

Q&A

HEKA'S NEW HEAD
OF ARBITRATION

ELECTRICAL STORM

NEW RULES IN MEXICO'S
POWER SECTOR

TRENDS

TALKING ABOUT
A REVOLUTION

IN-HOUSE

ACCIONA'S LEGAL DIRECTOR
FOR MEXICO AND CENTRAL
AMERICA

DATA DRIVEN



As Brazil's data protection law comes into effect, erecting a legal framework that will bring new challenges both to law firms and their clients, we spoke to prominent partners on the implications of the new legislation.



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THE LONG ROAD TO RECOVERY

By Adam Critchley



Latin America has become what the World Health Organisation has termed the 'epicentre' of the COVID-19 pandemic, with the region on its way to accounting for almost half of the global death toll. Brazil heads the list of worst-affected countries in the region, and worldwide is second only to the US in terms of fatalities, and where President Jair Bolsonaro has tested positive for the virus, something of a comeuppance following his blasé attitude, refusal to wear a mask and his shows of support for Brazilians protesting the country's lockdown measures.

Mexico overtook Italy's death toll at the time of going to press and is likely to sit behind Brazil in the final tally as the number of infections continues to rise across the country, with the spread exacerbated by a reopening of many

industries, a gradual return to work underway and the simple impossibility for many people to stay at home due to the need to work and earn. Argentina, Chile, Peru and Colombia all remain in lockdown, with measures expected to be gradually lifted later this month, but as has happened in Europe, a surge in new cases can be expected as social mingling returns.

Bolivia's interim President Jeanine Áñez has also tested positive for the virus, along with three members of her cabinet, and which plunges the country's immediate political future into confusion with no date set for presidential elections, which were postponed due to the pandemic, extending the state of instability that has ensued since President Evo Morales was ousted from power following allegedly fraudulent elections last October.

Latin America's economic recovery will be a slow one, once it gets started, and yet the beginning of that process may still be a long way off. The World Bank forecast in June that the region, including the Caribbean, will see a GDP contraction of around 7.2 per cent this year, but the decline in output will be sharper in some countries, with local economists predicting a drop of as much as 10 or 11 per cent in some economies.

Once the recovery gets underway, fiscal policy must play a central role, to mitigate the social and economic impact of the pandemic, while providing the needed impetus to achieve a reactivation of economic activity that would help steer the region towards sustainable and inclusive development, according to a recent report by the Economic Commission for Latin America and the Caribbean (ECLAC). And despite the gloomy outlook, ECLAC is optimistic of the region's capabilities for recovery.

The report cites the swiftness with which the region's countries have reacted by adopting packages of fiscal measures that represent, on average, 3.2 per cent of GDP, and which include measures on public spending, tax relief and liquidity support backed by governments in the region. However, the region's countries face a drop in tax revenue, linked to the pandemic, as a result of the contraction in economic activity and lower prices for commodities, and spending needs for mitigating the pandemic's social and economic effects are rising quickly.

To counter that, countries will need to implement important fiscal stimulus measures to contribute to the reactivation of economic activity, investment and quality job creation, and in order to achieve this, greater fiscal efforts will be needed as well as adequate access to financing measures, according to the ECLAC. Let's hope the recovery can begin soon, and that the region's countries can rebuild, and not just a refashioning of the pre-pandemic fabric, but a profound and well planned restructuring to create social welfare states in which the well-being of all can be improved and sustained. ■

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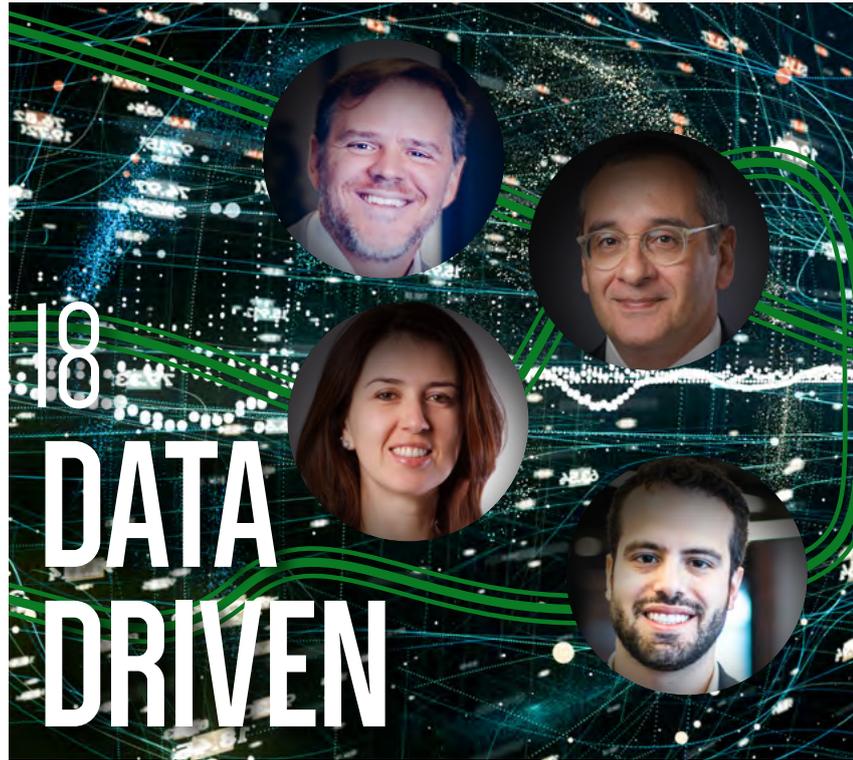
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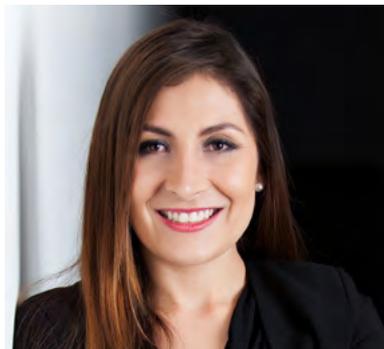
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JUAN FRANCISCO TORRES-LANDA

MEXICO

Hogan Lovells elects new head of Latin America practice

Hogan Lovells has named Mexico City-based **Juan Francisco Torres-Landa** as the new head of its Latin America practice.

The appointment is part of a series of changes announced to the firm's leadership across the globe.

Torres-Landa, who succeeds Bruno Ciuffetelli and Jose F. Valdivia, has excelled in civil, commercial, and corporate areas, helping clients with the financing of projects and acquisitions, foreign investments, foreign trade, arbitration, migration, environmental matters, economic competition, mining, taxation of non-residents, and telecommunications, the law firm said.

He has held the post of senior lecturer at several universities, including the National Autonomous University of Mexico (UNAM), Instituto Tecnológico Autónomo de México (ITAM), and the Universidad Iberoamericana. He has also been a keynote speaker in numerous forums, both in Mexico and abroad.

Torres-Landa joined Barrera Siqueiros y Torres Landa (currently Hogan Lovells) in September 1983, and became a partner in 1995. He also spent time as an associate foreign lawyer in Washington, DC., in 1990.

Among the other appointments announced by the firm include that of Alex Wong, who will be taking over the role of office managing partner for Singapore, replacing Stephanie Keen, who is moving into the expanded role of Asia-pacific regional lead for the corporate and finance practice, while Dr. Frederick Ch'en will be taking on a newly-created role of office administrative partner for the Tokyo office.



LICY BENZAQUEN



DIEGO ABEO

PERU

Olaechea appoints two partners

Peruvian law firm Estudio Olaechea has appointed two new partners, **Licy Benzaquen** in the energy and natural resources practice, and **Diego Abeo** in the criminal law and compliance area.

The appointments are part of the firm's strategy to strengthen and expand new practice areas, and such growth reflects the commitment of the firm to continue providing a comprehensive and specialised service to meet its clients' requirements, the law firm said.

Licy Benzaquen specialises in providing comprehensive advice to companies focusing on the energy, hydrocarbons and natural resources sectors. She has ample knowledge of regulated sectors and experience in relationships with public and private institutions.

She is a lawyer with a law degree from the Pontificia Universidad Católica del Perú, and holds a master's degree in business law from the Universidad de Barcelona, as well as a master's degree in regulation with a specialisation in energy from Universidad Peruana de Ciencias Aplicadas.

She is a member of Peru's National Society of Mining, Petroleum and Energy (SNMPE).

Diego Abeo has supported several public and private companies in the country and abroad in criminal cases, and is a graduate in law from the Universidad de Lima, and holds a master's degree in criminal law from Universidad de Sevilla in Spain.

He holds a PhD in criminal procedural law from the same university and a diploma of specialisation in compliance and good corporate practices from the Universidad del Pacífico, as well as a degree in compliance issued by AENOR-Madrid.



ROBERTO QUIROGA MOSQUERA

BRAZIL

Mattos Filho appoints new managing partner

Roberto Quiroga Mosquera has been appointed as the new managing partner at Brazilian law firm Mattos Filho, following the untimely death of the firm's former managing partner José Eduardo Carneiro Queiroz on June 29.

Quiroga (*pictured*) advises both domestic and foreign clients on a wide range of tax matters, including direct and indirect taxes, the tax implications of M&As, corporate restructuring, capital markets and cross-border transactions.

He is a professor of tax law at the Law School of São Paulo University and on the Master of Laws Program at the Law School of the Getulio Vargas Foundation.

Quiroga is one of Brazil's leading tax experts and is a regular contributor to specialised publications and media outlets, the firm said.

The firm had expressed its shock and sadness at the passing of late managing partner José Eduardo Carneiro Queiroz, who joined the firm in 1995 as an intern and became managing partner in 2015.



JULIANA DANIEL



BRUNO MASSIS



JANA ARAÚJO



LUCIANA MOUTINHO

BRAZIL

Lefosse elects new partners and counsel

Lefosse Advogados has announced the election of three partners and a counsel, boosting its capital markets and competition and regulation practices.

The new partners are **Juliana Daniel**, in the competition and compliance practice; **Bruno Massis**, in capital markets, and **Jana Araújo**, in capital markets and M&A, while **Luciana Moutinho** has been promoted to counsel, and who is also part of the firm's capital markets practice.

