTS

Diana Abegão Pinto
SRS Advogados

Alejandro Azañón López
DLA Piper Spain

Pedro Fontes
VdA

Juan Martínez
Faus & Moliner Abogados



Eliana Bernardo (PLMJ)

**TEAM OF THE YEAR
LIFE SCIENCES & PHARMA**

SRS ADVOGADOS

FINALISTS

Baker McKenzie

Faus & Moliner Abogados

PLMJ

Uría Menéndez



Ana Menerés (SRS Advogados)

**LAWYER OF THE YEAR
TAX**

ISAQUE RAMOS
PLMJ

FINALISTS

Maria Inês Assis
Abreu Advogados

Cristina de la Haba Gordo
Ey Abogados

Ishtar Sancho
Allen & Overy

José Suárez
Pérez-Llorca



Bruno Ferreira collected the award on behalf of Isaque Ramos (PLMJ)

**TEAM OF THE YEAR
TAX**

EY ABOGADOS

FINALISTS

Andersen

Cuatrecasas

Linklaters

PLMJ



Cristina de la Haba & Diego Montoya (EY Abogados)

**LAWYER OF THE YEAR
WHITE COLLAR CRIME**

JOAQUÍN JIMÉNEZ RUBIO

Ayuela Jiménez



Joaquín Jiménez Rubio (Ayuela Jiménez)

FINALISTS

Joana Bernardo

VdA

Tiago Geraldo

Morais Leitão

Juan Palomino

Pérez-Llorca

Dirce Rente

PLMJ

**TEAM OF THE YEAR
WHITE COLLAR CRIME**

MORAIS LEITÃO



Duarte Santana Lopes, João Lima Cluny & Tiago Geraldo (Morais Leitão)

FINALISTS

Ayuela Jiménez

Ospina Abogados

Uría Menéndez

VdA

**LAWYER OF THE YEAR
STARTUP**

DAVID SALGADO AREIAS

Areias Advogados

FINALISTS

Javier Bustillo

ECIJA

Pedro Cruz Gonçalves

Morais Leitão

Guilherme Seabra Galante

PLMJ

Rita Trábulo

CCA Law Firm



David Salgado Areias (Areias Advogados)

**TEAM OF THE YEAR
STARTUP**

ECIJA

FINALISTS

Areias Advogados

CCA Law Firm

DLA Piper Spain

Morais Leitão



Fernando Antas da Cunha & Javier Bustillo (Ecija)

**LAWYER OF THE YEAR
PUBLIC LAW**

MARCO REAL MARTINS
BAS - Sociedade de Advogados

FINALISTS

Borja Carvajal Borrero
KPMG Abogados

Tiago Leote Cravo
Abreu Advogados

Raquel Sampaio
SRS Advogados

Elena Veleiro
Pérez-Llorca



Marco Real Martins (BAS – Sociedade de Advogados, SP, RL)

**TEAM OF THE YEAR
PUBLIC LAW**

SRS ADVOGADOS

FINALISTS

Cuatrecasas

Pérez-Llorca

Uría Menéndez

VdA



Alexandre Roque (SRS Advogados)

LAWYER OF THE YEAR INSURANCE

MARGARIDA TORRES GAMA
Morais Leitão

FINALISTS

Carlos Filipe Couto
VdA

Jaime del Fraile Sánchez
Uría Menéndez

Virginia Martínez
Hogan Lovells

Luis Enrique Rodríguez
González
Clyde & Co



Margarida Torres Gama (Morais Leitão)

TEAM OF THE YEAR INSURANCE

PLMJ

FINALISTS

DAC Beachcroft

Herbert Smith Freehills

Hogan Lovells

Morais Leitão



Joaquim Shearman de Macedo (PLMJ)

LAWYER OF THE YEAR FINTECH

ALONSO HURTADO
ECIJA

FINALISTS

André Abrantes
PLMJ

Mariana Albuquerque
Morais Leitão

Adrián Calvo
Bird & Bird

Pedro Simões de Oliveira
CCA Law Firm



Alonso Hurtado (ECIJA)

TEAM OF THE YEAR FINTECH

PINSENT MASONS

FINALISTS

CCA Law Firm
CMS Albiñana
& Suárez de Lezo
Morais Leitão
VdA



Idoya Arteagabeitia (Pinsent Masons)

**BEST PRACTICE
WHITE COLLAR CRIME**

OSPINA ABOGADOS



Beatriz Uriarte Arreba & Juan Gonzalo Ospina (Ospina Abogados)







BRUNO FERREIRA:

“WHAT STARTED
AS FOUR LETTERS
IS NOW 400 PEOPLE”

Recently highlighted by the Financial Times as one of the six leaders who have taken advantage of the current circumstances to make successful changes in their companies, Bruno Ferreira is the kind of partner who leaves no one indifferent. His vision of the legal market and working models has set the recent agenda of the Portuguese legal world. One discovers young lawyers reproducing some of the ideas he has expressed in interviews and, since his appointment as co-managing partner of PLMJ just over half a year ago, his shadow is cast as one of the references within the profession. We take this opportunity to learn about some of the ideas behind the transformation he is leading within one of the country's emblematic firms.

by antonio jiménez

You spent ten years at Garrigues before being hired by PLMJ, already as a partner. Did you notice a big difference between working at a multinational firm like Garrigues, specifically at the Lisbon office, and moving to a flagship firm within the Portuguese legal market? Someone might consider that from the very first moment PLMJ hired you they already had the decision made of incorporating you to management positions.

To become the co-managing partner of a firm of PLMJ's size just a few years after joining the firm is a great honour and indeed an enormous challenge. I accepted this challenge specifically because the mission that was proposed to me in this role is precisely that of realising the vision for the future that made me join this team four years ago.

I think the question you are asking me is why I was chosen to hold this position and I don't think it's up to me to say. What I can say is that I see the figure of a law firm's managing partner as a kind of spearhead of a Board of Directors that shares the same vision. In this case, an extraordinary and cohesive group that works as a real team and is committed to PLMJ's present and future. It is also perfectly aligned with the path we decided to follow in 2018.

I would therefore say that what is required of me and my colleagues on the Board is the ability to implement the measures we have decided on together and to continue the project that we started. This primarily involves the development of our people –lawyers and staff– investing in talent and creating a management culture based on a serious commitment to transparency and frankness.

As for the differences between the two firms, I learned a lot at Garrigues and made many friends there. Thinking about both firms on Iberian Peninsula level is reductive. PLMJ Colab has a strong presence in Portuguese language countries, and Garrigues has a very significant presence in Latin America. In any case, I was at Garrigues in a very different phase of my career so I can only really say that the main differences are perhaps the differences between the two cultures, the Portuguese and the Spanish. This is even more remarkable when the Garrigues Lisbon office is part of a large organisation and which, like all organisations, has a drive towards centralisation.

What does PLMJ have to do today with the classic Pereira Leal Martins Júdice? What is the meaning of the slogan or definition of “Transformative Legal Experts”?

As one would hope, the legacy of the founders in steering the course of the firm over the decades is still a clear

PLMJ IN NUMBERS

1967. THE FIRM PLMJ WAS FOUNDED IN LISBON BETWEEN PARTNERS ANTÓNIO MARIA PEREIRA AND LUÍS SÁRAGGA LEAL. THE NEXT DECADE, THEY WERE JOINED BY NEW PARTNERS FRANCISCO DE OLIVEIRA MARTINS AND JOSÉ MIGUEL JÚDICE. 2010. PLMJ COLAB GLOBAL NETWORK BEGIN TO OPERATE



NUMBER OF OFFICES:

SEVEN IN PORTUGAL AND SIX INTERNATIONAL ONES



NUMBER OF EMPLOYEES

+400 (283 LAWYERS/53 PARTNERS)



PRACTICE AREAS:

BANKING AND FINANCE, CAPITAL MARKETS, CORPORATE M&A, DISPUTE RESOLUTION, EMPLOYMENT AND LABOUR, EU AND COMPETITION LAW, HEALTHCARE, LIFE SCIENCES & PHARMACEUTICALS, INTELLECTUAL PROPERTY, PROJECTS AND ENERGY, PUBLIC LAW, REAL ESTATE AND TOURISM, TAX, TECHNOLOGY, MOBILITY AND COMMUNICATIONS



INTERNATIONAL DESKS:

NINE



REVENUE 2019:

€55.3 MILLION

presence in the firm as a whole, and it is naturally part of the vision of current leaders. But it must be said that the generation that is now in its forties is already the second generation after the founders, and I believe that both were and have been able to take up the baton that the founders handed over to them at the turn of the millennium.

Twenty years have passed in the meantime. What started as four letters is now 400 people. With this growth, we have also made a corresponding leap in terms of our quality, profile and leading position in the legal sector. This is recognised by clients and visible in their evaluation of our work. And it is reflected in the leading global legal rankings.

Looking to the present and future, the mission of the current generation and leadership is clear: to go beyond what has been built, recognising that the new generation has played a part and will always play a role in this building project. We want PLMJ to exist forever and, for this very reason, our fundamental and great mission is to ensure that we continue to grow at the same time as we prepare for the next 20 years. How? By acting in line with our people's career and life expectations, and with an eye on what is, in fact, Portugal's catalyst for growth: companies. Within the firm, we have the technical quality necessary to go even further, and we have a team that has renewed itself and is highly motivated. We build solutions for the client's current but also (and at times more importantly) future needs. Law firms are known for lagging behind innovation, and we want to start changing that perception, not by innovating for the sake of innovation but by trying new approaches that add real value to

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our clients and, most importantly, co-creating these solutions with them. This is what our mantra “Transformative Legal Experts” means: transformative, agile and loyal to our clients and our people. It means looking beyond the financial result and considering the impact of our activity in all its dimensions. It is a path to sustainability which business case is now proving its virtues.

We reported the changes in the firm since your appointment in April. Hirings, promotions and some departures. Where is PLMJ heading? Are there some privileged areas in the process that is underway?

The answer has two dimensions that are like two sides of the same coin. One directly relates to our work and the other to a more comprehensive transformation in terms of the areas of the organisation which we wanted to impact.

Starting with the first dimension, we have looked inwards and managed the transformation that new generations of lawyers and firm leaders demand of us. We do not just want to be on the side of our clients. We want to be a crucial part of the companies we support in preparing for the future and, in some cases, this involves being the catalysts of that transformation. We want to be at the heart of the decision.

Concerning the internal dimension and our people, we want to be more than just a workplace. We want to be an organisation that places great value on the talent of its people and contributes to their growth, allowing them to explore their creativity. We want PLMJ to function a bit like a permanent interactive university and an incubator of innovation, knowledge and transformation that is concerned with sustainability. We want our people to develop and value themselves in many, many areas that go beyond the Law. This vision translates into a significant evolution and requires a major

alignment of everyone –including all the lawyers and the professional support staff– around this project. This has led to some departures, several lateral hirings for areas we consider strategic and that allow us to reinforce the focus on our core –business advocacy– and a significant set of internal promotions. All these moves were essential for what I talked about above, continuous growth and preparation for the next 20 years.

How are management functions distributed between Luis Pais Antunes and you?

Luis continues as president of the Board of Directors, and I provide support in the management of the company's day-to-day activity, which now has a bigger team which allows us to have more people looking closely at each of the issues we consider to be strategic pillars of PLMJ. In addition to the responsibilities of the firm's financial and administrative organisation, I will continue to work on matters for our clients.

It's the model we think best serves PLMJ at the moment. It is part of a generational transition process within a movement that began in 2018, and it involves several dimensions. We constantly reflect as a group on which model best serves us and, therefore, we cannot say that this is the end of the line. More than anything else, it is important to stress that this is teamwork, shared leadership, a cohesive and loyal Board of Directors that serves our people and our clients.

Your appointment happened just six months ago, within the context of the summer and the exceptionality of the COVID pandemic, we know that. Despite that, are you carrying out the changes at the planned pace, or did these circumstances condition the renewal process? What would you highlight of the already achieved?

Quite the contrary. The current situation has even allowed us to speed

this process up considerably. There are a few examples. First, we have reorganised the practice areas in a way that will enable us to bring even more value to our clients, with teams working in a truly multidisciplinary and goal-oriented manner. We have also implemented a set of measures aimed at improving our people's quality of life. For example, we have introduced voluntary partial teleworking and a commitment to a group of working rules that take into account the quality of life of all. We have even launched new careers at PLMJ, including that of professional support lawyer. We are also completing the reorganisation and upskilling of the entire whole Management Support Team, where we want the best talent to be at the wheel of this demanding and complex machine which is a firm of over 400 people.

ABOUT BRUNO FERREIRA



Bruno Ferreira joined PLMJ in 2016 and is the co-managing partner since the beginning of 2020. He combines a stellar Law career with the mission of leading Portugal's biggest law firm. He has a very diverse experience in the Banking and Finance and Capital Markets

areas, with a unique mix of Transactional and Regulatory advisory work in some of the most challenging legal cases in the Finance area. First, as a member of the Board, and now acting as a co-managing partner, Bruno Ferreira is committed to driving PLMJ towards the future. As part of a growth and sustainability-focused strategy, the undergoing transformation has touched several dimensions of the firm, like the implementation of new processes that changed the paradigm of performance review, compensation and progression, evolving from a quantitative to a mainly qualitative model based on a 360° feedback with transparent procedures and governance. People, clients and sustainability are the three cornerstones driving Bruno Ferreira's leadership.

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ADVOCACIA EM RETRATO



PARA OUVIR, CLIQUE AQUI



“Atualidade e perfil dos protagonistas da advocacia além da esfera profissional. O primeiro conteúdo Iberian Lawyer em língua portuguesa”

For further information carlos.montagnini@iberianlegalgroup.com

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WE WANT PLMJ TO EXIST FOREVER AND, FOR THIS VERY REASON, OUR FUNDAMENTAL AND GREAT MISSION IS TO ENSURE THAT WE CONTINUE TO GROW AT THE SAME TIME AS WE PREPARE FOR THE NEXT 20 YEARS

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BRUNO FERREIRA

One of the most striking changes, especially at the labour level market, has been the hiring of a new Human Resources manager. What is the fundamental reason for this change, and to what extent will it be reflected in the future hirings?

We are firmly committed to attracting and retaining talent, both lawyers and members of the Management Support Team. The Human Resources dimension is strategic, not only because it is an essential talent management tool, but also because it is the most outstanding

agent of internal culture. Today, with Inês Zenha, we are better prepared than ever for these challenges, which begin with recruitment but which also involve the entire careers of our people.

It seems the change implies a greater focus on the Corporate and Financial areas. Is this a misperception or there is an intended background to this development? When this was asked to you before, I read you answered that it is not a repositioning but a change in focus. I would not call it repositioning, but

refocusing, and it implies a greater focus on the core of Business Law, which is much more than just the Corporate and Financial areas. At the end of 2018, we began to implement the new strategic plan with a component of refocusing PLMJ that would enable us to serve our clients for the next 20 years and continue to grow. We have always worked on major Litigation and major deals, the “bet the company cases” as the Americans say. Still, there was marginal work that was gaining ground over time and was less aligned with this organisation’s focus. Our refocusing involved, above all, making a clear decision about what we did not want to do, rather than deciding to enter new areas or market segments.

We have been following this path with enthusiasm and determination, and we already have the first strong signs that this is the right strategy, because the 2019 results were the best ever, whatever the criteria for analysis.

Recently, for an article in our magazine, you told us that at PLMJ the policy of interns and recruitment is aimed at finding the partners of the future. But isn't focusing recruitment policy only on the company's leaders perhaps a little excessive, and possibly dangerous? To what extent can this trend end up undermining the necessary middle levels of any structure?

Implementing a pyramid organisation in institutions is a challenge in all sectors. It is no different in law firms. When we recruit, we obviously seek to have a pool of people who have the potential to achieve the career they aspire to, and we want to be able to offer the context in which they can develop effectively. Our commitment is to potential and to respond to the career expectations of those who have the necessary characteristics to join PLMJ, with the awareness that we want and need different profiles. What we believe is that there is always a leadership



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BUSINESSES



dimension at the various career levels, and this is something we want to promote.

As part of its Talent Project, PLMJ has carried out a sweeping review of the various dimensions of careers at PLMJ. We started with lawyers, and 2021 will be the year in which we also carry out this review on the Management Support Team.

As a result of this project, we have already put some measures into place. We have created the career of professional support lawyer (PSL), which came up in the context of this review and has two objectives: improving the efficiency of the internal processes of the practice areas by providing them with resources that allow them to work better and with a greater focus on the client (also seeking to improve the link between the management support and production teams) and, at the same time, offering an evolution parallel to the classic lawyer’s career. We believe these measures make it possible to bring in and retain talent.

The following quote is yours: “PLMJ wants to be at the centre of decision making.” The statement is ambitious, of course, but are we talking about economics or politics? Is there even a difference between the two?

Of course, I mean the role we want to play with our clients and in significant transactions. Never more so than today have legal advisers been so strategically crucial in the decision-making process, and I have no doubt this will continue to be the case. To that extent, we see our role as real business partners, supporting our clients throughout the various phases of their business life cycle. To achieve this, we work to ensure the relationships are focused on the long term because we believe that being part of our clients’ strategy, and knowing where they come from and where they want to go, makes all the difference. Besides this, these relationships bring continuous learning and challenges. ■

A photograph of two men in dark suits shaking hands. They are standing on a surface covered with Euro banknotes. The lighting is dramatic, with strong shadows. The man on the left is slightly taller and has short hair, while the man on the right has longer hair. The background is a close-up of the intricate patterns and colors of the banknotes.

We present for the first time in Iberian Lawyer the top ten White-Collar Crime lawyers in Spain. To elaborate this classification, we carried out an investigation in which, apart from the positioning in the practice area, we have mainly taken into account the feedback from colleagues and the participation in the highest profile White-Collar Crime cases in Spain. The absence of women in this Top Ten is striking. However, there are female names that are beginning to sound very strong, such as María Massó, partner at Baker McKenzie, Helena Prieto González, partner at Garrigues and ONTIER's partner Berta Aguinaga.

TOP TEN WHITE-COLLAR CRIME LAWYERS IN SPAIN

01. IGNACIO AYALA

OLIVA-AYALA ABOGADOS



He is co-founding partner, together with Horacio Oliva, of “Oliva-Ayala Abogados”, and current firm’s managing partner. With more than 35 years of professional practice behind

him, he is the great master and reference point in Criminal defence for all Criminal lawyers. Faithful to the school of his teacher Horacio Oliva (Criminal Law professor), he has had outstanding successes in his defences, the latest being related to the Bankia case, in which he defended Rodrigo Rato.

Ayala is one of the most sought-after lawyers for Criminal advice and defence, especially in the business sector, as a result of its extensive experience in the courts and its participation in complex business, judicial and extrajudicial negotiation processes.

The main international legal directories highlight him as one of the best Criminal lawyers in the country, for advising high profile clients on corporate crimes both nationally and internationally.

He has carried out numerous teaching and research tasks as Criminal Law professor at the Universidad Complutense de Madrid and has published various scientific works, mainly in the field of Criminal Law.

02. JESÚS SANTOS

BAKER MACKENZIE



Partner head of Baker McKenzie’s Criminal Litigation department since 2012, and judge on leave of absence since 1985, when he began his career as a public prosecutor. In 1989 he joined the

National High Court and was later appointed as Assitant Prosecutor and acting Head Prosecutor. Among the highlights of his long professional career, it is worth mentioning his participation in numerous litigations for socio-economic crimes and his international profile thanks to his functions as a consultant for the United Nations, the International Criminal Court for the former Yugoslavia and his appointment from 2004 to 2011 as Liaison Magistrate with the Republic of Italy. He has also excelled in investigations related to Islamic terrorism, where he was appointed coordinator of the group of specialists of the Prosecutor’s Office on Islamic terrorism in May 2004.

Since joining Baker McKenzie, the Criminal Law department has positioned itself as one of the reference Criminal defence departments, having participated as a lawyer in the main criminal proceedings in the country: Neymar, Gürtel, Defence of the former BBVA president Francisco González and the former president of Banco Popular Emilio Saracho, defence of Michael Fridman, and recently in the Bankia case, where he obtained the acquittal of the auditor Deloitte.

03. JAVIER SÁNCHEZ-JUNCO

SÁNCHEZ-JUNCO ABOGADOS



Managing partner and founder of Sánchez-Junco Abogados law firm, and a public prosecutor on leave of absence. Throughout his 20 years of experience in the prosecution career,

he has held various posts in the Provincial Courts of Asturias and Madrid, as well as in the Attorney General's Office and the Supreme Court. One of his most notable professional periods was his five years in the Anti-Corruption Prosecutor's Office, where he led the prosecution of Mario Conde and other Banesto directors. A lawyer who is very pragmatic in his procedural strategies, he obtained the acquittal of Javier López Madrid, son-in-law of OHL founder Juan Miguel Villar Mir, who was tried in the Bankia case and investigated in the Lezo case. He is currently leading the defence of King Emeritus Juan Carlos I.

Sánchez-Junco has been highlighted by the main international directories as a highly recommended lawyer in the field of Economic and Business Criminal Law.

He teaches in the Master's degree in Access to the Legal Profession at the Universidad Carlos III de Madrid, at ISDE and in the Master's degree in Economic Criminal Law at KPMG. He has taught Criminal Law at ICADE and Procedural Law at the UNED, as well as in the Master's degree in Legal Consultancy at the Instituto de Empresa.

04. LUIS JORDANA DE POZAS

CUATRECASAS



Former public prosecutor and partner head of Cuatrecasas' Criminal practice area since 1995, specialising in Criminal proceedings for high-profile economic and

business crimes. During his years as a public prosecutor, he led the prosecution of Lola Flores for tax offences and the disappearance of "El Nani", among other things, and he practised at the Provincial Courts of Alicante, Bilbao and Madrid. During this stage, he created and coordinated a group of prosecutors specialised in economic crime.

From Cuatrecasas' Criminal department, where he is assisted by Joaquín Burkhalter, he has defended Manuel Castro, former BBVA risk manager in the Villarejo case, and has handled significant cases of tax fraud, where he is a great specialist.

He has directed and participated as a speaker in numerous courses, seminars and conferences on Economic Crime. In 1988 he was awarded the Distinguished First Class Cross of San Raimundo de Peñafort. He has been recognised as a top-level Spanish Criminal lawyer by various international directories in the last two years, in the Corporate Crime practice.

05. CARLOS AGUILAR

CMS ALBIÑANA & SUÁREZ DE LEZO



Carlos Aguilar heads the Litigation Department of CMS Albiñana & Suárez de Lezo. He has extensive experience in Criminal, Civil, Commercial and Constitutional

Law, with numerous arbitration and forensic proceedings before the Provincial Courts, the National Court, the Supreme Court and the Constitutional Court. In recent years his professional activity has primarily focused on Economic Criminal Law.

Carlos has advised and defended numerous individuals and companies in all types of litigation and proceedings. His actions in defence of both personalities and companies in the most important proceedings of Economic Criminal Law in Provincial Courts, National Courts and Supreme Courts in recent years in our country are noteworthy. He has also directed the design and implementation of Criminal Compliance systems in various financial entities, listed companies and state-owned companies.

Throughout his long career, he has acted in the "Gescartera case"; he has managed to obtain the acquittal of Ángel Acebes in the "Bankia case"; he is in charge of the defence of Esperanza Aguirre in the "Punica case", as well as the defence of several directors of Banco Popular in the "Popular case".

06. CRISTOBAL MARTELL

MARTELL ABOGADOS



A reputable Criminal lawyer based in Barcelona. Managing partner of Martell Abogados, a boutique firm currently considered one of the best Criminal law firms in the

country. He was a member of the Governing Board of the Barcelona Bar Association and chairman of its Ethics Committee.

In a few years, Martell managed to become a leading lawyer in the field of White-Collar Crime, thanks to his brilliant Criminal defences, full of imagination and good strategic approaches.

It is common to see him involved in cases with media exposure such as "Gürtel", "ITV", "Mercurio", "Nóos", "Messi" or "Neymar". His defences against the Puyol family and Gino Pozzo, in his time as owner of the Granada Football Club, both of which are currently under investigation, have been very outstanding.

He combines teaching with the Law practice. In 1986, just after finishing his degree, he began teaching Criminal Law at the Universitat Abat Oliba, where he taught for 18 years.

07. CARLOS GÓMEZ JARA

CORPORATE DEFENSE



Founding partner of Corporate Defense. He is considered one of the youngest and most famous Criminal lawyers in the market in such specialised areas as Financial and International

Crime. He is an external lawyer for the FROB and the Deposit Guarantee Fund, where he has prosecuted more than 17 proceedings related to crimes of investor fraud, falsification of annual accounts, obtaining a conviction in almost all of them. Together with Jesús Santos, he is defending former president of Banco Popular Emilio Saracho, who is accused of market manipulation.

He was awarded the *Forty under 40* recognition by Iberian Lawyer and the *Harlan Fiske Stone Scholar* distinction by Columbia University (NY, USA).

European Doctor of Law, LL.M. Columbia University and Criminal Law professor at the Universidad Autónoma de Madrid, he teaches and lectures at various universities and centres, and is the author of more than a hundred publications on Economic Criminal Law.

He is a member of the Madrid Bar Association, the American Bar Association and the New York City Bar, and is a member of the Legal Experts Advisory Panel of Fair Trials International.

08. JAIME ALONSO

URÍA MENÉNDEZ



Partner and head of the Criminal Litigation area at Uría Menéndez, a firm he joined in 2013 from Estudio Jurídico Rodríguez Mourullo, one of the most important Criminal law firms in Spain.

Recognised as a very meticulous lawyer, he stands out for his great rigour of analysis, contemplating all the angles of Criminal defence. He has participated as a defence lawyer in some of the most important procedures in the field of White-Collar Crime that have been handled in Spain in the last fifteen years, including highly relevant processes related to tax offences, fraud or corruption. His role in defence of Banco Santander (in the case of the Banco Popular's IPO) is being highlighted, and he is also in charge of the defence of BBVA in part 9 of the Villarejo case.

As a teacher, he has been a Criminal Law associate lecturer at the Universidad Autónoma de Madrid since 1999 and has been a speaker and lecturer on numerous occasions, especially on subjects related to Tax Crime, Money Laundering, Criminal Liability of Legal Entities and Behavioural Analysis of Law.

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09. JOSE ANTONIO CHOCLÁN

BUFETE CHOCLÁN



José Antonio Choclán is one of the most sought-after lawyers in the Spanish legal market for the defence in Economic Criminal proceedings. He is the director and founder of

the Criminal boutique that bears his name since 2004. He is a judge and has served various judicial posts, always in the Criminal field, most recently as a judge of the Criminal chamber of the Spanish National High Court, with extensive experience as an examining magistrate, Criminal judge and hearing magistrate. There, he was a member of the tribunal that issued the sentence in the Banesto case, condemning Mario Conde.

At the head of the firm and thanks to his specialisation in economic crimes, Choclán has participated as a lawyer in some of the most notorious and high-profile court cases of recent years, among others the “Malaya” or “black cards” case of Bankia.

As an expert in tax fraud issues, he has also defended different football players, including Cristiano Ronaldo in his tax fraud trial.

He is currently defending Cristina Cifuentes following her recent indictment in the “Punica” plot.

10. ENRIQUE MOLINA

RAMÓN Y CAJAL ABOGADOS



Partner and head of the Criminal Procedure department at Ramón y Cajal since 2010, when he joined the firm after several years working independently.

His experience extends to the treatment of all national and international

Legal-Criminal issues, derived from his status as a public prosecutor on leave of absence from the High Courts of Justice in Madrid and Barcelona and from the National High Court, where he participated in the main investigations in economic, tax and terrorist crimes.

He is recognised as a lawyer with a great practical sense, offering defensive strategies full of common sense. He has defended several Bankia’s directors who have been acquitted in court, and he also obtained the acquittal of the PP treasurer Carmen Navarro in the famous trial of the Partido Popular’s computers. Throughout his career, he has led other high-profile media trials, such as the one involving part of the “Gürtel” plot. He defends several advisors in the Banco Popular case.

He is recognised by the main international directories as one of the best Criminal lawyers in the country.

WHITE-COLLAR CRIME WOMEN LAWYERS STEPPING UP

As we move forward in this Top Ten, the absence of women is striking, but this has been the result of the research carried out by Iberian Lawyer. We have detected, through these same channels of investigation already mentioned; positioning in the sector, references from colleagues, and high profile cases handled, women whose names are beginning to ring out strongly, as is the case of María Massó, partner at Baker McKenzie, Helena Prieto González, partner at Garrigues and Berta Aguinaga, partner at ONTIER, among others.



