

N.12 · 23 March 2020

Stepping up

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Law firm profile

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Best practices

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LATIN AMERICA COUNSEL

A portrait of Christina Maccio, a woman with long blonde hair, smiling and wearing a blue jacket. The background is a light blue wall.

LOOKING SOUTH

Orrick, Herrington & Sutcliffe has hired Christina Maccio, a first-chair trial lawyer, fluent Spanish speaker and leading litigator for the energy sector with extensive experience representing companies in Latin America and Europe, as a partner in its Houston office

ENERGY & INFRASTRUCTURE

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CLOSING THE DOORS

By Adam Critchley

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Latin America had reported two deaths from Covid-19, or coronavirus, by mid-March. Argentina was the first country in the region to record a death from coronavirus, that of a 64-year-old man on March 7, followed by Central America's first fatality, in Panama, a day later, with the victim also a 64-year-old male. As a result, the region's countries have begun to enact measures aimed at mitigating the spread of the virus.

Covid-19 arrived in most of the region's countries from Europe, and given that regional pattern, and despite not having reported any cases of the outbreak, El Salvador's President Nayib Bukele made the decision on March 11 to ban the entry of all foreign nationals and quarantine returning compatriots for 30 days, in addition to closing schools for the duration of March. And Venezuela's President Nicolás Maduro announced a ban on all flights from Europe and Colombia for 15 days starting March 15.

With the number of cases on the increase, the travel ban by El Salvador and Venezuela seems wise, given the predominance of cases among inbound travellers. Argentina's first case, for example, was a man suffering from the virus who had entered the country from Milan, while Brazil, which was the first country in the region to report a case of Covid-19, confirmed that the carrier had also returned to the country from Italy.

Similarly, Colombia's first confirmed case was that of a 19-year-old woman who had returned from Milan, and the Dominican Republic's first case was that of an Italian tourist, leading the country to ban all inbound flights from Milan during the month of March. And Mexico's first five cases were also reported in citizens who had recently travelled to Italy.

As part of the impact on travel and trade in the region, large gatherings will undoubtedly be affected. Colombia's publishing chamber has announced the postponement of the Bogotá Book Fair, an annual event attracting some 600,000 people from around the world, and which had been scheduled to open on April 20, with new dates yet to be announced. The Buenos Aires Book Fair however, which runs from April 30-May 18, has so far yet to be affected.

In addition to the threat of illness and death, observers have warned of the economic impact the virus will have on Latin America, so let's hope the containment and travel curtailment measures being imposed across the region can keep contagion and illness to the minimum. ■



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BRAZIL

Galvão Villani changes name with addition of partner Carlos Eduardo Navarro

Brazilian law firm Galvão Villani Advogados has announced the entry of **Carlos Eduardo Navarro** as a new partner and the subsequent changing of the firm's name to Galvão Villani Navarro Advogados.

Carlos Eduardo (*pictured*) has 15 years' experience in tax law, with an emphasis on structuring (including serving domestic and foreign start-ups) and business restructuring of small, medium and large companies.

He has extensive experience in sectors such as cosmetics/beauty, technology and defence, and his clients include large cosmetic companies such as Coty, Pierre Fabre and Sephora, as well as start-ups including Piktiz, Mac Jee and LimeLife by Alcone.

In addition to his work as a business lawyer, he is also a judge on the Tax Court of the Treasury of the State of São Paulo, a coordinator of CESA's Legal Teaching Committee, and a member of tax boards of companies and associations.

Before joining Galvão Villani Navarro Advogados, he worked in tax boutiques, including Viseu Advogados, where he was a leading partner in the customs, tax and social security areas for five years, Machado Associados, where he was a member of the indirect taxes area, in addition to the EY consultancy.



BRAZIL

Demarest adds banking and finance partner

Brazilian law firm Demarest has announced the hiring of **Helen Naves** as a partner, joining its banking and financial law practice.

For more than 20 years, Naves (*pictured*) has worked in the financial market in prominent institutions, including Safra and Santander. She joins Demarest from Trench Rossi e Watanabe Advogados.

A graduate of Law from the University of São Paulo, she specialised in capital markets Law and earned a master's degree in commercial law from the same university. She also holds an LLM in banking, corporate and financial law from the Fordham University School of Law in New York.

An experienced manager of interdisciplinary teams, Naves has a strong track record of representing Brazilian issuers and intermediary institutions in various issuances and public offers of debentures, promissory notes, agribusiness receivables certificates and certificates of real estate receivables.

"Naves, with her experience, is a strategic acquisition for foreign investments in Brazil, supporting the structuring of projects in the banking and financial areas, as well as an important leadership in the new economy," **Paulo Coelho da Rocha**, managing partner at Demarest, said.

Throughout her career, Naves has represented banks as financiers, and has also advised several foreign investors, including financial institutions, providing analysis and counsel for making investments in Brazil. She also has vast experience in drafting various commercial, operational and partnership agreements for provision of services of payment institutions and related financial services.

"I bring to Demarest my experience working in other firms and in the financial market itself to further strengthen an area that already has excellent professionals. Our combined forces will allow us to deliver services of the highest level to our clients, in line with current economic challenges," Naves said.



CHILE

Chile's Jara del Favero promotes Andrea Abascal to partner

Chilean law firm Jara del Favero Abogados has promoted **Andrea Abascal Marín** to partner, a specialist in regulated markets, public bids and M&A operations linked to the life sciences sector.

Abascal (*pictured*) has been with the law firm for a decade and has twice been recognised by Chambers and Partners in the life sciences area, in which she has advised clients such as pharmaceutical laboratories, and cosmetics and food companies.

A graduate of the Universidad Adolfo Ibáñez and has diplomas in health law, ethics and policy from the University of Toronto. She is currently studying a master's degree in administrative law at the Universidad de Los Andes and is a professor of regulatory affairs and medicines, biological products and cosmetics at the Universidad de Chile.



COSTA RICA

Arias adds head labour partner in Costa Rica

Arias has recruited labour and social security law attorney **Carolina Soto** as leader of its labour law department in its San José, Costa Rica office.

Carolina (*pictured*) has 18 years of experience in company shutdowns, merger and acquisition processes, labour disputes and representation of multinational companies before government entities.

She holds a law degree from the University of Costa Rica, and a master's degree in labour law and social security from the Distance State University (UNED).

"Joining Arias means for me a fundamental and necessary step in my professional career, and this new challenge will allow me to not only grow in work experience and knowledge, but also learn from the operation of an integrated firm, which is innovating constantly," Soto said.

"To our firm it is extremely significant to be able to rely on Carolina's experience, trajectory, maturity and leadership to design more sophisticated and innovative services, and which, without a doubt, will give us competitive advantages and value to our specialization in labour law, now with five lawyers dedicated exclusively to solving problems related to this area," Carolina Flores, a partner at the firm, said.

This hiring represents the strengthening of the firm's commitment to female participation in leadership and decision-making positions, Arias, which has offices in Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama, said in a statement.



COLOMBIA

Posse Herrera Ruíz names new real estate partner

Colombian law firm Posse Herrera Ruiz has named **Alejandro Turbay** as a new partner, and who focuses his practice on the real estate sector.

Alejandro (*pictured*) advises property developers, builders and real estate portfolio managers and his promotion strengthens the firm's real estate practice, the firm said in a statement. Alejandro is a law graduate of the Universidad Javeriana, has a master's in law from Boston University in the US and a specialisation in urban law from the Universidad del Rosario and an advanced negotiation certificate from Harvard Law School.

Posse Herrera Ruiz has also appointed new practice directors: **Lina Lineros** in financial law, **Juan Pablo Bonilla** in conflict resolution and bankruptcy and restructuring, and **Jaime Gómez** in the tax practice.



MEXICO

Adalberto Méndez López to head ECIJA's new Mexico human rights practice

Spanish law firm ECIJA has launched a human rights and corporate social responsibility practice in Mexico, and recruited **Adalberto Méndez López** as the practice's head partner.