"These promotions reflect our commitment to recognise and award talent within our firm," managing partner **Carlos Mello** said. "Our new partners and counsel are outstanding lawyers, client driven, with a strong bond to our culture and values."

"The trademark of our firm is our careful planning for each of our initiatives. We are attentive to the movements of the market. With our singular organisation and differentiated processes, we encourage our partners and associates to anticipate demands from our clients, always maintaining the standards of excellence we have," he added.

Juliana Daniel has extensive experience in domestic and international administrative and court proceedings. Her practice is focused on anticompetitive conduct investigations with special emphasis on cartels and collusive practices.

Bruno Massis is well versed in capital markets transactions, including equity and debt, advising issuers and underwriters on public offerings and private placements of securities.

Jana Araujo has represented clients in several domestic and cross border debt and equity public offerings and private placements. She has solid experience in advising national and foreign clients on matters in connection with Brazilian corporate law, securities regulations, corporate governance and foreign capital regulations.

Luciana Moutinho has worked on significant transactions in the Brazilian capital markets in recent years and developed solid relationships with issuers, coordinators and regulatory authorities. She obtained her bachelor's in law degree from Fundação Armando Alvares Penteado, a postgraduate degree in economics from the Fundação Getulio Vargas and an LLM degree from Columbia University. She has worked as a foreign associate in the New York office of Simpson Thacher & Bartlett.



LILIANA HERNANDEZ-SALGADO

BRAZIL & MEXICO

Baker McKenzie promotes partners in Brazil and Mexico

Baker McKenzie has promoted five lawyers to partner in Mexico City, one to partner in the northern Mexican city of Monterrey, and four to partner in São Paulo.

The promotions to partner are part of a total of 85 across the firm's global offices, and which are effective from 1 July.

Across the firm's practice groups globally, tax and dispute resolution saw the largest intake of new partners, with M&A also significantly adding to their numbers.

During financial year 2020, Baker McKenzie also added 68 lateral partner hires.

In São Paulo the new partners are **Luciana Nobrega** and **Juliana Lemos**, in the tax practice; **Giovani Tomasoni**, in the projects practice, and **Bruno Dreifus** in the M&A practice.

In the firm's Mexico City office, the new partners are **Liliana Hernandez-Salgado**, in the employment and compensation practice; **Alfonso Curiel-Valtierra**, in dispute resolution; **Carlos Davila-Peniche** and **Marina Hurtado-Cruz**, in the IP and technology practice, and **Diana Juarez-Martinez** in the tax practice.

The firm's new partner in Monterrey is **Héctor Díaz Santana Iturrios**, in the tax practice.

"Welcoming 153 new partners, both home-grown and lateral, over the last 12 months is a clear sign of the importance we place in the long-term growth strategy of the Firm. I wish them all the best in their future career with Baker McKenzie," **Milton Cheng**, global chair of Baker McKenzie, said.



PALOMA INFANTE

CHILE

Morales & Besa names new director

Paloma Infante has been named director of the regulatory and environmental law practice at Chilean law firm Morales & Besa.

With more than 15 years' experience in environmental law, Infante (*pictured*) is a law graduate from the Universidad de Chile and holds an LLM in environmental law from New York University.

She focuses on environmental and mining, water and energy regulations, including the environmental evaluation of projects, litigation, negotiation with communities, land disputes, and regulatory frameworks for flora and fauna, fishing and aquaculture, among other themes.

Before joining Morales & Besa in 2018, she was director of the legal division at Chile's Environment Ministry, and head of the ministry's environmental regulation office.

Prior to that she worked for the country's environmental regulatory body, the Superintendencia del Medio Ambiente, where she worked on the implementation of the country's environmental regulatory framework.

She is a member of the environmental and sustainability committee of the Rocky Mountain Mineral Law Foundation, and she is a professor in environmental law at the Universidad del Desarrollo.

"The appointment of Paloma is in response to her outstanding professional career that, internally, has resulted in the restructuring and consolidation of our environmental and regulatory practice group, and in a powerful feminine leadership, and externally, in the expansion of our spectrum of clients and industries," Guillermo Morales, founding partner at Morales & Besa, said.



ERNESTO SALDATE DEL ALTO

MEXICO

Creel adds two partners

Mexican law firm Creel Abogados has recruited two new partners, to its finance and capital markets and litigation practices.

Ernesto Saldate del Alto joins the firm as a litigation partner, and who has been engaged in complex litigation cases in local and federal tribunals, including constitutional and administrative litigation. At Creel, he will also be focusing on alternative conflict resolution, and participating in ad hoc cases, and representing clients before tribunals both in Mexico and abroad.

Saldate graduated in law from the Universidad Panamericana in 2001, and specialized in penal law at the Escuela Libre de Derecho in 2008, and in civil and mercantile law at the Universidad Panamericana in 2009.

In addition, **Andrés Nieto** has also joined the firm as a partner in the firm's finance and capital markets practice, and who specialises in finance and capital markets, corporate law, M&As, and arbitration.

He has represented companies and financial institutions in restructuring, regulatory compliance, including anti-money laundering, loans and debt issuances. He also has ample experience in commercial arbitration.



CLAUDIA MERCEDES VIVAS ALONSO

NICARAGUA

Lexincorp names new managing partner

Central American law firm Lexincorp has named **Claudia Mercedes Vivas Alonso** as its new managing partner in Nicaragua.

Claudia has worked as a lawyer in many prestigious legal firms in Nicaragua and across a broad range of sectors, in the areas of corporate law, banking law, tax law, administrative proceedings, energy and hydrocarbons and real estate.

She has a broad knowledge of the local legal practice, in advising companies, as well as non-governmental organisations and embassies, having for many years served as senior legal adviser in the economic section of the US embassy in Nicaragua, according to the law firm.

Her extensive experience includes consultancy work for local and international companies in the elaboration of commercial, civil and corporate contracts of regional implementation.

She also advises energy and oil and gas companies for the obtaining of permits and licences for the development of energy projects in Nicaragua.

She is a member of the Bar Association of Nicaragua, the Chamber of Commerce of Nicaragua, and the Nicaraguan-German Chamber of Commerce and Industry. She graduated in law from the Catholic University and has a postgraduate degree in banking law from the American University in Nicaragua, and in international business from the INCAE Business School in Nicaragua.

She also has a master's degree in law, with a specialisation in international contracts from Thomas More-Luigi Bocconi University in Italy.

Lexincorp has offices in Nicaragua, Guatemala, El Salvador, Costa Rica and Honduras.

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MAKING THE GRADE

In June, Mexico joined the UN Security Council for a two-year stint, as well as the Hague System for the International Registration of Industrial Designs, and on July 1, the US-Mexico-Canada free trade agreement came into effect, marked by a meeting in Washington between presidents Donald Trump and Andrés Manuel López Obrador.

In mid-pandemic, not all of the news coming out of Mexico has been bad these past few months. The country, together with the United States and Canada, welcomed the introduction of the new free trade agreement, the USMCA, that replaces NAFTA, the North American Free Trade Agreement that had been in place since 1994. The negotiation of the new agreement was one of the priorities of the government of US President **Donald Trump** – along with the more contentious plan to build a wall along the US-Mexico border in an attempt to staunch illegal immigration.

The new trade agreement stipulates better conditions and pay for Mexican workers employed in assembly plants owned by US and Canadian companies, the so-called 'maquiladoras', many of which are located close to the US border, and in the automotive sector. Mexico has long been a vital piece in the supply chain for the US auto sector, assembling vehicles for multiple brands, including Ford, General Motors, Nissan and Volkswagen, in facilities spread across the country, from Puebla and Guanajuato to Aguascalientes. Better working conditions and pay was a condition for the approval in the US Congress of the USMCA stipulated by the Democratic Party. The USMCA also modified the auto sector's rules of origin, stipulating that a higher percentage of parts for vehicles assembled within the trade bloc must be manufactured within the three countries.

The USMCA came into effect on July 1, and which was celebrated with a meeting between Trump and Mexican President **Andrés Manuel López Obrador** in Washington, DC., and which was López Obrador's first trip outside Mexico as head of state since taking office in December 2018. The visit was criticized from some quarters in Mexico, in mid-pandemic, as it was seen as a show of support for Trump in an election year, and following a consistently negative and at times offensive attitude from Trump towards



Andrés Manuel
López Obrador

Mexico, and which began even before he was elected with campaign rhetoric aimed at garnering support for his plan to build a border wall.

But Mexico's private sector supported the visit, given the importance of the US as Mexico's largest trading partner, and López Obrador was accompanied to Washington by a delegation of business leaders, including Carlos Slim, Mexico's richest man and a key member of the private sector, given his business interests, in companies such as infrastructure conglomerate Grupo Carso, Telmex and Inbursa, among others. Canadian Prime Minister Justin Trudeau, whom López Obrador had called on to attend the meeting in Washington, declined the invitation, citing a busy schedule and, perhaps more importantly, the increasing rate of infections from the coronavirus in the US.

In June, Mexico was elected to a seat on the United Nations Security Council for a two-year term, along with India, Ireland and Norway, the second time in less than a decade that Mexico takes its seat on the international body. And in the same month, the country joined the Hague System, the first Spanish-speaking country in Latin America to join. Part of the World Intellectual Property Organization (WIPO), the Hague System provides a mechanism for registering industrial design, allowing for the country to protect its intellectual property, while guaranteeing that trademark designs from the other 90 member countries will also be respected in Mexico.

MEXICO JOINS UN SECURITY COUNCIL

Mexico has been elected unopposed to the United Nations Security Council, along with India, Ireland and Norway, for a two-year term.

Mexico was last a member of the UN Security Council from 2009-10.



Andrés Manuel López Obrador and Donald Trump

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USMCA COMES INTO EFFECT

The United States-Mexico-Canada Free Trade Agreement (USMCA) came into effect on July 1, the trilateral accord that replaces the North American Free Trade Agreement (NAFTA), which had been in force since January 1994.

The USMCA launched one month later than originally planned, as the three countries face the COVID-19 pandemic.

Renegotiating NAFTA and replacing it with a new deal was one of the campaign pledges of US President Donald Trump, who had bemoaned NAFTA as not being sufficiently beneficial to the US economy and US companies.

"The new United States-Mexico-Canada Agreement (USMCA) is a mutually beneficial win for North American

workers, farmers, ranchers, and businesses. When finalised and implemented, the agreement will create more balanced, reciprocal trade that supports high-paying jobs for Americans and grows the North American economy," according to a statement from the United States Trade Representative.