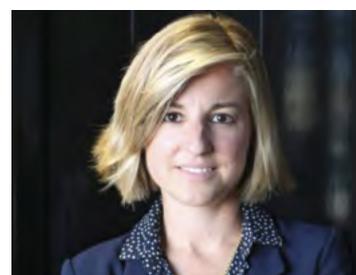
MARÍA MASSÓ
BAKER MCKENZIE

María Massó is a partner at Baker McKenzie Madrid. Before joining the firm in 2008, she worked in the Criminal Litigation department of Garrigues. She has substantial experience in the defence or prosecution of tax fraud, misappropriation offences, misappropriation of trust proceeds, misuse of trade secrets, bankruptcies involving criminal negligence or corporate offences. Maria Massó Moreu advises both individuals and companies on issues including corruption, bribery and money laundering. Clients highlight her “outstanding technical level”.



**HELENA PRIETO
GONZALEZ**
GARRIGUES

Helena Prieto is Criminal Law partner at Garrigues. After working in the M&A department of Bankers Trust/Deutsche Bank, she became a public prosecutor in 2004, having worked in the Public Prosecutor's Offices of Barcelona and Madrid. She was attached to the Public Prosecutor's Office of the Road Safety Chamber. In 2008 she joined the General Public Prosecutor's Office, having been part of the offices of Cándido Conde-Pumpido, Eduardo Torres-Dulce and Consuelo Madrigal. She heads the internal investigations unit within the Criminal Law area.



BERTA AGUINAGA
ONTIER

Berta joined ONTIER as a partner in the Economic Criminal department in 2015, after having developed her professional career at Garrigues (2003-2013) and CMS Albiñana & Suárez de Lezo (2014-2015). She specialises in White-Collar Crime and Business Law. Specifically, in crimes against honour, crimes against privacy, crimes against property and the socio-economic order, relating to Intellectual and Industrial Property, the market and consumers, corporate offences, money laundering, crimes against the Treasury, crimes against workers' rights, against the public administration and justice, against public health and crimes against road safety.



Alexandra Reis
Senior Counsel
Philip Morris



António Neto Alves
General Counsel / Company Secretary
The navigator Company



Catarina Coutinho
HR Associate Director
CBRE



Isabel Charraz
Country Legal Counsel Portugal & Greece
Citibank Europe



Isabel Fernandes
Head of Legal
Grupo Visabeira



Isabel Lage
General Counsel
Fidelidade



José Almeida Fernandes
Tax Director
Semapa



Luis Graça Rodrigues
Legal regional Counsel
Indra



Maria do Rosário Vilhena
HR Head
Nestle Portugal



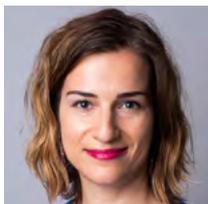
Patrícia Afonso Fonseca
Head of Legal
Novo Banco



Patrícia Mendes
Head of Legal & Compliance
Volkswagen Financial Services



Pedro Vaz de Alamada
Legal & Business Affair Manager
Novartis Farma



Teresa Carvalho de Oliveira
Head of Legal
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COVID-19, BREEDING GROUND FOR WHITE-COLLAR CRIME

The pandemic has not only weakened the economy and threatened livelihoods. It has also encouraged some to take advantage of new vulnerabilities to commit economic and financial crimes such as fraud and money laundering. Iberian Lawyer talks to Jesús Santos, partner head of Baker McKenzie's Criminal Litigation area, about how the COVID-19 has affected the criminal map of White-Collar Crimes.

by desiré vidal

Jesús, can we say that the pandemic has caused an increase in White-Collar Crime and that, on the other hand, due to the need for liquidity, picaresque or other factors, has diversified its typology? If so, through what criminal formulas has the “offender” profile changed and diversified? What types of crime would the definition of “White-Collar Crime” encompass today?

Indeed, the crime map has been affected as a result of the weakening of the economy we are experiencing due to the COVID-19 pandemic. In general terms, crime levels increase in periods of crisis and recession, which is particularly relevant to economic and financial crimes, such as fraud and



JESÚS SANTOS

money laundering, or other more common conducts in the corporate sphere such as crimes of unfair administration or misappropriation. This is due not only to the lack of liquidity and to the situations of need faced by certain sectors of the population, but also, indeed, to the increase in the picaresque nature of the criminals and the exploitation of an increase in the weakness of the victim, especially in cybercrime, where the means necessary for its execution are extremely accessible.

In this sense, the exceptional situation that we are experiencing in our country as a result of the state of alarm has led to the proliferation and increase in the use of computer systems to carry out all kinds of activities (for example, there has been a significant increase in Internet sales). This has favoured the commission of cyber-crimes, most of which are of a financial or economic nature.

As for the authors of these crimes, with the passage of time and the appearance of new technologies, it should be noted that their conception as those people in the business world who commit a crime in the framework of their professional activity has been losing weight. It is necessary to modernise this conception to bring it into line with current standards. As an example, a large percentage of the frauds that occur have their origin in computer fraud, since this type of commission can reach a greater number of victims.

However, even if the specific techniques for the commission of "White-Collar Crime" have evolved over the years, the legislator has introduced new types of criminal offences in order to update the criminal coverage to the appearance of new harmful conducts. Furthermore, other offences are included within existing types, such as fraud or money laundering. Therefore, the concept of "White-Collar Crime" includes those crimes in the commission of which there is a financial component with the aim of obtaining a profit or economic advantage.

This may also have had a role in Europol's creation of the European Financial and Economic Crime Centre (EFECC). What were, in your opinion, the determining factors in its creation?

Probably the most important factor in the creation of this centre is the free movement of capital, which is the result of economic cooperation between European Union countries through the Common Market. In this respect, the effective prosecution of many crimes or criminal networks requires not only the effective seizure of the means or products

necessary for the commission of the crimes but also of the capital obtained with its commission which facilitates the commission of new offences.

Similarly, another factor that should not be underestimated is the serious damage that these crimes can cause to the financial and economic interests of the European Union. It is therefore clear that crimes such as financial fraud and money laundering seriously damage the economies of the Member States by evading control of the countries' tax systems.

For all these reasons, it seems reasonable to believe that the creation of this centre responds to a need for greater cooperation between the Member States given the cross-border nature of these crimes and the economic damage they entail.

You have participated in the defence of Deloitte, one of the entities involved in the 2011 Bankia IPO, which has concluded - at least for the time being - with the acquittal of the defendants. It has been an example of "choral defence" with a successful outcome. How do you coordinate the advisory work in this type of procedure with multiple defendants and, therefore, defence lawyers?

Although a lawyer is undoubtedly and exclusively owed to his client, and must always follow the strategy that is most beneficial to him, it is essential



THESE CRIMES TEND TO STAND OUT BECAUSE OF THEIR HIGH COMPLEXITY, THEIR HIGH VOLUME (OFTEN MACRO-CAUSES WITH A MULTITUDE OF PROCEDURAL PARTS) AND THE NUMEROUS INVESTIGATIVE STEPS REQUIRED TO CLARIFY THE FACTS. WITH THE ASSOCIATED DIFFICULTY THAT, ON MANY OCCASIONS, THEY ARE COMMITTED THROUGH ORGANISED GROUPS OR COMPLEX CORPORATE NETWORKS, EVEN OF AN INTERNATIONAL NATURE



ABOUT BAKER MCKENZIE SPAIN

Baker McKenzie opened its first office in Madrid in 1965, and it later launched its Barcelona office in 1998. It is Spain's oldest and most established international law firm in terms of number of lawyers.

The firm currently employs over 265 lawyers, who are experts in their particular practice areas, providing specialised, high-quality legal advice in all areas of Law and corporate expansion and growth to many of the most dynamic and important companies in the world.

NUMBER OF LAWYERS:

57 partners | 10 counsel | 200+ associates

TURNOVER 2019 IN SPAIN:

€69.8 million. 

that there is coordination between the lawyers on both sides of the case and that the lines of defence are as aligned as possible. This way, positions are reinforced, and judges are offered a clearer and more credible knowledge of the facts they have to prosecute.

The Bankia case is an example of “unity is strength”, and that synergies between lawyers can help to satisfy the interests of their clients and obtain the results they expect.

What role do auditors play in preventing or avoiding financial fraud in companies? For fraud to occur, it is not necessary for the fraud to be “conscious”, so to speak.

Today auditors play a major role in the world of economic Criminal Law. The continuous and thorough review of a company's financial statements by an external and independent auditor not only allows for the early detection of possible fraud and distortions that may be occurring but can also serve as proof of a company's commitment to the implementation of a culture of compliance and respect for the Law within its organisation.

There is a very interesting document that reflects on the theory of the “legal good” in relation to White-Collar Crime, as a “moral theory” that “underlies and crosses the whole set of economic-business crimes” and that, contrary to what happens in other types of crimes in which the moral position clearly coincides with the legal one (homicides, nuclear crimes, etc.) “in white-collar crimes it can sometimes be obscured”, we quote. The document is entitled “The essence (moral) of unjust in white-collar crime”, by José R. Agustina, and in it the author approaches and translates into Spanish the original document of Lying, Cheating, and Stealing -A Moral Theory of White Collar Crime (2006), by Stuart P. GREEN, professor at Rutgers University School of Law. We would like to ask you, in your opinion, what role does the moral question play in this type of crime?

There has been much discussion about the relationship between morality and Law (and more specifically, Criminal Law). I believe that in a democratic state Criminal Law protects the assets that society itself considers essential. In this sense, legal goods are the expression of a minimum collective morality.

Certainly, in some criminal offences, it is easier to see this relationship between moral values and legal values than in others, where intermediate legal values serving final values are protected. It is clear, for example, that traffic safety serves life, and that when security is protected against certain behaviours that endanger the life and physical integrity of people, it is these assets that are ultimately to be protected.

In economic and business crimes, the same moral-goods relationship exists. The purpose of this

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THE BANKIA CASE IS AN EXAMPLE THAT ‘UNITY IS STRENGTH’ AND THAT SYNERGIES BETWEEN LAWYERS CAN HELP TO SATISFY THE INTERESTS OF THEIR CLIENTS AND OBTAIN THE RESULTS THEY EXPECT

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classification is to preserve a certain basic social morality. The problem is that this is a world in which intermediate or functional goods are often protected. When the stock market, competition or the Treasury are protected, is it people's assets, their basic welfare and the basic benefits of the State towards its citizens what is ultimately preserved.

There has also been talk about certain corporate crimes occurring in circumstances of necessity or pressure that make them less morally reprehensible. That can happen, but it can also happen in any other crime, and for that reason, there are mitigation or exoneration circumstances in the Spanish Criminal Code for cases where the conduct is less reprehensible.

We are also talking about other types of "scams", those related to the whole range of government aid. Do you have any information you can tell us about this?

Indeed, at Baker McKenzie, we deal with all kinds of economic and financial crimes, including subsidy fraud, as well as related crimes such as tax and social security fraud. These types of frauds are committed not only nationally but also internationally, for example, with aid received from European Union funds.

In relation to these crimes, it is interesting to note the increase in government aid being granted by the public authorities to both companies and individuals in order to alleviate the economic consequences of the health crisis we are experiencing as a result of the COVID-19 pandemic. Therefore, the increase of government aid combined with the weakening of the economic situation of society in general, the possibilities of committing these crimes are also increasing proportionally.

ABOUT JESÚS SANTOS

Jesús Santos is the partner head of Baker McKenzie's Criminal Litigation department since 2012. His work is focused primarily on providing advice on Corporate Compliance, pre-litigation situations and Criminal proceedings both to companies and to individuals, as prosecution or defence.

He has been a judge, on leave of absence since 1985, when he

became a public prosecutor. He joined the National High Court in 1989, and was appointed Assistant Public Prosecutor of the National High Court's Public Prosecutor's Office, where he also served as acting Head Public Prosecutor.

During this period, he was Coordinator of International Judicial Assistance and gained relevant expertise in dealing with Extradition Processes and European Arrest Warrants.

Highlights of his extensive career include his role in many lawsuits for social-economic crimes related to international insurance companies and various VAT carousel frauds. He has an international profile thanks to roles as a consultant to the United Nations, the International Criminal Court for the former Yugoslavia and his appointment from 2004 to 2011 as the Liaison Magistrate with the Republic of Italy.

While he held the position of Liaison Magistrate in Italy, he was strongly involved in the investigations carried out by OLAF and, specifically, with the Anticorruption public prosecutor and current head of the Investigations Department of OLAF.

After he joined Baker McKenzie, the Criminal Law department was positioned as one of the reference Criminal defence departments, with him participating as a lawyer in the main proceedings currently conducted (cases Neymar, Defex, Gurtel, Bankia flotation, Son Espases, ICBC, Nummaria, etc).

He teaches at several universities and has also published numerous articles. Furthermore he is a regular lecturer at courses and seminars on Criminal Law and Criminal Procedure. He is a Law graduate from Universidad Complutense and joined the Military Legal Service of the Spanish Army as number 1 in his class. 



What kind of issues do you have at Baker McKenzie Spain that could be framed within this area? What common characteristics do they have, if any?

At Baker McKenzie, we handle all types of cases from both a prosecution and a defence perspective, although our practice concerns mainly offences that are related to economic and corporate Criminal Law. Thus, we advise individuals and companies, both in a Litigation phase and pre-Litigation (prior to the initiation of Criminal proceedings). It is common to advise companies when there is a suspicion or certainty that an employee has committed a crime within the company. These crimes can be committed either to the detriment of the company (such as cases of unfair administration, appropriation of company funds by an employee, etc.) or to its benefit, which may lead to the criminal liability of the legal entity, a matter in which we have extensive experience, as it is a speciality to which we have been intensely devoted in the last decade (since before the introduction of legal entities criminal liability in the Spanish legal system at the end of 2010).

The typology of these crimes is very varied, although all of them have as a common characteristic the importance of their economic-financial component. Furthermore, they tend to stand out for their high complexity, their high volume (we often speak of macro-causes with a multitude of procedural parts) and the numerous investigative proceedings (including International Rogatory Commissions) which are necessary to clarify the facts. With the associated difficulty that, on many occasions, these crimes are committed through organised groups or through complex corporate structures, even of an international nature.

When researching this particular area of Law, we see that there are not too many senior specialists in Spain. I suppose you all know each other, in fact. What kind of specific training does a lawyer in your field require and what kind of soft skills are appropriate? Among these, are there any that you consider indispensable?

First of all, an in-depth technical and legal knowledge is indispensable given the complexity that the procedures we deal with usually entail, since it is also an area related to delicate aspects such as people's freedom or the survival of their businesses. In this sense, it is essential to improve and learn continuously, in order to be updated in an area of constant evolution. On the other hand, lawyers specialised in Criminal Law need to be prepared to work in a collaborative environment within



IN ORDER TO BECOME A GOOD CRIMINAL LAWYER I CONSIDER IT ESSENTIAL TO HAVE ADEQUATE SKILLS FOR THE EMOTIONAL MANAGEMENT OF THE RELATIONSHIP WITH OUR CLIENTS. SUFFERING WITH THE SUFFERER AND ACCOMPANYING OUR CLIENTS IN THIS PATH DURING THE LONG JOURNEY OF CRIMINAL PROCEEDINGS



multidisciplinary procedures, where the ability to adapt and work in a team are necessary skills for day-to-day work.

Finally, one of the qualities I consider indispensable to become a good Criminal lawyer is having the right skills for the emotional management of the relationship with our clients. Suffering with the sufferer and accompanying our clients in this path during the long journey of Criminal proceedings.

In such a unique and specialised practice, we imagine that mentoring is a very important part of the new professionals training. Is this work carried out from Baker McKenzie Spain?

Indeed, all of our lawyers have access to legal training that allows them to expand their technical knowledge, thus achieving not only a greater degree of knowledge but also its permanent update in accordance with legislative developments. This training is compulsory for those lawyers who join our firm after completing their university studies, from the Master's degree in Access to the Legal Profession, together with sessions related to skills such as dealing with clients, working methodology or legal English.

These training courses are offered at all levels, as the company has a large number of resources, both documentary and video, online classes, etc. We also help and contribute to our professionals carrying out specialisation courses, both nationally and internationally, so that we can count on the best professionals on the market. 



WHITE COLLAR CRIMES AND COVID-19 INTERNATIONAL SCENARIO

by veronica volpe



White-Collar Crime, a term first coined in 1939 is, according to the definition given by the FBI, “now synonymous with the full range of frauds committed by business and government professionals.” Behind these crimes, there is “a financial motivation, to obtain or avoid losing money, property, or services or to secure a personal or business advantage.”

Those are not victimless crimes. Everyone remembers Lehman Brothers - the fourth-largest U.S. investment bank – bankruptcy

in 2011. Twelve years later, we are all still facing the consequences. Although indirect, the impact that these crimes have on society cannot be underestimated. They hit our economy and financial sector, and deprive us all of prosperity, economic growth and employment. According to PwC’s Global Economic Crime and Fraud Survey 2020, in fact, 47% of companies experienced a fraud in the past 24 months with a total of \$42 billion of fraud losses.

Nowadays, COVID-19 only made things worse. Those crimes evolved and combined with new types of cyber-crimes and money laundering operations. Moreover, technical innovation and the digitalisation of financial transactions made them even more challenging. The deceleration of economic growth is causing an imminent recession.

People have started to feel anxious and this uncertainty scenario is perfect for criminals to act and exploit fears and vulnerabilities. In the UK, in fact, Coronavirus-related fraud has risen by 400%, reports Action Fraud.

To prevent the rise of this tendency, Europol has created the **European Financial and Economic Crime Centre** (EFECC), welcomed by Member States and E.U. institutions. They aim to not only prevent, disrupt and deter criminals, but also not to let them take over illegal funds, which allow their operations to continue and expand. The new centre will make alliances with public and private entities to identify, seize and defeat criminal assets in and beyond the E.U. According to Europol’s report *Enterprising criminals Europe’s fight against the global networks of financial and economic crime*, in fact, today more than 98% of criminal assets are still not recovered.

In conclusion, what we need today, with a still ongoing pandemic, is a strong international cooperation across several jurisdictions. We must not let criminal groups exploit vulnerabilities resulting from the COVID-19 pandemic, as this situation will test the resilience of our economic and social framework for many years to come. Institutions and law firms across Europe must prepare themselves to face a constantly increasing number of cases involving this type of crimes and it is vitally important to protect private and public finances during this time of crisis. 📌



ENACTMENT OF THE BILL ON MEASURES TO PREVENT AND COMBAT TAX FRAUD

by fernando lópez muñoz

On 13 October 2020, the Council of Ministers took the next step towards enacting the Bill on measures to prevent and combat tax fraud, which has been on hold ever since the draft bill was first announced in October 2018. The main aim of this Bill is to reinforce measures to prevent tax avoidance and curb the black economy, including changes to various tax regulations and adapting them to comply with European law.

While the aims of the Bill are very clear, we will have to wait until we have the definitive text that is finally enacted to see the effectiveness of the changes proposed in the fight against tax fraud.

The range of measures proposed to curb the black economy include lower limits on cash payments between traders (down from €2,500 to €1,000), while transactions involving private individuals who are non-

domiciled for tax purposes are cut from €15,000 to €10,000.

The future of cash itself is uncertain in a changing world where electronic money is becoming ever more dominant, but likewise it will always be the case that for as long as cash payments are allowed, there will always be a chance (no matter how small) that transactions and payments will be difficult to trace.

Along these lines, penalty proceedings will be introduced for companies that manufacture and/or possess so-called 'phantomware' that allows accounting data to be manipulated. But in this regard, we must remember that technology advances at a very rapid pace and it is extremely difficult to regulate the situations that appear every day as a result of the digital economy.

There is also an attempt to control cryptocurrencies (if such a thing is possible) by establishing a duty to declare them. There will be a requirement to declare holdings of assets of this kind in the Informative Tax Statement on assets and rights held abroad (form 720) which at an international level has been questioned by the European Commission (the decision of the European Court of Justice is awaited), and at a domestic level it is difficult to see what the point of this measure might be, given that the information that has to be disclosed in this tax statement does not, in the majority of cases, reflect the wealth held by taxpayers overseas, nor does it allow the said wealth to be supervised. Having said this, and given the inherent characteristics of cryptocurrencies, will it really be possible to detect people who possess them or use them but who do not declare them on their tax returns?

Tax havens (which will now be called 'non-cooperative jurisdictions') do not escape the new regulation. The fight against them will be intensified, which is perfectly reasonable, but perhaps this ought to be pursued and co-ordinated at an international level, given that there are still unregulated 'black holes' in the tax system; as such it is questionable whether or not the will to eliminate tax havens is really there.

Also at an international level there is the transposition of the European Directive on Tax Avoidance, the Anti Tax Avoidance Directive or ATAD, the main aspects of which are international fiscal transparency (IFT) and the so-called 'exit tax'.

About Ayuela Jiménez

OFFICES: 2 (Madrid, Bilbao)

NUMBER OF EMPLOYEES: 23

- Partner: 6
- Counsel/Of counsel: 3
- Associate: 7
- Junior: 5
- Staff: 2

MAIN AREAS OF SPECIALISATION:

- Corporate
- White-Collar Crime and Compliance
- Litigation and Arbitration
- Tax
- Insolvency and Restructuring

TURNOVER 2019: €1,305,421

The aim is, on the one hand, to force activities located in low-tax territories through shell companies to pay tax in Spain (IFT), and on the other, for companies that transfer their tax residence or their activity to a foreign country to pay tax on profits earned in Spain, even where these have not been effectively obtained ('exit tax'). Although the latter measure is already in force for natural persons, the intention is to now extend this to companies. There are also various measures at a domestic level, such as the creation of a Cadastre reference value for real estate and the application of mechanisms to facilitate voluntary compliance and the settlement of tax obligations. The new reference value for real estate will be controversial, given that the intention is that it should be the Cadastre that

defines the taxable value on the basis of real-estate conveyances executed and formalised in public deeds. While this measure will not affect taxes that take the Cadastre value as their reference (e.g. Property Tax or Capital Gains Tax), it will affect those that take the transaction price or consideration as their reference (Wealth Tax, Inheritance Tax, and Property Transfer Tax and Stamp Duty), which could see tax rates go up to the detriment of taxpayers. For years now procedures have been developed in both administrative and judicial settings to address precisely this question of the value established by the Authorities for properties involved in transactions of all different kinds (procedures to verify value) as against the value determined by the parties,

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ENERGY & INFRASTRUCTURE

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ABOUT FERNANDO LÓPEZ MUÑOZ

Fernando López is the partner head of the firm's Tax department and he has more than thirteen years of Tax Law experience. He has a wide experience in Tax planning advising high net worth and big fortunes (individuals) as well as groups of companies both from a national and international perspective, restructuring (mergers and acquisitions), tax audits, administrative and contentious-administrative procedures. He holds a Law degree from the University of Huelva and a Master's degree in Legal Counsel from the IE Law School.



FERNANDO LÓPEZ MUÑOZ

and it is highly unlikely that this new measure will do anything to reduce current levels of litigation, given that the transfer of assets is always linked to the causes and specific circumstances of each case, and this is very hard to standardise. The simplification of the rules regarding the discounts applicable to penalties and surcharges seeks to encourage voluntary compliance with tax

regulations. From a technical perspective, it is true that tax regulations are not simple to understand or apply, but perhaps the simplification of these aspects will not change anything in the mind of those who wish to reduce their tax burden by unlawful means. We are looking forward to seeing the final text containing the various tax changes (some of the measures initially

announced in the draft bill were the subject of intense debate, such as those affecting life insurance known as unit-linked insurance when used in tax planning), which arrives at a time when announcements are constantly being made regarding forthcoming possible tax reforms and the highly-likely increase in the tax burden.

Doubtless the ultimate aim of all these legislative amendments to the tax system is the common good and 'tax justice', but from the point of view of both ordinary taxpayers and the professionals who work in the world of tax, it is hard to understand or imagine how many of them can possibly be effective.

It should not be overlooked that we are facing a situation of constant legislative instability, where tax planning and legal certainty for any class of taxpayer are simply non-existent.

Perhaps it would be worth considering if it would not be more effective to combat tax fraud by increasing staffing levels at the tax authorities and to have 'ground rules' that are more simple and, above all, more stable, given that increasing the tax burden and tax rates does not always go hand-in-hand with increasing tax revenues and reducing tax avoidance. 

"THE NEW LAW WILL NOT DEAL WITH MASSIVE OR UNSUBSTANTIATED REQUESTS FOR INFORMATION"



JUAN CARRASCO

Juan Carrasco, Technology, Media and Compliance (TMC) partner at Santiago Mediano Abogados, talks with us about the new law that will regulate the registration of passengers and which is expected to come into force this month after being approved at the beginning of September. The new law aims to prevent terrorism and other serious crimes and, among other particularities, it incorporates the European Directive on the use of PNR (Passenger Name Record), which obliges airlines to transfer passenger data in order to cross-check them against police databases.



A NECESSARY LAW

Currently, crime (especially serious crime) is not limited to a single country territory; on the contrary, it has a cross-border impact, and it is common for criminals to travel (often by plane). For this reason, the different countries security forces consult and make use of data from the Passenger Name Record - PNR -, cross-checking these data against police databases, making it possible to identify people who may be related and linked to this type of criminal activity.

However, the fact that each country has traditionally used different mechanisms and tools for collection and treatment highlighted –within the European Union- the need to homogenise them, in order to achieve more effective and efficient action in crime prevention, detection and investigation.

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THE FACT THAT EACH COUNTRY HAS TRADITIONALLY USED DIFFERENT MECHANISMS AND TOOLS FOR COLLECTION AND TREATMENT, HIGHLIGHTED –WITHIN THE EUROPEAN UNION– THE NEED TO HOMOGENISE THEM, IN ORDER TO ACHIEVE MORE EFFECTIVE AND EFFICIENT ACTION FOR THE PREVENTION, DETECTION AND INVESTIGATION OF CRIMES

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ABOUT JUAN CARRASCO LINARES



Juan Carrasco Linares is a partner at Santiago Mediano Abogados. He focuses on Technology, Media, Digital Transformation, Innovation and Compliance, with over 20 years' experience advising on Law and Technology related matters (privacy, e-commerce and web 4.0 services, start-ups and technology-based business models, technology contracting,

Intellectual Property, consumers, online advertising and marketing, electronic signatures, telecommunications, e-government and domain names, among other areas), to entities linked to the technology, media and telecommunications, Internet, advertising, content, health, human resources, real estate, finance and retail sectors, among others.

He is a regular contributor to legal publications, and co-author of various works, articles, studies and books, all related to Law and Technology. Closely linked to the academic world, he currently teaches the legal module of ISDI's Master's degree in Internet Business (MiB). Juan has been highlighted in his speciality by various international directories.

He is a Law graduate from the Universidad Carlos III de Madrid and holds a Master's degree in Telecommunications and Communication Technology Law from the same university. Juan is a member of the Madrid Bar Association and the Association of National Experts in ICT Law (ENATIC)

It was this need that led to the approval of the regulations governing the use of PNR data, enabling the creation of a uniform system for the processing of such data in an organised and coordinated manner at European level, which undoubtedly helps to increase and strengthen security on our continent.

YEARS OF DELAY

Although the reasons for the delay in transposing the Directive have not been overlooked, it is clear that the need to consult the various sectors concerned (mainly the air transport sector) and to obtain reports from bodies and institutions (including the Council of State) may have had an influence.

The lack of continuity in legislative activity resulting from the political situation we have experienced in recent years has also had an influence, with

the repetition of successive electoral processes in a short period of time, together with the difficulty of forming a stable government.

WHAT'S NEW

As the main change or novelty introduced by the PNR Law, I would like to highlight the creation of the Passenger Information Unit (PIU), a specific body responsible for the management and processing of PNR data and whose functions are limited to collecting, storing, processing and transferring PNR data, as well as being the means by which they are exchanged with other Member States PIUs, with Europol and with third countries.

I would also like to draw attention to the fact that the regulation limits the use that the PIU may make of PNR data, in that it indicates that these data may only be processed for the assessment of passengers/

crew members, for dealing with transfer requests from competent authorities and/or for establishing or updating the criteria to be used in the assessment of persons.