As reported in our January-February issue, ECIJA opened an office in Mexico City at the beginning of the year, in a merger with local firm Chacón & Rodríguez.

Méndez López (*pictured*) has several years' experience as a company lawyer, a public official and an international consultant in more than 17 countries in matters of corporate social responsibility and human rights.

He has worked at the United Nations Development Programme, the Inter-American Human Rights Institute (IIDH), USAID and Chemonics International, as well as at the UK's Foreign & Commonwealth Office.

He is one of few lawyers in the Americas who has participated in proceedings before three of the world's four human rights protection institutions, and has authored books on the subject, according to the law firm.

Ricardo Chacón, managing partner of the firm's Mexico office, said that the incorporation of Méndez López "reinforces not only our leadership in Mexico with a pioneering human rights practice in the country, but also responds to ECIJA's aim to become the firm of reference in Latin America, where we have positioned ourselves as the Spanish law firm with the biggest presence on the continent".



MEXICO

Kuri Breña recruits new partner

Mexican law firm Kuri Breña, Sánchez Ugarte y Aznar has announced the hiring of **Julio Freyssonier Isoard** as a partner, and who specialises in controversy, tax and administrative litigation.

Freyssonier (*pictured*) has more than 16 years' experience as a lawyer advising local and international companies and has worked in firms Ernst & Young and Chevez Ruíz Zamarripa y Cia.

He graduated in law from the Universidad Anáhuac and has a master's degree in business law from the Universidad Panamericana.



MEXICO

Mijares Angoitia promotes two to partner

Mexican law firm **Mijares Angoitia Cortés y Fuentes** has announced the promotion of two new partners and one adviser, effective 1 April 2020.

Patrick Meshoulam (*pictured, left*) and **Carlos Orci** (*pictured, right*) have been appointed partners in the corporate and capital markets and economic competition and telecommunications practice areas, respectively.

Alejandro Díaz has been appointed adviser within the firm's intellectual property area.

Patrick assists Mexican and foreign clients in a wide range of corporate transactions, including public and private offerings of equity, debt and structured securities, mergers and acquisitions, and financings. He has worked on multiple domestic and international offerings assisting issuers, investment banks and other financial institutions.

Carlos focuses on corporate, competition and telecommunications law, including the representation of companies in mergers and acquisitions, as well as in merger control procedures, cartels, abuse of dominance, essential facilities, and barriers to entry investigations. He has advised companies in landmark competition matters in Mexico.



TRINIDAD AND TOBAGO

Dentons adds lead partner in Trinidad and Tobago

Dentons has announced that **Shalini Rose Campbell** has joined as the lead partner in the law firm's Trinidad and Tobago office.

"As a key member of our regional litigation, and dispute resolution as well as corporate law teams, Campbell specialises in litigation and dispute resolution activities related to banking and finance, bankruptcy and insolvency, energy, environmental, insurance, tax, and related commercial type matters," Dentons said in a statement.

"Shalini's addition comes at a key time with the evolving oil and gas industry in Guyana and Suriname as well as its rebound in Trinidad and Tobago," according to Dustin D.P. Delany, managing partner of the Dentons Caribbean Community (CARICOM).

Shalini (*pictured*) will collaborate with Dentons colleagues across the Caribbean to serve clients in Anguilla, Antigua and Barbuda, Barbados, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines as well as Trinidad and Tobago.

Shalini gained a Master of Law from the University of London.



US

King & Spalding adds three arbitration partners

US law firm King & Spalding has hired three international arbitration partners from Kirkland & Ellis in a bid to grow the firm's commercial work in Latin America and Europe.

The three new partners, **Javier Rubinstein**, **Lauren Friedman**, and **Lucila “Luli” Hemmingsen**, will expand the firm's Investor-state arbitrations in those two regions.

Rubinstein (*pictured*), who served as vice chairman and global general counsel for PwC before joining Kirkland, will be based in Chicago for King & Spalding. Friedman and Hemmingsen will work out of the New York office.

“The geographical and industry knowledge Javier, Lauren, and Lucila have, combined with their language skills and decades of experience being outside and in-house counsel, make them a great addition to our International arbitration team,” according to **Andy Bayman**, leader of King & Spalding's Trial & Global Disputes practice group.

Zach Fardon, managing partner of King & Spalding's Chicago office, said that the presence of Rubinstein will help expand the firm's international arbitration footprint into the city and its surrounding area.

“King & Spalding's premiere international arbitration practice and its commitment to grow disputes work in the Midwest were two important factors as we thought about the right platform going forward,” Rubinstein said.

Friedman's practice includes commercial and investor-state arbitrations on behalf of clients in the oil and gas and mining sectors, as well as consumer goods and public utilities.

In addition to her arbitration work, Hemmingsen also advises clients on treaty protection structuring connected to those proceedings.



NICARAGUA

NEW CHALLENGES

Even before the first quarter of the year is behind us, Latin America is facing new challenges, with its economies dependent on exports to China and other parts of Asia likely to see a slowdown as a result of the coronavirus, while the slump in oil prices – the sharpest since the early 1990s – will likely dampen the revenues of those oil-export-dependent economies of the region.

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The oil price crash in early March has deepened fears of a global recession as economies are already suffering from the fallout of the coronavirus, which in itself is expected to negatively impact dozens of economies across the globe. The

27-per cent drop in oil prices on March 8 came in the wake of Saudi Arabia's announcement that it would increase production from April, following a decision by Russia to not join a plan by members of the Organisation of Petroleum Exporting Countries (OPEC) to cut production.

The price slump is expected to heavily impact the major Latin American economies such as Brazil, Mexico, Argentina and Colombia that are heavily dependent on their oil industries, and will bring further woes to Mexico's state oil company Pemex, for example, already struggling with declining production and saddled with debt. According to Tom Ellacott of UK-based energy consultancy Wood Mackenzie, "the price collapse could be the trigger for a new phase of deep industry restructuring - one that rivals the changes seen in the late-1990s".

Such a shake-up will likely put the brakes on new investment, possibly including the cancellation of contracts, or at least cost cuts and the imposition of austerity measures by both local, state-owned oil companies and global majors engaged in the region, actions which will undoubtedly involve many of the region's law firms, given the importance of their energy practices.

Latin America's economies were already bracing themselves for shrinkage, given the knock-on effect of the coronavirus, and particularly those economies dependent on China, and other Asian markets, for exports. (see coronavirus story).

Nicaragua may also see its economy affected by the US government's announcement in early March that it has expanded sanctions against the Central American country, in light of alleged human rights violations perpetrated by the Nicaraguan national police.

And in anticipation of the transition from the London Interbank Offered Rate (LIBOR) as a universal benchmark interest rate in 2021, and the global effort to find robust rates to replace LIBOR and other interbank offered rates (IBORs) underway, law firm Mayer Brown has launched a global multidisciplinary task force to provide advice on the latest market developments and issues facing banks, companies and investors.

OIL PRICE PLUMMET BRINGS NEW WOES TO LATAM'S ECONOMIES

March's 27-per cent drop in global oil prices sparks concern for Latin America's state oil companies and their oil-dependent economies, especially as oil demand is weak amid the measures imposed to contain coronavirus and the slump in global travel.

According to **Tom Ellacott** (pictured), UK-based energy consultancy Wood Mackenzie's senior vice president of global research, "the price collapse could be the trigger for a new phase of deep industry restructuring - one that rivals the changes seen in the late-1990s".

"This is not the first time we've seen a price war - the last was as recently as 2015/16," he said. "But this time, oil demand is also weak as the coronavirus outbreak depresses global economic growth. The macro-economic backdrop is completely uncharted waters for oil and gas companies."

However, the oil and gas industry's financials are in much better shape, thanks to the actions taken following the last price collapse. At current activity levels, we estimate that



Tom Ellacott

many companies need an average Brent price of \$53 per barrel to break even in 2020, including dividends at expected current levels and announced buybacks," he said. "But gearing levels remain high for many players, limiting their ability to absorb any sustained oil price weakness through the balance sheet."