MEXICO JOINS THE HAGUE SYSTEM

Mexico has joined The Hague System, which provides a mechanism for registering industrial designs, and is the first Spanish-language Latin American country to do so.

The system allows designs to be registered, with a single application, filed in one language, and with one set of fees, in all the 91 countries that are party to the agreement, rather than having to register a design in each territory.

Mexico's incorporation into the Hague System means that both Mexican designers registering their designs are protected in the territories covered by the agreement, and designers in other countries now have their intellectual property protected in Mexico. 

COVER STORY

DATA DRIVEN



A large, bold, green letter 'B' is positioned on the left side of the page, partially overlapping the text. The letter is filled with a solid green color and has a white outline. It is the first letter of the word 'Brazil' which is partially visible.

Brazil's data protection law will come into effect in August, designed to provide a comprehensive legal framework and which will bring new challenges to companies and law firms as they help their clients navigate the new regulations. We spoke to prominent lawyers in Brazil who are experts in the IT, IP and data protection areas on the implications of the new legislation.

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Brazil's General Data Protection Law (Lei Geral de Proteção de Dados Pessoais, LGPD) comes into effect in August, as originally planned, following the Senate's rejection of a proposed postponement in April as the COVID-19 pandemic took hold. Although the law takes effect this year, fines and sanctions for non-compliance will not be imposed until August 2021, however

The law was designed along the lines of the European General Data Protection Regulation (GDPR) and sets out a set of rights that can be exercised by individuals, defines what is characterised as personal data, and sets out the legal bases for their lawful processing. The law has been seen as overdue in a country of around 140 million internet users, making Brazil the fourth largest market in the world in number of users and the largest in Latin America, while the importance of data protection has been highlighted during the ongoing pandemic, with so many activities, from e-commerce and communication, to video conference and transactions now taking place online.

"We believe the LGPD is a milestone in Brazil's data protection approach, as it is the first comprehensive data protection law in the country," Pedro Ramos, a partner and head of the data protection practice at law firm Baptista Luz, says.

However, while the legislation is in place, the regulatory body that will oversee it, the Autoridade Nacional de Proteção de Dados, has yet to be created, which leaves the legislation rather toothless until that happens.

"The data protection authority still needs to be created, and fast, since we are less than one year away from the entry into force of the LGPD, and both private individuals and legal entities need to be provided with further guidelines and instructions on the data protection rules." Ramos says.

As well as providing individuals and companies with a clear set of rights, the LGPD also obliges companies to appoint a data protection officer. But unlike its European counterpart, the law does not take into account the size or revenue of a company, but rather focuses on the information a company holds, and also exercises global jurisdiction. All companies will be subject to compliance with the LGPD when they process data within Brazilian territory, or the data of persons who are within Brazilian territory, irrespective of the location of the data processor, and which process data that is collected in Brazil.

'ROOM FOR IMPROVEMENT'

"The law was very much inspired by the [European] GDPR, although there are important differences," according to partner **Gabriela Paiva**, a partner at law firm Trench Rossi Watanabe's intellectual property and IT practice. "Overall, the Brazilian law is much less detailed than the GDPR, delegating authority to the regulator to provide further details on many important aspects and implications of processing activities, such as the international transfer of personal data, circumstances when a Data Protection Officer need not be appointed," she says.

"Overall, the new law is a positive development towards the protection of personal data, and it has been a valuable tool in strengthening an incipient culture of privacy since its enactment," Paiva says. "There is, nevertheless, room for improvement. For example, the preceding legislation was entirely consent-based, but during the law-making process the bill evolved and adopted a broader approach, allowing the processing of personal data based on any of ten possible legal bases, with consent being just one of them. However, there are still remains of that initial consent-based approach throughout the law, which may impact how the law is construed and enforced."

In addition to consent being one of the legal bases for the lawful processing of data, the LGPD also stipulates compliance with regulatory obligations, the execution of public policies, contracts or similar instruments, the

carrying out of research, performing judicial or arbitration procedures, the protection of the health of an individual, and to protect credit as being the other bases upon which data is used. Under the new law, the act of processing personal or sensitive data must be documented from initial collection to termination, and it will be mandatory to have a description of what kind of data is collected, the retention time, the purpose of the collection and who that data can be shared with.

THE LAW HAS BEEN A VALUABLE TOOL IN STRENGTHENING AN INCIPIENT CULTURE OF PRIVACY.

GABRIELA PAIVA,
PARTNER, TRENCH ROSSI WATANABE



GABRIELA PAIVA

While that level of control and protection will be largely welcomed by individuals, particularly as consumers, who are more and more vulnerable to data breaches, the new law could prove more of a headache for corporations as the observance of the new rules could imply higher costs and risks of non-compliance, and they will have to find a way to comply in a smooth and efficient way.

“The LGPD will ultimately make companies conscious that personal data is exactly that, personal, and, most importantly, not up for grabs,” according to **Raphael de Cunto**, a partner in law firm Pinheiro Neto’s technology practice. “If the companies want or need to handle personal data, then it must be done with care and under the rules of the new law. We are now seeing what happens to every law after its enactment: certain aspects do not fit the reality, or they cause distortion when applied to real situations. This just makes the role of the data protection authority more important,” De Cunto says.

The need for such a law has also been made more acute by the outbreak of the COVID-19 pandemic, and which has hit Brazil particularly hard, with the second-highest death toll and number of confirmed cases after the US, with no sign of a slowdown of contagion.

“Data protection has gained special attention during the pandemic, since the processing of personal data, specially health data, has been an important tool to develop public health policies and determine preventive measure, such as imposing social distancing or using contact-tracing technology to fight the spread of the coronavirus,” according to Gabriela Paiva from Trench Rossi Watanabe. “Having a data protection law in force would assist companies in taking action consistently with the protection of personal data and privacy,” she says.

However, while the timing is perfect, the economic impact of the pandemic may

mean that some companies will be reviewing their investment priorities, she says. “And which in some cases means that implementation may be suspended or slowed down.”

And the negative economic impact of the pandemic and the subsequent shifting of companies’ priorities as they seek to weather the storm and trim the sails towards economic recovery follows the already uphill task of convincing companies of the importance of investing in compliance with the new law, she says.

“From a business perspective, initially, when the law was first published, in August, 2018, one of the biggest challenges was buy-in: convincing officers and boards that investment – not only financial, but also of time and human resources – in implementation was necessary due to the exposure to non-compliance that the law would bring,” Paiva says. “Not only in terms of sanctions, but also in connection with the potential for litigation and reputational damage due to a failure to comply. Once the implementation project was approved, the next challenge was to secure proper team engagement, as the project can last from months to a couple of years and be very demanding,” she says,

COMPANIES ARE FACING DIFFICULT DECISIONS, CHOOSING BETWEEN THE RISKS OF NOT IMPLEMENTING THE LAW, OR IMPLEMENTING THE LAW IN A WAY THAT MAY NOT BE HOW THE REGULATOR WILL CONSTRUE IT.

GABRIELA PAIVA,
PARTNER, TRENCH ROSSI WATANABE



THE LGPD WILL ULTIMATELY MAKE COMPANIES CONSCIOUS THAT PERSONAL DATA IS EXACTLY THAT, PERSONAL, AND, MOST IMPORTANTLY, NOT UP FOR GRABS.

RAPHAEL DE CUNTO,
PARTNER, PINHEIRO NETO



in reference to the long preparation required to achieve compliance.

‘A CULTURE OF AWARENESS’

As with many new laws, the LGPD will likely imply teething troubles and a process of adaptation, and will even be unpopular in some quarters, as companies and directors

“THE LGPD IS NOT A LAW THAT WAS PUSHED BY CROWDS IN THE STREETS, THERE WAS NO POPULAR CLAIM FOR IT, AND YET, IT CAME AT THE RIGHT MOMENT.”

RAPHAEL DE CUNTO,
PARTNER, PINHEIRO NETO



become wary of compliance and make internal adjustments to ensure it, although many would agree that the timing is good.

LGPD is not a law that was pushed by crowds in the streets, there was no popular claim for it, and yet, it came at the right moment, sponsored by several different stakeholders that embraced the idea that we would be better off having a discussion in Congress than a regulatory void that inevitably would cause each aspect of data protection to be fought in the trenches of the judicial system,” according to Pinheiro Neto’s Raphael de Cunto. “Banking today is heavily data-driven for example. It needs legal certainty to thrive.”

But imposing that legal certainty brings its challenges to those that will be subject to the new law, he says.

“Probably to a great majority of clients, especially those Brazilian companies that were never exposed to data protection issues like multinationals, there will be several challenges,” De Cunto says. “Getting to understand the law, creating a new culture of awareness of data protection within the working environment, and perhaps even having

to develop new business models in order to be LGPD-compliant. It’s similar to when companies had to wake up, but in a harder way then, to the need to build internal structures and practices to be in compliance with anti-corruption laws.”

And, according to **Pedro Ramos of Baptista Luz**, it is precisely that need to create a new culture of awareness that will be one of the first challenges for law firms’ clients to overcome.

“Brazil is a country newly introduced to the culture of data protection, therefore one of the main challenges the new law brings is the need to change the mindset of the local market about what privacy and data protection relate to, and how personal data should be processed,” Ramos says.

The same challenges among clients are anticipated by **Rafael Pistono**, the founder of Brazilian law firm CTA, which was recently integrated into Spanish firm ECIJA, marking the latter’s entry into the Brazilian market, at the same time as it entered Ecuador with the integration of GP&A González – Peñaherrera & Asociados Abogados.

“For the clients, the main challenges are to educate and raise awareness throughout the organization,” Pistono, who is a partner in CTA ECIJA’s TMT and privacy and personal data practice, says. “Do the mapping, inventory and recording of the personal data processing activities, assess the risks of the operation, keep up the monitoring and control of regulatory compliance, adjust contractual relationships with third parties to mitigate legal and regulatory risks, and develop a plan for incident assessment, response and remediation,” he says.

‘THE TIME IS NOW’

But despite the fact that penalties will not be imposed until after August 2021, companies must not delay their preparation for its enactment, even



though this may now be hampered by the adverse economic effects of the pandemic, according to Pedro Ramos of Baptista Luz.