Another change introduced by the PNR Law is the obligation for airlines and aircraft operators to provide the corresponding PNR

ABOUT SANTIAGO MEDIANO ABOGADOS



NUMBER OF OFFICES IN SPAIN:

1 (MADRID)



NUMBER OF EMPLOYEES

12 PARTNERS/24 LAWYERS/9 STAFF



PRACTICE AREAS:

- INTELLECTUAL PROPERTY AND COMPETITION
- INDUSTRIAL PROPERTY
- PUBLIC AND ADMINISTRATIVE LAW
- LABOUR
- LITIGATION AND ARBITRATION
- COMMERCIAL AND CORPORATE
- TAX
- ECONOMIC CRIMINAL LAW



THE PROCESSING OF DATA REVEALING RACIAL OR ETHNIC ORIGIN, POLITICAL OPINIONS, RELIGIOUS OR PHILOSOPHICAL BELIEFS, TRADE UNION OR POLITICAL PARTY MEMBERSHIP, OR THE HEALTH, LIFE OR SEXUAL ORIENTATION OF THE INDIVIDUAL IS PROHIBITED



data of persons (passengers and crew members) travelling on international flights, both within and outside the European Union, departing from or arriving in Spanish territory, or making a stopover there. This obligation also extends to flight reservation management bodies (e.g. tour operators and travel agencies), to the extent that they collect PNR data on passengers.

Finally, the PNR Law indicates that the PIU will only provide PNR data to the competent authorities (Police, Civil Guard, National Intelligence Centre, Customs Surveillance and Public Prosecutor's Office) in the case of individualised requests, which must be motivated and reasoned; that is to say, that it will not attend to massive requests for information or those that are not duly justified. In the case of requests made by courts and tribunals, these shall comply with the provisions of the procedural rules.

DATA PROTECTION

Analysing the set of measures that the PNR Law introduces, I conclude that it is a law that brings together sufficient guarantees for citizens to be reassured as to the use that will be made of our data (PNR) by the PIU and competent authorities. Indeed, under the premise that privacy regulations apply, it is first established that the PIU must appoint a Data Protection Officer (DPO), who will ensure that the appropriate measures are taken to control the processing of PNR data and that data protection guarantees

are applied. This DPO is the point of contact to whom we can turn for details on all aspects of the processing of our PNR data.

Similarly, as far as the purpose of the processing is concerned, PNR data may be processed only for the prevention, detection, investigation and prosecution of terrorist offences and serious crimes (inter alia, participation a criminal organisation, drug, weapons and human organs trafficking, stolen vehicles or artworks, child pornography, computer crime/cyber crime, theft, kidnapping, murder, miscellaneous forgeries or industrial espionage). In other words, our data may not be used for purposes other than or incompatible with those provided for by the law.

On the other hand, with regard to the data categories that cannot be processed, the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a trade union or political party, health, life or sexual orientation is prohibited. If the PIU receives such data, it must immediately delete it.

Another guarantee provided for in the law is the adoption and implementation of a register, at the disposal of the Spanish Data Protection Agency (AEPD), through which it will be possible to identify the operations of collection, consultation, transfer and deletion of data; and where the purpose, date, time and identity of the person who consulted or transmitted the PNR data, and

the identity of the recipients of such data, will be reflected, in the interest of greater traceability of consultation and transfer operations.

In line with the above guarantee, the PIU shall also keep documentation identifying PIU personnel (including the DPO) and the levels of data access granted to each of them, requests made by competent authorities and data transmissions. With regard to PNR data retention period, they should be deleted after five years from the date of their transmission to the PIU. However, the data should be depersonalised after the first six months from that date, i.e. certain identifying information (such as name, address or payment method) should be masked so that it is only visible to the competent authorities making a request, not to PIU personnel.

And last but not least, the AEPD is recognised as having a set of specific competences such as advising the PIU (on request) on the application of Data Protection regulations; knowledge of the complaints submitted in response to them; or verification of the legality of the processing carried out by the PIU, for which it may carry out investigations, inspections and audits.

In short, a set of guarantees that allow the impact on the citizens privacy to be balanced, in order to combine the difficult balance between the interests affected. ■



SANDBOX: TAILOR-MADE PLAYGROUND FOR THE FINTECH SECTOR

by alejandro varo

Shortly, the Law on Digital Transformation of the Financial System (hereinafter, the Law) will be finally approved, whose main purpose is to create a controlled environment to test technological innovations within the financial sector, popularly known as Sandbox.

This Law will meet the demands of the Fintech sector, in the sense of having a Sandbox just like the one existing in other countries.

But why has the creation of a financial Sandbox been so demanded and pursued? In our modest opinion, because admission to Sandbox means for the promoter, among other things:

1. A certain validation that the model you propose may be useful and is admissible in our financial system. In this regard, it must be borne in mind that not all applications submitted will be accepted, but only those with the favourable report of the competent supervisory authority since they understand that they have a potential use or

2. The guarantee that - as long as they operate within the protocol submitted and approved by the supervisory authority - they will be protected by Sandbox and, therefore, they may not be subject to administrative sanctions as a result of a breach of other regulations, unless they breach the protocol. For this purpose, the Law requires a test protocol agreement to be signed between the developer and the supervisory authority or authorities. This protocol shall establish the rules and conditions of the pilot project where the tests will be carried out.
3. Flexibility and elimination of procedures and prerequisites that would otherwise be necessary, therefore not needing the administrative authorization required for activity at hand. In this regard, the Law

states that the pilot projects and tests proposed within these projects will not be subject to the specific legislation applicable to the provision of financial services. In any case, they must comply with the provisions of this Law and the relevant protocol.

4. Cost reduction. Without prejudice to the cost of all the procedures prior to signing the protocol with the supervisory authority, this cost will be notably lower than that required, for instance, for a prior authorization or license issued by the Bank of Spain or the National Stock Exchange Commission.
5. Specification and quantification of risks. The promoter will be very clear about the risks they face and the maximum liability to participants. The Law states that each participant must sign an informative document expressing their free will to participate. This document must include - among others - the nature, support evidence, implications, risks and responsibilities that may arise from their participation and, in

particular, the guarantee scheme established in the relevant protocol to cover promoter's liability. Likewise, the Law establishes that the liability for damages to participants resulting from their participation in the tests will be exclusively of the promoter when these damages are due to a breach of the protocol, a negligence on their part or arising from risks they did not report. In the event of damages arising from technical or human error during the course of the tests, liability will also be of the promoter.

6. Facilitating the recruitment of participants for the tests since, as a general rule, the fact of taking part in a project included in Sandbox offers greater certainty than that provided if they participate in any other pilot test of a promoter in relation to the financial system, given that they will not have any uncertainty regarding the possibility of inadvertently violating any specific regulation. They will only need to follow the guidelines of the protocol signed between the promoter and the supervisory authority. The details will be available in the information document that they will sign. In addition, and given that the promoter must have financial guarantees to cover liabilities, the participants will have the guarantee that they will be paid the relevant compensation in the event that they suffer damages

ABOUT ALEJANDRO VARO

Partner of the Commercial and Corporate Law department of Estudio Jurídico EJASO ETL GLOBAL. Specialist in Corporate, Restructuring, Financing and M&A. Secretary of the Board of Directors of several companies. Expert in the design and legal implementation of new business models, new solutions and business strategy, both in the Startup and Technological Ecosystem and in the traditional one.

Honorary collaborator of the Commercial Law department of the Universidad Complutense de Madrid. Lecturer on the Master's Degree in Legal Advice for Companies at the Complutense University of Madrid. Author of various publications on the Legal sector.

ABOUT ESTUDIO JURÍDICO EJASO ETL GLOBAL

OFFICES:

Nine

EMPLOYEES:

Lawyers: 73 Partners: 23
(equity partners) Staff:
50

AREAS OF EXPERTISE:

Business Law,
Commercial,
Information Technology,
Tax, Labour, Public,
Competition and
Litigation.

TURNOVER 2019

€19,123,131.52

7. Possible shorter deadlines to obtain the necessary authorization required to carry out their activity once the tests have been completed. For that matter, the Law provides that if the authorizing authorities consider that the information and knowledge acquired during the performance of the tests allow for a simplified analysis of compliance with the requirements provided for in current legislation, procedure deadlines may be reduced, according to the particularities of each project.
8. Attracting resources via investors, as there is the possibility of testing the technological product limiting the risks. 

PILAR MENOR

PILAR MENOR: TOP LEADER

Iberian Lawyer wanted to know more about one of the great female references in the legal sector in our country and, specifically, in the Labour practice. Her expertise and good practice in this sector have been recognised on many occasions, most recently at the 2020 Labour Awards where she was chosen Lawyer of the Year. She is Pilar Menor, global Employment co-chair at DLA Piper, head of Employment and senior partner in the Madrid office. Married to a professional colleague, Pilar is the mother of 5-year-old fraternal twins and combines her family life with a successful career of over 25 years. Respected and loved by the whole profession, Pilar tells us why she decided to become a lawyer.

by desiré vidal

If there is one woman who stands out in the legal sector for sustained leadership over time and for skill in her area of practice, it is you. Not only because of the numerous awards and acknowledgements you have received after more than 25 years of career but also because of the clear and agreed respect for you. When your name comes up, no one disputes your valuable role. What is your assessment of all these years in the profession and where do you think you are now?

Fortunately, in the legal profession there are many and very good female references. For eight years I have been managing partner of DLA Piper, one of the main business law firms in Spain, and I agree that there are few female references in these positions, as there are still few women at the head of large firms. But there are undoubtedly very valuable women in this profession and many of them are an inspiration to me.

The balance of my career is very positive. I think that one of the best decisions of my life has been to choose this profession and I feel privileged to work in something that I am passionate about and that enriches me. Last May, I took the helm of a new international responsibility at the head of the Employment international practice, a very interesting cultural challenge because we are more than 400 lawyers in 40 countries and it is the first time that a non-English speaking lawyer has taken on this responsibility at DLA Piper.

It is an enormous challenge to carry out an international responsibility and even more so at this time without being able to travel. When I was planning what I was going to do in my first 90 days as Group Head at the beginning of the year, I scheduled several trips to visit my team and even planned to spend the whole month of July in London with my family to work from there, but none of this has been possible. In any case, the balance of these months is very positive, they are very intense and interesting times for Labour lawyers, and having the global vision of the measures that are being applied in different jurisdictions it is very enriching.

In addition to my work as a Labour lawyer and the group's management I am also very active on various DLA Piper committees on the causes I advocate for: I chair a working group in EMEA on Diversity and Inclusion, I am vice president of the Women's Leadership Alliance (LAW) and I participate in the firm's Welfare and Mental Health

Committee, an area we have all been paying special attention to over the last few months, when we have all had to work a lot remotely.

Furthermore, I have recently been appointed to the position of Board member to the Council of Bar Associations of the Community of Madrid, which allows me to broaden my knowledge of other types of lawyers and bring me closer to the institutional side of the profession. The legal profession has an important social function and the Bar Associations have a very important role to play.

Why did you one day choose the Labour practice and why did you decide to become a lawyer in a law firm instead of an in-house lawyer?

Since I was young, I was concerned about acquiring economic independence, so in my second year of studies I began to work as an assistant to a procurator, which gave me the opportunity to learn Litigation Law and to join a law firm

About DLA Piper

NUMBER OF OFFICES:

DLA Piper is a global law firm with offices in more than 40 countries throughout the Americas, Asia Pacific, Europe, Africa and the Middle East, with more than 90 offices worldwide. In Spain, it has offices in Madrid.

NUMBER OF EMPLOYEES IN SPAIN:

35 staff, 65 lawyers, 20 partners

MAIN PRACTICE AREAS:

- Employment
- Commercial
- Real Estate
- Tax
- Litigation & Regulatory
- Financing, Projects & Restructuring
- Intellectual Property and Technology
- Energy and Health Sciences

Turnover 2019 (Spain):

€29.8 million.

when I finished my studies. At that time the opportunity to work in a company did not cross my path, but it is not something I deliberately ruled out. I think that working as an in-house lawyer is very interesting, you learn a lot by working with the different business areas and it must be very rewarding to see the evolution of the sector and the business from the inside.

I love the work at the law firm, it is very varied and allows me to work with clients from different sectors.

Woman, manager and also a member of international forums. You belong to a generation where standing out seemed to be frowned upon, at least here in Spain. Do you think we have freed ourselves from these “complexes” that we have historically dragged along? In other words, do you think that recognition has to come from outside for us to accept and value it here?

It is true that we still have much to do in terms of recognising female leadership, and having references that allow the new generations of lawyers to visualise that reaching a position of responsibility is an attainable goal and one that does not involve paying an unbearable personal cost, is very important. Leadership is exercised by example and surrounding oneself with a good team is fundamental, something that has been key in my career. There are many models of leadership, but I believe that a leader must be close and committed, must help his team members to shine, and of course must lead by example. Leaders don't create followers, they create more leaders.

You have been a witness and an actor of the Labour practice in all these years in which our society has changed substantially. Changes that have also touched on the legislative level. Apart from the latest extraordinary measures taken as a result of the pandemic, in your opinion, what are the most notable milestones in the history of Labour Law over the last 20 years?



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FOLLOWERS,
THEY CREATE
MORE LEADERS



In recent decades, successive governments have undertaken a constant fight against unemployment and for job creation; legislation is beginning to pay attention to technological issues such as the digital disconnection and considerable progress has been made in terms of equality and measures to balance work and personal life. On the whole, and leaving aside the extraordinary moment we are living in, I believe that in these two decades, on the one hand progress has been made in the concept of flexicurity, moderate flexibility has been gained for companies while maintaining security for employees, but new rigidities and formal obligations such as the registration of working hours have also been created.

On the other hand, it should be noted that in the last 20 years the main Labour reforms have been carried out by means of Royal Decree-Laws urgent reforms, which for me is not the ideal formula. I am a defender of Labour reforms reached via tripartite agreements between the social agents who have a very important role in the Labour field, although unfortunately this has not always been possible.

In the first decade, unemployment benefits were reformed to streamline spending and measures were put in place to reduce abusive temporariness, which is a structural and as yet unresolved problem of our Labour market, by limiting the abusive chaining of temporary contracts. From 2010 some of the major reforms of the last 20 years took place: pension reform and the new Law regulating Social Jurisdiction of 2011, the modification of dismissal for objective reasons and the regulation of collective dismissals and important modifications in the field of collective bargaining, the lowering of compensation for dismissal, internal flexibility measures. For example, the 2012 reform was very disruptive and controversial, we still hear about its repeal, my balance is that

ABOUT PILAR MENOR



Pilar Menor is the Labour global co-chair at DLA Piper, head of Employment and senior partner in the Madrid office, a responsibility she combines with the management of the firm's Employment Law department. She has extensive experience in all areas of Labour Law and Social Security, having intervened in many operations of business restructuring, defence of clients' interests before the courts and social jurisdiction tribunals, arbitration, collective bargaining, and senior management contracts.

Pilar is a Board member in the Council for Madrid Autonomous Community Bar Associations, represents DLA Piper in the Foundation Probono Spain and in the Royal Academy of Legislation and Jurisprudence, she is a member of the following professional associations: member of the Spanish Forum of Labour Lawyers, member of the International Bar Association, member of the European Employment Lawyers Association, Women in a Legal World, Woman Forward Think Tank, Fundación Pro bono España and member of the Madrid Bar Association. She also participates in several DLA Piper steering committees: member of the EMEA Diversity and Inclusion working group, chair of the EMEA Diversity and Inclusion working group, vice-chair of the internal group of DLA Piper LAW (Women's Leadership Alliance) and member of the DLA Piper Mental Health and Wellness Steering Committee.

It should be noted that Pilar Menor is continuously recognised by the most prestigious international legal directories.

it was necessary in the economic context in which it occurred and that it has been a useful instrument for companies.

Right now, in addition to the emergency legislation caused by the pandemic that affects the ERTes and other measures, we Labour lawyers are faced with a constant production of regulations: Law on remote work, equality plans, equal pay and new obligations, which is complicating compliance with Labour regulations for companies, and above all, keeping up to date.

As an international player, you have criteria to evaluate the speed at which our country is advancing, not only in terms of the legal sector, but also in other sectors that end up having an impact on it, such as education and the attraction and promotion of talent. Are we doing well in this sense? What are we missing and where could we say that we are ahead?

Spain is a great country and a modern economy going through a very complicated time. Getting out of this situation requires a joint effort, a great exercise in wisdom and responsibility and high-mindedness. The situation we are experiencing is teaching us many things: the importance of investment in R&D to avoid the drain of research talent, the importance of the agri-food sector, the need for a great state pact in terms of education, the importance of completing the digital transformation of companies, and let us not lose sight of sectors such as biotechnology and energy. On the other hand, we have a great economic dependence on tourism and this forces us to be extremely careful with our reputation as a country.

In the legal sector I think there is a lot of very well-trained talent, and we have great universities and our students finish their studies very well prepared. I would highlight the good level of Spanish law practice. Outside our borders, the big Spanish law firms are very well known and even some boutiques. Leaving aside the rivalries between firms, as a "Spaniard abroad", this makes me happy.

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IT SHOULD BE NOTED THAT IN THE LAST 20 YEARS THE MAIN LABOUR REFORMS HAVE BEEN CARRIED OUT BY MEANS OF ROYAL DECREE-LAWS URGENT REFORMS, WHICH FOR ME IS NOT THE IDEAL FORMULA. I AM AN ADVOCATE OF LABOUR REFORMS REACHED VIA TRIPARTITE AGREEMENTS BETWEEN THE SOCIAL PARTNERS (...), ALTHOUGH UNFORTUNATELY THIS HAS NOT ALWAYS BEEN POSSIBLE

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PILAR MENOR

Innovation is another *sine qua non* factor for any practice, including Labour. Not only because of the new technological tools but also because of the new procedures and work systems that have even led to the birth of new professions. How has this process been in terms of Labour Law?

I would highlight above all how the new information and communication technologies have facilitated access to knowledge. Before, the difference between the lawyer who had invested time in preparing a case and the one who had not was very evident. Now, the search for precedents is very fast with online repositories.

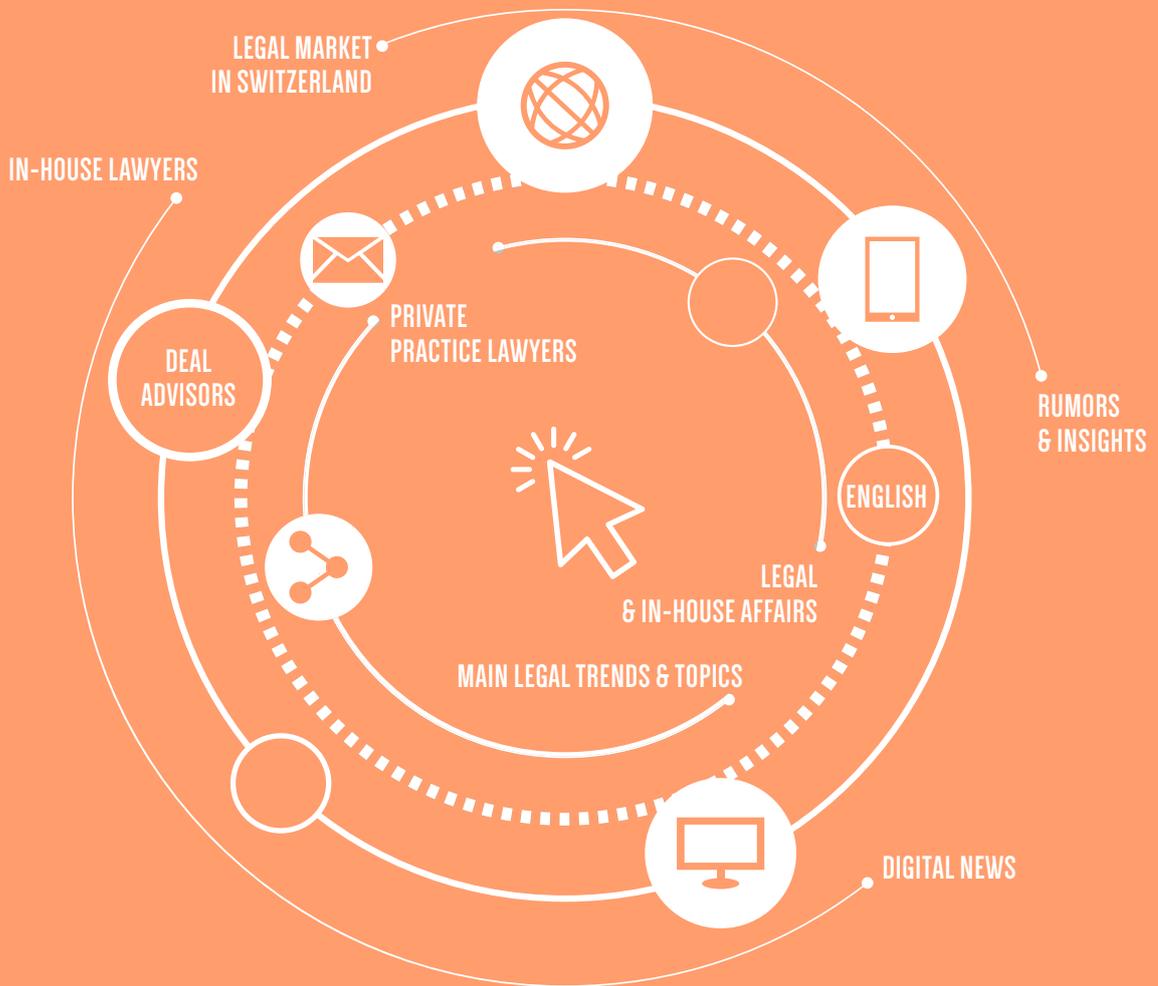
Another change has been the ability to access trial recordings as opposed to the old handwritten minutes, and electronic notices through Lexnet. On the other hand, there has been a loss of value of some simpler tasks that have been commoditised, and even non-complex model contracts are available on the internet for anyone to use. Artificial Intelligence has also landed in the legal industry and this is a challenge for us. During the confinement, technology has allowed us to do things that were previously unthinkable for a Labour lawyer, such as virtual trade union negotiations. In these times, almost all of us have had to negotiate ERTes remotely.

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PILAR MENOR

Is a successful career like yours compatible with a full family life? How have you managed to balance both facets over the years? Who has helped you most to advance professionally, men, women, or both?

It is absolutely compatible, and I think that I could not lead this demanding professional life without having personal stability. I am the mother of five-year-old fraternal twins. They were born when I was the managing partner of DLA Piper and I have made a good balance, although this does not mean that I have not had difficult moments, because the life of any person, man or woman, with a decision-making position in a law firm demands a lot of effort. I do not rule out having to slow down if one day it is necessary for them. Family support is very important, my husband is a lawyer and understands my profession very well, we are well organised. Outside the family environment, at DLA Piper I have always felt supported and helped equally by men and women.

Why, in your opinion, is the presence of women still in a minority, in general terms, in the decision-making positions in some firms and why, in some cases, is the salary gap still there? When will the balance be balanced?

Of course, it is not for lack of talent, because there are many very well-prepared women. There are various factors that influence the so-called “glass ceiling”, some common to other sectors

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SPAIN IS A GREAT COUNTRY AND A MODERN ECONOMY THAT IS GOING THROUGH A VERY DIFFICULT TIME. GETTING OUT OF THIS SITUATION REQUIRES A JOINT EFFORT, A GREAT EXERCISE IN WISDOM AND RESPONSIBILITY AND HIGH-MINDEDNESS

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and others specific to the legal profession, a very demanding and customer-oriented profession. Law firms’ clients attach great importance to the response speed and availability of the professionals, and at the same time we are faced with procedural deadlines that cannot be postponed, closures of operations, etc. This leads to difficulties in work-family balance that cause the slowdown in the careers of some women lawyers. On the other hand, we women have not paid enough attention to important issues in the development of a professional career in this type of firms, such as learning how to manage in “political environments”, networking, building networks that will help you boost your career. We are very focused on working well and believe that recognition will come simply for a job well done, but there are other factors that influence career development. In terms of salary, I think that we negotiate less and worse our remuneration.

No doubt the new generations will have an easier time because law firms are increasingly aware of gender equality and balance. Of course, at DLA Piper we are committed to facilitating women’s access to positions of responsibility without departing from the meritocracy that we have always pursued. It is a question of putting in place the means to facilitate balance at all times in the employee’s life cycle, recruitment, development, promotion. We cannot simply wait for generational change to be the solution; we must step on the gas pedal. 

THOSE WONDERFUL WINES

Patrícia Pais Leite, head of Legal at the Vinho Verde Commission, introduces us to the captivating world of the wine as its legal ins and outs, a world of endless experiences. A passion which began for her twenty years ago, when she entered for the first time in a beautiful 19th century mansion house located in the centre of Porto, responding to a job offer “at a certifying entity” as a “lawyer with Industrial Property skills.” That interview was the moment when she knew she was at the Vinho Verde Wine Commission and that the job was at the head of the Legal department. Her journey in the “legal universe of wines” had begun. In just a few months, this unknown world became a passion.

by antonio jiménez



PATRÍCIA PAIS LEITE



First of all, can we say “Green Wine” instead of “Vinho Verde”?

“Vinho Verde” is the name of a Wine Designation of Origin (DO) and, like any other DO, it is not translatable, in accordance with European legislation in the wine sector and European and international Intellectual Property standards. All Wine DOs must be used in the language in which they are registered, that is, the languages which are or were historically used to describe the specific product in the demarcated geographical area. They also enjoy legal protection against translation. The European legislation considers the translation of a DO to be an abusive practice, in order to avoid the risk of the DOs becoming generic (the common name of a wine) as a result of such practices. This protection is ensured at the international level by the Lisbon Agreement for the Protection of Designations of Origin and the Trade-Related aspects of Intellectual Property Rights Agreement.

Most DOs are protected only in the language of the country of origin (Champagne, Bordeaux, Prosecco, Chianti, Ribera del Duero, Rioja, Douro, Alentejo, among others), although there are DOs that are also protected in other languages.

Is the Vinho Verde Wine Commission a private institution or a public one? What exactly are the functions of a wine commission?

The Vinho Verde Wine Commission (Comissão de Viticultura da Região dos Vinhos Verdes, CVRVV) was set up in 1926 as a public entity to implement the rules governing the production and trade of the wines from the Vinho Verde region, demarcated

in 1908. In 1987, the Government recognised the CVRVV as a regional association, a legal entity in private law. It is also a public interest institution, which under Portuguese Law is a private non-profit legal entity pursuing general interest purposes. The CVRVV has two main activities. The first one, it is the management entity that performs the strategic function delegated by the State to ensure the promotion and legal protection and defence of the Vinho Verde DO and the Minho Geographical Indication GI. The second one, it is the Certification body that certifies wine products with the Vinho Verde DO and the Minho GI.

As Management Entity, the CVRVV activity is based on the interprofessional model, representing, in a whole and equal way, operators of the region with professional interests in the production, on the one hand, and in the trade, on the other, of products with DO and GI. As a Certification Body, the CVRVV was designated by law and accredited by the Portuguese Institute of Accreditation (IPAC), according to the Portuguese and European standard NP EN ISO / IEC 17065, as the entity responsible for supervising the production, trade and certification of wine products with the Vinho Verde DO and the Minho GI.

The Vinho Verde Wine region, or Minho region, is one of the oldest regions in Portugal. What are the requirements to be a member?

Any operator can use the Vinho Verde DO provided that it meets the wine sector legal requirements and the DO production and trade rules, from the vineyard to the packaged product. To be able to benefit from this certification, the wine products must comply with the requirements set out in the EU regulations, Portuguese national legislation and specific regional regulations. These last rules are



THE WINE SECTOR IS ONE OF THE MOST REGULATED SECTORS OF AGRICULTURE: THERE ARE RULES FROM THE VINEYARD TO THE BOTTLE



ABOUT PATRÍCIA PAIS LEITE



Patrícia Pais Leite has a Law degree and a MBA, both from the Universidade Católica Portuguesa (Porto). She began working as a trainee in a law firm for admission to the Portuguese Bar Association, while she took a postgraduate course in Management. Afterwards, she joined for a year the Tax and Legal department of an international consultancy company, where she practised mainly Commercial and Corporate Law (group companies operations). In 2000, she was hired as a Legal consultant and head of the Legal department at the Vinho Verde Wine Commission. Her professional experience and passion for “Wine Law” led her to take in 2017 a Master’s degree in Law from Universidade do Minho (Braga, Portugal), whose thesis theme was the Legal conflicts between wine Designations of Origin and Trademarks. The thesis received an honourable mention from the APDI (Portuguese Association of Intellectual Law) and was published as an article in the scientific journal of this association. It was also presented as a paper in a webinar of the ASIPI (Inter-American Association of Intellectual Property). In 2018 she began a nine months qualification as wine taster at the Vinho Verde Wine Commission to join the Wine Tasting Board, another function she also currently performs at that entity. Patrícia also works as a wine educator and trademarks consultant.

related to the DO production and trade, namely the following aspects:

- The geographical production area
- Soil types
- Grape varieties suitable for production
- Cultivation practices
- Registration and classification of the vines
- Yields per hectare
- Winemaking methods and oenological practices
- Minimum natural alcoholic strength
- Physical-chemical and sensory characteristics of the product
- Registration of the operators’ activities
- Winemaking and storage facilities
- Products circulation, trade and labelling

What are the general steps that a wine must take to become a Vinho Verde wine designation? Are there any strictly legal aspects? How are they managed?