Fraser McKay, head of upstream analysis at Wood Mackenzie, said, "sustained prices below \$40 per barrel would trigger a new wave of brutal cost cutting. Discretionary spend would be slashed, including buybacks and exploration. But given the lack of excess in the system, the cuts to development activity will be necessarily fast and brutal".

"Unsanctioned conventional projects will also be delayed, and in-fill, maintenance and other spend categories scaled-back," he said.

"There is much less obvious excess spend to cut this time around after five years of disciplined investment and austerity," according to Ellacott. "Raising capital is also much harder now, especially for US Independents, and upstream M&A market activity is at record lows. In addition, many companies have already made the most of the obvious asset sales."

CORONAVIRUS SEEN HURTING LATIN AMERICA'S ECONOMIES

The coronavirus outbreak is expected to heavily impact Latin America's economies, despite there not yet having been a significant number of cases confirmed in the region, as it affects global supply chains and trade, according to **Zhen Pan** (pictured), an associate attorney at Miami-based law firm Diaz, Reus & Targ.



Zhen Pan

In an article addressing the anticipated effects of the coronavirus on Latin America published in *The Dialogue*, Zhen said, "the ripple effects of the outbreak will negatively affect global business in general, and Latin America's economies in particular".

"Since the early 2000s, China's economy has doubled its size. It has become the second-largest trading partner in Latin America, and the top importer from Brazil, Peru, Uruguay and Chile for products such as oil, copper, wine, seafood and fruits. As the virus continues to spread across China and business interruptions and closures remain in place, exports from these countries will plummet, and Latin America's economies will be hurt given their reliance on trade and investment with China to drive growth," he said.

"The specific impact on each Latin American country depends on how important trade is to that country's economy. The more the economy is dependent on exports to China, the greater the country would be exposed to weaker Chinese demand. In Chile and Peru, their exports to China account for more than 33 per cent and 25 per cent, respectively, of their total exports.

As trade accounts for almost 50 per cent of the countries' GDP, it appears that Chile and Peru would be most exposed to a weaker import demand from China. While exports to China account for 25 per cent of Brazil's all exports, the impact would be somewhat smaller because Brazil has a more diversified export basket," he said.

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US EXPANDS SANCTIONS AGAINST NICARAGUA

The US Treasury Department's Office of Foreign Assets Control (OFAC) has sanctioned the Nicaraguan National Police (NNP) and three senior officials of the government of Nicaragua for their alleged involvement in human rights abuses in the Central American country, imposing sanctions pursuant to Executive Order 13851 that "blocks property of certain persons contributing to the situation in Nicaragua," and pursuant to the Nicaragua Human Rights and Anticorruption Act of 2018 (NHRAA). Additionally, OFAC issued General License No. 1 authorising all transactions that are necessary to conduct official business of the US government in Nicaragua; and General License No. 2, authorising all transactions and activities that are ordinarily incident and necessary to the wind down of transactions involving the NNP, through May 6, 2020.

The Treasury Department said in a statement it blacklisted Nicaragua's police over its role in significant acts of violence, including "using live ammunition against peaceful protesters and participating in death squads, as well as carrying out extrajudicial killings, disappearances, and kidnappings".

According to a bulletin issued by law firm Diaz Reus & Targ, the consequences of these additional sanctions are as follows: Individuals and companies sanctioned by OFAC are added to the list of specially designated nationals and blocked persons, known as the SDN List. Accordingly, all of their property within or transiting US jurisdiction is blocked. US persons or foreigners

that conduct business in or with the US, US persons, or using US-origin goods or services are prohibited from engaging in transactions with individuals and companies sanctioned under EO 13851 and the NHRAA, or with entities in which they have, directly or indirectly, a 50-per cent or greater ownership interest.

US and foreign persons violating the additional OFAC sanctions on Nicaragua may face significant civil and criminal penalties. OFAC may also add them to its SDN List.

In order to prevent a violation of OFAC sanctions on Nicaragua, persons are advised to conduct an OFAC review of any transaction involving Nicaragua to confirm whether they need OFAC's authorisation to proceed. If necessary, request OFAC's specific license or interpretative guidance. In addition, organisations can prevent, detect, and react appropriately to violations of OFAC sanctions by designing and implementing sanctions compliance programs.

Having an effective sanctions compliance program in place is also a significant mitigating factor that OFAC will consider when deciding whether to impose sanctions based on an apparent violation of its regulations, or for calculating the appropriate penalty, according to the law firm.

MAYER BROWN LAUNCHES GLOBAL IBOR TRANSITION TASK FORCE

In anticipation of the imminent transition from the London Interbank Offered Rate (LIBOR) as a universal benchmark interest

rate in 2021, and the global effort to find robust rates to replace LIBOR and other interbank offered rates (IBORs) underway, law firm Mayer Brown has launched a global multidisciplinary task force to provide advice on the latest market developments and most significant issues facing banks, companies and investors.

The firm's cross-practice IBOR Transition Task Force is composed of more than 80 lawyers across the firm's three regions – Asia, Europe and the Americas – and across eight practice areas. The global team of lawyers will keep pace with changes and provide timely updates, the firm said in a statement.

According to **Jeremy Clay** (pictured), Mayer Brown's managing partner, "While efforts for an equitable and lasting solution are currently underway worldwide, this process is both complex— involving multiple regulatory regimes



across dozens of countries and currencies—and one in which the stakes are enormous.

Mayer Brown's global presence, subject matter and product competence across various affected markets, and use of technology solutions, including artificial intelligence, to facilitate the timely collection, analysis and remediation of related contracts and other documents, uniquely enable the firm to provide clients with integrated and global IBOR transition solutions."

The firm has set up an IBOR Transition webpage containing a repository of information on the background of LIBOR and other IBORs, the proposed IBOR benchmark replacements, the latest market developments, the team's thought leadership and contact details for IBOR Transition Task Force members.

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COVER STORY

A portrait of Christina Maccio, a woman with long blonde hair, smiling and wearing a blue high-collared jacket. The background is a soft, out-of-focus light blue.

LOOKING SOUTH

CHRISTINA MACCIO

In February, law firm Orrick, Herrington & Sutcliffe hired Christina Maccio, a first-chair trial lawyer and leading litigator for the energy sector, and who is a fluent Spanish speaker with extensive experience representing companies in Latin America and Europe, as a partner in its Houston office.

“From the start, Orrick’s strategy has been to build our Texas office around areas where the firm is market-leading globally. It’s working. Last year was our best year ever in Texas in terms of revenue growth, innovative client engagements and collaboration with Orrick teams worldwide,” **Dahl Thompson**, leader of Orrick’s Houston office, said regarding **Christina Maccio’s** hiring. “Adding Christina, a rising-star, first-chair trial lawyer with deep experience in oil & gas, is a reflection of this strategy and momentum,” he said at the time.

Christina, who joins Orrick from DLA Piper, brings a proven record at trial, on appeal, and in US and international arbitration venues on behalf of US and global energy companies to Orrick,

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THE NUMBER OF MARKETS IN WHICH ORRICK IS PRESENT

including publicly traded energy companies, independent oil companies, state-owned oil companies, oilfield services firms and oilfield suppliers. She also has guided high-stakes commercial litigation in the financial, technology and other sectors in matters involving business torts,

LATIN AMERICA IS AN EXCITING AND DYNAMIC REGION (...) WE ARE WATCHING LATIN AMERICA CLOSELY

CHRISTINA MACCIO

”

foreign sovereign immunity, contract disputes, restrictive covenants and trade secret protection. Christina spoke with The Latin American Lawyer about the opportunities and challenges for law firms active in the region.

As Orrick expands its Latin America practice and focus, where does the firm see the biggest opportunities, in terms of sectors and countries? Are there also new sectors that are emerging as new sources of work in Latin America?