“We believe that the postponement of the law, at least for a short period, is a good idea, since, in addition to not yet having a functional data protection authority, the pandemic has significantly impacted business in Brazil,” he says. “Companies, unfortunately, are unable to focus their efforts on conducting an adequacy program, due to the major financial and managerial impact.”

“However, the postponement of the law does not mean that companies need to disregard the data protection rules. The time to conduct an adequacy program and implement a privacy governance program is now. It is, as we have said, a significant cultural change, and consequently changes the way work is perceived. Companies have to act fast and get their businesses in compliance with the data protection rules. That is important not only from a legal perspective, but also

WE HAVE NOTICED THAT CLIENTS RESPOND BETTER TO, AND HAVE MORE CONFIDENCE IN, COMPANIES THAT MARKET AND DISCLOSE THEIR PRIVACY PROGRAM.

PEDRO RAMOS,
PARTNER, BAPTISTA LUZ

”

from a business perspective: we have noticed that clients respond better to, and have more confidence in, companies that market and disclose their privacy program,” Ramos says.

Time is also of the essence to ensure that the law becomes part of the national fabric, and people begin to use it and abide by it, according to Pinheiro Neto’s Raphael de Cunto.

“I don’t particularly like having LGPD postponed. Especially in Brazil, it may create the unhealthy perception that ‘this law will not stick’, a euphemism for lack of enforcement,” he says.

But the priority is the creation of the regulatory body, the lawyers agree.

“Many aspects of the law have been left for the regulator to detail, but the regulator is not yet active,” Gabriela Paiva of Trench Rossi Watanabe says. “Consequently, companies are facing difficult decisions, choosing between the risks of not implementing the law, or implementing the law in a way that may not be how the regulator will construe it, and which could result in the need for new investments and further changes to the companies’ activities.”

“FOR THE CLIENTS, THE MAIN CHALLENGES ARE TO EDUCATE AND RAISE AWARENESS THROUGHOUT THE ORGANIZATION.”

RAFAEL PISTONO,
FOUNDER OF BRAZILIAN LAW FIRM CTA



“However, the Authority is not yet active, rendering many elements of the law unenforceable or, at least, questionable, and jeopardising an effective protection of privacy and personal data,” she says.

While the Data Protection Authority is not yet completed and in place, the uncertainty remains,” according to CTA



RAFAEL PISTONO

ECIJA's Rafael Pistono. “The expectation is that the additional regulations that will be provided by the yet to be created regulator will bring more structure and provide guidance to the sector.”

‘A WHOLE NEW LEGAL PRACTICE’

And despite the lack of a regulator to enforce the new law, law firms have already begun to see an increase in their workload, and a change in their clients' demands.

“There is much demand among companies relating to the implementation of the law, and which includes conducting data mapping exercises, defining the legal bases for processing activities, reviewing data protection/privacy related documentation, as well as developing a data protection program for the company,” Trench Rossi Watanabe's Gabriela Paiva says.

“I think we were already seeing a steady increase in work related to privacy as the economy and communications more and more turned online,” according to Pinheiro Neto's Raphael de Cunto. “The LGPD itself was necessary given this shift from offline to online. But with the LGPD a whole new legal practice is already a reality.”

“I believe the LGPD will generate different types of work,” he says. “There will be a first phase, where the basic need is to assist clients on how to adapt their business to the new rules, then we will see a wave of issues arising out of compliance with the law when it enters into force. The work will both be on the consulting and on the litigation side.”

“The increase in work due to the LGPD is already a reality in the market,” Baptista Luz's Pedro Ramos says, and in which the challenge, he says, is “interpreting and suggesting recommendations to our clients without the widely anticipated guidelines from the data protection authority”. 📄

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CWP: Conferences and working program

SEP: Social events program

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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

Legalcommunity Week 2021 – Program (in progress)

CWP: Conferences and working program

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SEP: Social events program

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14:00 - 16:00	 CWP	Roundtable on Arbitration		Tbc
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

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RELISHING THE CHALLENGES



CRISTINA VITERI

Ecuadorian law firm Heka Law incorporated Cristina Viteri as a partner and the new head of its litigation and arbitration practice in June, and who talks about the use of arbitration in the country and the challenges posed by the economic fallout from the COVID-19 pandemic.

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Cristina Viteri brings a wealth of experience to the role, having previously held the position of legal director at Quito's metro operator, Empresa Pública Metropolitana Metro de Quito, a company that faces the Herculean task of building an underground passenger train service in the country's capital city, with its challenging topographical features. That role implied a series of legal challenges too, given that the company is currently engaged in a dispute with Metro de Madrid, the contractor engaged as adviser on the construction of the network's first line, over the costs incurred, which were over and above the budget for the original contract. In December 2019, the Ecuadorian government imposed a \$1.4 million fine against Metro de Madrid, but

which the Spanish company is contesting, and the subsequent litigation is expected to be a lengthy and complex process.

Ecuador has a long history of arbitration between the government and multinational companies, most notably against oil major Chevron over the environmental damage caused in the country as a result of its oil drilling. In another high-profile case, French oil company Perenco launched a complaint with the International Center for the Settlement of Investment Disputes (ICSID) in 2008 following the Ecuadorian government's modification of its hydrocarbon laws and the decision to terminate existing production-sharing agreements and issue new contracts, and which the oil company saw as detrimental to its interests. Ecuador launched a counterclaim, alleging environmental damage caused by Perenco, and the resulting verdict awarded damages to both sides.

Prior to holding that position at the state-owned company, Viteri, who holds a master's degree in conflict resolution from the University of Geneva, worked as a legal adviser to the country's public prosecutor's office, having also worked as an associate at law firm Winston & Strawn. Fresh into her new role at Quito-based Heka Law, Viteri took time out to talk to The Latin American Lawyer about the increased use of arbitration in Ecuador, and the challenges and opportunities of both leading an arbitration and litigation team and helping the firm's clients navigate their way out of the economic crisis caused by the

COVID-19 pandemic, and which has impacted Ecuador especially hard.

Q: Do you see the use of arbitration continuing to increase in Latin America?

A: Without a doubt, arbitration in Latin America will continue to be a rising trend. One of the effects of the pandemic is the impossibility of the two parties, including states, to comply with their obligations in terms of investments. As a result, during these months, numerous arbitration processes will begin in diverse jurisdictions. In addition, arbitration tribunals have shown that they can more easily adapt than courts to the use of remote means for the carrying on of proceedings and holding hearings, making them a much more attractive and beneficial mechanism for dispute resolution under the current circumstances.

Q: Why is the use of arbitration on the increase in Ecuador?

A: In the case of Ecuador, since the promulgation of the Productivity Increase Law of 2018, the state has the obligation to include arbitration, either national or international, in investment contracts with an investment value above \$10 million. As a result, the number of contracts between the state and private companies that contain arbitration clauses has increased as new investments have been made in the country. Heka Law has seen the opportunity to attend to the needs of its clients and the requirements of the market in these matters, as the number of arbitration processes has evidently increased.



THE PANDEMIC HAS HAD SERIOUS REPERCUSSIONS ON THE ECONOMY, BUT AT THE SAME TIME, IN THE LEGAL SPHERE, IT HAS CREATED MANY OPPORTUNITIES.

Cristina Viteri, partner and head of litigation and arbitration, Heka



Q: Are you also seeing other firms grow their arbitration and litigation practices?

A: A number of firms have incorporated specialized lawyers to strengthen their arbitration practices.

Q: Ecuador made its arbitration laws more flexible in 2018 in order to attract more foreign investment, has that had the desired effect?

A: In 2018 the Ecuadorian government launched a series of measures to increase foreign direct investment, and one of the main mechanisms to achieve that was the enactment of the Productive Promotion Law. Unfortunately the desired amount of investment has yet to be achieved. The flexibility implemented in arbitration matters was a positive move, but there are many additional factors at play to attract foreign investment into the country at the required percentage. Investors expect more

ABOUT HEKA

Heka is a Quito-based, full-service law firm with six partners. Its practice areas include labour law, public contracts, corporate and M&A, finance and capital markets, real estate, foreign investment, litigation and alternative conflict resolution, intellectual property, tax, foreign trade and customs regulations, technology, telecommunications and media, and immigration.

structured reforms, such as, for example, those applying to the labour regime.

Q: Is the country currently working to modify its arbitration laws?

A: For the moment no regulatory body of any relevance has been established. However, the Task Force created by the Arbitration Commission and ADR of ICC Ecuador is developing a project for a reform of the Arbitration and Mediation Law. I have the pleasure of working with various renowned jurists in the drawing up of that proposal as a secretary of the Task Force.

Q: There have been some big arbitration cases in Ecuador already, such as the state versus Chevron, and versus French company Perenco. Have those cases set a precedent for more to come?

A: Ecuador has faced various battles in arbitration, real battles between David and Goliath, which are very important and have set important precedents in arbitration matters. Among those are the Chevron II and Chevron III, the Burlington, Perenco, Oxy and Copper Mesa cases, and the arbitration planned by the government of Ecuador against the United States over the interpretation of the TBI, among others.

Those that you mention were arbitration cases that were very drawn out, and extremely costly for both parties. Both the Chevron and Perenco cases have had an environmental focus, as, in both cases, the



DEFENDING A CASE, EITHER IN LOCAL OR INTERNATIONAL COURTS, REQUIRES A GOOD LEADER WHO IS ABLE TO DRAW UP A STRATEGY AND LEAD A TEAM TO ACHIEVE THE DESIRED RESULTS.



state presented arguments relating to the damage caused in the east of Ecuador during the time that those companies were operating in the country. Without a doubt it was a challenge for the state to defend itself against the alleged violations committed against the protection standards contained in the TBI, and at the same time present the environmental case. In this sense, the precedent that has been set for the state's defence teams is to be more proactive, and act not only in defence but also identify the non-compliance attributable to the other party.

Q: And with regards to the conflict between the Ecuadorian government and Metro de Madrid, concerning the construction of the Quito metro, is that arbitration case likely to proceed, and can you perceive a possible winner at this stage?

A: The state comptroller general established responsibilities for an amount of more than \$1 million, against Metro Madrid, for indirect costs relating to the design of the Quito Metro network's Line 1. It appears that Metro Madrid will fight the decision. In this case it is difficult to know if there will be litigation, and which side has the greatest possibility of winning.