The verification of compliance with the requirements follows the accredited certification process.

Certification is granted if the following conditions are verified together:

- The analytical compliance of the product at the laboratory (physical-chemical characteristics) and the Tasting Board (sensorial characteristics: appearance, nose and palate).
- The labelling approval, according to the analytical report and an administrative account of the wine product.
- The existence of an administrative account of the product with a positive balance and with the specifications mentioned in the labelling.

The guarantee seal is the final result of the certification process in pre-packaged products. It is the public evidence of the DO certification.

Inside the Commission, there is a Legal support area, which you lead. What are its functions? Is there anything that makes it different from the tasks that the same Law area performs within other wine regions?

The Vinho Verde Wine Commission has, since its creation, a solid and well-defined strategy in terms of managing the region’s Industrial Property (IP) rights (Designations of Origin, Geographical Indications, Trademarks and Logos). With regard only to the Vinho Verde DO, we have 86 registrations in 71 Countries (28 EU members

and other 43 countries). For this reason, IP rights management is the central area of activity of the Legal department and represents about 70 per cent of the working hours. This means, first of all, protecting and defending the existing rights against third parties abusive practices, by administrative, judicial and extra-judicial means, in the national, European or international context. It also covers the maintenance of the validity of existing rights (national, European and

international registrations) and the creation of new rights. In the last five years, the Legal department has carried out an annual average of 375 proceedings in 100 cases and has completed around 33 cases per year. In this activity, the department coordinates specialised technical services in Industrial Property of an external company. It should be noted that the protection of wine DO and GI and their relationship with wine trademarks is a particular field that combines the

VINHO VERDE WINE REGION

The name of the Vinho Verde Designation of Origin comes from the green colour (verde in Portuguese) that covers the entire landscape of the region.

DO VINHO VERDE FIGURES

VINEYARDS: 16,000 HA

GRAPE GROWERS: 16,000

WINE PRODUCERS AND BOTTLERS: 600

WINE BRANDS: 1,400

GRAPE VARIETIES: 45

SUB-REGIONS: 9

ANNUAL PRODUCTION: 80 million litres

SALES IN 2019: 66 million litres; second place in the Portuguese Wine Market

EXPORTS IN 2019: 28 million litres / €67 million; second place exported Portuguese DO wines (Madeira and Porto excluded) and represents about 40% of total

EXPORT MARKETS: Over 100



PATRICIA PAIS LEITE

“

THE VINHO VERDE WINE COMMISSION WAS SET UP IN 1926 AS A PUBLIC ENTITY TO IMPLEMENT THE RULES GOVERNING THE PRODUCTION AND TRADE OF THE WINES FROM THE VINHO VERDE REGION, DEMARCATED IN 1908

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rules of Industrial Property with the European, national and regional laws of the wine sector. In addition to the IP rights management, the department provides legal support to CVRVV corporate bodies and departments, in matters relating to the legislation of the wine sector and also in other areas of Law.

A large part of your work, we imagine, will have to deal with regulatory aspects, certifying what a wine that can be labelled as Vinho Verde is, and what is not. Are these regulatory and compliance aspects the most important source of your activities?

In the department's activity, the specialised knowledge of the rules of the wine sector is essential. The wine sector is one of the most regulated sectors of agriculture: there are rules from the vineyard to the bottle, and at various hierarchical levels. The EU establishes the basic regulatory framework for the industry, which is regulated and complemented at a national level through sectoral rules applicable to all wine-growing regions in each Member State. Then there are more specific rules of regional scope, from legal diplomas to procedures defined by the regional entities for each DO and GI.

In terms of legal support for CVRVV corporate bodies and departments, we prepare and analyse draft rules, diplomas and legal documents, issue opinions and information, analyse and prepare contracts and protocols and guarantee the review and compliance with the association's statutory rules, especially in terms of election and functioning of its bodies.

What other tasks are usually managed by your area?

The department also provides internal support in other areas of Law: Administrative, Tax, Labour and Commercial Law. It is also up to us to coordinate the debts recovering lawsuits carried out by external lawyers. More recently, we have developed new skills in the field of Personal Data Protection, and we have been guiding the other departments in complying with the COVID-19 sanitary rules in the various activities of the wine commission.



ALL WINE DOS MUST BE USED IN THE LANGUAGE IN WHICH THEY ARE REGISTERED, NAMELY THE LANGUAGES WHICH ARE OR WERE HISTORICALLY USED TO DESCRIBE THE SPECIFIC PRODUCT IN THE DEMARCATED GEOGRAPHICAL AREA. THEY ALSO ENJOY LEGAL PROTECTION AGAINST TRANSLATION



What are the relations like with the other wine-growing regions? Are there international platforms where they make decisions together?

In Portugal, the wine sector is supervised by the IVV (Institute of Vine and Wine), a public entity of the Ministry of Agriculture that coordinates and controls the institutional organisation of the sector and the contact point with the European Union to monitor European policies and prepare the rules for its application, among other tasks.

The sector has 14 wine growing regions, corresponding to 31 DOs (such as Vinho Verde, Bairrada, Alentejo) and 14 GI (such as Minho, Beira Atlântico, Alentejano), following the European Union's quality policies. In each region, there is an

entity that manages and certifies the respective DO and GI.

Institutional cooperation between regions and with the State services is essential for the excellent functioning of the sector, both at the level of the governing bodies as well as the technical experts. Management and Certifying entities of each region are part of ANDOVI (National Association of Wine Designations of Origin), of the IVV Consultative Council, which supports the activity of the IVV Board in defining the general guidelines of the wine sector policies, and of ViniPortugal, which promotes the quality and excellence of Portuguese wines in the world. Both the IVV advisory body and ViniPortugal are also composed of other associative structures and organisations of wine sector professionals, such as producers, cooperative wineries and traders.

Are there some regulatory and compliance issues arising from national or European directives that are beyond your role?

The UE establishes the minimum normative framework for all Member States wine regions in several regulations concerning a Common Organisation of the Markets in agricultural products, which is part of one of the most important public policies to promote the differentiation and competitiveness of the European agri-food sector. Then we have the Portuguese rules of the sector, applicable to all national wine regions, which complement specific matters such as the institutional organisation of the sector, the exercise of activities in the sector, the protection of wine DO and GI, the suitable grape varieties, planting and uprooting the vineyards, labelling rules, supports for the promotion of products, the infringements regime and the certification fees, among others matters. Management and Certifying entities of each region are always aware of the entire process of defining the European and national policies and rules through their participation in the IVV Consultative Council.

Do you usually work with support from external legal services, or is this exceptional and you typically solve all tasks with internal lawyers?

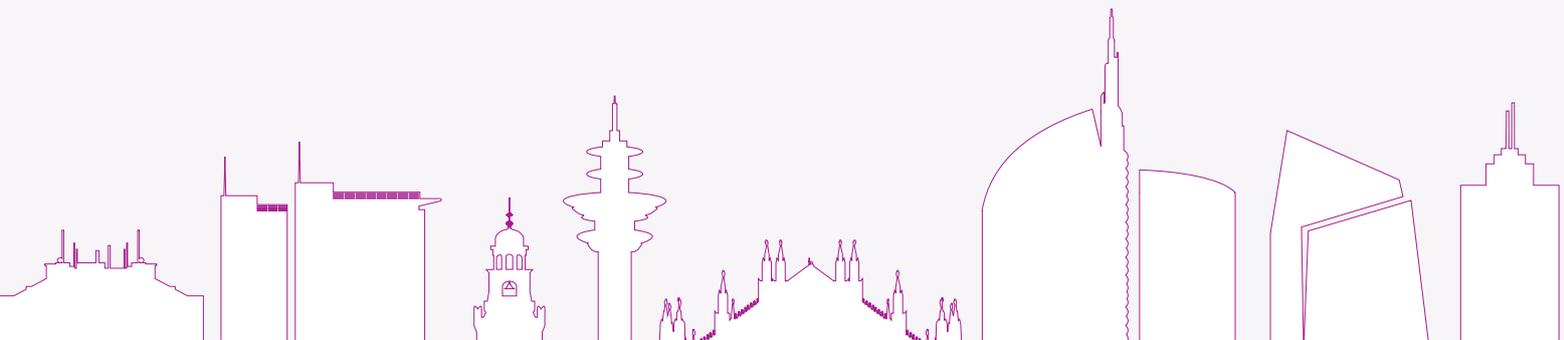
In addition to the Industrial Property technical services, CVRVV works with external lawyers to deal with matters that require specialised knowledge in specific areas and for Litigation matters. 

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 Open with registration

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| MONDAY 7 JUNE | | | Partners | Address |
|------------------|---|--|--|---------|
| 9:00 - 13:00 |  CWP | Opening conference: "Innovation and artificial intelligence" (Lunch to follow) |  | Tbc |
| 14:00 - 16:00 |  CWP | Roundtable: "New media" |  | Tbc |
| 16:00 - 18:00 |  CWP | Roundtable |  | Tbc |
| From 18:30 |  SEP | Corporate Counsel Cocktail |  | Tbc |
| TUESDAY 8 JUNE | | | | |
| 8:00 - 9:30 |  CWP | Breakfast on Finance |  | Tbc |
| 9:15 - 13:00 |  CWP | Conference: "Africa and the Middle East" (Lunch to follow) |  | Tbc |
| 14:00 - 16:00 |  CWP | Roundtable: "Cross border litigation" |  | Tbc |
| 16:00 - 18:00 |  CWP | Roundtable: "CSR & Sustainability: Business Ethics in Crisis Situations" |  | Tbc |
| 18:00 - 20:00 |  SEP | Networking Roundtable |  | Tbc |
| From 19:00 |  SEP | Best PE Deal Makers Cocktail |  | Tbc |
| WEDNESDAY 9 JUNE | | | | |
| 6:15 - 8:30 |  SEP | Corporate Run |  | Tbc |
| 9:00 - 13:00 |  CWP | Conference: "LATAM" (Lunch to follow) |  | Tbc |
| 11:00 - 13:00 |  CWP | Roundtable |  | Tbc |

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| | | | | |
|-------------------------|---|--|--|-----|
| 18:00 - 20:00 |  SEP | Discussion and Cocktail |  | Tbc |
| 18:30 - 20:30 |  SEP | Talks & Cocktail |  | Tbc |
| 19:30 - 23:30 |  SEP | Corporate music contest |  | Tbc |
| THURSDAY 10 JUNE | | | | |
| 9:00 - 13:00 |  CWP | Conference on Finance (Lunch to follow) | CHIOMENTI | Tbc |
| 19.15 - 23:30 |  | Legalcommunity Corporate Awards |  | Tbc |
| FRIDAY 11 JUNE | | | | |
| 18.00 |  SEP | International guest greetings |  | Tbc |

SEE YOU FROM
7 TO 11 JUNE 2021

for information please send an email to : helene.thiery@lcpublishinggroup.it

CARLOS MENOR, A CONVINCED IN-HOUSE LAWYER

Carlos Menor believes that facing change, more than showing courage, is an opportunity to continue growing and developing professionally and personally. Carlos, a lawyer who leads by example is, since October, the new Legal Director of the Renault España Group after having led the Legal department of the company Thyssenkrupp Elevator Iberia and Africa. Carlos Menor is, besides charismatic, accessible, practical, and a declared optimist, a great communicator.

by desiré vidal



CARLOS MENOR



You started your career in law firms and then became a corporate in-house lawyer. Why did you make this change, was it decided or did the path simply lead you there? Going further back, why did you decide to become a lawyer?

I'll start with the second question, the truth is that I was not at all clear about what I wanted to do. I didn't have any special vocation, I liked art and history very much, but after talking and consulting with the great advisor of my life (my father) I decided to study Law.

My career as a lawyer began, as we all did 25 years ago, in a small office in Madrid as a trainee. It was there, thanks to my cousin, that I began to understand and marvel at the world of Law. Going to court, preparing all kinds of documents, reading and studying endless files and seeing the special relationship between lawyer and client.

From there and after completing my academic training, I went through several firms of different nature learning a lot, both from the legal point of view, as well as from the client relationship point of view. After some time, I thought about the possibility of working from the other side of the consultancy, experiencing the possibility of working from within a multinational in its legal department and being able to have both points of view.

The difference between working at a law firm and a legal department of a multinational is truly remarkable. On the one hand, in a law firm you have a diversity of content because of the clients you may have in your portfolio and at the same time, you have the pressure of the firm's monthly invoicing.

With respect to a legal department, the clients are internal and the business is one, although, if one wants to be by the business side, the experiences can be of all types and the opportunity to meet people from different countries is relatively easy. In my experience, both paths are very enriching, but if I have to choose between the two, I'll stick with the in-house practice for the satisfaction of being able to help colleagues and for the opportunity to see how the company you provide services for is jointly growing.



THE TWO WAYS (LAW FIRM OR IN-HOUSE) ARE VERY ENRICHING, BUT IF I HAVE TO CHOOSE BETWEEN THE TWO, I WILL STICK WITH THE IN-HOUSE PRACTICE FOR THE SATISFACTION OF BEING ABLE TO HELP COLLEAGUES AND FOR THE OPPORTUNITY TO SEE HOW THE COMPANY TO WHICH YOU PROVIDE SERVICES FOR IS JOINTLY GROWING.



Now you have gone from being the head of the Legal department of an elevator company to being the Legal director of an automotive group such as Renault in Spain. These are different sectors, but what do they have in common? On the other hand, how have your colleagues seen this professional change in the middle of a pandemic?

These are indeed sectors of different activity, but they have a lot in common. In the end, they are manufacturing industries aimed at the end user, that is, from the Legal departments we must have

a deep knowledge of the product and in turn, we must support the marketing of the product to the consumer, for which in this type of business, it is necessary to be very close to the business. The professional change that I have gone through takes place in a really special framework, although I think one should take advantage of the challenges, opportunities and challenges. Within the legal world, the only thing I can highlight is all the support and congratulations I have received from my professional colleagues. I do not see change as something brave, but rather as an opportunity to continue growing, to get to know other businesses, to work with other people, in short, an opportunity for both professional and personal development.



I DO NOT CONSIDER CHANGE AS SOMETHING BRAVE BUT AS AN OPPORTUNITY TO CONTINUE GROWING, TO KNOW OTHER BUSINESSES, TO WORK WITH OTHER PEOPLE, IN SHORT, AN OPPORTUNITY FOR BOTH PROFESSIONAL AND PERSONAL DEVELOPMENT.



The automotive sector has also been hit hard by the health and economic crisis. Do you already know what your first challenges will be at Renault?

I believe that, as in all businesses and industries, from a legal perspective there are currently several fundamental challenges.

On the one hand, the digital transformation of the traditional legal departments, as well as their philosophy. It is mandatory to change the working tools, instilling digitalization to all members of the

company, as well as the way of working. We must change the traditional industrial mentality into an innovative, agile and decisive mentality. On the other hand, an aspect that remains in time and is fundamental, the closeness and support to the business, where a practical and resolute approach is absolutely necessary. In my opinion, new technologies must help us to promote this aspect, bringing the services of companies closer to the world of business. In no way do I renounce the face-to-face model of visiting the client, which I understand to be basic in any industry, although it should be optimised through the aforementioned new technologies. Finally, I consider team management to be vital and a fundamental aspect of any legal consultancy. Performing a proper team building is basic for organizations, as well as for providing an excellent service. Specialisation is very important, but without forgetting shared functions, teamwork must be encouraged through the creation of projects, as well as through the sharing of clients.

Because of your position and experience to date, you are used to international relations with both clients and other professional colleagues. What factors do you feel are essential as a lawyer when dealing with professionals from other cultural backgrounds? On the other hand, what are your maxims when dealing with a “complicated legal issue”?

The truth is that throughout my career I have had the opportunity to interact with professionals of various nationalities, which has been a remarkable enrichment. I believe that when dealing with people from other countries, whether they are from your own company or third party collaborators, the first thing that comes to mind is transparency and trust, without these pillars it is impossible to work and collaborate as a team. Once this barrier is overcome, everything goes smoothly and success is fully guaranteed.

For three years, I was fortunate enough to head the Italian Legal department. In this case, the arrival was not at all easy, as the impression my Italian colleagues had of me was that of a person sent by management to control and monitor their activity. That impression changed radically after a while and it was thanks to the work and the desire to work and collaborate together with all of them.

Similarly, when I arrived in Portugal, this fortunately changed on the basis of work, trust and transparency. Today, I can only thank all my colleagues in Portugal, who I consider to be very great professionals.

When dealing with complicated matters, one has to measure his or her limits very well and always try to be a practical, businesslike and an open-minded lawyer. All this, without forgetting the defence of the interests of your company/client. We lawyers must try to solve our clients' problems and cases, and in no case, hinder them by trying to impose restrictive criteria that lead us nowhere.

Compliance is one of those issues that often drives many in-house lawyers crazy, whose companies do not have a Compliance officer.

What is your experience in this area?

I come from a German multinational where Compliance is fundamental and part of the company's DNA. I consider it to be fundamental and I see it being implemented more and more in other companies. From my experience, I understand that it must go hand in hand with Legal and become part of their organisation given the legal implications it has.

Compliance generates a lot of work, provided it is properly implemented in a company. Starting this matter from scratch is extremely complex and involves a lot of work. It is an essential aspect in the life of a company, so it must be considered as such and given the importance and relevance it deserves.

For the management, monitoring and implementation of a good Compliance system, I do recommend continuous and close collaboration with a specialised Compliance law firm. With this help and support, the company will be able to have peace of mind and security in this matter.

When advising a company, for example, on investing in country X, let's take Africa as an example, is the in-house lawyer limited to the purely legal aspects or, on the contrary, he must address other issues such as strategic advice or simply common sense?

The figure of the in-house lawyer has to go beyond pure legal advice. I believe that in order to be able to provide good advice, it is necessary to have market and strategic knowledge of the company, without which advice can be useless. Taking the example of Africa, you have to know the situation of the country, its economic risks, institutional

ABOUT CARLOS MENOR



Carlos is a lawyer, member of the Madrid Bar Association since 1988. He graduated in Law from the Universidad Autónoma de Madrid, having completed a Master's degree in Private Law at the CEU in Madrid.

After more than 8 years working as a lawyer at different law firms in Madrid, in 2007 he became part of the Legal department of Thyssenkrupp Elevator SEAME, subsequently leading the Legal department of Thyssenkrupp Elevators Iberia & Africa from 2017 until last October. He currently holds the position of Legal Director of the Renault Group Spain.

He advises the company from an international perspective, managing the company's risks from a preventive model, intervening in negotiations of all kinds and defending the company's interests. In addition, he executes and supervises all the external lawyers who work for the company.

Another of his passions is teaching, which is why he has been teaching Law at Saint Louis University since 2010, as part of the Business Management team.

relations, knowledge of the market and users, etc. ..., and all this must be combined with a certain knowledge of the legislation and local institutions. Lawyers cannot focus only on the legal side of the business when giving advice, we must give much more relevance to our position and position in the life of a company, for which we must provide value added to the legal component, our expertise must be combined with a knowledge of the business and all the peculiarities that surround it, so that in the end we can give a much richer support than in normal circumstances.

If we expand the work or impact of the corporate lawyer in this way, we are closer to the concept of partner or associate, that is, someone who is fully involved in the firm's affairs and who is therefore largely responsible for its evolution.

Indeed, we must consider and push this situation, changing the image of the "fire-fighting" lawyer into an ally and partner of the company, who watches over not only legal security but also the company's growth and well-being.

As I said earlier, it is about being a much more relevant asset in a company. The in-house lawyer must have a relevant weight in the organisations so that he is not seen as an advisor but as an indispensable part of them.

It is true that it is difficult to transform the

traditional philosophy of the in-house lawyer that currently exists in many organisations, but such a change is possible. As I have said before, it is essential to be at the business side, for which you have to move, be proactive and encourage contact with the client. Our work cannot stop there, apart from the above, it is vital to give visibility to our team and our work, for which we must promote the relationship with the company's management, as well as with the parent company. The relationship must be constant, fluid and working.

Once all this is done, this is where organisations will no longer see us as mere advisors but as a vital partner for the development and future of companies.



WE MUST CHANGE THE IMAGE OF THE FIRE-FIGHTING LAWYER AS AN ALLY AND PARTNER OF THE COMPANY, WHO WATCHES OVER NOT ONLY LEGAL SECURITY BUT ALSO THE GROWTH AND WELL-BEING OF THE COMPANY.



ABOUT RENAULT SPAIN

NUMBER OF OFFICES IN SPAIN:

Currently 4 factories, a R&D centre and a subsidiary company with commercial facilities in Barcelona, Madrid and Valencia

NUMBER OF EMPLOYEES:

13,000

TURNOVER IN SPAIN IN 2019:

€7,594 million euros
and a net profit of €110 million

You are optimistic. How do you see the future?

Despite the COVID-19, the second wave that we are experiencing in most countries; despite the tremendous economic and financial crisis that is already beginning to be felt; despite this widespread pessimism, I am tremendously optimistic. I believe that we must all, without exception, row together and work so that countries and different societies move forward.

We must try to comply with all the recommended health measures, so that we can firstly be healthy and, consequently, be able to work and collaborate so that companies, institutions and citizens can have an optimistic future.

As Churchill said, one has to be optimistic because it doesn't seem too much use being anything else. 

A MATTER OF TRUST



GUSTAVO CAIUBY GUIMARÃES

Gustavo Caiuby Guimarães is the director of Wealth Management at Dunas Capital, which operates in both Portugal and Spain and is responsible for, among other things, the administration of the investments of some wealthy clients. Beyond the intriguing or rumour-driven interest that this type of matter always arouses, we have approached him to get a description of the main tasks of this emerging sector, and, even more, to clarify some doubts about a universe that, because of its exclusivity, may seem more inaccessible than it is. An example of the opposite is the naturalness and closeness with which Caiuby Guimarães shows himself clarifying many of our doubts.

by antonio jiménez

What are the requirements to become a wealth manager, and what makes them different from any other investment manager?

In my opinion, to become a wealth manager, you need to know about investments in different segments and have good social skills. The first one is related to the return that you can provide to your client and how he or she will measure your performance. The second one is important because you have to interact with several people daily, not only with clients and prospects but also with different service providers. Understanding each one's needs is essential to achieve the best outcome. Also, there is a legal perspective, where some legislators demand specific certifications to be a wealth manager. In Brazil, for example, most of the Wealth Management firms require a certification called CFP (Certified Financial Planner) from its employees, despite it is not mandatory. This "stamp" shows more credibility and the manager has to understand many

areas related to the Wealth Management services, from investments to succession planning.

I consider that starting a professional career in Wealth Management is relatively recent because the first wealth managers, or private bankers, used to work in other areas. Fields like a trading desk or fund management, and just because of the high number of wealthy clients, started taking care of them with more attention. Thus, it is hard to say that a wealth manager is different than an investment manager; their essence is very similar. However, the investment manager is more focused on the technical side, and the wealth manager has a broader view, not only looking at the client's investments but also looking at the other variables like succession and tax planning.

These services are usually mostly offered by banks to wealthier clients. How does client acquisition by independent companies like Dunas work?

Most of our clients are from our network and referred by lawyers, friends and other clients. Word of mouth is essential in this segment because the client must trust and feel comfortable with the person that will manage his/her assets. So, when they receive a referral from someone that they trust, it is easier to convince the client and start working with him/her. When prospecting new clients, we show them what the value-added when hiring an independent wealth manager is. The crucial factor is the mitigation of conflicts of interests. As we usually charge a flat fee of the managed assets, we have more flexibility when choosing an investment. So, we tell the clients that we will suggest the best investment opportunities adjusted to their risk profile instead of offering products that will only benefit the bank or asset manager. Besides, in a multi-family office, we usually manage the assets of 10 to 50 economic groups, so we can provide tailor-made solutions to each one of them instead of offering traditional products that we commonly see in the banks. However, it is essential to say that we rely on the banks for the custody of our clients' assets, and this is something that we have to explain to our prospects and clients. We tell them that we are an intermediary that will better assist them with their investments, but the money will be held in a duly regulated financial institution. In some cases, the independent companies have agreements with banks, so we can offer better conditions when compared to a client, especially smaller ones, opening a bank account straight with the bank. That is another example of value-added that we can provide to our clients. Finally, converting a client is a long process and demands persistence, but once the customer decides to hire an independent company, it is hard to go back to a larger structure.

One of the constants of your work must include the minimisation of risk. Why do you usually choose to invest with these limitations in mind?

Our goal shouldn't be to minimise the risk but to provide the highest profitability within the risk acceptance of each client. To understand how much risk the client is willing to take, we first need to understand the investment horizon he/she has. The process of defining the risk profile is a crucial stage because it also assists us in managing the clients' expectations, as we will only suggest investment solutions according to their capacity for taking risks. Thus, after defining the client's risk profile,

DUNAS CAPITAL IN NUMBERS

Dunas Capital is authorised by the Portuguese Securities Market Commission CMVM (Reg.307) to provide asset and portfolio management, investment fund management and financial advisory services. Dunas Capital is a Management Entity specialised in the management of liquid and illiquid funds. Dunas Capital is fully and exclusively dedicated to the management of funds and assets of institutional and private clients

12

ECONOMIC GROUPS

Number of portfolios managed

€190

MILLION

Total value of investments managed

10

Employees

Portugal and Luxembourg, they work with banks in Portugal, Luxembourg, Switzerland and Spain

Countries where they invest

SINCE

2003

Years of operation



GUSTAVO CAIUBY GUIMARÃES

ABOUT GUSTAVO CAIUBY GUIMARÃES

Gustavo Caiuby Guimarães started his professional career at G5 Evercore, in São Paulo, in 2008, working as a Wealth Management intern. As it was a small investment boutique,

during this period, he had the chance to learn different areas, from trading to generating reports. After graduating, he was promoted to relationship officer and started dealing directly with clients, being responsible for managing approximately \$50 million. In 2014, he became a relationship manager and was responsible for managing five times more assets than at the beginning of his career. During those years his team and himself were responsible for managing liquid and illiquid assets of their clients in Brazil and abroad. In 2017, he decided to pursue an MBA at ESADE in Spain. After graduating in 2019, he joined Dunas Capital's team to develop the Wealth Management department and became responsible for providing alternative investment solutions in Portugal for local and foreign investors. At the same time, he is a banker in a Brazilian multi-family office called M8 Partners and responsible for bringing new clients and providing global investment solutions. He has a bachelor degree in Business Administration at ESPM (Brazil), a post-graduate in Finance at INSPER (Brazil) and an MBA at ESADE (Spain). He is a CFP® certified professional duly authorised by Planejar, affiliated to the Financial Planning Standards Board – FPSB. 

we always have to keep it in mind once recommending any investment. That is not a limitation, but something that you have to bear in mind all the time. Investing is always about measuring the relation between risk and return. We take into consideration the risks when analysing an investment opportunity, but it is not a limitation.

The investment funds that you offer are your firm's and external ones. How do you select these external funds?

As I mentioned before, we have a flexible structure with open architecture, so we provide to our clients what is the best option for them. We offer our own funds and external funds, but all of them have to be part of our internal asset selection process. Therefore, for any fund that we suggest to the clients, we have an internal procedure of analysing the fund manager, the investment strategy, the portfolio composition, the historical performance, and several other factors. After that, we rank each fund according to its investment strategy and compare it with its peers. Once we have selected the funds, we start allocating in our clients' portfolios. There are cases when clients bring us some investment options, and we perform the same process that I just described. The financial market is a live organism and continuously changing, so our list of funds is always following and adapting according to it.

What is a White Label Fund, and how does it differ from a conventional fund?

A White Label Fund could happen, mainly, in two different situations. The first one is when a financial institution hires us to manage a fund with a specific investment strategy as they don't have the capabilities or the licenses needed to do so. In this situation, we are responsible for managing the fund and deciding the asset allocation, while they are responsible for marketing the fund and raising the capital within their network. The second situation is when



WORD OF MOUTH FROM OUR CLIENTS ALSO HELPS US TO CONTINUE INCREASING IN DIFFERENT GEOGRAPHIES, AND IT IS THE BEST THERMOMETER TO EVALUATE OUR PERFORMANCE AND SERVICES PROVIDED



we partner with a company or a group with shared interests to set up a fund, and they may provide some technical expertise in a specific matter. In this situation, the managing entity is responsible for the fund, but both companies are sharing activities related to it. At Dunas Capital, we have both cases, the first one is related to mutual funds and investment in financial assets, and the second one is more focused on alternative investments. On the other hand, the conventional fund is the “traditional path” when we decide to create a fund internally, and we will be responsible for all the activities of the fund, from fundraising to choosing the investments. In the Wealth Management industry, it is common to see this last case when we identify a specific demand from our clients, and we decide to create an investment vehicle that will be able to solve the clients’ needs.