As a firm, we focus on serving the energy and infrastructure, technology, and finance sectors globally. Each of

these sectors is experiencing enormous growth in Latin America, with notable expansion in countries such as Mexico, Brazil, Colombia, Argentina, and Panama. Due to the rapid increase in Internet connectivity in South America, for example, technology companies, including fintech companies, are committing significant resources in the region to building infrastructure to grow their market, innovate, and develop products for an increasing customer base. As you note, privacy and data protection are of increasing importance, and companies will need guidance on how to navigate privacy laws in the region, as lawmakers examine and amend existing laws, in some instances to mirror the EU's data protection regulations (GDPR). Energy companies are making extensive investments across Latin America in renewables, power, and oil and gas sectors. Overall, we are watching Latin America closely, including changes in countries' laws and geopolitical developments, to anticipate and identify issues that our clients will need to address as they expand in the region and assess risk exposure. We also work with lawyers across our offices worldwide to help Latin American clients pursue expansion strategies and obtain capital in the international markets.

While Mexico had seen an increase in energy deals since the reforms to the sector in 2013, with a marked increase in foreign investment in the renewables and oil and gas sectors, has that now slowed as a result of President Andrés Manuel López Obrador's cancelling of the renewable energy auctions?

Overall, it has. The reforms of 2013

»»»



DAHL THOMPSON

were a promising moment for foreign investors, renewable energy companies, especially wind and solar, and IOCs. However, President López Obrador's decision to cancel renewable energy auctions as well as additional oil-field auctions effectively ended—or, at a minimum, sharply curtailed—the reform, with the intended result of consolidating power in Pemex and the Federal Electricity Commission over Mexico's energy sector. The impact of these changes on the oil and gas sector has been a halting

of additional inbound foreign investment into Mexico. Instead, the Mexican government is entertaining bids from oilfield services companies for exploration and production projects and other infrastructure projects. Mexico has tried this approach before. In the past, however, it has not yielded a level of investment or production that made a significant economic impact in the country. Perhaps, with advances in technology, the administration is optimistic that the results this time will be different.

In the renewable energy sector, prior to President López Obrador's announcement, Mexico had been one of the top 10 markets in the world for renewable energy investment and was considered a top producer of wind and solar energy. Following the change in its policy, Mexico's continued dominance in renewables such as wind and solar in Latin America may fade due to local risks—which have caused delays in project completion—as well as the federal government's change in priorities in the sector. As a result of all these factors, foreign investment in renewables in Mexico, like investment in oil and gas, has slowed. Without question, however, Mexico

AS RECENT POLITICAL AND LEGAL CHANGES THROUGHOUT THE REGION DEMONSTRATE, THE LAWS UNDER WHICH A COMPANY HAS BEEN OPERATING IN A CERTAIN JURISDICTION MAY CHANGE RAPIDLY

CHRISTINA MACCIO



remains one of the largest economies in Latin America. To what extent foreign investment may play a role in shaping the Mexican economy and its energy infrastructure going forward is a decision that remains in the hands of the Mexican government.

Are there any sectors or countries that present particular challenges?

Latin America is an exciting and dynamic region. Rather than focus on specific sectors or countries, speaking in very general terms, for companies examining an investment in Latin America or operating a current one, it is important to keep in mind that in some sectors, energy especially, you may not be dealing with purely commercial enterprises on the other side. You may be dealing with a sovereign, and by its own nature, a sovereign entity has its own motivations and institutional and political incentives, which may or may not be aligned with a purely commercial interest. Companies need to be aware of that reality when examining future investment or managing a current investment in Latin America, as that fact more than any other will impact the risk profile of any potential or current investment.

What are the challenges for a law firm engaging as counsel and litigator in Latin America?

As recent political and legal changes throughout the region demonstrate, the laws under which a company has been operating in a certain jurisdiction may change rapidly. US law firms advising clients operating in Latin America and lawyers handling disputes arising out of Latin America need to be aware of that fact. They need to stay current on political conditions in each country where they are advising clients as well as geopolitical developments in the region, as those conditions and

LAWYERS ADVISING CLIENTS ON INVESTMENTS IN LATIN AMERICA NEED TO ANTICIPATE THAT DISPUTES MAY ARISE

CHRISTINA MACCIO



developments undoubtedly provide context for a dispute in which a client may become involved—and, in certain instances, may even give rise to the dispute itself. They need to consult with and work closely with counsel on the ground in that jurisdiction and maintain a network of contacts in the business and government sectors in those jurisdictions.

Finally, lawyers advising clients on investments in Latin America need to anticipate that disputes may arise. A company or firm contemplating an investment in the region needs to plan with corporate counsel the structure of the investment in a way that ensures that any investment protection treaties to which the host country may be a signatory will apply. It is imperative for an investor to have a neutral dispute resolution provision in their agreement, in case an act of the host government would hinder or limit the transaction or investment or result in an expropriation. Full-service firms like Orrick have the knowledge and experience to recommend this optimum structure by involving both disputes and transaction teams to advise clients on any potential transaction or investment. ■



MIGUEL ZALDIVAR

STEPPING UP

Hogan Lovells has elected Miguel Zaldivar as the firm's new Global CEO, and whose appointment makes him one of only a handful of global law firm leaders of Hispanic-American origin.



Miguel Zaldivar has been elected as the new global CEO of law firm Hogan Lovells. Of a Latino background, and resident in Hong Kong, he talks to *The Latin American Lawyer* about the importance of Latin America to the law firm, and what he sees as the main challenges for law firms active in the region.

Q: How important is your Latino background, and what does that bring to your role as global CEO of the firm?

A: I was born and raised in Latin America. I received my first law degree in the civil law system from a Latin American law school and have practiced in matters involving Latin America during my entire professional career. I spent significant time working for clients in Venezuela, Mexico, Colombia, the Dominican Republic, and Honduras. When I joined the firm in 2002 I co-founded the Latin American Practice group and even after my move to Asia I kept involved in matters related to Latin America. On the practice side, my selection confirms to our partners and

LATIN AMERICA HAS BEEN A VERY IMPORTANT MARKET FOR OUR FIRM FOR OVER TWO DECADES.

Miguel Zaldivar

our clients a strong commitment to continue to expand our business in Latin America. Other benefits to the firm related to my background include a deep understanding of emerging markets and the increased significance of China as a leading investor in those markets, in particular as it relates to the Belt and Road policy initiative.

Q: How important is Latin America as a market for Hogan Lovells?

A: Latin America has been a very important market for our firm for over two decades. We continue to operate a Latin American “hub” out of Miami and have over 100 lawyers working out of our two Mexican offices, fully integrated with our Latin American teams based in São Paulo, New York, Houston, Madrid, London, and Beijing. Over the years we have developed a very close network of Latin American firms that enable us to operate in virtually every country in the region. On the litigation side, we have leading practices in arbitration, international litigation, and investigations (including anti-corruption related matters). On the transactional side, we continue to be viewed as one of the leading firms involved in sovereign financings and infrastructure development, complex energy matters and cross-border M&A. Those will continue to be our areas of focus. Despite ongoing political and socio-economic challenges our business in the region continues to grow. Our clients include a balanced combination of Latin American governments, state-owned companies, and family-owned corporations with financial institutions and multinationals from around the world.