Q: Amid the economic crisis caused by the COVID-19 pandemic, the Ecuadorian government announced the closure of several state-owned companies. Are those attractive assets for foreign investors to acquire?

A: The economic crisis and the

“

I AM PASSIONATE ABOUT LAW AND IN THIS NEW ERA I SEE THE POSSIBILITY OF LEAVING A MARK WITH MY NAME ON IT IN THE AREA OF LITIGATION.

”

losses reported during several years by companies such as Ecuadorian airline TAME have led the government to take the decision to begin insolvency processes. Several state-owned companies are affected by the measure, which aims to monetise their assets and put their delegate their activities to the private sector. We hope that in the following months there will be expressions of interest from the private sector.

Q: As the country seeks to reopen and reactivate its economy, what are the challenges and opportunities for Heka in this process?

A: Due to the effects of the pandemic and the need for countries to reactivate their economies, law firms face the challenge of offering legal solutions to the problems that are arising. Without a doubt



CRISTINA VITERI

the pandemic has had serious repercussions on the economy, but at the same time, in the legal sphere, it has created many opportunities. Heka faces the challenge of facilitating effective solutions to the problems faced by its clients. As a result we find ourselves working constantly in the search for opportunities and options so that they can improve their current situation.

Q: Has the pandemic changed the way the firm works, and has it caused an increase in the firm's workload?

A: Due to the confinement, the firm's day-to-day work is carried out remotely. The adaptation to a new way of working has been simple for those of us at the firm. We could even say we have had unexpected results, as our performance as lawyers has improved. The current focus is to attend to clients, in the most effective way and as quickly as possible. In general, the requirements of our clients demand quick solutions. During this time of the pandemic the

work of the firm's litigation practice has shown promising figures, especially in the search for out-of-court settlements. At the same time, we've seen a decrease in contractual, labour and telecommunications work.

Q: And finally, what are the personal challenges of joining and leading a new team?

A: The challenges are huge. Being the head of a litigation team is a complex job. From my experience working in the State Prosecutors Office, I was able to learn that defending a case, either in local or international courts, requires a good leader who is able to draw up a strategy and lead a team to achieve the desired results. I want to deserve the post that I occupy, and be at the level of my partners. For me it is very exciting to work with a team of young lawyers and be able to manage my own portfolio. I am passionate about law and in this new era I see the possibility of leaving a mark with my name on it in the area of litigation. 📌



ELECTRICAL STORM

In May, the Mexican government announced new rules governing the development of electricity generation projects in Mexico, handing the government more control over the industry, but which deals a blow to private players. We talked to lawyers about the ramifications for companies already involved in the sector, and the likelihood of litigation going forward.



attainable with the auctions, but which now look unlikely to be met.

Private sector companies are within their right to go to tribunals to contest new rules regarding the development of electricity generation projects in Mexico, the country's Energy Minister Rocio Nahle announced following the government's introduction of new rules governing the electricity sector, in apparent anticipation of the legal battles ahead as energy project developers, particularly those that have already signed contracts as a result of tendering winning bids at auction, seek to achieve redress.

Nahle said the government will respond to the private sector's demands and is not closing the door to dialogue.

The new rules have been met with anger by many industry insiders, who see the changes as a partial rolling back of the energy reform, introduced in 2013 by the previous federal administration, and which threw the energy sector open to more private investment and has resulted in the construction of a number of utility-scale solar power facilities and wind farms, part of the then government's pledge to ramp up the participation of renewable energy in the country's energy matrix.

Mexico's employers' confederation Coparmex said in a statement that the new rules "will drive away significant investments in the country, while causing interested parties to go to national and international courts to demand that Mexico's government complies with its obligations."

Several companies involved in renewable electricity generation have already filed direct injunctions against the measures announced by the National Electricity Control Centre (CENACE) on April 29. However, those injunctions were challenged by CENACE and state utility CFE, as they violate the Injunction Law.

'A STEP BACKWARDS'

"It is important to point out that, independently of the granting of those temporary suspensions, they will continue their legal process, and we will have to be mindful of the final resolutions that are

Mexico's energy ministry (SENER) has tightened its control over the electric power industry with the announcement of new rules concerning the participation of renewable energy projects, giving more authority to state utility CFE as the predominant player, citing the need to guarantee supply to the country's grid.

However, the new rules are a slap in the face to the renewables industry, which had grown its participation in the country's electricity sector as a result of the 2013 energy reform, which allowed for the carrying out of three electric power auctions, and which successfully awarded capacity generation to a number of players, and led to the development of wind and solar farms in several states.

The buildout of renewables projects also obeyed the previous government's targets of making renewable energy generation a bigger part of the country's energy matrix, comprising 35 per cent by 2024, and 50 per cent by 2030, goals which appeared

announced in relation to the definitive suspension by the ruling,” according to **Juan Carlos Serra**, of Mexico City-based law firm Basham Ringe y Correa.

“It is also likely that companies will take out injunctions against the decree that sets out the measure in protection of the so-called reliability, security and continuity of the national electricity generation sector,” he says.

“Representative groups in the sector, such as the private sector have said that they will pursue all legal means against the agreement, and it is likely we will see lawsuits filed against it,” he says.

Serra says the move could limit the participation of renewable energy projects in the country’s generation matrix, and prove to be a discouragement to new investments.

“THE NEW RULES COULD BE SEEN AS A STEP BACKWARDS FOR THE ELECTRICITY SECTOR IN MEXICO, AFFECTING THE CONDITIONS FOR COMPETITION THAT HAD BEEN GENERATED BY THE 2013 ENERGY REFORM.”

Juan Carlos Serra,
partner, Basham Ringe y Correa

“Above all for the way in which it is being carried out by the federal government, as the decision was not duly analysed by the National Commission for Regulatory Improvement (Comisión Nacional de Mejora Regulatoria) in order to determine the regulatory impact that the publishing and implementation of the decree would have on the electricity sector,” he says. “And especially on the renewable energy sector, and which could contravene the current legislation and also send

the wrong signal to the industry in the sense that there is no security or legal certainty with respect to the applicable regulatory framework, and which is an obstacle to, and discourages, foreign investment in the sector,” he says.

“At the same time, with respect to the content of the agreement, part of the new rules could be interpreted as a step backwards for the electricity sector in Mexico, by seeking to strengthen the CFE as a key player in the country’s electricity sector, affecting the conditions for competition that had been generated by the 2013 energy reform.”

Asked whether the move will affect the federal government’s goal of achieving 35 per cent of renewable power generation capacity in its energy matrix by 2024, and 50 per cent by 2030, as set out in the 2013 reform, and as part of Mexico’s commitment to the COP21 Paris climate agreement,



JUAN CARLOS SERRA

Serra said it would likely impede the attainment of those goals.

“As renewable energy projects in Mexico are affected, as they can’t begin electricity generation, or their development by foreign companies is suspended, Mexico’s production of clean energy will decline, and that will be an obstacle to achieving those percentages set out by the reform,” he says.

He adds that the development of projects awarded in Mexico’s electricity auctions could also be affected. The previous Mexican government successfully carried out three auctions following the energy reform, although the fourth, which was scheduled to take place in late 2018, was postponed by President López Obrador and never reinstated.

“From our perspective, the announcement means that some projects already under development as a result of the auctions could be affected,” he says.

“The senate’s energy commission identified some of the projects that could be affected, and for that reason presented proposals so that CENACE and SENER modified the plans to respect the permits issued for the projects, and to avoid discrimination against renewable energy projects.”

“Those projects that were in the planning stage and which have yet to be developed will have to evaluate the impact of the measures to determine whether they would still be financially viable,” Serra says. “They will have to take into account the commitments acquired in their contracts and the legal consequences if the projects are no longer developed.”

The government of President López Obrador has been harshly criticised by the renewables sector for the rolling back of the development of the sector in Mexico, and for giving more priority to hydroelectric projects, a form of generation that has been seen as problematic in other countries in the region, such as Colombia, as it is adversely affected by extreme weather conditions, such as droughts.

But rather than having abruptly turned against the development of renewables, Serra says the new measures obey a policy that seeks to strengthen state utility CFE and provide it with a more

predominant role in the country’s electricity sector, as it enjoyed prior to the reform.

“The federal government’s policy is to ensure that the country’s electricity is predominantly generated by CFE-owned power stations, despite the fact that some of those power stations are more pollutant,” Serra says.

But that policy also intrinsically limits the participation of the private sector.

“The government is sending a signal to the sector and investors seeking opportunities in Mexico’s electricity space, and which could be construed as limiting that participation,” he says.

“THE RULES MEAN THE FEDERAL GOVERNMENT DETERMINES WHICH ELECTRICITY GENERATION PROJECTS ARE STRATEGIC, AND DISPLACING OTHERS, SUCH AS RENEWABLE ENERGY PROJECTS”

Juan Carlos Serra,
partner, **Basham Ringe y Correa**

According to SENER, the ministry defines strategic power station projects as those whose development and implementation are necessary to comply with the country’s national energy policy, and which should be given priority connection to the grid.

“That could be interpreted as the federal government being the one that determines which electricity generation projects are strategic, displacing others, such as renewable energy projects,” Serra says.

The government cited the need to guarantee electricity supply to the grid as the motive for the



BERNARDO M. CREMADES JR.

new regulations, as well as energy security, given that wind and solar power are characterized by their intermittency, and would require back-up from thermoelectric and other more conventional power sources, such as oil-fired power stations.

But what Mexico is really lacking, rather than more conventional power stations, is transmission and distribution infrastructure, Serra says, to avoid a ‘bottleneck’ preventing the connection of new projects, as has happened in other countries, such as Chile, as it increased its renewable energy generation capacity.

“We believe that supply to the grid was already guaranteed, and all the measures taken post-energy reform, including the electric

power auctions, were done so with the aim of guaranteeing supply and sufficient capacity,” Serra says.

In the wake of the new rules, law firm Thompson Knight advised that foreign investors in Mexico’s electricity sector may want to examine whether they have claims under one of Mexico’s 32 agreements for the promotion and reciprocal protection of investments, and six free trade agreements.

“THERE WILL BE LITIGATION.”