What characteristics does a Venture Capital fund need to possess for you, who generally try to minimise risks, to choose it?

When analysing Venture Capital funds, we have to take into consideration their strategy and understand if their goals are aligned with the client’s interests and our beliefs as wealth managers. The market has many options worldwide, so we have to analyse the managers’ background, success cases, investment horizon and some other factors before proceeding with the investment. In addition, it is also vital for us to deeply understand the risks the funds are willing to take and the return they are expecting to achieve. Once again, the goal shouldn’t be just minimising the risks, but offering the best risk-return ratio for our clients, always keeping in mind each client’s willingness to take risks. Thus, it is much more important to know the client’s needs than just set a list of characteristics to be analysed in a Venture Capital fund, because each case will be different than the other. In our case, for example, we have some in-house Venture Capital funds, and instead of offering them to all of our clients, we understand which fund fits best each specific client before showing them the materials.

What are the main differences between an institutional and a private client? Do institutional funds require more significant guarantees when making their investments?

The main difference is that, when dealing with institutional clients, they usually have some obligations and demands that limit the investment options. Depending on the situation, the performance of the portfolio may be impacted, but the client



THE WEALTH MANAGER, ALONG WITH THE CLIENT AND A LAWYER, WILL BE ABLE TO SHARE EXPERIENCES AND EXPERTISE TO PROVIDE THE BEST SOLUTION THAT WILL ATTEND THE CLIENT’S GOALS



understands it because we are just following their requirements. Institutional clients are usually pension funds or foundations that, even though they already have access to different asset managers and banks, they want to hear a second opinion from an independent institution with no conflict of interests about their strategy or the possibilities of investments. In general, this type of client has a conservative profile in most of its portfolio, and their due diligence process is rigorous. Finally, the amount managed for those customers is usually higher than private clients, and the investment horizon is longer than the individual customers.

Most of the private clients, on the other hand, have made their fortune based on their work (senior management positions or selling their companies) or from inheritance. Each investor has his investment profile, and it usually varies according to their current situation and life goals. High-net-worth individuals like to explore different areas of investment, ranging from financial assets to real estate. Even though some clients have access to other banks, they usually reach out to independent wealth managers, because they know that we will be able to provide a tailor-made solution and an unbiased recommendation for their investments.

On your website, you differentiate two types of funds: up to €1 million and above €1 million. What is the minimum you work with to consider that you can take over a portfolio? Because, I guess, maybe the main obstacle you face is the consideration that the client has of himself. When do you consider that it is necessary to have a wealth manager?

At Dunas Capital, for the Wealth Management area, we usually manage clients’ portfolios above €1 million. However, there are some unique situations

where we can start working from €500,000. The biggest problem of managing smaller portfolios is our capability to deliver high-quality services. We, as a multi-family office company, don't have large teams to take care of our clients, because we are not focused on scalability, but in differentiation. So, if we pretend to deliver excellent and tailor-made services to our customers, we have to focus on a specific segment rather than try to address the entire market; otherwise, we can jeopardise our business. Besides, diversification is more problematic in smaller portfolios than in larger ones and, because of that, it is more difficult for us to add value in this segment of clients.

However, I'm not saying that smaller clients shouldn't try to find a financial advisor. Nowadays it is easier to find institutions and advisers capable of assisting smaller investors, and I strongly recommend them to learn more about those firms, because they can be a better solution than staying with the traditional banks. A wealth manager is recommended not only when one has a large number of funds to invest, but also when one needs assistance with succession and tax planning. The wealth manager, along with the client and a lawyer, will be able to share experiences and expertise to provide the best solution that will attend the client's goals.

This is a publication dedicated to the legal market, and you are not lawyers, we know. How do you select the lawyers you work with? How do lawyers usually come into contact with you?

We work with several lawyers, mainly in Portugal, and we believe that this partnership is significant for both sides for acquiring new clients. When dealing with a law firm, we usually have two different approaches. The first one is related to our internal needs, like assistance setting up a new fund, tax advice, Compliance, among others. We usually choose a partner according to their capabilities and response time. The market is very dynamic, and we can't lose much time waiting for a solution; otherwise, we may lose our client to a competitor. The second perspective is more focused on our clients' needs. In most cases, they demand tax and succession planning, investment structures and other alternatives that require a legal opinion. In this case, we usually pay attention to the law firm's expertise in advance, so we can offer our clients different options of lawyers that will be able to deliver what they need. Therefore, we are just facilitating the contact between both parties, but the client will be



THE INVESTMENT MANAGER IS MORE FOCUSED ON THE TECHNICAL SIDE, AND THE WEALTH MANAGER HAS A BROADER VIEW, NOT ONLY LOOKING AT THE CLIENT'S INVESTMENTS BUT ALSO LOOKING AT THE OTHER VARIABLES LIKE SUCCESSION AND TAX PLANNING



responsible for choosing the service provider. It is important to mention that the other way around works the same way. That is, the lawyers recommend us to their clients whenever they need an investment firm to take care of their clients' assets. I like to say that law firms tend to introduce their clients to independent firms instead of larger banks because they know that these companies are person-oriented like their firms and their client will not be just one more out of thousands.

Would you dare to give a profile of the type of Dunas client?

As I previously mentioned, each client has his/her own needs and expectations. It is hard to define one specific profile of our clients. We have several institutional clients in Portugal, mainly because in the past years, it was more common to prospect this type of clients and the concept of the multi-family office is still growing in the local market. However, providing high-quality service and the value-added of a wealth manager, we believe that there is a vast potential of individual clients in Portugal. This one is one of the reasons why we have seen a large number of private banks and independent companies coming to Portugal in the past months. Moreover, we have individual clients from Spain and Brazil, mainly because we have developed local partnerships that enabled us to show our work and provide international solutions to those clients. At the same time, word of mouth from our clients also helps us to continue increasing in different geographies, and it is the best thermometer to evaluate our performance and services provided. Lastly, the ideal client profile is the one who understands and trusts our work to manage his/her portfolio of assets. 🇵🇹

IGNACIO DELGADO



SWAPS

ATYPICAL INVESTMENTS

On this occasion, Iberian Lawyer wanted to know more about interest rate swaps and swap contracts. We talked about them with Ignacio Delgado, a lawyer at Legisfund, who recently won a civil swap case against BBVA ruled in favour of the plaintiff. On this occasion, the interest rate swap contract was declared null and void, and he secured a €2.2 million compensation.

by desiré vidal



Firstly, we asked **Ignacio Delgado**, a lawyer at **Legisfund**, if he could explain to us in the simplest way the legal nature of this type of investment product. “From a strictly legal point of view, the absence of substantive regulation makes it difficult to determine the legal nature of this contractual figure, without prejudice to the fact that it is perfectly admissible in our law under the provisions of Articles 1255 of Civil Code, and 50 and following of the Commercial Code, provided that its clauses respect other applicable rules. The fact that our legal system is permissive with this type of atypical contractual figure should not prevent it from having a regulatory framework that regulates it. In this case, the MIFID regulation, which was created, among other purposes, to provide greater consumer protection and transparency in the marketing of financial products such as swaps. It came into force at the end of 2007, right in the middle of the maelstrom of placement of these products, which is why many banks claim that they

did not have the necessary protocols in place to implement the obligations they imposed. However, there was already previous legislation requiring them to inform clients of the risks of the products they were contracting.”

After some initial judgments that did not focus the concept of defect of consent by error on the information deficit, a doctrine body has been consolidated understanding that failure to comply with the legal duty of information leads to the presumption of the defect of consent in the swap contract. The Supreme Court has described swap as a complex-speculative investment contract, with a tremendous risk, typical of financial engineering, and its jurisprudence has established the duty of information that is incumbent on the financial institution, which should be sufficient and understandable about the possible consequences of upward or downward fluctuations in interest rates and the high costs of early cancellation. We ask Delgado, in what specific aspects is the entity obliged to inform the client before contracting swaps. “Eminently, the entity is obliged to comply with its assumed contractual obligation of information, diligence and loyalty. In practice, in the area of swaps, this means that the bank would have had to inform the customer if there was a conflict of interest, i.e. if the bank benefited if the swap caused the customer to make a loss. Similarly, it had to inform whether there were other options (such as a cap) which were more suitable for covering the risk allegedly being pursued by both parties, or other aspects

as important as the existence, in certain cases, of an implicit commission. We also consider it essential that the client had been informed of the existence of an early cancellation cost for the financial product and how this cost was calculated. And, of course, the bank or financial entity should, before signing the swap, inform (through scenarios, graphs and others) of the possible negative scenarios the client could face in the event of a fall in interest rates, as well as the forecasts that the banks already had in this respect. In our experience, clients were hardly ever made aware of the risks involved in swaps, to begin with, because the employees who marketed them mostly lacked the necessary knowledge to do so, so it was difficult for them to explain something they did not know. In fact, some advertising campaigns that we have seen actually sold swaps as insurance against rises, ignoring essential elements such as early cancellation costs, which is an element that caused the loan to be ‘captive’ with such a bank in the long run and that it could not be changed, if desired.” But what is the basis of the Law and the applicable rule on which swap claims are based? Delgado tells us that “It depends on the case, the type of client, the circumstances of the contract and, of course, the means and previous experience that each of the parties had to understand the possible risks of the underwritten swap that was underwritten.” Having said this, the Legisfund’s expert tries to simplify and tells us that “the actions that the case law is accepting with greater consensus are those of nullity (annulment) for consent by error

and breach of contract, based on Article 1101 of the Civil Code. Within these, and as we have said, depending largely on the case, there are occasions when it focuses more on elements such as ignorance of the existence of the cancellation cost and its calculation method, or the implicit commission and its value at the time the swap was signed. In certain cases, we have taken the ignorance of the cancellation cost to be the most relevant because its cost did not allow the client to change his financing to another entity that offered him better conditions and when we talk about long-term financing, it is essential. It is also important to differentiate between types of swaps: the majority of case law refers to them as independent and autonomous swaps from the financing contract. However, there are also implicit swap contracts, which are included in the clauses of the main financing contract (leasing, loan policy, etc.) and to which case law has provided a different solution, even if the elements of the defect of consent by error are present. The High Court's jurisprudence was reluctant to admit the nullity of these swaps until very recently, so we intuit that there are many photovoltaic solar plants that are affected by this type of swap and have not claimed in court."

In relation to swaps, there is often talk of a disproportionate and asymmetric position between the entity marketing the financial services and its client. Other doubts that arise are whether it is necessary to be a professional investor to be able to understand the risks of this product, what the suitability test that banks must carry



IGNACIO DELGADO

"IN OUR EXPERIENCE, THE CLIENT WAS RARELY MADE AWARE OF THE RISKS INVOLVED IN SWAPS, TO BEGIN WITH, BECAUSE THE EMPLOYEES WHO SOLD THEM MOSTLY LACKED THE NECESSARY KNOWLEDGE TO DO SO, SO THEY COULD HARDLY EXPLAIN SOMETHING THEY DID NOT KNOW"

out consists of, and whether this is mandatory, and also whether the fact that the clients are established companies necessarily implies the expert nature of the client. "It is not necessary to be a professional

investor from the strictly legal point of view, as the regulations themselves allow retailers (not professionals or eligible counterparties) to contract this kind of product, but obviously the law provides greater

ABOUT IGNACIO DELGADO



Avellaneda has been a litigation lawyer for fifteen years and has been working at Legisfund since 2016. In addition, for the last five years, he has combined this work as an investment officer at Therium Capital for Spain, one of the world's leading litigation funds. Recently, he also began working with ComClaims, which is dedicated to identifying and developing opportunities for investors in acquisition of litigation assets. Ignacio has a degree in Law from the Universidad Pontificia Comillas, an LLM by the Madrid Bar, and has worked in prestigious firms such as Ramón y Cajal, López-Ibor and Rödl & Partner. In 2019 he was nominated for the Iberian Lawyer Forty under 40 awards in the Litigation category. 

protection for retailers,” replies Ignacio. “Putting practice into relation with the complexity of this type of financial product, financial institutions should verify that the swap subscriber is a person with greater technical knowledge, experience, or at least ensure that they have transmitted a minimum knowledge of the operation and risk of the product. We had clients who were business administrators of at least 100 companies and trained in auditing, and were ruled in favour by the court since it was demonstrated that the product placement suffered from the due warnings on the part of the bank, which cannot presume knowledge in the administrator of the contracting company,” continues Delgado.

Regarding the fact that the clients are established companies, Delgado states that this “does not imply *per se* the expert nature of the client: in fact, in the case of renewable energies, where there was a massive placement of swaps that caused significant losses, the investments were in many cases carried out by individuals who formed a single-person limited company as a vehicle for their investment. However, behind this vehicle, there was only one private individual with no knowledge of the subject, nor the ability to hire or pay for advisors to replace their lack of knowledge. Not surprisingly, the problem was aggravated when the bank, through subsidiaries or investee companies created for this purpose, claimed to have advised its client on everything related to the financing of the project (within which we must include the swap) and also charged for it. As we have

seen, not only did it not give proper advice, but also marketed products that were against his client’s own interests.”

We often see claims for swap contracts capturing the attention of the media. But what is the profile of the most frequent claimants? Are they usually investors with speculative intentions? In which sector do financial institutions offer swaps (Mortgages, Energy...)? “The profile of the plaintiff is absolutely varied,” says Delgado, “because the falls in interest rates, given the configuration of the swaps that have been mostly traded, have led to widespread economic losses, regardless of the profile of the subscriber: we have seen cases ranging from individuals to listed companies, and even to SMEs. However, in no case do we find speculative profiles, as this was not the purpose for which they were contracted. In 2007 and 2008 a large number of swaps were marketed to individuals, who were then placed by the banks on their first home mortgages. Swaps were also closely linked to bank financing and refinancing of companies in the construction and real estate sectors, and finally we find those in the energy sector: following government incentives for investment in renewables, also in 2007 and 2008, bank financing in the photovoltaic sector shot up, and the commercialisation of swaps came along with it, undue in our opinion. The difference with the other two ‘waves’ is that many of these swaps are still alive, as their duration was linked to that of the Project Finance, so we were talking about contracts with a duration, in many cases of no less than 15-20 years.”

“IT IS NOT NECESSARY TO BE A PROFESSIONAL INVESTOR FROM A STRICTLY LEGAL POINT OF VIEW (...), IN RELATION TO THE COMPLEXITY OF THIS TYPE OF FINANCIAL PRODUCT, FINANCIAL INSTITUTIONS SHOULD VERIFY THAT THE SWAP HOLDER IS A PERSON WITH GREATER TECHNICAL KNOWLEDGE OR AT LEAST ENSURE THAT THEY HAVE TRANSMITTED A MINIMUM KNOWLEDGE OF THE OPERATION AND RISK OF THE PRODUCT”

Regarding the percentage of declaration of nullity of the swap contract that we are seeing in the courts, Delgado says that this is generally high “but like I said, it depends on the type of profile of the contracting party, the approach of the firm in question, the action taken, the type of swap (autonomous or implicit) and other factors.” We assume that in order to claim a swap case, the intervention of a lawyer specialised in this type of product is necessary. Legisfund handles legal proceedings with an economic interest in dispute of more than €10 million (aggregate), only in swap matters. “As in any other branch of Law,

I would always recommend that the plaintiff be accompanied by a specialist in the field who has a thorough knowledge of the product, its configuration and how it has been considered by the case law. Like all branches of Law, it has many characteristics that must be taken into account, recent developments in case law in small but essential aspects for the success of the procedure, etc.”

By requiring so much specialisation, are we talking about a niche with enough importance to be considered a practice area? “Of course,” says Delgado, “it is a niche for us, because it is a field to which we dedicate a lot of time, and we do not stop learning every day. It is also related to other fields of Law such as Insolvency Law, when we have encountered a derivative placed on a company in Insolvency proceedings, or more recently, Competition Law, when at the beginning of last year, the CNMC imposed a fine on several banks for manipulating swap prices in Project Finance”. Delgado has also achieved pioneering victories in this area, in lawsuits whose risk has been entirely assumed by litigation funds. The British litigation fund Therium landed in Spain with him some five years ago. We asked him how he helps plaintiffs and how the process works, and whether the possibility of success of swaps and their viability often goes beyond the due diligence of litigation funds. “Yes, more than five years ago we managed to have the costs and risks of a lawsuit of a firm’s client taken over by a German litigation fund when this kind of deal had hardly been heard of in our country. With Therium and

ABOUT LEGISFUND



Legisfund is a law firm that offers a wide range of legal services covering Civil and Commercial Law, and has a great experience in consumers, SME, and big companies regarding mis-selling banking products. They also specialise in all related with litigation funding. 

other similar funds, we have successfully funded claims for damages arising from the improper marketing of swaps in Spain. This was a very innovative transaction in which, for a group of claimants who had large claims, we covered the fixed costs associated with the litigation, as well as the risk of costs in the event of a loss. Without this, many of them would not have dared to claim. The funds that finance litigation carry out a due diligence process of the merits or strength of the case in relation to the firm’s approach to the case. There are times when the firm’s vision is not entirely aligned with that of the fund, for which a winning approach always prevails, and has no concern, however, with exploring or opening a new line of jurisprudence, for example. But all of this would make for a whole separate interview...” 



TOMÁS ACOSTA

TOMÁS ACOSTA: "STAYS ABROAD ARE LIKE 'HITTING A GROWTH SPURT'"

We travelled to Chile to meet Tomás Acosta, resident partner of Uría Menéndez at PPU Chile. From his words, we can guess an overwhelming personality, an adventurous spirit and a lot of passion for both his profession and the firm's project, which is now celebrating its fifth anniversary in this part of the world. His knowledge of the Latin American market in general and of the Chilean market in particular has made us much better understand the position of the Andean country, which last month voted in favour of rewriting a new Magna Carta. Although Tomás claims that he will return to Spain one day, he enjoys the post without homesickness and seems to have an agenda for a while.

by desiré vidal

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IF I HAD TO DEFINE WHAT HAS MOST BENEFITED ME PROFESSIONALLY FROM DEVELOPING PART OF MY CAREER ABROAD, I WOULD SAY THAT IT IS THE FLEXIBILITY TO ADAPT TO CHANGE, TO SEE IT AS A GOOD THING RATHER THAN A THREAT, AND TO HAVE A BROADER PERSPECTIVE ON SITUATIONS

”

You have been with the firm for twelve years now. You started in the Madrid office, then went to the London office and have been the resident partner in the PPU Santiago de Chile office, Uría Menéndez's sister firm in Latin America, for just over a year. How have you experienced these changes in your career at the firm? Looking back, what do you think developing part of your career in other countries has brought to you? And on a personal level?

Twelve years, time flies! The truth is that on every occasion you mention, just as on previous stays abroad (during my last year of my career I did an Erasmus exchange at *Handelshögskolan i Stockholm* in Sweden), the same feeling is always repeated: I have the impression that I am "hitting a growth spurt". These are all opportunities to learn other ways of doing and thinking, to meet people from very different backgrounds and to deal with new situations. How have I experienced these changes? I would distinguish

three moments. Before living them, always with a mixture of eagerness and uncertainty, but above all with a great desire to demonstrate (to colleagues, clients, myself...) what I am capable of doing and contributing. During the stay, with intensity. I am lucky enough to be, and have been, in enormously rich destinations, both professionally and personally, so there is never any time to lose. And, finally, on my return, with gratitude and joy. You always return back better than you were when you left. As I said before, these are all growth experiences.

If I had to define what has most contributed professionally to me in developing part of my career abroad, I would say it is the flexibility to adapt to change, to see it as a good thing rather than a threat, and to have a broader perspective on situations. And at the same time, there are all the great people, as well as excellent professionals, from whom I've been lucky enough to learn and with whom I've been able to grow at every stage.

Y

I have no doubt, without all these experiences, I would be a different person and a different lawyer.

It has been five years since the launch of PPU in Santiago de Chile and, although perhaps 2020 is not the best time to take stock, how have these five years been with respect to the firm’s growth?

PPU is a unique project. We are building together a regional office called to lead the sophisticated legal advice in the Pacific Alliance (currently composed by Chile, Colombia, Peru and Mexico). And we are doing it over a low heat, with lots of love. Integrating such prestigious firms, already established in their respective countries as those that are part of the PPU is not done overnight, certainly if you want to do it well. That is why I believe that five years is a short time to make a truly significant assessment, although the quantitative aspects confirm that we were right when we decided to invest in this project. But beyond the "cold" indicators, I prefer to highlight the pride that those of us who are part of PPU feel for the law firm we have. 2020 is not an easy year for anyone, but this has not prevented us from continuing to make progress in integration, strengthening our institutionality and cohesion, and getting the trust of our clients for their most important matters. We are all anxious to see the next five years... and the next fifty!

You are an expert in M&A, B&F and Capital Markets. Would you say that these are the first areas in terms of activity



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PPU CHILE PRACTICE AREAS

Finance, Banking and Capital Markets

Corporate and M&A

Environmental Law and Sustainable Development

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Labour

Competition

Mining Energy and Natural Resources

Dispute Resolution

Insurance and Reinsurance

TMT

Taxation and International Trade

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ABOUT PPU CHILE

Number of offices:

1
in Santiago de Chile

Number of employees:

19

Partners

1

Spanish partner

82

Lawyers
(excluding partners)

63

Administrative staff

volume, at least in a "normal" context, that is, before the appearance of COVID-19? What would you say has been the impact of the pandemic on the firm's activity?

The areas you have mentioned are one of the pillars on which full-service firms such as Uría Menéndez or PPU stand on, that is undoubted. Dispute Resolution, whatever form it takes, is also very present. However, what we believe really gives strength to a firm like ours is being able to offer top quality advice in all areas of Law that a corporate client may need. To this end, having powerful areas as Tax, Labour, Industrial and Intellectual Property, Competition, etc. is key, regardless of their activity volume.

That said, it is true that the economic crisis triggered by the pandemic has caused some areas to assume an unusually high volume of activity. Labour is an obvious example, but it is not the only one. Tax has had a very powerful activity, as well as everything related to digitalisation. I would not be surprised to see an increase in the need for advice in Financing, in situations of insolvency or pre-insolvency, as well as the so-called "distressed M&A" in the coming months.

On October 25 Chile held a popular consultation in which an overwhelming majority voted in favour of drawing up a new *Magna Carta* that cancels the one known as "drawn up by Pinochet". This is considered the most important event since democracy was restored three decades ago. What improvements would you

like to see made to the new Constitution, particularly in the practice of Law and the Legal profession in Chile?

I hear a lot about the fact that Chile's current Constitution was written by Pinochet. And this may be true from a formal point of view, but the truth is that since its promulgation, the Chilean Constitution has undergone numerous and deep reforms. The most significant was that of 2005, under the presidency of Ricardo Lagos. This reform was so far-reaching that it came to be known as the "Lagos Constitution". At the beginning of this debate I was very interested in this aspect and one day I got hold of a Word version of the 1980 Constitution and another of the current one. I made a comparative version of both documents and, to my surprise, they are like chalk and cheese. This in itself is something to think about.

Indeed, on October 25, the "Approval" option triumphed and a process should be launched for drafting a new constitution in Chile. The so-called "Constitutional Convention" was also chosen as the constituent body. This is a body that will consist of 155 people, who may not be members of parliament or hold any public office. Both options were approved by majorities of close to 80 per cent of the votes, although it is striking that the turnout was just over 50 per cent, a similar percentage to that of previous presidential elections. We are now entering a period in which the candidates for this Convention, whose

ABOUT TOMÁS ACOSTA

Tomás Acosta is a partner in the Corporate and M&A group of Uría Menéndez.

He joined the firm's Madrid office in 2008 and, between 2012 and 2014, worked in the Uría Menéndez London office. Since April 2019 he has been based in the PPU Santiago de Chile office, Uría Menéndez's sister firm in Latin America.

His professional practice, with a markedly international profile, focuses on Mergers and Acquisitions (both of listed and unlisted entities), Restructuring and capital and debt issues. He also regularly advises on other Corporate matters, such as Corporate Governance and national and international Commercial contracts.

Tomás regularly advises Private Equity firms, industrial clients and national and international financial institutions on their investments and divestments in Europe and Latin America. 



members will be elected in elections on April 11, 2021, must be formed. Once the body is formed, it will have a period of up to twelve months to agree on a text. This will be done by a two-thirds majority of its members. The text, if approved, will also have to be submitted to a new plebiscite, known as an "exit plebiscite". All these factors lead me to believe that citizens would vote on a new constitution around the second or third quarter of 2022, if all times are right. We must also bear in mind that if the Convention does not reach an agreement on the text, or if the exit plebiscite rejects the text, the 1980 Constitution will remain in force.

The question you ask me is very suggestive. It leads me to reflect on what are the expectations we can reasonably have of the Constitution. A few weeks ago, a prestigious Chilean university conducted a survey in which, among other things, they asked respondents if they thought the new Constitution would have a direct impact on their quality of life. Do you know how many people answered yes? Almost 70 per cent, if memory serves me right. These expectations

seem excessive to me (let's remember that the Spanish Constitution enshrines the right to work...) and a real challenge for those in government who have to manage them.

I would love to see a Constitution in Chile that favours institutional strength, that supports the characteristic Chilean stability of the last decades, and that reaffirms Chile's role as a recipient of international investment, based on legal security and the rule of Law. Let us hope that these objectives can be reconciled with an adequate response to the social demands that were the focus of the debate during the so-called "social explosion" a year ago.

How is the government of Chile dealing with the health and economic crisis and what differences would you point out with respect to how it is being dealt with in Spain?

With a lot of responsibility and caution, which did not surprise me at all. Action was taken promptly and decisively, and the situation has been rigorously monitored. All this has undoubtedly helped contain the situation, which is serious in any case. However, developments over the coming months, which coincide with spring and summer in the southern hemisphere, are a matter of uncertainty.

Renewable energies have been an important source of investment for years, but in the wake of the pandemic the need to invest in this type of energy has become even more evident.

How is this momentum being experienced in Latin America? Are governments betting on these investments?

Chile's commitment to renewable energy is undoubtedly one of its hallmarks. Not for nothing has Chile launched an ambitious plan to decarbonise its economy with the aim of achieving carbon neutrality by 2050. Naturally, renewable energies are currently one of the main drivers of economic activity. And these are not empty words, I notice this (and very intensely!) in my daily life. A not insignificant part of my time is dedicated to advising foreign investors who wish to invest in Chile in this sector, as well as supporting established operators.

At this time, investments, in general, are also diversifying, we understand that, at a global level, but which business sectors are attracting the most investments in Chile? For example, investments in start-ups seem to be a winning trend in Europe. Is the same happening in Latin America? What type of funds are gaining notoriety as a result of the pandemic?