In 2019, the Firm worked on matters that spanned across many Latin American countries in addition to Brazil and Mexico where we have our own offices. These included Argentina, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador,

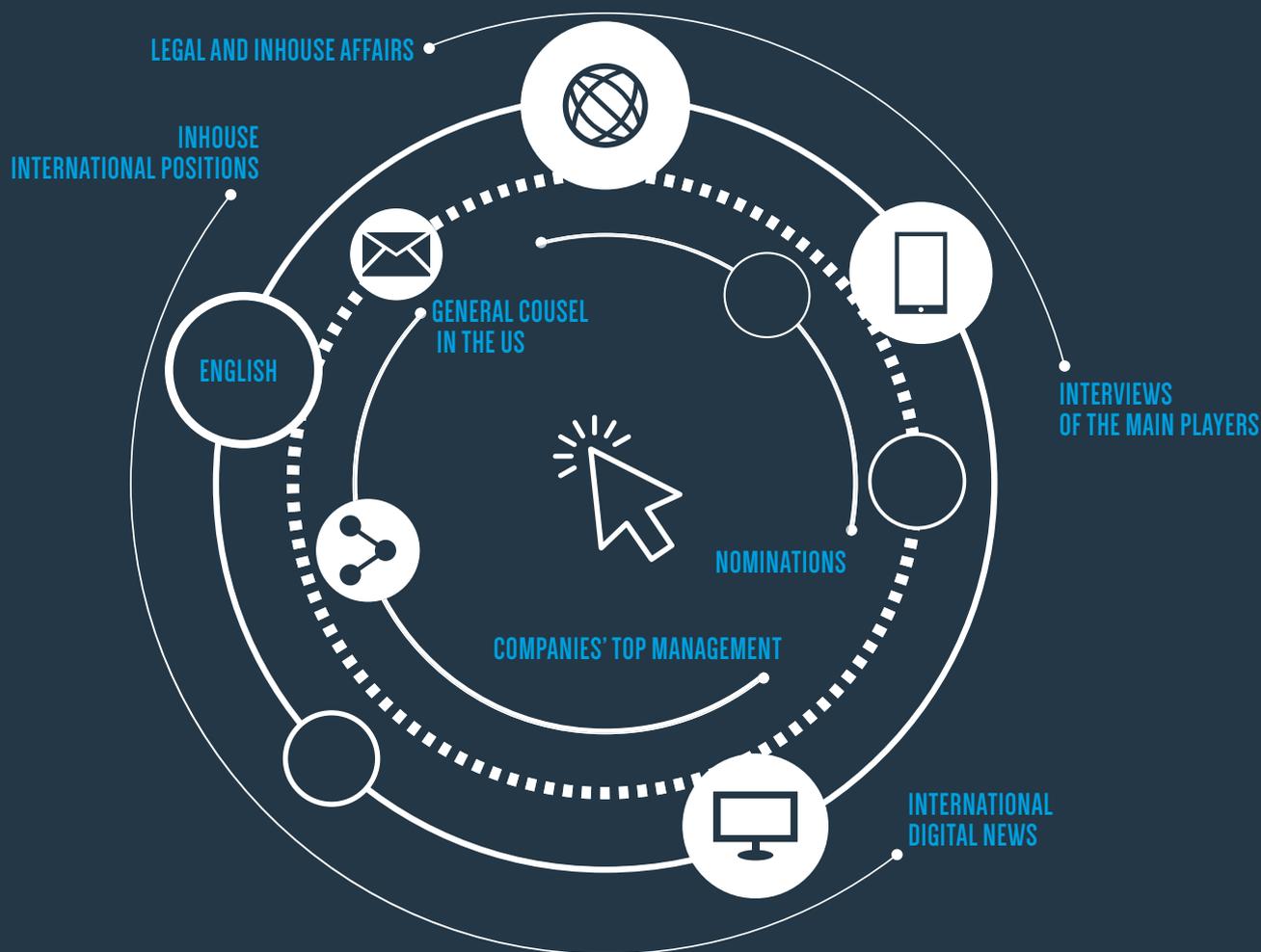
40%+

The percentage of the recently promoted partners and counsel who are women



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MY SELECTION [AS GLOBAL CEO] CONFIRMS TO OUR PARTNERS AND OUR CLIENTS A STRONG COMMITMENT TO CONTINUE TO EXPAND OUR BUSINESS IN LATIN AMERICA

Miguel Zaldivar

Guatemala, Nicaragua, Panama, Peru, Uruguay and Venezuela.

Q: What do you see as the biggest challenges for law firms nowadays? And are there any specific challenges in Latin America for law firms?

A: I think that right now the greatest challenge for law firms today is almost uniform: How to successfully overcome the effects of Covid-19 in our business and come out of this contingency stronger than before. In addition to the social tragedy that this pandemic represents for Latin America's already economically challenged region, this unfortunate event has negatively impacted the price of commodities; subjecting unprecedented stress on the economies of most countries in Latin America, which are particularly dependent on oil and gas and extractive industries.

Q: Are clients' demands changing?

A: Latin American clients continue to demand personalised services and we place a premium on providing high quality services with a "human" touch. They continue to expect the lawyer to know their business, the particular realities of their countries and to treat them with warmth and cordiality. Multinational clients have become quite sophisticated, and more now than before expect their international lawyers to be multi-lingual and multi-cultural, and to also demonstrate a deep understanding of local business practices and legal nuances (not to simply cover local issues with referrals to local counsel). Besides that, some clients have started to demand more diverse legal teams. International clients have been demanding law firms to provide more innovative solutions and legal technology to increase efficiency. Price pressure across the region is significant, causing firms to develop more creative alternative pricing arrangements and to explore risk-sharing mechanisms.

Q: Is there any new legislation emerging in Latin America that presents a new challenge to law firms and their clients?

A: Legislation is consistently changing in Latin America and every country has its own unique challenges, but we have seen the application and growth of compliance and anti-corruption enforcement from many governments as well as increasing interest in areas such as data privacy. Brazil, for example, is currently implementing regulations which mirror those of the European Union's General Data Protection Regulation (GDPR), and we are to use the experience from helping clients implement GDPR in Europe to help our clients comply with Brazil's regulations. I also expect we will continue to see more governments adopt these laws.

INTERNATIONAL CLIENTS HAVE BEEN DEMANDING LAW FIRMS TO PROVIDE MORE INNOVATIVE SOLUTIONS AND LEGAL TECHNOLOGY TO INCREASE EFFICIENCY

Miguel Zaldivar

Q: In January Hogan Lovells announced a slew of promotions across the globe, and which included the promotion of a partner in Mexico City. How do those promotions reflect the firm's growth and how it is responding to increased demand from its clients?

A: This year we had 29 promotions to partner and 56 promotions to counsel. In Mexico City we promoted Luis Ernesto Peón Barriga to partner and Cecilia Stahlhut Espinosa and Mauricio Fuchs Tarlovsky to counsel. These promotions reflect the quality, breadth, and depth of our diverse practice around the world and our commitment to nurturing and growing our talent. As you know, clients are demanding law firms understand the moral and strategic importance of diversity and inclusion. This year more than 40 per cent of our new partners and new counsel are women. Each of the individuals promoted have demonstrated our core values through their hard work, client dedication, leadership behaviours, and innovative thinking. ■



OSCAR ARRÚS

AT THE CUTTING EDGE

Law firm Garrigues is a market leader in Peru, but how does it manage to stay at the leading edge amid the strong competition from local firms? In a conversation with *The Latin American Lawyer*, the firm's lead partner in Peru, Óscar Arrús, explains



Garrigues has received multiple awards for the deals in which it has been involved, due to their complexity, volume and importance in the local market, according to **Óscar Arrús**, the firm's lead partner in its Lima office.

"For us it is very important to be at the cutting edge," Arrús says. "We live in a world practically without borders, where communications are increasingly rapid and clients therefore demand quality and speed. Garrigues has been able to accommodate itself in this borderless world through the expansion of its legal practice."

WE LIVE IN A WORLD PRACTICALLY WITHOUT BORDERS, WHERE COMMUNICATIONS ARE INCREASINGLY RAPID AND CLIENTS THEREFORE DEMAND QUALITY AND SPEED

Óscar Arrús



70%

the percentage of cases the firm deals with that are arbitration



32

the number of offices Garrigues operates



13

the number of countries in which Garrigues has a presence

The awards and recognitions the firm has recently received are for its involvement in Peru's inaugural sovereign bond offer, acknowledged by *LatinFinance* as Sovereign Bond of the Year and as Liability Management Deal of the Year by *Bonds & Loans Latin America*.

The firm also participated in the securitisation of \$1.15 billion and the structured financing of \$800 million for Lima Metro's Line 2, and which was heralded as deal of the year by IFLR and by *Trade*

Finance Americas, as well as Americas P3 Deal of the Year by Project Finance International. Garrigues also participated in the \$1 billion financing of Eckerd Perú (InRetail Pharma) for the acquisition of Quicorp, which was hailed as *leveraged finance deal of the year by Bonds & Loans Latin America*, and was also involved in the sale of a 57-per cent stake in Rutas de Lima, a transaction that was awarded the *private equity deal of the year award of 2017 by LatinLawyer*.