**Bernardo M. Cremades,
Jr., partner, B. Cremades y Asociados**

“These treaties may allow foreign investors to bring claims, for example, that Mexico has not provided their investments with fair and equitable treatment. If so, these investors may be able to initiate international arbitration, including before the International Center for Settlement of Investment Disputes (ICSID),” the law firm said.

DISCOURAGING INVESTMENT

Bernardo M. Cremades Jr., a partner in the litigation and arbitration practice at B. Cremades y Asociados in Madrid, agrees that the government is setting itself up for conflict with the sector.

“There will be litigation,” he tells *The Latin American Lawyer*. “Renewable energy companies are taking out injunctions in Mexican courts to challenge the new rules. If those injunctions are not successful, foreign investors could make use of treaties for the protection of investments to claim compensation for damages suffered in arbitration courts,” he says.

“It’s important to point out that this situation could generate huge losses, not only for renewable energy

“THE MEXICAN GOVERNMENT IS GIVING PRIORITY TO ELECTRICITY GENERATION USING FOSSIL FUELS, AND WHICH IS A STEP BACKWARDS COMPARED WITH THE GLOBAL TREND.”

**Bernardo M. Cremades,
Jr., partner, B. Cremades y Asociados**

companies, but also for other players in the sector, such as companies that construct power stations, suppliers and other contractors. Furthermore, the new rules may not be the last. Look at Spain, for example, where the cuts to renewable energy participation took place in several phases,” Cremades Jr. says.

He also believes that the new rules will prove a discouragement to foreign investment in the sector.

“By making access more difficult for participants, foreign investment will be discouraged. Furthermore, the legal uncertainty it creates will be a blemish that could have a negative effect on foreign investment in Mexico in other sectors. And those effects do not take long to be noticeable, with Iberdrola [the Spanish electricity generation company that is the largest foreign investor in Mexico’s electricity sector] having announced in recent weeks that it is cancelling a \$1.2 billion investment in a co-generation plant Mexico. That will likely not be the only case,” Cremades Jr. says.

And he adds that, more than a reversal of the previous government’s policy of promoting investment in renewable energy, the policy of President Andrés Manuel López Obrador is one of favouring Pemex, the country’s state-owned oil company, which reported massive losses in first quarter, shortly before the new rules for electricity generation were announced by the government.

“The Mexican government is giving priority to electricity generation using fossil fuels, and which



RAQUEL BIERZWINSKY

is a step backwards compared with the global trend,” Cremades Jr. says.

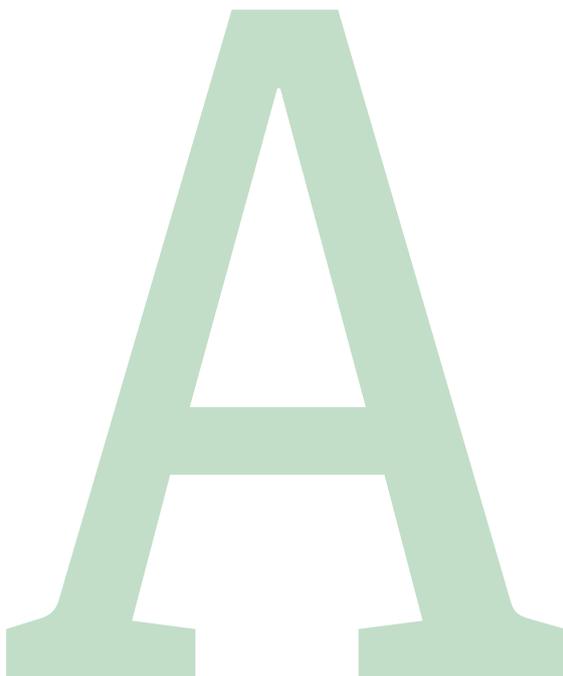
According to a note by law firm Norton Rose Fullbright, the new policy imposes a new requirement on developers to obtain a generation permit. Developers will have to request an interconnection feasibility opinion from CENACE before applying for a generation permit from energy regulatory body CRE. The new requirement is in addition to the interconnection studies that CENACE must conduct to determine what upgrades are required to connect a project to the grid.

“It is a clear attempt to set roadblocks to interconnection of privately-owned power projects,” the law firm says in the note, penned by **Raquel Bierzwinzky**, Javier Félix Muñoz and Carlos Campuzano. 📧

TALKING ABOUT A REVOLUTION

Alternative legal service providers are still a fledgling industry in Latin America, but law firms across the region are beginning to see the important role they can play, by reducing their workloads and costs, participants in a recent webinar agreed.





Alternative legal service providers (ALSPs) are relatively new on the scene in Latin America, but the potential for their growth is huge, as law firms seek to reduce their costs and outsource work in order to focus on their specialities, while maintaining their personalised relations with clients.

Given the increased use of technology and artificial intelligence, ALSPs can tailor their services to a law firm's specific needs, enabling firms to outsource certain monotonous or time-consuming tasks, while ALSPs are diversifying and offering a wider range of services, such as data analytics which can inform law firms' decisions and provide predictive intelligence that enables them to better cater to their clients' needs.

In a recent webinar organised by Gericó Associates and hosted by managing partner **Marc Gericó**, as part of the firm's Latin American Legal Forums series, representatives of ALSPs in Chile, Colombia, Panama, Peru and Spain discussed the emerging reality of a legal sector served by such companies, and the benefits they can bring, allowing law firms to sharpen their focus on their expertise and complementing their work, and allowing businesses to source legal services without having to go to a law firm.



"The ASLP is a model that has become more consolidated in the English-speaking market, but we had to adapt the model to the Spanish-language context," **Silvia Perea**, managing partner of Spanish company Abroading, says. She explains that her company began to detect the areas in which law firms are seeing a repetition of tasks and where law firms' efficiency can be heightened by shifting those tasks to an ALSP.

"In Spain there was not a willingness to embrace the concept, the idea of alternative legal services was not one that people were familiar with, and we had to explain the concept and the way we work, as a method that would allow attorneys to dedicate time to more important tasks," she says, and which involved explaining the ALSPs' role.

"We are not a threat to the traditional law firms, but rather we allow them to concentrate on their specialization. What we offer is added value. I



“THERE ARE NO RULES EXCEPT CREATIVITY.”

Silvia Perea,
Managing Partner de Abroading de España

don't think ALSP's are going to take away work from law firms, many companies will continue to work with their law firms of choice, and we play a complementary role," she says.

"Ten years ago the legal sector in Spain was very different, the concept of alternative legal services did not exist, and we had to convince clients that it was possible to work in a different way, and which would allow lawyers to dedicate their time to their specialization."

"In younger lawyers, with a more open mindset, and who are more versed in technology, we found that there was more immediate acceptance of the way we work. We have developed a way of working that is much more flexible, less rigid, and which allows more space for creativity. We become an extension of the law firm's team. There are no rules except creativity," she says.

“THE ALSP MODEL ALLOWS FOR MUCH MORE AGILE OPERATIONS AND LOWER COSTS FOR LAW FIRMS.”

Silvia Perea

"The ALSP model allows for much more agile operations and lower costs for law firms, and the positive impact the use of ALSPs on law firms is that we allow for the elimination of monotonous tasks and a greater focus on specialisation."

She says it is very important that the client is aware that the ASLP has expertise in the theme being addressed, the capacity to carry out the necessary processes, and also the creativity to design solutions.

"What also creates confidence in the client is the company's track record," she says.

‘ARRIVING LATE’

"What we are seeing in the Latin American legal market is that we are arriving late to a global trend, and that is because ALSPs are only just beginning to emerge," according to **Andrés Jara**, the CEO of Alster Legal in Chile.

"But they do represent a good solution to law firms' needs," he says.

"Argentina has been a pioneer in this area, as the English-speaking pioneers in the space have not explored Latin America, in part because of the region's size. The first markets to see such companies emerge were Mexico and Brazil, but demand for such services has yet to mature, and there is a lack of segmentation, and a lack of supply, and full-service law firms are still seeking to cover all services, from high-end to more routine services, but ALSPs are working to prove that there are alternative ways of providing legal services," he says.

"There is definitely an opportunity for those companies seeking to provide such services, but it requires a lot of marketing and the creation of spaces for conversation, an opening of doors, so that more law firms can get to know what alternative services are on offer."



“LATIN AMERICA’S LEGAL MARKET IS ARRIVING LATE TO A GLOBAL TREND.”

Andrés Jara,
CEO, Alster Legal, Chile

‘AN EMERGING REALITY’

Managed legal services are now starting to emerge, but it is still only an emerging reality,” Jara says. “There are limitations, for example, because of the civil responsibility of lawyers, and in Latin America we hope to see the emergence of more ALSPs, and law firms will appreciate that.”

An ALSP can focus on legal process outsourcing (LPO) and can elevate their sophistication by adding more services and specializing, whereas managed legal services is outsourcing a specific task and leveraged by technology.

One of the key tools that are applied by ALSPs is the use of artificial intelligence, and law firms are

starting to realise the importance of using such tools, according to **Alberto Lozano**, director of Cavelier in Colombia. He says that, while many talk about the proliferation of the term ‘big data’, what many law firms are lacking is precisely that, the data.

“It’s important to begin to capture data so that we can analyse them and make decisions,” he says, explaining that one of the most important steps Cavelier took was installing software that would enable it to analyse data and make more informed decisions, and which he described as a kind of ‘Aladdin’s lamp’.

“We came to the conclusion that with artificial intelligence we can ask questions, such as finding out how much a project will cost us, we often charge a lot because we don’t know if a case is going to be difficult or not, and so we would charge a lot, but that would push us out of the market,” he says.

“Another question we can ask is how long will a case take, and which lawyer we should assign to each case in order that we can be more efficient for the client.