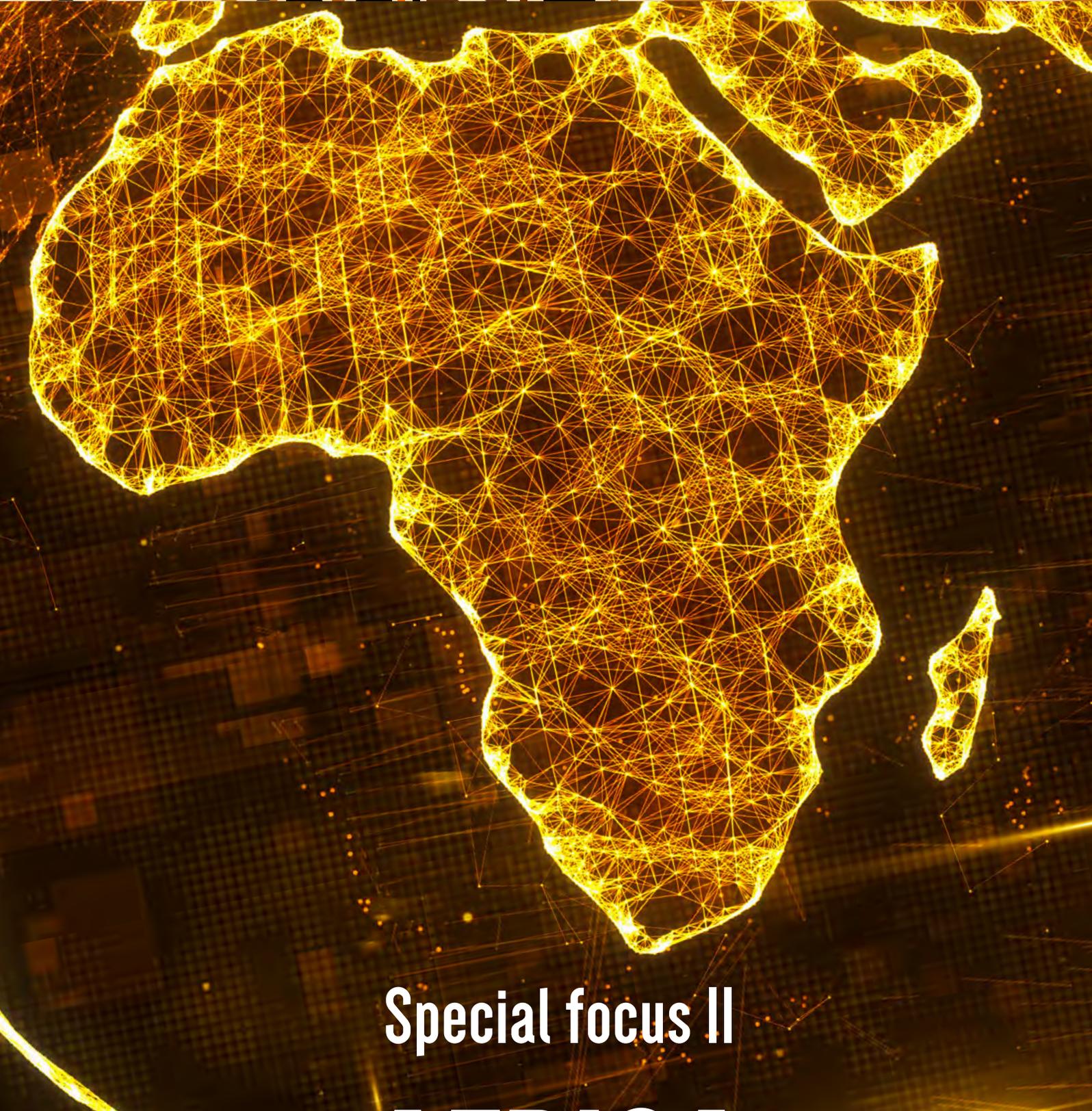
The traditionally most active sectors in Chile, but also in Latin America as a whole, are still the most relevant today. I am speaking essentially of two types: on the one hand, natural resources, chiefly the extractive industry, with mining and its ancillary industries at the forefront; and, on the other hand, infrastructure (road networks, water installations, hospitals and, more recently,

telecommunications infrastructure, particularly with the deployment of 4G and 5G networks) and energy, which I spoke about earlier. In addition to these sectors, others of a more technological nature are gradually gaining ground, as are emerging industries such as medical cannabis.

But I find the question about start-ups very interesting. In many Latin American countries, and of course in all the Andean countries, favourable ecosystems are being created for entrepreneurship, with several companies already in the scale-up phase. And there are wonderful examples of unicorns, such as Mercado Libre (Argentina), Rappi (Colombia) and, probably in the not too distant future, Cornershop in Chile.

Finally, the mandatory question, do you miss Spain? What do you miss most? Do you plan to return or will you continue to be a "Partner Abroad"?

Of course I miss the comfort of living in my country and having all my loved ones close to me, and more than ever in these difficult times we have had to live through. But if you were to ask me if I am homesick, I would say clearly not. With all that the world (and, in my case now, Latin America) has to offer in terms of seeing, listening, tasting; with all the people you can meet, with whom you can talk; with the immense nature that there is to be discovered out there; with the wonderful project that PPU is... there is no time for that. Will I go back to Spain? Yes, without a doubt. 🇪🇸



Special focus II

AFRICA





LAWYERS

WHO DEAL WITH COMPLEX SITUATIONS

The second meeting of the Special Focus Africa, an encounter between lawyers who have an in-depth knowledge of the situation in the continent and the general counsels of several companies which make business in Africa, organised by Iberian Lawyer, took place last October 21. After the first meeting from the previous month, this time the conversation turned around more precise topics, following the idea that been the more accurate as possible to deepen into this promising market.

On this occasion, the participants were three partners who have assisted in multiple transactions on the field: Miranda & Associados Banking, Corporate, Energy, Mergers & Acquisitions, Mining and PPP & Project Finance partner Nuno Cabeçadas, VdA Partner Project Finance Infrastructure & Mobility Teresa Empis Falcão and SRS Advogados head of the Projects and Environment departments, Transport and Shipping partner José Luis Moreira da Silva. To join into their conversation we invited Total International legal negotiator Daniele Novello and Elsewedy Electric group legal director Mahmoud Shaarawy.

The topics followed the main concerns appeared in the first meeting: Energy, Infrastructures and the guarantees for investments. As some of the major projects developed in Africa in the last years are related to the Energy and Infrastructures area, we began with this topic.

Nuno Cabeçadas was the first one to participate, and he reminded us that he was his whole career a lawyer from Miranda, and since the first time in the firm he began to work in projects in África, which means more than 18 years devoted to transactions in the continent, and the challenges and the opportunities have been the same ones all over the time: “The majority of the people in Africa still does not have access to energy, and Africa still has a deficit of infrastructures that requires billions of investment to become real.”

“THE MAJORITY OF THE PEOPLE IN AFRICA STILL DOES NOT HAVE ACCESS TO ENERGY, AND AFRICA STILL HAS A DEFICIT OF INFRASTRUCTURES THAT REQUIRES BILLIONS OF INVESTMENT TO BECOME REAL”

NUNO CABEÇADAS



An input that was automatically confirmed by all the participants. He kept describing the current situation: the inequalities on the development of infrastructures in Africa, the need for investment, the presence of the investors, the existence of equity available for these projects, a will of the governments to develop this plans in their countries, etc. But, for several reasons, these projects do not seem to advance at the pace we want them to go forward, and the fact in the number of projects which reach the needed investment and are effectively implemented is not as high as we want them to be. The question is why, which ones are the reasons which explain this apparent paradox. And what can be done to minimise this contradiction. In the personal experience of Cabeçadas, there is a significant number of projects which do not find a financial agreement. And this is especially true in Energy and Infrastructure projects. And very often, the reasons can be found in the lack of preparation from the very initial phases of the projects. A classic problem is the timing of having the necessary licenses for the projects. “I lived in Mozambique for six years, working at our office in Maputo, and I confirmed on the ground how this

hurts the initiatives. I think things are getting better, but still, on many occasions, the lapse of time need to obtain the authorisation kills the projects. Environmental licenses, building permits... Those can be great obstacles, and we have seen investors losing hope, losing faith and, eventually, losing patience, and deciding to abandon the projects.” Also stressed the dogma assumed by a lot of governments and administrations that the high risk of investing in Africa is something that must be supported entirely by the investors. So the PPI (Public-Private Investments) usually do not end well. And, lastly, the guarantees which often doesn’t cover the risk of the project. Governments sometimes they do not have the capacity to do it, or sometimes they are in default so they cannot, etc. “But don’t get me wrong, I am an African optimist, I think we are in a better situation than we were twenty years ago, we got a lot of examples of projects who close their financial help. In Mozambique, the country I know best, we got several projects which confronted difficulties but eventually succeeded. And you can find similar success stories in other countries of Africa, so I think we shall be positive and optimistic on the continent. The key is that the challenges are well identified. There are proofed solutions for many of them. And, as lawyers, we are in a privileged position to make more projects more bankable, and that will make projects more bridgeable to minimise the infrastructure gaping in Africa.”

“AFRICA HAVE HIGH-QUALITY PEOPLE, ONE OF THEIR MAIN CAPITAL IS THE PEOPLE, SO THAT IS A PROBLEM THAT AFRICA DOES NOT HAVE”

DAMIELE NOVELLO



Daniele Novello provided some inputs after his experience working in Total on the North of Africa, especially Egypt. He talked about “a problem that Africa does not have: they have high-quality people, one of their main capital is the people. I am absolutely impressed by the people I am working with. Maybe I had some prejudices in the past, I don’t know, but certainly, the people I work with are among the smartest and better-spirited people I have ever met.” Total, as Novello reminded, is a merge of Total and Elf, and the last of the two companies had a significant presence in French Africa. And he predicts that big challenges are coming with the energy transition we are living nowadays. In these challenges, one of the determinant actors will be the same energy companies that are already established on the continent.

Teresa Empis Falcão remarked that the lack of infrastructures had been a hot topic when talking about Africa for the last twenty years. Besides one of the big thread to the development of Africa in the long term. But also she sees that “is one the most significant opportunity for us all: for investors, financiers, for all players in Africa. There is a huge opportunity there. Sometimes it is frustrating because, we who live

“I THINK PROJECT TARGETING, STRUCTURING, IS ABSOLUTELY CRUCIAL. CHOOSING THE RIGHT PROJECT, AT THE RIGHT TIME TO BE DELIVERED, USING THE PROPER STRUCTURE, THAT’S KEY TO LEAD TO THE SUCCESS”

TERESA EMPIS FALCÃO



in Europe have the funding, but we don't have a pipeline, and in Africa, there is a pipeline, but the projects do not come out from paper. There is a project, the Vasco da Gama terminal in the port of Sines, that can be a sample of what happens in African projects. The reason why it does not come out from paper. I think project targeting, structuring, is absolutely crucial. Choosing the right project, at the right time to be delivered, using the proper structure, that's key to lead to the success of the project. Because otherwise, it won't happen. So I think the identification of the projects which are capable of being delivered, that is a pre-exercise that is necessary for any government. And that needs a long-term master plan more than a short term focus. That way, the different pieces might tight well together.”

But, besides the idea of opportunity, Empis Falcão also stressed the lack of government capability. “It's essential to ensure that the officials involved in the projects from the government side they have the right skills to understand the project, and to contribute to the project been implemented. Unfortunately, this does not happen always; sometimes, it is hard to find people with the capability to understand the project and ensure that it is correct implemented to the interest of the government and the country. The bad reputation of many projects has to do with the lack of preparation of the government officials, which, in the end, they do not negotiate well for the government. And that is the origin of the reputation of lack of willingness from the governments to launch new projects.”

José Luis Moreira da Silva emphasised the fact that there is liquidity in the market waiting to find the projects to fund. And also that is important to remember all the players who want to participate in investments in Africa shall be aware that the pace is not the same than in Europe and North America. Moreira da Silva used the idea of an African time, that seems very suggestive and productive as a tool to understand and talking on the topic. “You seem to have several years in expectation. I have outstanding experiences in recent years when the projects are not government-supported, for instance, in the case of ports. We are talking on governments with meagre qualification rates which prevent the funders from putting money into these projects, or if we are talking from other institutions who avoid putting their assets in those investments. So, unless the institutions that have the liquidity and could be eager for that long-term projects are involved there is little beside them. So, what we see now is that a long-term project without the support of international institutions does not go ahead. So unless you have a particular investor, one with the economic power to push it, these projects rarely go ahead. Lately, we are moving forward because we had them. Let's speak about some successes. It is important to stress the positive side.”

“UNLESS YOU HAVE A PARTICULAR INVESTOR, ONE WITH THE ECONOMIC POWER TO PUSH IT, THESE PROJECTS RARELY GO AHEAD. LATELY, WE ARE MOVING FORWARD BECAUSE WE HAD THEM. LET’S SPEAK ABOUT SOME SUCCESSES. IT IS IMPORTANT TO STRESS THE POSITIVE SIDE”

JOSÉ LUIS MOREIRA DA SILVA



And that is another big issue for the developing of business in Africa. Very often, the projects demand a lapse of time longer than the during of one administration, and this weakens the feasibility of the investment. They move in different circles, except as Cabeçadas remarked, sometimes the politicians in power might be the same for more years than the cycle needed by a project. He pointed out that the number of prepared people is very few, and they are almost always related to the projects which go ahead, and there is a limit for their capability of being in charge of all of them. And Empis Falcão also accentuated the fact that those successes that Moreira da Silva pointed are good news not just for the companies related to them, but for the market in general as models that might boost the rest of the pending ones.

Mahmoud Shaarawy was a determinant member on the conversation, by his expertise on the financial issues and risk for investments that all the projects have to face in Africa. And for be able to summarise the two types of founding that you can find in the projects developed there. One type is with a loan granted by the government, so the only necessary thing is the arranging of the agreement with the lenders and the administration. The other option is to become the owner of the development and signs a public-private agreement to provide something, energy or whatever, to the government, and get paid for that. “The first issue as that you can work with local banks, but they do not have the capability of granting the loans for these larger projects.” Empis Falcão stressed the importance of the local banks and the need of the governments in facilitating or giving the impulse the presence of these banks to be able to develop the projects, something that is not happening currently.

Shaarawy pointed out that the risk is also significantly related to the banks, the lack of compliance and the issues of currency. But, most determinant even is the problems on transferring money outside the African countries. “When you have some dividends from inside Africa, and you want to transfer them outside Africa is always a catastrophe. First, because of the currency. Let me give an example of what happens, for instance, in Algeria, where we have two factories. First, you have to prepare the money for the transfer. After that, you have a committee that must link this bank to the Central bank, and explaining why you want to transfer the money outside of Algeria. So you have to prove that you brought fresh money outside of the country, you invested it, and now you want to transfer it back to your shareholders. And they always want you to keep at least 50% of the dividends to be reinvested in Algeria for the next ten years. So, this is one of the main issues you have to face when

“WHEN YOU HAVE SOME DIVIDENDS FROM INSIDE AFRICA, AND YOU WANT TO TRANSFER THEM OUTSIDE AFRICA IS ALWAYS A CATASTROPHE. SO YOU WILL THINK IT A THOUSAND OF TIMES BEFORE INVESTING ONE DOLLAR”

MAHMOUD SHAARAWY



you are going to invest in a country like Algeria. So you will think it a thousand of times before investing one dollar. You always have to take that into account before investing in Africa”.

Cabeçadas insisted on calling the transferring of dividends back to the investor “the nightmare”, and he considered that is one of the bottlenecks which prevent the investors from doing businesses in Africa. All of them agree that the first thing that must be done before investing in Africa is to prepare the last thing: How to create the necessary structure to take the money back to the investor. Hence, the first thing they will know when they are deciding to involve or not in the project is if they can take the money back to the source of it. Lawyers, as Empis Falcão remind us, are the best professionals to do that, so, as long as the situation in Africa is the one it is, they are an unavoidable part of every project. And, as Morais da Silva remarked, that is always good news.

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AFRICA



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« WILL THE AFRICAN CONTINENTAL FREE TRADE AREA BE ABLE TO LIFT THE CONTINENT OUT OF THE ECONOMIC DOWNTURN CAUSED BY COVID-19? »

By Tânia Cascais
Partner at Miranda & Associados

Tânia Cascais is Partner at Miranda & Associados, co-head of Corporate, Commercial & Projects areas and responsible for Angola and Senegal jurisdiction's. Has over 20 years of experience and her practice is focused Corporate & Commercial, Energy and Foreign Investment.

At a time when the world seeks solutions to deal with the socio-economic effects of a pandemic of unforeseeable dimensions, the African continent faces additional challenges. Speaking at a trade conference in Dakar,

Senegal, the recently-appointed Secretary-General of the African Continental Free Trade Area (AfCFTA), Mr. Wamkele Mene, noted that the COVID-19 pandemic had, for the first time in 25 years, caused a contraction of GDP of between 2 to 5% in sub-Saharan Africa.

The AfCFTA is a trade agreement that came into force in May 2019. The decision to create this pact was made in 2012, but negotiations began in 2015 and the agreement was signed in March 2018, in Kigali, Rwanda. Overall,

the AfCFTA aims to address Africa's historical economic fragmentation. It will create the largest free trade area in the world in terms of the number of participating countries, connecting 1.3 billion people across 55 African Union (AU) Member States and encompass a joint GDP of around US\$3.4 trillion. One of its aims is to prioritize intra-African trade and improve regional and continental trade integration. Initially, large economies such as South Africa and Nigeria refused to join. South Africa, however, signed up in 2018 and Nigeria in 2019, leaving Eritrea as the only AU Member State still refusing to join the new block.

The AfCFTA has been going through lengthy negotiations, though, which will certainly continue during the subsequent phases of its implementation. So far, during Phase 1 of the negotiations, important milestones have been agreed: Member States negotiated the AfCFTA Protocol on Trade in Goods (TIG Protocol), which includes a reduction of 90% of import tariffs. For the 7% most sensitive products, the process will be phased over a period of between 10 and 15 years, and 3% of import tariffs, not exceeding 10% of the value of imports, will enjoy permanent protection. Other parts of the TIG Protocol have been agreed, notably those relating to general principles and rules on non-tariff barriers (NTBs) and trade facilitation measures. The AfCFTA also includes a Protocol on Trade in Services, which aims to progressively liberalize this area by eliminating barriers. Phase 2 of AfCFTA negotiation includes

competition policy, intellectual property and investment provisions, and was expected to be completed in 2020. Phase 3 will include an e-commerce protocol.

However, and although the agreement is already in force, trade under the agreement has not yet begun and is only expected to start in January 2021. The delay is due to several factors such as the COVID 19 pandemic and the fact that negotiations on key substantive issues are still to be completed, including tariff concession schedules (Annex 1 to the TIG Protocol), rules of origin (Annex 2 to the TIG Protocol) and commitments on specific services sectors.

While the proponents of the deal have claimed that the AfCFTA will foster development in Africa and help African commerce, notably during the pandemic crisis, the deal has also attracted criticism and disapproval. Studies have shown that there will only be small gains from reducing trade tariffs, with the most important gains resulting from the reduction of NTBs.

African countries generate significant revenue from import tariffs. While countries should ultimately compensate the losses resulting from tariffs reduction with higher tax revenue from increased consumption and income, there will be a period of losses and the possible gains will be determined by how countries pursue steps to lower NTBs. As most African countries have significant NTBs and other protectionist measures, this will pose a significant challenge. For instance, looking at a country like Senegal, which is generally

perceived as being an economy that will rapidly benefit from trade under the agreement, it is yet to be seen how the new legal framework applicable to the provision of services and goods to the oil sector – currently under preparation and soon to be enacted, and which usually includes protectionist measures to foster local entrepreneurship – will adjust to the AfCFTA's objectives.

The COVID-19 pandemic creates a pressing need to reduce Africa's high trade dependence on non-African countries. The AfCFTA could help facilitate this process, but it would mean increasing the pace of the negotiations and reducing the timelines for implementation.

Achieving this, however, becomes even more challenging in light of the current lockdowns and border closures across the continent. Ultimately, it seems that before the AfCFTA can achieve its goals of increasing intra-Africa trade and foreign investment, there is a very significant amount of work for African countries to do and very substantial policy reforms to implement at national levels. The reforms may require politically difficult decisions. That said, it is worth bearing in mind that the AfCFTA is a major opportunity for Africa as it lays down the path for making the continent as competitive as any other region in the world.



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ALTERNATIVE ENERGY FOR AFRICA

By Inês Pinto da Costa, Partner in the Corporate M&A and Project and Energy practices

Inês has almost 20 years' experience in project finance, M&A and private equity operations.

Her work includes projects in the areas of infrastructure, energy, PPPs, and projects for industrial plants in Portugal and in Portuguese-speaking African countries. Inês has advised on many international M&A deals and worked with some of Portugal's largest private equity firms.

She has great experience in the African market, dealing not only with questions of financing, but also in construction contracts and private investment.

Inês has postgraduation in securities law and in international trade law at the University of Lisbon. She also has an executive master's in management for lawyers from Universidade Católica Portuguesa.

By Neylla Gulamhussen, Associate at the Corporate M&A practice

Neylla has great experience in the Mozambique market advising primarily on corporate and commercial law, real estate and employment and labour.

Neylla has experience in drafting, reviewing and negotiating various types of contracts, and in incorporating companies in Mozambique. In the area of employment and labour law, she advises on drafting, revision and termination of employment contracts, and on the procedures to recruit foreign labour.

Neylla is admitted to the Portuguese Bar Association and to the Mozambican Bar Association.

The African continent is very rich in natural resources, with proven oil reserves representing 8% of the world's stock and those of natural gas

amounting to 7%. The continent also has an immense capacity when it comes to renewable energy sources, such as hydro, sun, wind, biomass and others. It has enormous potential to

enable the development of several projects (be it on a larger or a more local scale) that will empower local communities, bringing prosperity and opportunities to the rural population. Despite the potential for renewables,

due to several discoveries of fossil resources, there is still a continued dependence on oil and gas and, in reality, this dependence will lead to certain constraints, as it has done in other regions. However, this situation should not prevent or limit the development of other energy projects.

Most of the rural communities have little or no access at all to electricity and the use of modern renewable energy sources can also be used on a smaller local scale, contributing to rural development (such as that of agriculture) and improving the population's living conditions. The fact is that, with a growing population and economic progress, Africa is currently facing an increasing demand for all forms of energy.

The continent now has the opportunity to develop several alternative types of sustainable energy projects on a long-term basis.

This will require a firm and appropriate commitment from each country – not only regarding large scale and backbone infrastructures – but also regarding the accelerated implementation of modern renewable energy projects by adopting the right measures to enable the growth of this sector and make it possible for such potential projects to succeed and prosper, while providing a cost-effective transformation to a cleaner and more secure energy sector.

As an example, the Mozambican Government has committed to providing quality, affordable and sustainable energy to all Mozambicans by 2030, within the scope of the Sustainable Development Goals

advocated in the 2030 Agenda, mandated by the United Nations and of which Mozambique is a subscriber.

For this purpose, the Mozambican Government has launched the Energy for All Program, coordinated by the Ministry of Mineral Resources and Energy, under which the Government aims to ensure that, by 2024, over 10 million Mozambicans will have electricity. This will result in increased productivity, contribute to creating adequate employment and bringing about an improvement in the living conditions of the populations, particularly in rural areas. To this end, the Mozambican Government has been working to guarantee an increase in the availability of electricity, promoting public-private investment in new generation infrastructures and the contribution of renewable energies to the national energy matrix, with plans to mitigate the impact of climate change. In light of this, the Mozambican Energy Fund (FUNAE) is currently developing and implementing projects to invest in solar and hydropower for social infrastructure and to promote the market development of small renewable energy products. Specifically, it is developing the market for solar systems for households and small businesses, and it is seeking alternative ways to provide electricity access and/or electricity services to rural areas that can be scaled up in the short run.

The way forward
For a successful renewable energy uptake, it is crucial for Governments to create an investment friendly environment that enables businesses and is

designed to overcome the significant obstacles that African countries currently face. This should be done by developing clear, new public and private policies, a suitable framework of laws, and regulations and an institutional set-up. It is also essential to empower highly-qualified local experts and put in place viable foreign investment protections. This is, in fact, what has been argued by the International Renewable Energy Agency (IRENA), in its comprehensive report for Africa's energy transition named "*Africa 2030*", which recommended the adoption of enabling policies, a regulatory framework to catalyse investment, investors-friendly measures, and promotion of off-grid renewable solutions to increase energy access and reduce poverty in the short term. The second item to be addressed relates to the financing of energy revolution and development. Even though their cost has been decreasing, renewable energy projects are cost intensive and the access to finance is quite limited. To date, the investments in the energy sector have always been planned on a larger scale, with financing being provided by the country's government or through multilateral entities. At the same time, African countries need to create the necessary conditions to finance and develop smaller scale local renewable energy projects that will have dramatic effects on a smaller (but more rapid) scale. In this way, they can reach local populations and make it possible to change their living and working conditions for the better.



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INFRASTRUCTURE & ENERGY: A WORLD OF OPPORTUNITIES AND DEFIANCE'S IN LUSOPHONE AFRICA

By José Luis Moreira da Silva
Partner at SRS Advogados
Head of Projects and Head of the Mozambique Desk

Partner and Head of the Projects Department, José Luís Moreira da Silva has been involved in numerous complex projects in Portugal and in Lusophone Africa. He is also head of SRS Advogados' Mozambique Desk.

With over 30 years of experience, José Luis advises the major Portuguese port authorities and several infrastructure high level projects.

When we think about Africa, namely Lusophone countries, we normally think about all the existent potential in natural resources, namely oil

& gas and mineral resources, but we also think about the huge lack of infrastructures that are needed for their exploitation in order to boost their own development. We are used to work in Lusophone Africa, namely in

Mozambique, Angola, Cape Vert and São Tomé & Príncipe, and in all those great countries we find fantastic resources and a strong political will to exploit them sustainably and to obtain the necessary investments in order to capacitate the human force

and economically develop the country. But we still encounter problems when we get out of the Capital or from one of the Provincial main cities, where the lack of roads, railways, airports or maritime transport create bottlenecks for the investment necessary for those projects. Foreign investors are eager to participate in the exploitation of all this huge natural resources but they struggle to find solutions to get to the places where they are found, normally far away from the main cities or deep in the offshore seabed. Infrastructure and transport problems increase the risk for all major projects and makes investment more expensive. It's not only exchange currency, inflation or political turmoil that drives up the price of financing a project in Africa but also the lack of infrastructure. A major infrastructure or energy project, like the construction of a new deep sea port, a railway link or a power plant requires normally the support of a national development agency and/or a DFI, without which it is very difficult or even impossible to arrange the necessary financing, despite the fantastic opportunity and the huge potential of the project. Every African country has below investment sovereign ratings and can only proceed with its development plans with the support of those agencies, namely from China, Japan, USA and some European countries, and DFI, like the AfDB or IFC. The involvement of these DFI gives assurance to investors that the project

is well constructed and can be bankable and has some anticorruption safeties. But this involvement is not easy. It demands a sound Legal and Technical Due Diligence and an open and transparent procurement, something that puts away some of the projects. Another important aspect that has to be considered is the funding of capacitation of human resources from the Government and social society. We are seeing with satisfaction ever more funds being allocated by ALSF (from the AfDB), from the IFC / World Bank and from national agencies to projects towards the capacitation of government officials and this is absolutely fundamental in order to create the local strength to negotiate with foreign investors and their consultants in an equal basis. AfDB recently funded the hiring of an international well reputed law firm to advise the Government of Somalia in the negotiations towards a new major port contract and this is the way to proceed. African governments have to be in the same condition in parallel with international investors in terms of counselling if they want to obtain the best contracts and financial conditions to their countries. Another important aspect to take in consideration when thinking of investing in Africa is the need to add social support to local communities within the project. We have seen this with great success in Mozambique, in the Navigator project. The local communities have to be integrated within the project, so that they embrace it and acquire direct gains from it, like new schools and education,

water and sanitation, alongside new roads, houses and jobs. Without this social concern we may have to continue to see a wide spread of insurgency movements, like the ones in Cabo Delgado in the North of Mozambique. Investing in infrastructures, capacitating the human resources and integrating local communities are just some of the main aspects that have to be considered when investing in Africa. And the opportunities are huge. All the major international investors that are seeking long term investments with fixed yields, capable of accepting a percentage of risk, can look into Africa Infrastructure and Energy projects. In no other place in the world you can still find a huge mineral ground full with fantastic resources, a fantastic river for a hydro project, a coal mining facility or huge oil or gas reserves that can be exploited with relatively low costs and high returns. Only in Africa you can still see a lack of roads, railways, ports and airport infrastructures waiting for an international investor to develop. Africa is a world of opportunities and great defiance's ready to be perceived by international investors with the right advisors with large experience in Lusophone Africa, like the Portuguese companies, lawyers and consultants. Only we have the right language, the right law, the right experience and comprehension of the *local way to do business* that opens doors and easy the rocky road, so much appreciated in large investments like the ones we are talking about.



MOZAMBIQUE

A show of Energy in spite of the Pandemic

By Guilherme Daniel –Partner, GDA

Founder of GDA – Guilherme Daniel Advogados in 2016. In such capacity, he is actively involved in several matters mainly in Corporate, Energy and Natural Resources (particularly, Oil&Gas) and Infrastructure.



By Teresa Empis Falcão – Partner, VdA

VdA Partner of the Infrastructure & Mobility practice. Teresa has led countless banking and project financing operations, in Portugal as in other jurisdictions, within the infrastructure, transport and energy sectors, notably in lusophone African countries.