The firm has also participated in significant transactions, such as the financing of the Ruta del Cacao in Colombia and the bond offering by Sigdo Koppers in Chile.

Garrigues is present in 13 countries on four continents with a total of 32 offices, expanding its legal practice through the deployment of a network of offices.

“We now boast a presence that is one of the most important in the region, with offices in Colombia, Peru, Mexico, Chile and Brazil,” Arrús says.

“The fact that we are present in several Latin American countries has helped us to procure several clients. For example, in *cross-border* transactions with multinational companies, clients prefer to channel a case with a sole law firm that can help them in various jurisdictions, as that facilitates coordination, making the work more efficient.”

The firm is also seeing demand for its services grow, despite an adverse economic and political backdrop in Peru, he says. “Even though 2019 was a year of economic recession due to the political crisis, the workload has continued to grow year-on-year since we opened in 2014. And 2020 is the same.”

“All Garrigues’ professionals share the same identity: empathy towards the client, a constant

GARRIGUES IS AWARE OF THE CHALLENGE THAT CONSOLIDATING THE FIRM’S LEADERSHIP IN THE 21ST CENTURY IMPLIES, IN A WORLD OF CONSTANT TRANSFORMATION

Óscar Arrús

OUR SUCCESS IS THE TRUST OF OUR CLIENTS

Fernando Vives

concern to understand their needs and strict compliance with deontological laws. These qualities, together with our ample experience, training and disposition, are the reasons for which clients seek out our counsel.”

He says the sectors in which Garrigues is most active are infrastructure and energy, and with a significant number of projects lined up for public bidding over the next couple of years, the firm is expected to remain a protagonist in these sectors.

“It is expected that between 2020-21 some 23 infrastructure projects will be awarded in Peru, among them railways, roads and water treatment and storage plants, health centres, transmission lines and waveband spectrum. We expect to be involved in some of those projects. At the same time, due to regulatory changes in the education sector, we also expect to see an increase in M&A in that sector,” he says.

“Garrigues is aware of the challenge that consolidating the firm’s leadership in the 21st century implies, in a world of constant transformation. There is much competition in the legal sector in Peru, all of the local firms are aiming to offer a better service, and for that reason we strive to always be at the cutting edge.”

That also explains our investment in technological innovation and the constant training of the firm’s lawyers, he says.

“Garrigues has invested a lot of resources in innovation in recent years, not only in technological tools that result in a better service to the client, but also in initiatives that provide its professionals with the necessary tools to innovate and create a new way of collaborating among all the offices and with the client.”

This obeys the fact that clients’ demands are changing, as are the ways in which the firm operates, he says.



FERNANDO VIVES

“Due to the use of technology, the speed with which transactions are carried out has increased considerably,” he says. “Clients expect a quality product as quickly as possible, and which is why we are not remaining behind in terms of technology, but rather incorporating into our everyday work to make it more efficient.”

“In Garrigues we have a tech team that is constantly creating new applications and products that enable us to improve our work. For example, we have a system of knowledge management that allows us to share with our clients the information necessary at the opportune moment,” he says.

“We also currently use diverse artificial intelligence tools such as legal prediction systems and assisted document review and work automation processes, incorporating and adapting new technologies to the needs of our professionals with the aim of channelling their efforts into tasks that create greater value for the client.”

He says that arbitration is a very important area for the firm, and the Lima office opened a litigation and arbitration practice in 2018.

“Since then, our most important clients have begun to require our services in arbitration controversies, both national and international ones, and with increasing assiduousness.”

He says that more than 70 per cent of the cases the firm deals with are arbitration, and that, for 2020, he expects that percentage to increase, as the use of arbitration in Peru is growing considerably as a result of Law No. 26850, dating from July 1997 and which establishes arbitration as an obligatory mechanism for the solution of controversies with the state.

Garrigues was named ‘Law Firm of the Year in the Andean Region’ by *LatinFinance*, a distinction that, he says, confirms the firm is doing a good job and acknowledges the work of its team.

“Garrigues’ success can be summed up in this phrase by the firm’s executive president, **Fernando Vives**: ‘Our success is the trust of our clients. Our aim is to help them create value. Our strategy is to acknowledge, attract and manage talent.’”

But there are still challenges to be faced, Arrús says.

“The challenge is maintaining the same level of quality in our work, even amid the increase in demand for our services. But, fortunately, Garrigues is focused on the management of talent, and we therefore should not have problems in attending to new clients with the same quality with which we work today.”

BEST PRACTICES

Numerous law firms across Latin America, as well as firms in the US with a strong focus south of the border, are boosting their services offerings by adding new practices or growing existing ones, in response to an increased workload and client demand.



ADALBERTO MÉNDEZ LÓPEZ

TIn Mexico, ECIJA, which set up shop in the country in January in an integration with local firm Chacón & Rodríguez, has become the first firm in the country to incorporate a human rights and corporate responsibility practice, and for which it has recruited **Adalberto Méndez López** to head the practice.

Méndez López (*pictured*) has several years' experience as a company lawyer, a public official and an international consultant in more than 17 countries in matters of corporate social responsibility and human rights.

"Next year the UN will promulgate a law concerning companies and human rights, and which will bring a responsibility to companies to respect employees' rights," Méndez López says, and the new practice is designed to defend companies and help them design strategies to comply with the new regulations.

In addition, USMCA, the new free trade agreement among Mexico, the US and Canada, also contains clauses that guarantee workers' rights in the three

COMPANIES WILL NOW HAVE MORE CLARITY REGARDING COMPLIANCE AND PREVENTION REGARDING SOCIAL RESPONSIBILITY AND HUMAN RIGHTS, AND AT THE LEVEL OF INTERNATIONAL STANDARDS

Ricardo Chacón, managing partner, ECIJA Mexico

countries, and a mechanism for international claims in the event of the violation of such rights, and which obliges companies to create new methods of compliance, he says.

And locally, two proposals have been presented in the Senate to grant the national human rights commission the faculty to denounce companies' violation of human rights.

Companies must also implement much stricter standards with regards to recycling and environmental protection.

"The corporate social responsibility and human rights practice will also allow us to offer consultancy services, both to companies and public officials, as a means of crime prevention," Méndez López says.

According to Ricardo Chacón, managing partner of the firm's Mexico office, ECIJA is the first firm in Mexico to offer this practice, while only four firms in the world offer such services, but none of which have such a practice in Mexico.

Chacón says the incorporation of Méndez López "reinforces not only our leadership in Mexico with a pioneering human rights practice in the country, but also responds to ECIJA's aim to become the firm of reference in Latin America, where we have positioned ourselves as the Spanish law firm with the biggest presence on the continent".

"ECIJA is a leader in innovation and this practice we have opened is another example of our cutting-edge position, there was no such practice in a law firm in Mexico, and will advise companies on how



RICARDO CHACÓN

to act in order to be socially responsible," he says.

"Adalberto is an authority in this matter and which is why he is the ideal person to lead this practice, with a team of lawyers, and which will be a point of reference in this matter."

Méndez López has worked at the United Nations Development Programme, the Inter-American Human Rights Institute (IIDH), USAID and Chemonics International, as well as at the UK's Foreign & Commonwealth Office.

He is one of few lawyers in the Americas who has participated in proceedings before three of the world's four human rights protection institutions, and has authored books on the subject.

As part of the OECD, Mexico in 2017 adopted its mechanism for the resolution of controversies regarding companies' social responsibility and human rights commitments. As a result, "companies will now have more clarity regarding compliance and prevention regarding social responsibility and human rights, and at the level of international standards", Chacón says.

Social responsibility and respect for human rights are not the same however, Méndez López points out. "A company can be socially responsible and at the same time violate workers' human rights, and many in-house lawyers are not aware of that," he says. ■

Law firms in other countries are also adding new practices, or expanding existing ones, such as Garrigues in Colombia, García & Bodán in Central America, and King & Spalding in the US.