AI allows us to predict, based on the analysis of data. But the most important thing is not to replace

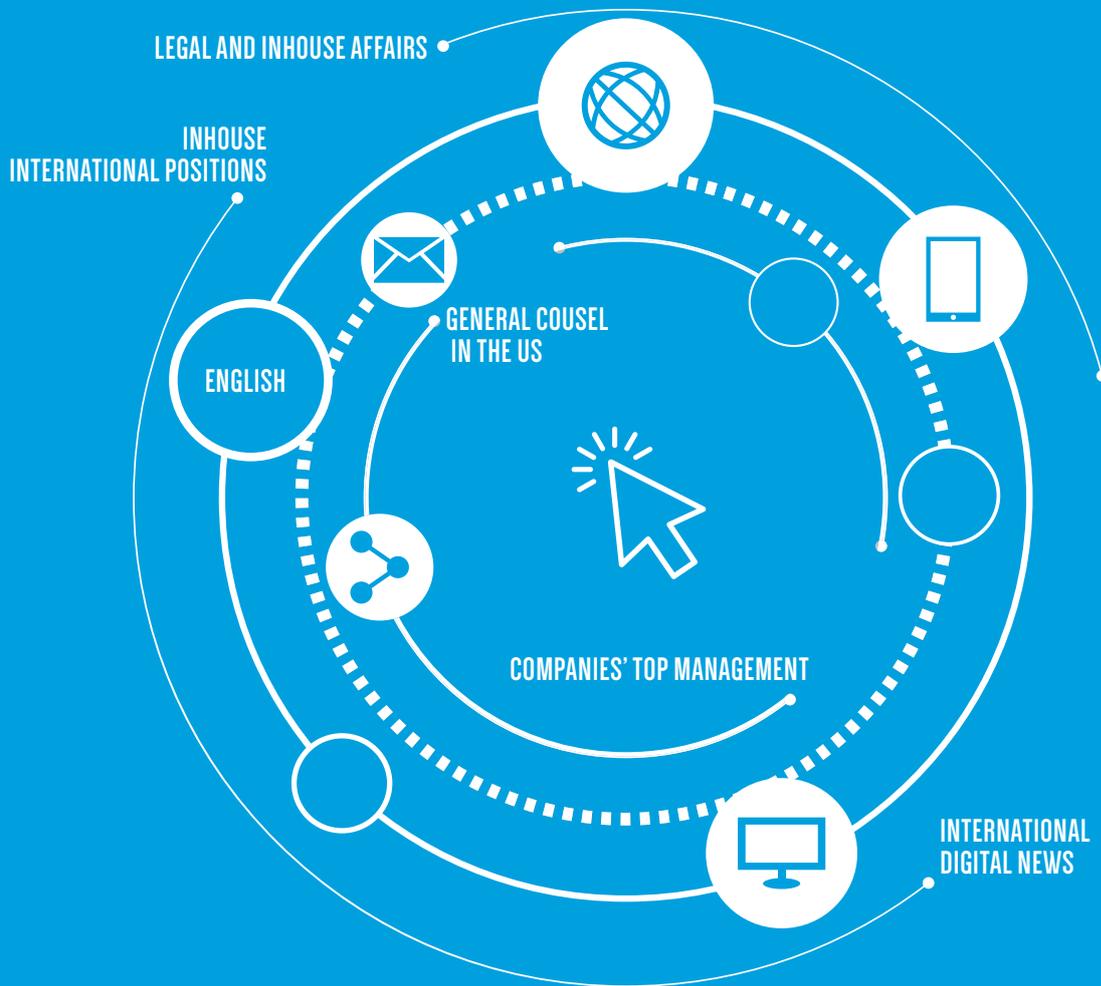


ALBERTO LOZANO



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“WE ARE ONLY JUST BEGINNING TO SEE THE EMERGENCE OF ALSPs, BUT THERE IS A WHOLE OCEAN OF OPPORTUNITIES.”

Juan José Hopkins,
Partner, Sumara Hub Legal in Peru

the lawyer, and that the personnel, the ethics, remains the centre of the firm, and the technology operates around them.”

‘BEHIND THE CURVE’

According to **Juan José Hopkins**, a partner at Sumara Hub Legal in Peru, the region is behind the curve in the use of ALSPs and AI.

“In Peru, over the last two years, we saw that there was a large number of studies carried out by large firms that wanted to encompass all services, from large deals to the smallest cases, and many clients felt dissatisfied with a service from a large firm from a partner or associate who was not the person they had initially dealt with. Clients wanted someone on the team that they could trust, and they have also recently realised that there are



JUAN ANTONIO BOYD

other ways of contracting legal services, and not just from the big law firms.”

“We are only just beginning to see the emergence of ALSPs, but there is a whole ocean of opportunities, and the more people realise that there are alternative ways of receiving legal services, the more such companies will proliferate,” he says.

There are many jurisdictions in which ALSPs are restricted, as lawyers must offer their services from within a law firm, but those restrictions do not exist in Peru, he says, making it a market that is receptive to the proliferation of ALSPs.

“Many firms tell us, ‘I can’t control income, but I can control expenditure,’” according to **Juan Antonio Boyd**, Director of Veló Legal in Panama. “More and more law firms are looking for alternative services to reduce their costs, and law firms of any size will always seek to reduce their expenditure. We don’t charge by the hour, our fees are presented to the client at the start of the contract, once they are approved. In this way, the law firm has full control over its expenditure, he says.

“That makes ALSPs an excellent response to law firms’ needs.”

THE WINNING COMBINATION

Law firms are like a company's 'family doctor', with knowledge of its track record, strengths and weaknesses, which enables them to provide emergency attention, according to Acciona's legal director for Mexico and the Caribbean.



CÉSAR ALEJANDRO VILLEGAS ÁVILA

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When it comes to hiring external legal services, companies rely on law firms in the same way that a family relies on its doctor, knowing that they are being attended to by someone that is familiar with their track record, their strengths and their weaknesses, according to Acciona's legal director for Mexico and the Caribbean, **César Alejandro Villegas Ávila**.

“As with a family doctor, having a ‘family law firm’ is essential,” he says. “Nobody can provide you with emergency legal attention or first aid like your trusted lawyer. As in all relationships, the relationship between a company and a law firm is based on honesty, communication and transparency,” he says.

“That is the winning combination.”

Spanish infrastructure and renewable energy company Acciona has a presence in 65 countries, of which 12 are in Latin America. In Mexico, where the company has been operational since 1978, Acciona is engaged in renewable energy projects, construction, road concessions, water projects and the services sector.

The company’s energy projects include wind farms, including the largest wind complex in Latin America, in Oaxaca state, and the Ventika wind farm in Nuevo León state, the company’s largest turnkey project carried out by the company globally, and a solar photovoltaic facility in the state of Sonora.

Acciona also built the country’s Baja California II thermal power plant, in the state of the same name, and is currently developing the Atotonilco wastewater treatment plant near Mexico City, among other projects.

In Central America, Acciona is present in Costa Rica, El Salvador, Nicaragua and Panama, and in the Caribbean in the Dominican Republic and Trinidad and Tobago, while in South America the company’s footprint extends to Brazil, Chile, Colombia, Ecuador and Peru.

65

The number of countries in which
Acciona is active

“EXTERNAL FIRMS COMPLEMENT THE CAPACITY OF OUR IN-HOUSE DEPARTMENT IN ALL SENSES.”

César Alejandro Villegas Ávila, legal director, Mexico and the Caribbean, Acciona

SUCCESS STORIES

When it comes to choosing a law firm, Acciona’s in-house team looks for both the prestige of the firm and the professional trajectory of the lawyers themselves, for which it looks at case histories and success stories, Alejandro says.

“We have a competitive hiring process, based on diverse criteria. First of all, we identify the law firms that have the greatest prestige in the practice area that we require. Wherever possible we try to get to know directly the professionals who will offer the service, their experience and their success stories. The cost of the service is also an important element to consider, although that is evaluated together with the other criteria, such as previous experience, the opinions of other clients, the law firm’s capacity for attention and its availability,” he says.

“We are also very strict about law firms fully complying with ethical values and corporate policies of integrity, as well as legal compliance, under both national and international standards,” he says.

12

The number of Latin American countries
in which Acciona operates



CÉSAR ALEJANDRO VILLEGAS ÁVILA

“WHEREVER POSSIBLE WE TRY TO GET TO KNOW DIRECTLY THE PROFESSIONALS WHO WILL OFFER THE LEGAL SERVICES, THEIR EXPERIENCE AND THEIR SUCCESS STORIES.”

César Alejandro Villegas Ávila, legal director, Mexico and the Caribbean, Acciona

And when it comes to hiring an external firm, the company will often seek a particular firm or lawyer because of their experience and knowhow, he says.

“In Mexico we have excellent law firms and lawyers that are at the top of our minds when we are seeking legal services. In the energy sector there are firms that have specialised teams that are recognised in the sector and they are the ones we

look for when we begin our search,” he says.

“Prior experience and specialisation in the sector facilitate the selection of a firm or a specific lawyer,” he says.

The benefits of using an external firm are having the guarantee of being able to rely on a full and high-quality service in the required timeframe, as well as an external and objective point of view that can clear up doubts or questions that are perhaps more difficult to resolve from within the company,” he says. “External firms complement the capacity of our in-house department in all senses.”

But there is always the risk, when hiring legal services, that the quality will not be as high as expected, he says.

“Often expectations can exceed results, or you may find that quality and price has not been optimal. But that risk exists in all manner of contracting.”

“Some law firms are ruled out however due to a possible conflict of interest, as the firm may represent a competitor or counterpart, or a firm may be ruled out because there has been an unfortunate experience in the past, perhaps because a firm did not meet the high standards of corporate ethics and values of our company,” he says.

“We have a diversified legal team experienced in various practice areas, but we do tend to use external firms when complex issues require lawyers who are specialised in areas such as project financing, antitrust, M&A, and litigation and arbitration,” he tells *The Latin American Lawyer* during a phone conversation amid the country's lockdown due to the COVID-19 pandemic. “As a legal services department, we need to be able to have specialised resources of the highest quality that the business requires, and we therefore always have the support of the law firms that help us to cover those needs.”

“We have used the services of law firms of all kinds, both local and global firms, and which has enabled us to build a fluid and successful relationship with them. Trust is essential for the development of such professional and commercial collaboration,” he says.

“PRIOR EXPERIENCE AND SPECIALISATION IN THE SECTOR FACILITATE THE SELECTION OF A FIRM OR A SPECIFIC LAWYER.”

César Alejandro Villegas Ávila, legal director, Mexico and the Caribbean, Acciona

THE LEGAL LANDSCAPE

He says that changes are taking place across Mexico's legal landscape, with more global law firms setting up shop in the country.