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When the world literally stopped in its tracks in the beginning of February, with western countries, quickly followed by others, closing borders to mitigate the spread of Covid-19,

the funding of the first onshore liquefied natural gas (LNG) development in Cabo Delgado, Mozambique, was close to signing. This landmark project includes the development of the Golfinho and Atum natural gas fields located in the

Offshore Area 1 concession and the construction of a two-train liquefaction plant with a total capacity of 13.1 million tons per annum, in a total investment of around 20 B\$. The prospect of possible suspensions or delays with

an impact on the financing's closing and consequently on the project timeframe was worrisome for Mozambique, given the transformational nature of the project and its potential to start getting the country out of a financial crisis worsened in recent years by the blockages on external support from bilateral and multilateral partners, in particular the IMF, as a result of the so-called hidden debts scandal, and, more importantly, to begin a sustained process of accelerated economic growth prompted by the revenues derived from the exploitation of natural gas and based on the implementation of a tax policy that guarantees the multiplier effect across other sectors paramount to a balanced economic and social development of the country. Fortunately, Total announced in July the signing of the project financing for the project amounting to 14.9 B\$, the largest ever in Africa, and including direct and covered loans from Export Credit Agencies (ECAs) (including US-EXIM, JBIC, NEXI, UKEF, Atradius, ECIC, SACE and Thai-EXIM), commercial bank facilities, and a loan from the African Development Bank. The sponsors include the operator, Total SA, and co-venturers from Mozambique, Japan, Thailand and India, including Empresa Nacional de Hidrocarbonetos (ENH), Mitsui & Co., Japan Oil, Gas and Metals National Corporation (JOGMEC), PTT Exploration and Production (PTTEP), Oil and Natural Gas Corporation Limited. (ONGC), Bharat Petroleum Corporation Limited, and Oil India Limited.

This was a significant achievement and a major milestone for this large-scale project and for Mozambique who is now well on the path to becoming a significant player in the global LNG industry. Despite these significant advances in this huge gas project, the Government is not losing sight of the strategic importance and the commitment to diversify the economy with a strong emphasis on agriculture. In fact, the state budget for 2020 has reinforced the line item for this sector, the only one to grow in times of crisis along with education and health. At the end of July, the government launched the second phase of the SUSTENTA programme. Now launched nationwide, SUSTENTA started in 2017 in only two provinces in the north of the country and is essentially aimed at increasing productivity, accessing financing and organizing the sector to develop agriculture and transform family farming, which represents 98.7% of farms, into large-scale productive value chains. More recently, in response to the Electricity Infrastructure Master Plan 2018-2043 launched in 2018 and in an unprecedented initiative that has attracted the attention of investors and many other stakeholders, the government has rolled out the PROLER, a programme of renewable energy projects' auctions, that is "a model for Public Tenders, in the form of auctions, for the acquisition of licenses for the production of energy from new and renewable sources, and serves as a bidding

mechanism for projects, with the aim of allowing the transparent and competitive selection of potential strategic partners for the development and construction of renewable energy (photovoltaic solar and wind) projects, connected to the National Power Grid." Finally, anticipating revenues of around US\$96 billion over the life of the natural gas projects, the Bank of Mozambique announced a few weeks ago the proposal to create the Sovereign Wealth Fund for Mozambique and launched a public consultation process on the project, embodying the government's main objectives regarding the management of these revenues. The Bank of Mozambique's proposal states that "the main challenge is how to maximise the gains from natural gas and other non-renewable natural resources and develop functional and transparent institutions without choking the economy". In spite of some significant challenges, notably the uprising north of the northern province of Cabo Delgado and the impact of Covid-19 on some relevant sectors such as the mining and tourism, these are certainly quite exciting news for the country in these singular times of a global economy held hostage by a pandemic that shows no signs of relenting.

He was going to be a judge, but he realised that it was difficult for him to embody the impartiality that a magistrate should have. He discovered that advocating for one of the parties to the end fitted more with his character, and that meant going to trial and winning it, and that is where he has already been recognised as one of Portugal's most prestigious and, more importantly, most promising young professionals.

Tiago Geraldo, managing associate at Morais Leitão cannot avoid taking sides in a debate, and perhaps that is why this interview is loaded with bold, but always meticulously reasoned opinions.

by antonio jiménez



TIAGO GERALDO

TAKING A STAND



You are a renowned Litigation lawyer. What do you find most exciting in this area?

I started Law school wanting to become a judge. Still, I changed my mind in the first years due to a (quite obvious) profile and personal suitability reasons: I have always found it hard not to take sides in a debate quickly, and to refrain from strongly and audibly defend the reasons for that side. I derive the enthusiasm of being a Litigation lawyer mainly from being able and allowed to actively and vocally take a stance and verbalising it, helping to show the right way, helping to do justice. I have always felt there is a certain courage in performing that job. And a sign of courage that is worthy, and dignifies those who undertake it, even against all odds. Practising mostly in Criminal Litigation, as I do, adds some other perks, the most fundamental being that you are not only discussing business nor property nor money; you deal with people's life, their reputation, their freedom. The stakes are high. That is, of course, stressful and demanding, but it is also –at least in some cases– deeply meaningful and rewarding.

“I DERIVE THE ENTHUSIASM OF BEING A LITIGATION LAWYER MAINLY FROM BEING ABLE AND ALLOWED TO ACTIVELY AND VOCALLY TAKE A STANCE AND TO STAND UP, HELPING TO SHOW THE RIGHT WAY, HELPING TO DO JUSTICE. I HAVE ALWAYS FELT THERE IS A CERTAIN COURAGE IN PERFORMING THAT JOB”.

As a young lawyer, you have indeed met several lawyers more experienced to work with and to work against. What were the things that you have learned from this contact?

I have the pleasure and honour of having worked for over 12 years with colleagues at Morais Leitão. They have always been personal references in the attitude, technical and strategic vital aspects of the profession. I owe them much for showing me the compass of what is and should be a complete Litigation lawyer, which I now understand to be basically about three things: commitment, brains and nerve. Learning by example, inside and outside the firm, is crucial for any young lawyer. I honestly don't think a Litigation lawyer may improve or progress in confined study or practice, disconnected from the world and its peers. Young lawyers only move forward by gaining more and more experience and fibre. They learn from older lawyers on dealing with clients, preparing a case, outlining a strategy and following it, managing the unexpected, the unforeseen, and also how to respond to errors and, perhaps even more significantly, how to learn from them.

Along with the previous question. What are the main advantages of a young

lawyer in comparison with a more expert one? What is the significant contribution of the young lawyers in the profession?

There is no way to run from it: experience is paramount in being a lawyer and clients are fully aware of this, especially in the Litigation field and even more within Criminal Litigation. Having said that, profile and personal characteristics always matter regardless of age, and you can see very quickly, sometimes with a small conversation only, who among the new trainees have the stamina and the skills required to make it in this profession. And, of course, you learn a lot with younger lawyers: when they are good and committed, as there are plenty, they have eager, willingness to show off, a less formatted way of thinking, refreshing legal knowledge and that gleam in the eye that is both inspiring and motivational for the team.

You are an expert in Criminal Law, but you are increasing your expertise in Regulatory, Economics and Finance. One could say you are becoming an expert in White-Collar Crime, an area very exposed to the media. Do you think its importance is overrated because of this exposure?

The Criminal cases will always stand out as the most serious and sensitive in the legal system,

but the classic sense of a single, concentrated Criminal system is outdated. In addition to Criminal offences, which are growing in number, complexity and the severity of its penalties, there is an even more exponential growth in the field of regulatory infractions—accompanied by the set of associated punitive mechanisms, such as fit & proper tests held by regulatory authorities. In a regulated market economy context, and in a way as a response to past financial scandals and the resulting social perception, the next regulation trends,

as I see them, will evolve more and more towards the perspective of sanctioning and accountability. Due to the profile and socioeconomic status of the corporations and people commonly targeted in this type of proceedings (whose exposure and reputational consequences are at times almost equivalent to high profile White-Collar cases), media coverage is as inevitable as it is problematic. A basic example: how can you say there is a sufficient presumption of innocence when in the investigation stage, you see someone's name in the

About Tiago Geraldo

Tiago Geraldo, now 35, joined Morais Leitão in 2008. He is a managing associate in the Criminal and Compliance department and co-head of the firm's Innovative Committee. Tiago focuses his practice on Criminal litigation, mainly White-Collar and Corporate defence, where he has substantial experience in representing companies and individuals, both in and out of court. He has been actively engaged as well in some relevant Regulatory investigations and disputes in a variety of sectors such as Energy, Banking, Competition, Capital Markets, Telecommunications and Media, also advising clients on Compliance and Training programmes. Tiago has strong ties with some of the major clients of the firm, acting as their contact person and leading counsel in numerous and prominent cases. On the academic circuit, Tiago Geraldo teaches Criminal Law at the Universidade de Lisboa School of Law. He is author of several papers and opinion columns, besides lecturing in seminars and conferences, always on topics surrounding Criminal and Regulatory justice. 



CLAUDIA FERNÁNDEZ LÓPEZ-AREAL

Morais Leitão, Galvão Teles, Soares da Silva & Associados has founded Morais Leitão Legal Circle.

5

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+400

Employees

+250

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15

Areas of practice

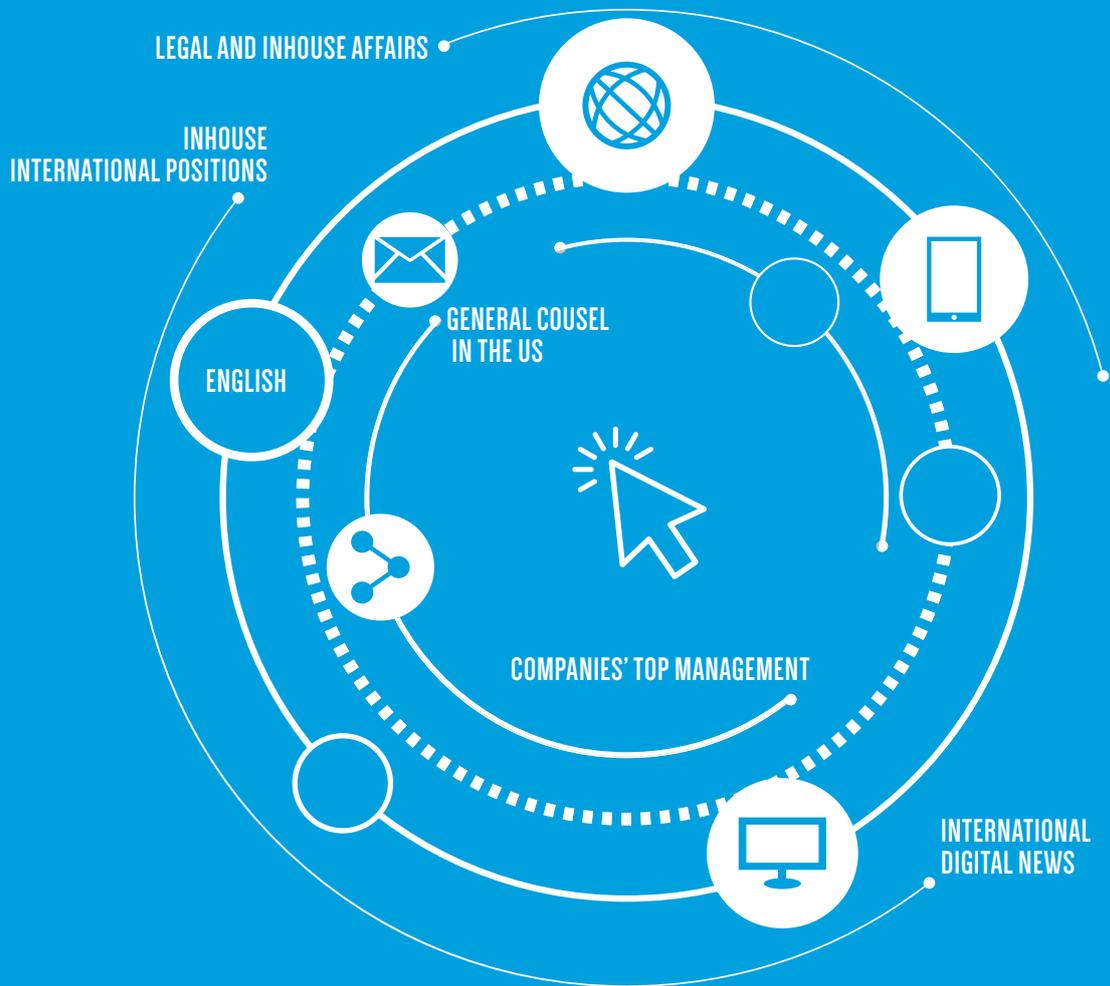
€64.1

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headlines as almost already convicted? There is no point in trying to find miraculous solutions, though, because this exposure exists, it's somewhat natural and will not disappear. The only viable answer, as long as the current context of public opinion and media appetite for this kind of cases remains, is giving conditions for lawyers to intervene in the public sphere in defence of their clients, which would require some law amendments and an even greater reform of mentalities.

The Bar Association has just approved this summer a new regulation on money laundering which imposes as a field for the Compliance and Regulatory experts to watch and prosecute these crimes. Might this recent measure change radically this kind of offences and the way lawyers deal with them? Is this new regulation putting the prosecuting of these crimes out of the courts as some lawyers pointed?

The regulation came to operationalise what was already provided in the Law and the general expectation before its approval was that it would help improve the levels of AML compliance by lawyers and law firms, besides detailing some relevant "how-to" aspects. The regulation contains, however,

some changes compared to the initial draft, such as, in practical terms, removing the president of the Bar Association as a filtering and control body. That raises relevant doubts about its compatibility with the status and specificity of the lawyer profession in the safeguard of the Rule of Law and its inherent guarantees and prerogatives. As for the nature and model of investigating and prosecuting money laundering, I would not anticipate any material changes, beyond, perhaps, a more active preventive role from lawyers, since the legal regime now embodied in this regulation commits lawyers to channel suspicions of money laundering practices to the Bar Association, being the latter bound to forward them to the criminal investigation authorities.

What is the vision you have about the profession in the future? Which ones are the areas that might develop stronger and what things might change in the next years?

One thing I am sure of: even with all the hype and fuzz about robotics and the expansion of artificial intelligence, the lawyer will continue to be necessary, and I believe more than ever, in that essential function in a state governed by the Rule of Law which is to challenge the use of

the government's most intrusive powers, especially in that *ultima ratio* area which is Criminal Law. Regarding new areas, there is no risk of being wrong when anticipating that in today's digital era, cybercrime matters will be increasingly relevant, as these pandemic times have shown. On another level, and although it is a trend that had already begun some years ago, I would say that individual criminal liability linked to the exercise of political offices will continue to be an expanding area. For reasons that are not so much legal as, if you like, they are sociological and of a sort of social balancing nature.

You are, besides a lawyer, a teacher. Your commitment to education and the academic environment is something remarkable in your trajectory. What teaching keeps alive in the soul of the lawyer once he begins to litigate and face the day to day routine of the practice?

I tell my students all the time that those who only know about Law know nothing about Law. This idea can be replicated for all areas: those who only know in Law practice don't know anything about being a lawyer, and the same goes for university assistants and professors, architects, filmmakers, musicians, etc. The way I see it, one's profession should be seen and cultivated as a craft; not as a divisive wall from the rest of the world or a push towards a dome closed to other areas, to different sensibilities, to other minds. Being curious and being open to all the worlds out there is vital in many areas, but in a lawyer's activity in a very palpable way, due to the complex combination of characteristics (technical, logical, strategical, cultural,

"YOU LEARN A LOT WITH YOUNGER LAWYERS: WHEN THEY ARE GOOD AND COMMITTED, AS THERE ARE PLENTY, THEY HAVE EAGER, WILLINGNESS TO SHOW OFF, A LESS FORMATTED WAY OF THINKING, REFRESHING LEGAL KNOWLEDGE AND THAT GLEAM IN THE EYE THAT IS BOTH INSPIRING AND MOTIVATIONAL FOR THE TEAM".

“ONE THING I AM SURE OF: EVEN WITH ALL THE HYPE AND FUZZ ABOUT ROBOTICS AND THE EXPANSION OF ARTIFICIAL INTELLIGENCE, THE LAWYER WILL CONTINUE TO BE NECESSARY, AND I BELIEVE MORE THAN EVER, IN THAT ESSENTIAL FUNCTION IN A STATE GOVERNED BY THE RULE OF LAW WHICH IS TO CHALLENGE THE USE OF THE GOVERNMENT’S MOST INTRUSIVE POWERS, ESPECIALLY IN THAT ULTIMA RATIO AREA WHICH IS CRIMINAL LAW”.

emotional, etc.) and different perspectives that a good lawyer should encompass. I teach by pleasure and for that exact reason: teaching is a different world, and in that other world –in the way you talk, in the people you know, to some extent even in the form of thinking– I keep up to date, and in contact with innovative angles through intelligent and unformatted students and their often challenging and disturbing questions. Teaching also helps to neutralise and balance the sometimes excessive cynicism and stress of the legal profession. And that with an almost daily gratification. The greatest thing of all in lecturing is to realise throughout the classes and semesters and years that to a certain extent, you are changing the lives of other people.

You are also a very active writer. The publications that appear in your CV exceed the more common dedication to the writing of articles and books. What is the main advantage of thinking about the Law from the perspective of writing?

Writing helps you think and organise and test ideas. It is a self-inquisitive intellectual journey, a debate of many hours

with yourself. No good legal idea can or should survive without being tested, in practice or on the paper, and writing helps to put things in perspective and challenge different perspectives more thoroughly. After having been confronted on several times –as all lawyers are– with the fact that in practice legal theory is often quite different, I write mostly on legal issues that have some connection with my professional background and experience as a lawyer. Not for contempt neither for scholar knowledge, but simply for the reason that I believe that Law does not exist nor should be seen as a sort of archaeological monument. It is a valid instrument to solve problems and cases, and that legal writing should also pursue that same primary aim.

One of the phenomenon related to the COVID is the rising of cybercrime and White-Collar Crime. While the most common and publicly recognisable as crimes decreased due to the confinement, the Interpol expressed its concerns on the increase of fraud and

business crimes. What kind of measures can tackle this increase under your point of view?

I would say that the resurgence dynamics of all those criminal phenomena will resemble the “V” or “Nike swoosh” shaped curve that everyone was talking about concerning the economic recovery after the COVID-19 lockdowns.

But nothing new there: the association between periods of crisis and fraud-related crimes is well known and I believe this will be again the trend shortly. Probably accentuated in the digital field and fostered by the fraud “opportunities” created by the subsidies and financial assistance support for the economic recovery, particularly the tens of millions that will be channelled by the European Union. There are some ways to tackle these risks in advance: foster greater cooperation and integration on a supra-national scale (and the European Public Prosecutor’s Office may be an essential step), extend alternative mechanisms to prosecution in Criminal matters and require by legal means greater self-compliance responsibility from corporations. The Portuguese government seems to be moving in that direction by the recent approval of an ambitious anti-corruption package (yet to be implemented) which may bring some significant changes to our Criminal system, notably by broadening the possibilities for plea bargaining and strengthening (and rewarding) mechanisms for Criminal compliance adopted by corporations. 🇵🇹



MARTA CAMPUZANO: "THE KEY TO WLWY IS MENTORING AT A TIME OF CHANGE AND DECISION"

by marta campuzano, president of Women in a Legal World Young

In February 2019 I received a call from Marlen Estévez, founder of Women in a Legal World (WLW), to tell me that they were thinking of creating a young area and giving women in the legal field the opportunity to have more visibility, help each other and promote female talent within the sector. One of the requirements to be a member of WLW is having more than 10 years of experience, so, with

the objective of not leaving out young jurists who want to join and grow, they came up with the brilliant idea of creating WLW Young (WLWY). I thought it was a great opportunity to bring together talent and to make that network of empowered women within the legal field bigger. I accepted the challenge of assuming the presidency of WLWY and we started by creating a Board of Directors

ABOUT MARTA CAMPUZANO



Marta Campuzano studied a double degree in Law and Advertising & Public Relations (2006-2012) at the Universidad San Pablo CEU. She worked as a lawyer for five years in the Corporate department of the international law firm King & Wood Mallesons in Madrid and, in 2005, she carried out the secondment at the London office. For the last three years, she has been working in the legal department of the multinational pharmaceutical company (headquartered in Madrid) Insudpharma, as a lawyer for the Exeltis business unit for the European and Asian markets. She chairs WLWY since February 2019.

“THE PROFESSIONAL EXPERIENCE OF YOUNG’S MEMBERS IS RELATIVELY SHORT, AND IT IS OFTEN A TIME OF DOUBTS, CHANGES AND DECISIONS. IT IS AT THIS TIME THAT YOU NEED AND APPRECIATE SOMEONE OFFERING YOU TOOLS AND SHOWING YOU THAT LIGHT ALSO ENTERS THROUGH THE CRACKS. I THINK THAT’S THE KEY TO WLWY, THE SUPPORT AT THAT STAGE OF YOUR LIFE”

formed by María de Orueta (lawyer at KWM), María Pérez de Prada (lawyer at Cuatrecasas), Lucía Blasco (lawyer at Grupo Ferroatlántica), Blanca Chichilla (selection, diversity and inclusion at Vodafone), Laura Castillo (lawyer at Gómez-Acebo & Pombo), Clara Lavandeira (lawyer at Cuatrecasas) and myself. The Young partners arrived non-stop, and we formed a great team of hard-working, talented and ambitious female lawyers under 35.

We started by joining WLW projects and events. Sharing and chatting with top managers and partners of top law firms makes us grow and gain confidence. You witness how they hold more and more important positions; you don't know where they get their time from, but you realise that talent and desire are the basis for progress. At Young, we say that by joining the people who inspire you, you will succeed.

The professional experience of Young's members is relatively short, and it is often a time of doubts, changes and decisions. It is at this time that you need and appreciate someone offering you tools and showing you that light also enters through the cracks. I think that is the key to WLWY,

the support at that stage of your life.

In only two years, we are already more than fifty actively participating members. Proposals and projects do not come exclusively from the Board; sometimes it is the members themselves who contact us to propose ideas and take them forward (for which we count on the help and dissemination of WLW and its platforms). At WLWY, we have participated in the elaboration of WLW reports with legal content (diversity, analysis of the female presence in the legal field, with the participation of María de Orueta), seminars of different specialities (the last one on current issues in the Labour field, with the participation of Laura Castillo). From the Young Board of Directors, we have attended different universities to give talks to students in their final years (CUNEF, UAM, Villanueva...) or articles such as that of Aitana Ruiz (Young member) on whether teleworking could solve the salary gap or that of Lucía Blasco on the occasion of Women's Day.

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Looking for a job and expanding one's professional network are important points in the life of a Young member, which is why we organised a talk on how to get the most out of your LinkedIn profile (given by Isabel Malvar) and are currently preparing a webinar on career opportunities (proposed by Young member Sol Sánchez) aimed at final year university students.

Two of the most beautiful projects we are part of are the mentoring programme (coordinated by Clara Cerdán from WLW) and the legal clinic (coordinated from WLWY by María Pérez de Prada). One of the mottos of WLW is "leading by inspiring and learning by teaching", and that is where this programme comes from, bringing together mentors with mentees and getting

many women to help each other, inspiring through experience and advising to achieve professional goals. We are already almost a hundred couples (mentor and mentee) in this beautiful initiative.

With regard to the legal clinic project, in the Parish of Gavia Santa Maria Nazareth, an aid programme has been established, such as micro-credits, rental assistance or difficulties due to the COVID-19 crisis. Given that most of the issues are of a legal nature, the legal clinic of the Centro de Estudios Garrigues and WLW have joined forces to try to help and respond through mechanisms that the partners will develop. We have only been in operation for a short time, but we are working to unify objectives and dates. Every day we receive dozens of applications

to be part of this network and to contribute with knowledge to promote the presence of women in the legal field.

One of our goals is to make WLWY members become great professionals and access management positions where the presence of men is currently overwhelming. You only have to look at the statistics to see that the percentage of female partners compared to men in large firms is less than 20 per cent, and the presence of female directors in IBEX-35 companies does not exceed 30 per cent. According to data from the General Council of Spanish Lawyers, the presence of women in the profession is higher than that of men, but few women reach managerial positions. At WLW, we not only ask ourselves where these women are, but we also go out and look for them. 



CORPORATE LAWYERS AND COVID-19

by María González Marrodán, head of Legal for the EMEA region and secretary of the Board of the parent company of Grupo Atento in Spain

are depressing. In addition, estimates of business failures are alarming, and the end of the pandemic seems increasingly distant.

Pages are filled with unfavourable omens for legal professionals, who see companies cutting back on their spending on external legal advisors. But let us open our minds to the search for those opportunities that, they say, underlie every crisis.

Those companies that survive will now, more than ever, seek legal security, which provides the necessary confidence to carry out their activity in a predictable framework, in the face of so much unpredictability and confusion. And that is where in-house lawyers play a leading role.

Let us not deceive ourselves, in-house lawyers have a special

talent, we fly under the radar in times of prosperity, and we become indispensable in times of crisis. When everything flows orderly, and the winds are in our favour, we seem to be condemned to ostracism, a seasonal lethargy or exile that reverts proportionally to the increase in fears, anguish and confusion that accompany any recession.

As a wise Spanish popular saying, applicable to many different disciplines and performances, goes *"nobody recalls Saint Bárbara until it thunders"*. And here and now, the "role" of the 3rd-century holy saint and martyr, patron of artillery corps and miners, would be taken up by our profession, the lawyers.

The pandemic is making us live through moments



The moment we are going through is propitious to get caught up in misfortune. The news is bombarding again and again about contagion and deaths, hospitals are again approaching collapse, and the economic forecasts

ABOUT MARÍA GONZÁLEZ MARRODÁN

María is a Law graduate from the Universidad Autónoma de Madrid, with over 20 years' experience in senior legal positions at various companies. She is currently head of Legal for the EMEA region and secretary of the Board of Grupo Atento's parent company in Spain. Prior to heading the EMEA region, she spent several years at Atento's Corporate Legal Office, leading transversal projects and projects to transform the area, thus contributing to the achievement of the "Best Corporate Legal Counsel" awarded by ESADE at the 6th Edition of the Aptissimi Awards in 2013. 

ABOUT ATENTO

Atento is one of the five largest providers of customer relationship management and business process outsourcing (CRM/BPO) services in the world and a leader in Latin America. Atento is also a leading provider of CRM/BPO nearshoring services for companies operating in the United States. Since 1999, the company has developed its business model in 13 countries and has a presence in Spain and a workforce of 150,000 employees. Atento has more than 400 customers to whom it provides a wide range of CRM/BPO services through multiple channels. Its customers are leading multinational companies in sectors such as technology, new digital companies, telecommunications, finance, healthcare, consumer affairs and public administration, among others. Atento's shares are listed under the ticker ATTO on the New York Stock Exchange. In 2019, Atento was recognized by Great Place to Work® as one of the 25 best multinationals to work for in the world and as one of the 25 best multinationals to work for in Latin America. 

of great tension, overloaded work, legal insecurity, stress, bewilderment and uncertainty. Almost comparable to a survival exercise. However, putting it in perspective, experience has shown that in such circumstances, one does not act without submitting everything to the supervision of the lawyer. We went from winning the Oscar for best supporting actor to becoming the protagonists of the film.

It would seem, therefore, that this is our moment, let us take advantage of it to forge solid

relationships based on the trust that legality grants. But without forgetting to progress and align ourselves with the digital transformation, the new working models, the challenges of the moment. In the coming years, we will have to be able to reinvent ourselves and even escape from the traditional concept of what we understand by legal services.

The COVID-19 has accelerated the implementation of new forms of work, which have evolved into hybrid models, combining face-to-face work with teleworking,

triggering a wide range of risks and legal concepts. The legal sector has been immersed in a vortex of legislative changes, proposing new scenarios in constant evolution and modification. The challenge from now on is twofold: to acquire the knowledge, skills and competences required by these new concepts that have emerged as a result of the pandemic and to continue evolving towards the technological transformation of the legal world, creating professional structures that are close, sustainable and competitive.

In the aftermath of the pandemic, we lawyers will constitute an action commando that, by bridging the gap, could be equated to an elite group, professional experts with a high level of resilience and with sufficient flexibility to deal with moments of legal uncertainty and overcome the adverse effects of the crisis. As if we were ex-combatants, when all this is over, we can boast of having overcome the coronavirus and of possessing highly qualified profiles with sufficient security and strength to continue fighting.

Let's learn from experience and evolve, taking advantage of these tailwinds, to enhance the value of our work and reinvent the role of the lawyer in all that is necessary. 



TOP TEN DON'TS FOR COMPLIANCE OFFICERS

by elisa turullols

So you have just become a Compliance Officer! Or maybe you have already been in the role for some time. It's a role of high responsibility and visibility as well. Given the sensitiveness of this role, and the consequences of some situations you may go through under it, I believe a list of top ten don'ts are going to be extremely helpful.

So, conscious of time is of essence, let's start.

Don't limit yourself to the legal remit.

Yes, Compliance means ensuring the company follows and applies the relevant legislation. BUT, Compliance expands beyond the legislation. Let me explain. The way a company operates internally is through internal policies, processes and procedures. You can tell the company they have to comply with anti money laundering legislation. Until the company does not put in place a proper and well designed process, integrated within their ways of working or operating on a daily basis, they will not be able to comply with the legislation regularly and consistently. This expands beyond the legislation. You need to ensure this process, and/or control are in place and working.