Colombia

GARRIGUES RECRUITS INFRASTRUCTURE PRACTICE HEAD

In Colombia, Garrigues has hired **Adriana Espinosa** to head its infrastructure practice as the law firm further consolidates its Latin America team.

Espinosa (*pictured*) is well-known in the Colombian market for her advice to companies and state bodies on the structuring and execution of major projects. Her appointment as an equity partner will be submitted to the next Garrigues partners' meeting.

With more than 15 years' experience and the recognition of the main international legal directories, Espinosa joins Garrigues from Colombian firm Arrieta Mantilla & Asociados, where she coordinated the infrastructure practice as a partner.

Her expertise will further boost Garrigues' infrastructure practice, a sector the firm



committed to in its expansion into Latin America and one in which it has excelled, both in Colombia and in the rest of the region, due to its participation in strategic projects, such as the legal structuring of the Bogotá metro system, the law firm said.

With the incorporation of Espinosa, Garrigues' office in Bogotá now has seven partners and more than 50 professionals covering the main areas of business law.

"For me, it is both a challenge and a source of motivation to be able to contribute to the growth and consolidation of the infrastructure practice," Espinosa said.

Javier Ybáñez, senior partner of Garrigues and coordinator of the Latin American practice, said, "this latest hire reflects the firm's commitment to continue bolstering its team with the best professionals". ▣

Central America

GARCÍA & BODÁN ADDS BANKING AND FINANCE PRACTICE

Central American law firm García & Bodán has incorporated a banking and finance practice into its services offering, and which will be led by the firm's regional director **Godofredo Siercke**, with **Carlos Téllez** as deputy director.

While the firm already offered counsel in this field, it was not officially presented as part of its portfolio of services.

The formal creation of this regional banking and finance practice puts these specialised legal services at the service of our clients and complements a full-service offering, partner Carlos Téllez said in a statement.

The structuring of a banking and finance practice places the firm at a better level and will serve as a platform to support the businesses of our clients, he said.



GODOFREDO SIERCKE

THE STRUCTURING OF A BANKING AND FINANCE PRACTICE PLACES THE FIRM AT A BETTER LEVEL AND WILL SERVE AS A PLATFORM TO SUPPORT THE BUSINESSES OF OUR CLIENTS

Carlos Téllez, deputy director, García & Bodán's banking and finance practice

García & Bodán has offices in San José, Costa Rica; in Guatemala City, Managua, San Juan del Sur and Tola, in Nicaragua; in San Salvador, and in Tegucigalpa and San Pedro Sula in Honduras. <#>

United States

KING & SPALDING HIRES ARBITRATION PARTNERS

US law firm King & Spalding has hired three international arbitration partners from Kirkland & Ellis in a bid to grow the firm's commercial work in Latin America and Europe.

The three new partners, **Javier Rubinstein**, **Lauren Friedman**, and **Lucila "Luli" Hemmingsen**, will expand the firm's investor-state arbitrations in those two regions.

Rubinstein, who served as vice chairman and global general counsel for PwC before joining Kirkland, will be based in Chicago for King & Spalding. Friedman and Hemmingsen will work out of the firm's New York office.

"The geographical and industry knowledge Javier, Lauren, and Lucila have, combined with their language skills and decades of experience



being outside and in-house counsel, make them a great addition to our International arbitration team," Andy Bayman, leader of King & Spalding's Trial & Global Disputes practice group, said in a statement.

Zach Fardon, managing partner of King & Spalding's Chicago office, said that the presence of Rubinstein will help expand the firm's international arbitration footprint into the city and its surrounding area.

Friedman's practice includes commercial and investor-state arbitrations on behalf of clients in the oil and gas and mining sectors, as well as consumer goods and public utilities. In addition to her arbitration work, Hemmingsen also advises clients on treaty protection structuring connected to those proceedings. [▶](#)

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 Invitation only

MONDAY 8 JUNE			Partners	Address
9:00 - 13:00	 CWP	Opening conference: "Innovation and artificial intelligence" (Lunch to follow)		Fondazione Stelline Corso Magenta, 61 Milan
14:00 - 16:00	 CWP	Roundtable: "New media"		Fondazione Stelline Corso Magenta, 61 Milan
From 18:30	 SEP	Corporate Counsel Cocktail		Gatti Pavesi Bianchi Piazza Borromeo, 8 Milan
TUESDAY 9 JUNE				
9:00 - 13:00	 CWP	Conference: "Africa and the Middle East" (Lunch to follow)		Fondazione Stelline Corso Magenta, 61 Milan
14:00 - 16:00	 CWP	Roundtable: "Cross border"		Fondazione Stelline Corso Magenta, 61 Milan
16:00 - 18:00				Fondazione Stelline Corso Magenta, 61 Milan
18:00 - 20:00				To be disclosed shortly
From 19:00	 SEP	Best PE Deal Makers Cocktail		Freshfields Bruckhaus Deringer Via dei Giardini, 7 Milan
WEDNESDAY 10 JUNE				
6:15 - 8:30	 SEP	Corporate Run		Milan
9:00 - 13:00	 CWP	Conference: "LATAM" (Lunch to follow)		Fondazione Stelline Corso Magenta, 61 Milan
11:00 - 13:00	 CWP	Roundtable		Fondazione Stelline Corso Magenta, 61 Milan
18:00 - 20:00	 SEP	Discussion and Cocktail		Legance Via Broletto, 20 Milan

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18:30 - 20:30	 SEP	Talks & Cocktail	 Toffoletto De Luca Tamajo	Toffoletto De Luca Tamajo Via San Tomaso, 6 Milan
19:30 - 23:30	 SEP	Corporate music contest		Milan
THURSDAY 11 JUNE				
9:00 - 13:00	 CWP	Conference on Finance (Lunch to follow)	CHIOMENTI	Fondazione Stelline Corso Magenta, 61 Milan
19.15 - 23:30		Corporate Awards		Milan
FRIDAY 12 JUNE				
9:00 - 11:00	 CWP	Roundtable on Arbitration		Fondazione Stelline Corso Magenta, 61 Milan
18.00	 SEP	International guest greetings		Milan

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MOISÉS HERNÁNDEZ

LAYING THE GROUNDWORK

TransCanada's senior legal counsel for Mexico and Latin America, Moisés Hernández, spoke to *The Latin American Lawyer* about the challenges and complexities of negotiating the legal hurdles of building natural gas pipelines in Mexico and negotiating the local laws



Mexico's 2013 energy reform included a major natural gas pipeline expansion plan, with the former administration pledging to invest some \$10 billion in building out the national pipeline network, taking advantage of cheap gas from Texas to supply the country's industries and power generation plants, coupled with a plan to build new plants and convert existing, oil-burning plants to natural gas.

TransCanada is among the companies that has muscled in to the country's midstream sector, having been awarded contracts to build three natural gas pipelines, including the country's first undersea duct, running from South Texas to Tuxpan, which came into commercial operation in September 2019.

The company is also building onshore pipelines connecting Tuxpan to Tula, in Hidalgo state, and to Villa de Reyes, in San Luis Potosí.

"We use external firms when time is of the essence, given that the preparation and analysis of a case can be time consuming, and

that would mean our team is neglecting other tasks and responsibilities," **Moisés Hernández** (pictured), TransCanada's senior legal counsel for Mexico and Latin America, says.

However, the process has been complicated with the change of government in Mexico, with state utility CFE, which oversees the contracts for the pipelines' construction, having sought to enter into arbitration with TransCanada regarding contracts awarded during the previous administration, following the new government's quibbling regarding such contracts.

INVESTING RESOURCES

"It's a very complex process in which different arms of Mexico's government are involved, such as regulatory bodies, the environmental protection agency, and federal, state and municipal governments, as well as private companies, such as the suppliers for the project," Hernández says.

The energy sector is heavily regulated and such projects are also subject to approval from the communities and towns they pass through, he says.