“In Mexico there is a growing number of law firms that are backed by large brands, or which are multinational franchises, and that creates greater diversity and options when choosing a firm for legal services, and which is a good thing in terms of healthy competition,” he says. “Sometimes you need an international firm, and on other occasions a traditional or boutique law firm is what we use. I celebrate the fact that there is an increasing number of women in leadership and directorship positions within law firms and in-house legal departments within corporations, and that trend must continue,” he says.

“I greatly appreciate lawyers at firms who have previously worked as in-house within companies, as they have a lot of knowhow about workflow and the kind of demands that exist within an organization,” he says. “At the same time, a lawyer's practical or specialist knowledge is fundamental, as there is nothing better than a lawyer that is familiar with the concepts, terms and practices within the industry or the sector, which allows us to work in a much more effective and precise way, as well as optimising response times,” he adds.

“As a global company with a presence in various countries, we often look for law firms that have a presence in both Spain and Mexico. However it is not always possible to find that combination, and in that case we would hire legal services from a local firm with the best knowledge of local

legislation and practices in the country in which we are operating, and that has been how we have worked in Costa Rica or the Dominican Republic, for example.”

“Much of our day-to-day legal work has to do with the contracting of services and goods, both as a supplier and a user, and legal consultations across our diverse business areas and with our partners keep us occupied,” he says.

“Our legal team comprises specialists in the business and the corporate sphere, with very talented men and women that work in a coordinated manner across the company's international operations, and this team has managed the company's legal needs for the last five years, and we expect the team to grow hand-in-hand with the growth of the business, maintaining an efficient balance between cost and benefit to add value and competitiveness to Acciona,” he says.

PROJECTED GROWTH

But the workload has increased as the company expands its portfolio of projects in Mexico and the Caribbean, in part due to the energy reform in Mexico, which over the last five years has seen the sector opened up to more private investment.

“Over the last three years we have seen the volume of work increase, with constant growth in activity in the development, construction and operation of power stations and the sale of energy on the wholesale electricity market. The company's installed capacity has increased and with that the need for legal services for our internal clients,” he says.

And that growth is expected to continue across the region, he says.

“We are currently working on new business opportunities in Central America and the Caribbean, and a large part of our resources are channelled into attending to the new challenges that that brings, but without neglecting the business that is already consolidated,” he says. New projects are very demanding in terms of time and resources, particularly when it comes to working in new jurisdictions and regulatory frameworks, but we are prepared for that and we take on the challenge with gusto,” he says. ■



DIEGO MARTÍN-MENJÍVAR



WELLNESS AS A PRIORITY

As we move towards a post-pandemic era and economic activities resume, wellness must remain a priority for law firms and businesses, according to Diego Martín-Menjívar, a partner at Consortium Legal in El Salvador.

By Diego Martín-Menjívar, Partner, Consortium Legal in El Salvador

We are at the doors of a new era, and which some people call 'the new normal' or the 'new reality'. Whichever way you call it, it is unquestionable that the changes to come will be quick to arrive, will create more competitiveness and the legal profession's adaptation to them will be necessary in order to survive in this already complicated sector. Law professionals are being called on to adapt to new

ways of working, bringing more technological solutions to their environment. Telecommuting, as well as the use of legal tech tools related to contract management, E-Signature, E-Commerce, electronic payment methods, and virtual corporate meetings, among others, will have to be part of the infrastructure required by a law firm.

Investment in technology will be more important than investing in the office space, which most probably will be subject to a natural downsizing. In fact, many of these changes have been already implemented by large law firms, the majority of

them, from more developed jurisdictions, such as in the US and Canada, and in European and many Asian countries, and it is only a matter of time before we see these developments come to

“INVESTMENT IN TECHNOLOGY WILL BE MORE IMPORTANT THAN INVESTING IN THE OFFICE SPACE, WHICH MOST PROBABLY WILL BE SUBJECT TO NATURAL DOWNSIZING.”

jurisdictions where it was thought we were 10-15 years behind.

Lawyers in Latin American countries will need to take big steps to put themselves in a similar position to their peers in the US, Canada and Europe.

But in general terms, these are not the only changes we will be witnessing, and which applies to law professionals worldwide. There are other important changes that will be happening very soon, as a result of the COVID-19 pandemic, regarding changes to our way of life, in order to provide wellness to our colleagues, family and our environment.

Wellness is a broad concept, which has taken on a more important position in our lives. The balance of our life needs, between family and friends, physical, mental and emotional health, nutrition, environment, work, education, and culture has expanded to a new reality. Many people have discovered that our home is the most important area of our lives, and many people did not have this space prepared for what we have been obligated to endure during these past months.

Many realized, for example, that even when they had internet access in their house, this was not broad enough to fulfill the new needs that the person (or family) had.

Even insignificant things (in appearance) such as our furniture, our kitchens, our appliances, are not fulfilling the functionality we need

right now. Many persons have probably invested more in their cars (which have been parked for months without any use) than in their kitchens, for example, which are now the “centre of operations” of families nowadays, since they spend an important part of their day in them.

“THE BALANCE OUR LIFE NEEDS, BETWEEN FAMILY AND FRIENDS, PHYSICAL, MENTAL AND EMOTIONAL HEALTH, NUTRITION, ENVIRONMENT, WORK, EDUCATION, CULTURE HAS EXPANDED TO A NEW REALITY.”

The same thing happens from a professional perspective. Lawyers have perhaps invested more in an expensive outfit than in their personal computer. The suits are hanging in their closets right now, and the computer has become the most important working tool. Offices have invested more in filing cabinets (including the cost of leasing the space), than in the cloud. Travel expenses in the budget (i.e. for seminars, networking events), which now have been substituted by costless webinars and videoconferences, were

probably bigger than the expenses for non-economic benefits for employees, such as healthy meals, fitness facilities, professional training courses – things that create wellness for them. This virus has taught us that wellness is important. If we get the virus, and our body is not prepared to combat it, because we are over-stressed or over-weight, or because our blood levels are not optimal, it is more likely the outcome of the disease will be terrible for us.

Business plans, travel plans, life plans, were put on hold because of this virus, and we might not be able to achieve these plans as expected.

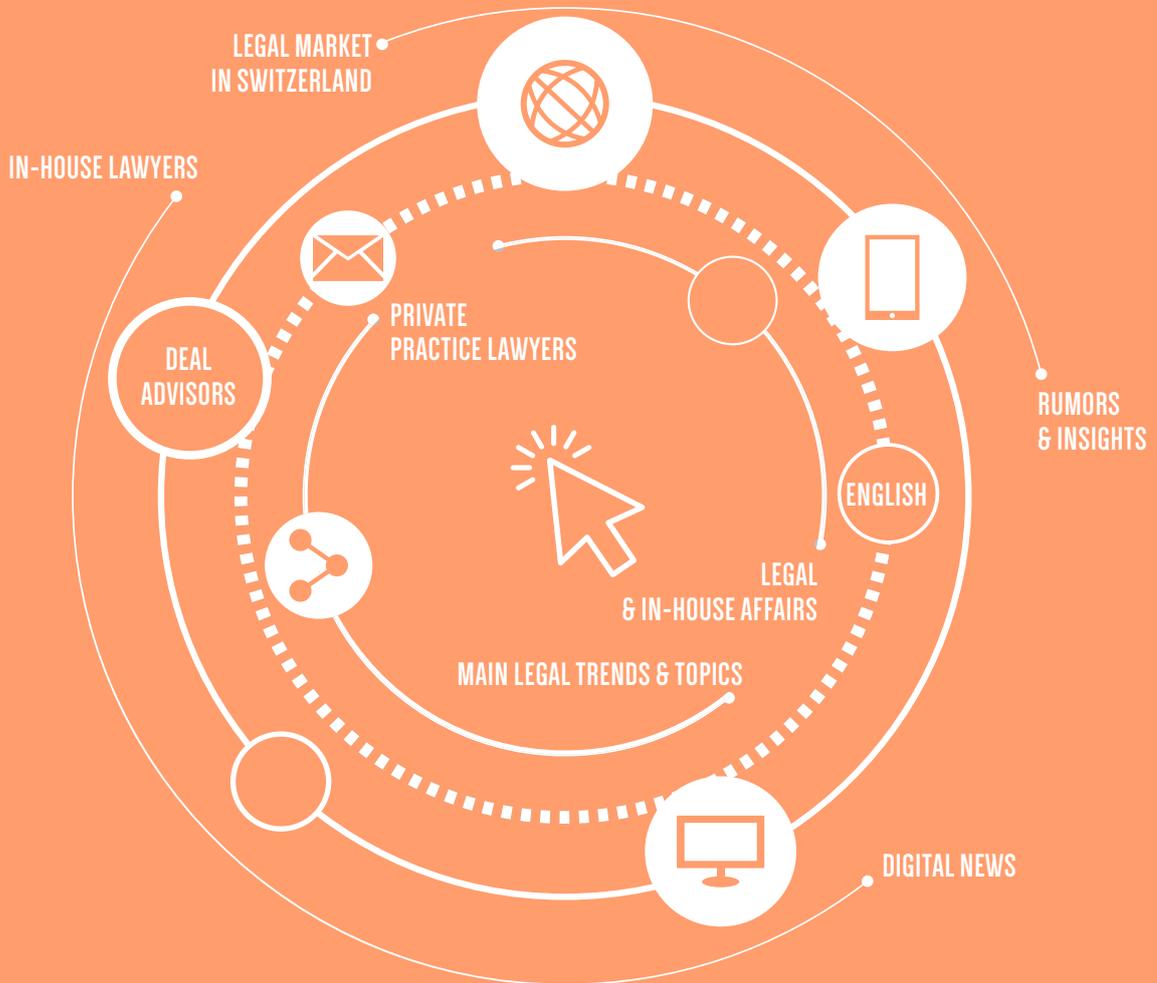
Our way to plan ahead has changed. Our priorities have changed. We should see this as an opportunity, and not as a crisis, if we set our minds to changing our past customs and applying what we have learned for a better future. We must shift the focus of our business from a “profit-centric” vision to a “human-centered” vision, which in the end will create profit as well.

Due to the broad use of technology, and the ‘new normal’ of social distancing that we are going to be obligated to follow, our client-attorney/employee-employer relationships must change, and we will have to search for a more humanised way to approach them, now that we have realised that technology used in a smart way can bring us together, instead of tearing us apart, as many used to think before the pandemic. ■



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