Don't stay in your office.

Your "desk" is with the business side. So roll up your sleeves and be with them on a daily basis, to be aware of their daily plans, as well as of their medium and long term ones. This way you can realise in advance the relevant legislation that may be applicable and you can make them aware of it ahead of the plans, so the processes, procedures, controls required to comply with the legislation are part of them (i.e.: the plans). This way you will provide value to them.

Don't forget the purpose of your role.

Being with the business on a daily basis can make you be so close that you can lose sight or perspective of the purpose of your role. Bear always in mind that your reporting line is to the Board, via the Compliance Committee (or Internal Audit and Compliance one). Ask yourself how come that Compliance came up in the business world. How did all start? And what was the reason for it to start?

Don't lose sight of the main goal of your job: the company complies with the legislation

How do you ensure the business

opens the doors so you can do your job? By providing value. What is value? Helping the business understand the legislation and how it translates to, and how they can comply within their daily operations, testing the process or the control for them, looking for best practices with peers within or outside the industry to give the business ideas or solutions to comply with the legislation in an efficient manner. And most important, help the business understand that Compliance benefits the whole company. Yes, it's a huge PR task and it goes straight into the culture of the company. It takes time, be patient and keep going.

Don't forget about training and keeping updated

Not only do you need training on new legislation, but also learning about new technologies, news within the industry of the company you work at, and even corporation scandals and how they happened, are very important. Further, getting abreast of any news and guidance from the regulators is also key. All this will help you provide value, as per the point above, and be the go-to-person for the business side on how to comply with legislation efficiently, up to date and in the world they have to work.

ABOUT ELISA TURULLOLS

She is a C-suit executive (CFO), Board advisor and expert in Good Corporate Governance (ESG) and Compliance. International advisor and collaborator at management team and Board of Directors (Europe, Middle East, South Africa, Latin America and USA). She has significant experience both in high calibre companies such as Deloitte, leading companies in their industry and supported by Private Equity and in SMEs and start-ups. This experience led her to live in London and work in several countries.

She is the author of "Guide to Good Corporate Governance" (Editorial Almuzara) and co-author of "Memento Expert. Criminal Compliance" (Editorial Lefebvre) and is also a lecturer at universities and business circles. Turullols is an active member of the coordinating team of the Good Corporate Governance Technical Committee of the World Compliance Association (WCA) and a member of the ROAC (Official Register of Auditors, Spain). She has a degree in Business Management and Administration, complemented by studies in Law, from the University of Navarra, Spain, a diploma in International Commerce from the Ecole Supérieure de Commerce de Poitiers (ESCEM), France and a management programme at the London Business School.

Don't be alone

Surround yourself of experts on different fields if you have a team, or get access to advisers on different fields. Further, keep in touch with other colleagues, not only Compliance related, but in other fields and industries (e.g.: IT, accounting,...). Attend webinars (or physical events whenever possible) and expand your network. Subscribe to Compliance blogs and newsletters from trusted sources. This will help you get support and look at issues from different angles. Further, be regularly in touch with the Compliance Committee and ensure they keep the Board abreast of any issue.

All this will also protect you when the going gets tough.

Don't be workaholic

And in particular in this kind of role you need to switch off, get your time off, nurture your family, friends and yourself. Take care of yourself by having a healthy diet, exercising (even 30'-40' of walking helps; one of my colleagues is taking advantage of the remote working and attends webinars and business video conferences whilst walking on a home portable treadmill) and from time to time be in a place with no network connection (or switch off mobile and other devices). This last advice is the ultimate luxury.

Don't just rely on oral communication

It's true that in this role you have to communicate greatly: on the legislation, on best practices, on any news and updates the business side needs to be aware of, and do not forget the PR task on culture explained above. BUT, you also need to put things in writing, as words can be gone with the wind. Moreover, you can orally further stress your points, arguments,

reasonings, any information you provide in writing. This reinforces the protection you need.

Don't waste your precious time

How do you carry on all these points in a 24 hours day? (with a good night's sleep included). Managing your time efficiently is paramount. I cannot stress this enough. Review regularly your goals and your main plan to achieve them. Then, check your daily tasks coming out of your main plan constantly, so you can be flexible when and if circumstances require.

Don't think your role ends when you report to the Board

What if not even the Board pays attention to the issue you raised? What if the business keeps not complying with the legislation? Yes, it's a tough call, but this is the beauty and the curse of this role, and I agreed this role is not for fainthearted. You have to look at the bigger picture. How can the whole society be impacted if the issue keeps ongoing? Think about how many children are forced to work long hours because there is no Compliance with the legislation to ensure companies don't use children's labour. What if a laboratory does not comply with the controls they require to avoid a leak of a virus or bacteria to the population? (Please note I am using "what if..."). The message is that humankind needs Compliance.

Go through these ten points, and take the decision that, should the issue appears in the newspapers, will make you feel internal calm and that you can comfortably explain if your best friends and family ask you about.

With all these points, you can take off and fly. May the force be with you bro! 🍷



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"NBP - LOOKING FOR NEW BUSINESS IN PORTUGAL"

by Alexandra Almeida Mota, BAS's specialist lawyer in the area of Labour and Social Security.

A broad scope of experience, including strong knowledge of the Iberian market, assistance to international clients on the implementation of their policies and practices in Portugal and extensive experience in negotiation representing unions and work councils.

Lawyer since 1998 and joined BAS – Sociedade de Advogados, SP, RL in 2015. In 2008, attended a Master's in "Relaciones Laborales" in IE Business School, in Madrid and a Masters in Law from the Faculdade de Direito da Universidade de Lisboa.

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could very well be the initials for the "National Bank of Poland", for the "Name Binding Protocol" (system for managing AppleTalk names) or for even the "Neutral Body Posture (is the posture the human body naturally assumes in microgravity), but finally can also be the initials for a growing Portuguese reality: "NBP – New Business in Portugal". In fact, every day, we deal with more and more foreign companies

wanting to start its operation in Portugal for a less than a year period, being the most common goal to seek for new business opportunities.

These companies need to hire local workers to these jobs and that is also when legal challenges start. How to hire these workers within the Portuguese law restrictions or under other legal system? How can we submit these workers at the Portuguese Social Security? Is it legally required

to constitute a Portuguese subsidiary?

For corporate law purposes, non-resident foreign companies may enter into employment agreements in Portugal without setting up any legal vehicle, namely, a company or a branch.

In fact, the Portuguese Companies' Code establishes that non-resident foreign companies are required to register a form of permanent representation in Portugal (i.e. representation office, branch or other) if: (a)



their head office or effective place of management is located outside the territory of another Member State of the European Union; and (b) they carry out activities in Portugal for a period exceeding 12 months.

Thus, a company with head office in Spain that carry out activities in Portugal for a period of one year, for example, does not have to comply with the referred corporate obligation.

Nonetheless, it should be assessed whether (or not) the activities carried out by this foreign company in the Portuguese territory could be deemed as a permanent establishment, under the relevant tax legislation.

In practical terms, the foreign company must be registered as such under the Portuguese Collective People Registration Office as an equated foreign entity that will develop its activity for a period inferior to one year.

The aforementioned registration number will allow employee enrolling and the identification of the foreign company before the Portuguese authorities, namely with Social Security and Tax Office.

For Social Security law purposes and in this case, the registration in the Portuguese Social Security is not automatically. The foreign company must proceed on its registration in Portuguese Social Security.

It is also important to emphasise that whenever an employer does not have a place of business in the Member State whose legislation is applicable, the employer may agree with the employee (in writing) that he/she will fulfil the employer's social security's obligations on its behalf as regards the payment of contributions, according with article 21, paragraph 2, of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009.

For employment law purposes, the foreign company and the employee may agree on to submit the employment contract to Portuguese law or to another labour law (e.g. to the Spanish employment law) (according with article 6.º of the Rome Convention).

Nevertheless, this choice is not applicable on mandatory matters, like in case of the termination of the employment contract. Given this and even if the foreign entity gets the employee consent to change to a Spanish employment contract, the Portuguese law will continue to be applicable in these mandatory labour matters.

NBP can, in the end, be the light switch that will permit to clearly see the room and understand what to do against blind expensive adventures and poor candle sight decisions.



TAX REFUNDS AND EUROPEAN UNION LAW: THE SAGA CONTINUES

by Antonio Puentes, head of tax controversy department



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Antonio Puentes is responsible for the tax procedure department of BDO Abogados. He has twenty years of experience in tax advice, tax controversy, dispute resolution and in projects related to the recovery of taxes paid in breach of community law.

When the EFTA Court issued its judgment in the famous Fokus Bank case in late 2004 (later backed up in October 2006 by the Court of Justice of the European Union in the Denkavit case), it began a saga that has now been going on for more than fifteen years and has not yet written its last chapter.

These judgments encouraged thousands of investment and pension funds residing in other Member States of the European

Union and the European Economic Area to apply to correct their self-assessments in Spain and ask for refunds of tax overpayments, on the grounds of discrimination incompatible with Community law in the final tax rates applied to an investment or pension fund residing in Spain for dividends received as a consequence of holdings in other entities' equity (1% and 0%, respectively) and the final tax rates applied to Community or EEA funds (19%, 18% or 15%, depending on the fiscal year and whether

or not there was a double taxation agreement).

The vast majority of these proceedings were won by the non-resident Community/EEA funds, although many had to take their case to court before winning their battles, and the Supreme Court itself, in a well-known judgment of 5 June 2018 (appeal 634/2017), had to rule on the correct procedure for requests submitted before section 14 of the Spanish Non-resident Income Tax Act was amended by Act 2/2010 of 1 March as a consequence of



the European Commission's procedure for infringement against Spain to put an end to this sort of tax discrimination.

With Act 2/2010 approved, it might seem the saga had reached an end, but it was far from so, because the Court of Justice of the European Union continued handing down decisions in connection with the free movement of capital under article 63 and concordant articles of the Treaty. Indeed, in its well-known judgments on the Santander Asset Management SGIIC case in May 2012 and the Emerging Markets case in April 2014, the chief interpreter of EU treaties found that funds residing in non-member States of the EU/EEA ("third countries") were also being discriminated against in the final taxation on dividends received by them, albeit with certain nuances, making it open season again for hundreds of American

and Canadian funds to apply to the Spanish Tax Agency for refunds due to overtaxation, plus interest.

In these latter cases, CJEU case law sets an extra requirement for funds not residing in other Member States of the EU/EEA, since in that case the legislation concerned is not as thoroughly harmonized as it is among the Member States of the Community. This extra requirement may be roughly summed up as two essentials: 1) full comparability between the third-country non-resident fund and the EC resident fund and 2) existence of a double taxation agreement in force between the third country and the EU/EEA Member State, including an information exchange clause enabling tax authorities to communicate with one another to verify whatever they need to in connection with the structure and nature of the fund, among other issues.

The Spanish Tax Agency turned down practically all the requests it received from funds residing in third countries, because it considered full comparability not proved (the burden of proof lying with the applicant, after all). But it also felt that the current double taxation agreement did not allow it to collect all the information the agency considered necessary. Economic administrative courts and courts of justice upheld the agency's position.

The saga is not over yet, though, because the Supreme Court has the last word, and it has handed down several favourable judgments in connection with US investment funds. Moreover, we have learned that in July 2020 it admitted a number of appeals by Canadian pension funds, and in the light of past history it takes no great effort of the imagination to picture the eventual result.



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THE EXTRA- CONTRACTUAL CIVIL LIABILITY OF THE STATE FOR LAWFUL ACTS SEEKING A NEW PARADIGM

by Pedro Neves de Sousa

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Whenever a private individual, whether a citizen or a legal person, suffers damages or losses caused by a lawful action or an illegal action or omission of the Administration, the practice has taught that litigation is settled in the administrative courts. This means that the private individual must wait patiently for a judicial decision condemning the public authority to pay the value of the damages caused.

This reality results from a stubbornly conservative

and reserved position of the Administration and its leaders, who, frenzied and frightened by the reports of the usual administrative inspections (and even by the increasingly frequent criminal investigations), opt for a passive attitude, instead of facing the concrete case in obedience to the principles by which the administrative activity should be guided. It is within this framework that recourse to the judicial route - and the consequent delivery of a judicial decision - brings with

it the comfort and security that the Administration appreciates and that it is not customary to dispense with, notwithstanding the awareness of the actual damages caused to the private sector individuals.

It is in this context that we have seen, namely in what civil extra-contractual liability for lawful acts is concerned, a timide but at the same time audacious and courageous position of some (few) political leaders, who, recognizing the damages that a certain decision may generate in the legal sphere of individuals,



seek a safe, reasoned and fair way to compensate individuals, avoiding recourse to the judicial means .

But a long road has been travelled until we reach this point.

First of all, and on a brief historical note, it is important to mention that only from the mid-thirties of the 20th century that Portuguese law began to contemplate the civil liability of the State and other public entities for damages caused to individuals in the exercise of administrative functions, if and when they resulted from unlawful or culpable conduct. With the entry into force of Decree-Law No. 48 051 of November 21, 1967, the Portuguese legal system established a specific law that regulated not only the civil liability for unlawful acts but also for lawful acts of the State and other public entities, when such acts, even if legally and legitimately practiced ,offended the content of the rights of individuals, causing special and abnormal charges or damages. . Then, with the approval of Law no. 67/2007, of 31

December, the current *Regime of Extra-Contractual Civil Liability of the State and Other Public Entities* was implemented which, besides having introduced important reforms regarding civil liability for illicit facts arising from the exercise of the legislative and judicial function of the Public Administration, created the so-called "compensation for sacrifice".

However, the "compensation for sacrifice" institute is concerned with the liability of the State and other public entities for damages and special and abnormal charges inflicted on private individuals as a result of lawful acts aimed at pursuing the public interest.

And in these cases, should public entities not understand whether their actions will cause special and abnormal damages that deserve protection of the law? The answer, in view of the administrative action required in modern times is, from our perspective, hopelessly positive. A paradigmatic and public case of this innovative action is, for example, the compensation that a public entity can (and should)

attribute to traders in virtues of the damages caused by public works contracts that prevent or significantly limit access to commercial establishments. In fact, in this case, the sacrifice, damages and expenses of the merchants are caused as a result of a lawful act (construction or requalification works), voluntary (for having been determined by decision of the public authority), and in the pursuit and satisfaction of the public interest (construction or requalification of a public space), being also verified the required causal link. The generalization of this new way of relationship between the Administration and private individuals, in the field of civil liability for lawful facts, may enshrine a new paradigm of public management, in which the budgetary provision for a public works contract contemplates from the outset - if justified - the amount necessary to compensate individuals who will suffer special and abnormal damages. On the other hand, it also embodies a conduct of responsibility and sense of justice on the part of the Administration, to the extent that it compensates private individuals in advance for the losses and damages that will be caused either by the decrease in revenue or by the decrease in operating profit (EBIT). Obviously, a decision of this nature, namely regarding the amounts to be spent by the public authority, cannot be purely discretionary, but must, on a case-by-case basis, be taken in line with the criteria established by the case law of the higher courts and by other information to be provided by the individuals affected, in order to build a model of fair compensation that avoids recourse to the courts.



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POLAND – LAND OF (CURRENT AND FUTURE) M&A OPPORTUNITIES

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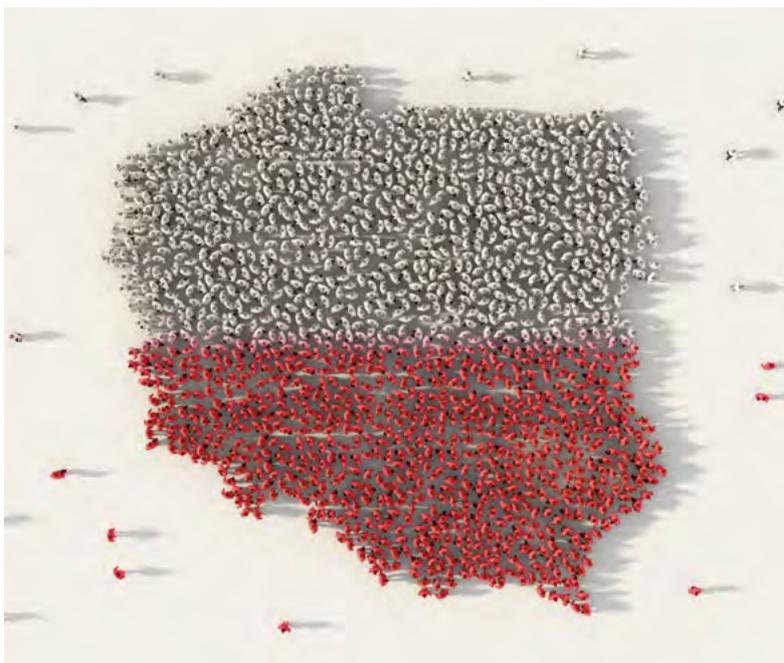
Poland was ranked third best country in which to invest in the post-COVID “new normal” by the New York-based [CEOWorld Magazine](#).

And we have seen some signs that the current situation (semi-lockdown) may create, apart from obvious uncertainties and tensions, positive M&A effects. Moreover, the situation in which

Polish private companies are currently finding themselves may be similar to that of Polish state-owned enterprises in the 1990s. At that time, when the Polish economy opened up, it turned out that these state-owned giants were unable to compete with efficiently managed international companies. At the same time, the large local market (Poland

has a population of nearly 40 million) required rapid development. Today, in the Covid era, we can see that a number of Polish companies with a significant domestic market share are facing difficulties with, e.g. cash flow.

This is because the dynamic growth of Polish private companies was (and is) based on credit without a special financial “safety net”. The pandemic has disturbed the delicate



balance.

Hence the view that companies particularly affected by the pandemic crisis, as long as they show "development potential", are a tasty morsel for expansionary investors. In the case of Poland, this attractiveness is due, e.g. to access to a big local market, its unique location at the east-west and north-south crossroads and low costs and weak currency. For investors from outside the EU, Poland is a good starting point for expansion onto the 450 million EU market. In other words, the crisis may lead to fairly well-developed Polish private companies, having a significant share of a sizeable market, becoming attractive acquisition targets. We at DZP have already noted this trend and expect it to intensify in the medium and long term. In the first place, investors are interested in companies representing industries that are well developed, but considerably dispersed. There are a

significant number of good, modern companies deprived of "critical mass". The reasons for this lack of "critical mass" include unresolved succession issues, outdated management, and excessive debt. Now the effect of these strategies (or frequently, the absence of a far-reaching strategy) for development can be seen (although it is still far from being a disaster for companies of this type). Research carried out by the Polish Business Centre Club shows that such companies can continue to survive the current market situation for about three months. Meanwhile, six months of uncertainty have passed and there is still no sign of a wave of bankruptcies (which, by the way, is very welcome news). Another important issue to bear in mind is the growing expansion of some Polish companies onto other markets through mergers and acquisitions. While it is true that, until recently, mergers and acquisitions of foreign companies by Polish companies were largely confined to countries in

their immediate geographical vicinity (Central and Eastern Europe), in recent years Polish companies have become accustomed to entering other markets to make purchases. In this context, one of the most promising markets is undoubtedly the Iberian market, as it is a natural gateway to other jurisdictions, such as Latin America. At DZP, we are working on projects of this type more and more frequently.

All M&A processes are carried out in Poland using organisational and legal instruments and solutions that are well known to investors on other markets. In view of the size of the transaction (on a European scale, it is usually possible to speak of small and medium-sized tickets), it is important to optimise the process in such a way as to ensure that the value of the transaction is properly proportional to its servicing costs, while maintaining an appropriate standard. The operating model adopted by DZP, which is the largest independent law firm on the Polish market and makes intensive use of international standards and operating models, is conducive to these conditions being met (size of transaction – cost – service standard).

We draw on 27 years of cooperation with leading law firms and lawyers from around the world, including the UK, Spain, Scandinavia and the USA. Our operating method is described in the recently published Wolters Kluwer M&A Guide (in Polish), a book on the Polish market that is completely unique.



THE “NORMALIZATION” OF THE *REBUS SIC STANTIBUS* CLAUSE IN COMMERCIAL PROPERTY LEASES



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As a result of the health crisis caused by the Covid-19 pandemic, many legal proceedings have been initiated in Spain under the *rebus sic stantibus* clause, with commercial property leases being one of the areas in which litigation is increasing the most. Initially, due to the fact that many establishments had to close their doors to the public by order of the Royal Decree 463/2020, of March 14, and the successive extensions of the alarm state. And once the "new normality"

was reached, as a consequence of the new scenario of deep crisis that is affecting several sectors, such as retail, leisure or hotel business.

For those business which are based on a lease contract (as this is the main cost associated with their activity), the measures approved by the Spanish Government have not help improving or alleviating their difficult situation. Certainly, the Royal Decree-Law 15/2020, of 21 April, has not served its purpose, both because of its

narrow subjective scope, and because of the limited scope of the measures proposed therein.

In this context, litigation departments of the law firms have not stopped negotiating modifications of lease agreements during the last months. And without a shadow of a doubt, in most cases, fortunately, agreements are being reached, which generally involve waivers and/or deferrals of rent payments, reductions of the rent fee or even the establishment of flexible



formulas (variable income) so that the rent can be adapted, at any time, to the progress of the business.

However, in those cases where it is not possible to reach an agreement and the parties of the contract finally end up in court, the *rebus sic stantibus* clause is becoming a key tool to try to rebalance the contractual benefits through a lawsuit aimed at requesting the modification of the lease contract by the court. In addition, when the lessee has a cash flow situation that prevents him from regularly paying the rent, it is advisable to accompany the lawsuit with a request for precautionary measures, with the main purpose of avoiding the execution of guarantees associated with the contract, such as a bank guarantee.

The application of the *rebus* clause, which requires the

tenant to prove a series of conditions, has traditionally been considered by case law as an extraordinary and restrictive remedy. However, as a result of the economic crisis in 2008, there was a change in case law, reflected in several Spanish Supreme Court rulings, which aim was to "normalize" the application of this mechanism (rulings n°. 18/1/2012, 17/1/2013, 30/6/2014 and 15/11/2014 of the First Chamber of the Supreme Court).

The response given by the courts during the last months is being very favorable to the interests of the tenants. In the judicial orders issued to date, different precautionary measures have been adopted, in most cases without a hearing of the defendant (*inaudita parte*), agreeing on: (i) the postponement or temporary suspension of a percentage of the settled rent (judicial order of 25th September 2020, of the

County Court No. 81 of Madrid); (ii) the temporary suspension of the lessor's power to execute a bank guarantee (judicial order of 15th July 2020, of the County Court No. 2 of El Prat de Llobregat); and (iii) even prohibiting the lessor from filing an eviction action during the proceeding (judicial order of 7th July 2020, of the County Court of Benidorm).

For the purpose of the future application of the *rebus sic stantibus* clause, the decisions handed down so far, all of them in application of precautionary measures, declare the well-known character of the pandemic as an unforeseeable event affecting those leases in which the balance of benefits of the parties has been altered. In this context, facing the absolutely unprecedented scenario of this pandemic, it is likely that we are on the verge of the definitive "normalization" of the rebus clause.



INFRASTRUCTURE IN PORTUGAL

Brief Overview of the Times Ahead

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The Covid-19 pandemic, or at least its socio-economic consequences, is here to stay. We face the deepest global recession since World War II, international economies are heavily affected and recessions of around 10% are predicted by the end of 2020. And winter has not

yet even begun. The infrastructure sector is obviously not immune to this crisis.

In Portugal, due to budgetary restrictions, a significant share of public infrastructure is on concession to private entities though Public Private Partnerships (PPPs) and under

project finance regimes. These infrastructures are thus regulated by long-term performance public contracts that clearly define the main risks (events) that may affect the normal development of the projects during their respective lifetimes, as

well as the party liable for the consequences of these events. Both the pandemic and the measures adopted by the Portuguese Government in this context have led to a significant reduction in the use of infrastructure – whether in the road, railway, airport, port or health sectors – and, in some cases, has even compromised their financial sustainability. Considering the rules applicable to most of these PPPs, the pandemic constitutes an event of *force majeure* that may entitle to restoring the financial balance of the relevant contracts through monetary compensation or the extension of their term. However, during the peak of the pandemic in March/April, the Portuguese Government approved a legal instrument (Decree-Law no. 19-A/2020), which imposes serious constraints to the exercise of this right by private partners. This controversial measure of dubious constitutionality has generated a great deal of criticism and may, dangerously, affect the confidence of national and foreign investors in contracting with the Portuguese State. This will certainly be a source of litigation in the future. However, crises also bring new opportunities. The European Union has approved a EUR 750 billion scheme for the next ten years to relaunch eurozone economies. Portugal will receive approximately EUR 26 billion, which on top of the already planned EUR 29 billion, means that the Portuguese State will dispose of a total EUR 55 billion over the next ten years. Such an enormous amount should certainly not be squandered.

Portugal has already submitted a first version of its Recovery and Resilience Plan ("RRP") to the European Commission and has proposed investing these funds in three major areas: Resilience (which includes health service, housing and the creation of social responses, as well as a commitment to competitiveness and territorial cohesion), Climate Transition (which includes sustainable mobility, decarbonisation and bio-based economy) and Digital Transition. Although a significant part of this amount is devoted to health expenditure, social support and aid to businesses in the utmost affected sectors, a few hundred million euros will be invested in transport infrastructure that may bring about structural changes in society.

Thus, under the RRP, the Portuguese Government plans to invest:

- a). EUR 833 million in cohesion infrastructures, including links to inland business areas, missing links, cross-border links and increasing the capacity of the structuring road network; and
- b). EUR 936 million in public transport infrastructure, including the expansion of the Lisbon and Porto metro network.

Apart from the RRP, yet benefiting from other agreed EU funding, the Government will focus on railway infrastructure. According to the recently presented 2030 National Investment Plan (NIP), 10 510m will be invested in railway infrastructure over the next ten years. Special emphasis will be given to the Lisbon-Oporto high-speed train and

the modernisation and electrification of the existing network.

In the port sector, according to the 2021 State Budget, the new Sines container terminal is intended to advance. This terminal is planned to be built and financed exclusively by private capital.

Considering the sluggishness in contracting with the public administration, and the tight schedule associated with the implementation of EU funds, the Government has submitted a proposal to simplify and reduce bureaucracy in the public procurement system, when it comes to projects benefitting from EU funds.

After much controversy and extensive political debate, the proposal will, in fact, be approved and should cover a large share of new public investment projects. Although public procurement is expected to accelerate, new legislation will introduce a fourth level of scrutiny in the use of EU funds by creating a new independent committee, which will be appointed by Members of Parliament and will monitor and supervise the contracts covered by this simplified regime. Let us see whether Portugal can keep up with this enormous challenge.



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A BRAND NEW START

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Recent large-scale events, be it the pandemic crisis or political instability have led to an increasing number of people seeking alternative residencies. We have seen this in Portugal for the past years and increasingly over the past months.

Whereas a few years ago we saw an inflow of pensioners looking for a sunny, calm country to spend their “golden years”, currently the trend has shifted to young - and not-so-young -, accomplished professionals, looking to relocate their professional base of operations to a country where their families, as well as themselves, can benefit from a more stable future. It also helps that Portugal has identified this opportunity to attract new residents and has approved several immigration programmes (mainly investment based, but not exclusively), which offer enticing benefits.

Furthermore, and in some cases most importantly, Portugal offers

a much favourable tax regime and benefits for newcomers, which translates, in its essence, in the exemption of taxation over most foreign sourced income, the so-called “non-habitual resident” – NHR – regime. This regime, combined with the fact that the Portuguese government abolished inheritance tax several years ago, has made Portugal the destination of choice for many. However, a decision to relocate to a different country is not one to take lightly and should weigh in far more factors than just attractive immigration programs or favourable tax regimes.

There are a number of bureaucratic hurdles to conquer, a different language and culture to get acquainted with, essentially all that comes from uprooting oneself from one country and laying down roots elsewhere.

Day-to-day matters such as driving a car or going to the doctor, imply previous steps

to be taken. Deciding on where the family will live and where the children will attend school, require careful deliberation. Filing your tax returns in an accurate and timely manner, registering to vote, opening a bank account, etc. etc... And then there are the ties to the origin country, not just emotional but also economical, which need to be considered.

Alas, these aspects are frequently overlooked and often result in added irritations and stress (not to mention costs), which can transform the intended cheerful new beginning into a nightmare of Kafkaian contours.

The way to avoid this is, fortunately, quite simple: plan ahead. Reach out to local communities of expatriates and/or to your country’s Embassy, seek comprehensive professional advice both in the origin and destination countries and be exhaustive about it.

When it comes to relocating to a different country, there are no insignificant details. After all, it’s a brand new start!

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