"The onshore, Tuxpan-Tula pipeline passes through four states, as does the Tula-Villa de Reyes section, through communally and privately owned lands,

THE CONTRACT PROCESS FOR EXTERNAL FIRMS IS ALSO COMPLEX, WHICH REQUIRES VALIDATION AT VARIOUS LEVELS, AND WE TRY TO USE FEW EXTERNAL COUNSEL BUT WHICH ARE SPECIALISED

Moisés Hernández, chief counsel for Mexico and Latin America at TC Energy.

and the company has had to negotiate right of way with numerous local groups, and which is a very complex legal process," he says.

"It's a process in which the company has to invest a lot of resources, both economic and human, with negotiations at a local level with farmers and landowners, and which include cultural aspects, respecting the uses and customs of indigenous communities, as they have a very deep respect for their lands, and this has given the company a very valuable learning curve," he says.

"We have an inter-disciplinary team of lawyers and sociologists to explain to the communities the impact the pipeline infrastructure will have.

Such projects have an environmental and economic impact, as natural gas is cleaner and cheaper for electricity generation, but such projects also provoke protests, given that not all the affected communities are in agreement with the construction of such infrastructure.

"We don't try and convince the local communities, but we simply explain both the positive and negative impacts and try to reach an agreement with them, with an ethical and professional approach, and by implementing programs that mitigate the negative impact of such projects," Hernández says.

"As the in-house legal team, we have a specialised group that attends to the communities and carries out the negotiation, and we formalise the contracts with the local communities, notary publics and the authorities."

And the in-house team also uses external law firms as counsel, he says.

"We use specialists in certain themes, and we consult with them, but our in-house team also features on-the-ground lawyers, for themes such as land acquisition and permits, as well as external consultants, who also advise us in the US and Canada, and we use local firms of repute in Latin America, leading firms in their respective fields and practices, and which also have an international presence," he says.

91,500km

the total length of TransCanada's pipelines in North America

\$5bn

the total investment by TransCanada in pipeline construction in Mexico to date

4

the number of TransCanada's natural gas pipelines now in operation in Mexico

2

the number of pipelines TransCanada has in development in Mexico

WHEN TIME IS OF THE ESSENCE

"The contract process for external firms is also complex, which requires validation at various levels, and we try to use few external counsel but which are specialised, and which we choose according to their expertise and experience."

The process for choosing law firms is based on requests for proposals, aimed at two or three leading firms, and based on an analysis of those proposals, TransCanada chooses its counsel.

"We use external firms when time is of the essence, given that the preparation and analysis of a case

can be time consuming, and that would mean our team is neglecting other tasks and responsibilities,” he says.

“But the external counsel is continually supervised and the final decision is always ours. We work hand-in-hand with them and always seek to listen to an external opinion, because when we are involved in a conflict, an external firm can provide us with a different perspective.”

He says it is also useful to listen to external counsel because they may have experience of similar cases, and the company can therefore see how a resolution has been reached in previous, similar cases.

However, TransCanada also has the challenge of being a pioneer, by being the first company to build an undersea pipeline in Mexico, for example.

“We consider external counsel as a supplier, but they are also our partners, our allies,” he says.

“But there can be risks, such as the divulging of confidential or sensitive information.”

He says that another challenge is the proliferation of law firms entering Mexico’s energy sector since the reform, but which do not always have the expertise in the sector that they claim.

WE HAVE AN INTER-DISCIPLINARY TEAM OF LAWYERS AND SOCIOLOGISTS TO EXPLAIN TO THE COMMUNITIES THE IMPACT THE PIPELINE INFRASTRUCTURE WILL HAVE

Moisés Hernández, chief counsel for Mexico and Latin America at TC Energy.

“Since the reform a new energy boom has erupted in Mexico, with new companies participating, and many law firms and lawyers have found a niche in this market, but that includes firms that were not experts in the energy sector, and while there is now a greater selection of such firms, few of them have expertise further back than 2013, and there is still much informality regarding legal services in the energy sector in Mexico.”

“There are many US law firms that have merged with Mexican firms, which gave them a big advantage, combining their expertise in the energy sector with the knowledge of local firms, given that the regulations and the contracts concerning the energy reform are different to those we are used to, and it’s important to know how business is done in Mexico, and the kinds of clauses that contracts contain.”

Hernández has the advantage of having studied in the US and worked for multinational companies and law firms, which gives him a global perspective, combined with his experience of the legal framework in Mexico governing the energy sector.

“If we look at energy reforms in Mexico, the reform in Mexico was much faster, and there are still many loopholes or gaps in the legislation, and it’s very important to understand that.”





FELIPE CÉSAR LOURENÇO



FELIPE CÉSAR LOURENÇO

PUBLIC CONTRACTS IN BRAZIL: when and why it is possible to renegotiate

Marianne Albers* and Felipe César Lourenço**

According to Brazilian Law (especially the Public Procurement Law), contracts entered by the Public Administration do not follow the same rules applicable to private contracts, *i.e.*, the public party has what are usually called “extravagant” powers, which allow it to terminate or unilaterally modify the contract, as well as to apply penalties to the contracting party in case of default or non-execution. On the other hand, the Law grants the private party the right to an economic-financial balance of the contract in the event of force majeure, extraordinary events, or contractual amendments unilaterally imposed by the

public party. Likewise, if the public party does not comply with its obligation to make the due payments for more than 90 days, the Law allows the private party to suspend the execution of its obligations, exception made to those contracts related to essential services/products (in these situations, suspension is expressly prohibited). Moreover, in case of a public calamity, public contracts cannot be suspended, even in case of default.

There is no question that the coronavirus pandemic can be considered as an unpredictable adversity, and consequently, in case of substantial increase of the price of goods, supplies or services related to a public contract, it is possible to request the revision of the original values agreed on in order to reestablish the economic-financial balance. As a final option, the parties can agree on terminating the contract without consequences. It is important to highlight, however, that the recognition of force

majeure in public contracts is not automatically but, in contrary, needs to be expressly recognized either by the contracting party or by a judge. Difficulties in delivering goods for reason of problems related to the import operation are normally not considered as a force majeure event and, thus, allows the contracting party to declare the non-execution of the contract.

Brazilian government is currently allowing the postponement of payment of certain obligations related to concessions as for instance, airport concessions. However, as said before, except in cases of a judicial order, it is the Government and not the private party which has the power to establish new values or to allow the deferral of obligations.

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MAURÍCIO PEPE DE LION

LABOR LAW

Mauricio Pepe De Lion**

From the labor standpoint, it is important to highlight that the Consolidation of Labor Laws (CLT) was enacted in 1943 and, in the last 70 years, only small and cosmetic changes were promoted. The so-called Labor Reform was implemented in November 2017 and, finally, several improvements were made.

However, nothing changed in relation to times of calamity. In a nutshell, the law and the courts are protective to employees and, even in case of a deep financial crisis, the intervention of a Labor Union is mandatory. At this point and time, employers have the following alternatives:

- Home office work, paid leave, individual or collective vacation: represents the most conservative position since the employees will continue to receive their full payment and benefits – it is possible to sustain that certain legal deadlines might

be disrespected due to the chaos caused by the Covid-19 pandemic;

- Reduction of worked hours with salary reduction: Federal Constitution establishes that salaries cannot be reduced at any circumstance. CLT, on the other hand, establishes that employers can reduce salaries in up to 25% in the event of force majeure, but case law is in the sense that such measure must encompass directors and executives, as well as a Collective Bargaining Agreement must be entered between the company and the respective labor union.
- Layoffs: CLT allows such suspension from 2 to 5 months, but there are several requirements to be followed such as the promotion of recycling courses and continuance of the benefits granting, but if the employer dismisses the employees in the following 3 months after

the end of the suspension period, the employee will be entitled to receive the accrued salaries, in other words, full payment during the entire period.

It comes from the above that the legislation in force does not provide employers with flexibility to handle employment matters even in times of deep crisis. For this reason, the Federal Government will issue a Provisional Measure aiming at authorizing employers not to observe certain legal requirements (especially the approval by a Labor Union) in order to maintain employment positions, but even in this case there will be risks involved so the opinion of an expert must be taken before implementing any of the proposed alternatives.

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