The judicial system in Mexico in dire need of developing ADR techniques

Dispute resolution in commercial and civil matters in Mexico is regulated by the Federal Civil Code and the Federal Civil Procedure Code. There is also the Civil and Civil Procedure Code for each of the 31 States and for the capital's Federal District. For commercial matters there is only one Commerce Code since commerce is legislated by the Federal Congress and its special regulations such as insolvency, banking, securities, etc. are unified in federal legislative bodies. Nevertheless, commercial matters can be resolved by local courts as well as federal ones, with the exception of insolvency procedures.

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Dispute resolutions of private issues are mostly resolved through litigation in courts because alternative dispute resolution techniques are not commonly used in Mexico. In 1996 there was a major reform of the Constitution and consequently the legislative reform of many federal and local substantive and procedural rules in civil and commercial matters. A few years later the total reform of the insolvency procedures for mercantile persons took place.

Year 2000 brought change in the legislative regime and the shift of power to different political parties. As a result, there have been constant reforms in all laws around the country, including procedural laws.

These changes, however, have been deficient causing that certain areas of laws are either unregulated or are ambiguously regulated and have to be subject to interpretation of the high federal courts to achieve jurisprudential strength.

Nevertheless in an overall view of the past 15 years, legislation has evolved and currently litigation runs smoother and faster. Commenting on the issue, Esteban Maqueo Barnetche, founding and senior partner at Maqueo Abogados, said: "I hope that congresses, both federal and local, will continue to extract deficient rules and regulate appropriately those holes in the law that have to be filled with jurisprudence and sometimes against the original intention or motives of the legislator."

Alternative techniques of dispute resolution have not evolved in Mexico as they have in different countries. According to Mr Maqueo Barnetche, it is very unfortunate considering that Mexico is probably one of the countries that need it most.

Arbitration seems to be the most sophisticated and common alternative to litigation in Mexico for business issues. There are great institutions in the country, both local and international, good arbiters and rules that regulate the arbitral process, however no other alternative methods have been appropriately encouraged.

In commercial relations, more and more arbitral clauses are being added. This practice may not be the best choice for all cases, noted Mr Maqueo Barnetche, because eventually the time to enforce an award before a judge will come. "I suggest that there should be a clause in the contracts, similar to the arbitration clauses, instead of them or in addition to them, stipulating a negotiation period that must be fulfilled before having to go before a judge, an arbitrator or a mediator. The attorneys would have to be compliant with the clause, because otherwise a condition needed to begin the litigation would be missing."

The judicial powers in Mexico have been promoting mediation as an alternative to judicial disputes. "Despite the efforts," said Mr Maqueo Barnetche, "I have not met a single mediator that has studied a mediation course in a law school. Few are mediators or attorneys who have attended seminars or workshops given by individuals, who in many cases have not studied the fine points of the mediation process beyond simply attending a university course. Negotiation, as an alternative means of solving disputes in Mexico has not been duly explored."

The government has shown interest in promoting alternative methods of solving disputes. However, as Mr Maqueo Barnetche pointed out, on the Supreme Court of Mexico's website one can find an essay (whose title can be translated as "Conclusions about Alternative Means of Dispute Resolution") stating that there is no need to make any reform or implement any legislation for ADR techniques in the near future.

"I believe that this issue should be analysed with greater detail and the universities should create academic programs that include all the alternative means of solving disputes and not limit them to arbitration only," commented Mr Maqueo Barnetche.

The global economic crisis has had a significant impact on the amount of dispute resolution cases in Mexico. Although it is hard to evaluate this impact regarding dispute resolution other than litigation, according to the yearly reports of the Supreme Justice Tribunal of the Federal District, in 2009 there was 23.1% more trials initiated than in 2008, and in 2010 there was 8.1% fewer trials initiated than in 2009. It shows that the downturn has caused a critical increase in disputes.

"As a law firm we have had the experience of having to turn down plenty of cases that have come up as a consequence of the economic crisis. It has been caused by the boom of contingency fees requests by potential clients due to lack of cash flow or an appropriate dispute resolution budget," said Mr Maqueo Barnetche.

As he noted, most people do not realise that Mexican corporations involved in disputes in a Mexican forum can be indirectly subject to foreign legislation. "For example, a public corporation that is listed on the New York Stock Exchange and is the holding company for subsidiaries outside the US may possibly suffer the consequences of the acts of corruption, incurred by its subsidiary companies according to the SEC's Foreign Corrupt Practices Act, even though they are subject to different jurisdictions than its holding company."

Therefore, it is very important for a client to be aware of several issues when attempting to bring a case before court in Mexico or when forced to be defended in court in Mexico. One of them, and probably the most important one, is to choose an appropriate attorney.

Maqueo Abogados, S.C. is Mexico-based law firm providing a wide range of services related to litigation and ADR. On the contrary to large law firms which handle thousands of cases at a time, Maqueo Abogados, S.C. concentrates only on a handful number of matters at one give time providing its clients with personalised attention.

"We care about all of our clients and our priority is to provide a personalised service to each of them. We act on each ocassion accordingly to the client's needs, which are different in every single case," concluded Mr Maqueo Barnetche.

Political instability causes uncertainty in the Middle Eastern and North African markets

The MENA and Gulf regions have weathered the financial crisis fairly well. However, the current political changes in North Africa and the Middle East have created a very different picture of the region. The instability has generally caught domestic and global investors by surprise, creating additional uncertainty and risk.

The recent political turmoil triggered by commodity price inflation has added another significant layer of risk to lending within the region outside the core countries of KSA, UAE, Qatar and Kuwait. Against this backdrop, many companies in North Africa and the Middle East have suffered greatly.

The financial crisis has affected the MENA region in a number of important economic areas. First of all, the Gulf-based businesses which historically have been flush with cash, are experiencing a severe cash shortage as central banks have tightened up their lending criteria. Secondly, many investors were significantly overexposed to speculative real estate markets in the UAE, Qatar, Bahrain and North Africa. This has exacerbated working capital and other financing issues with many groups' balance sheets.

For many companies worldwide, one of the common effects of the downturn was a formal declaration of insolvency. However, as Steve Koinis, managing director at Huron Consulting Group, explained, the MENA region has immature insolvency laws or just a lack of them, which has created a stalemate between many of the banks and borrowers. Therefore, restructuring in the historic Western sense of bankruptcy protection is not all that common.

"This tends to lead to longer and more protracted restructuring periods since legal methods are not well defined. Cash flow lending is non-existent, which continues to drive asset-backed lending. Since asset prices have deflated in the markets, most firms have no other primary sources of debt financing and must rely increasingly on equity financing," said Mr Koinis.

He noted that alternative funding options available are generally a mixture of equity capital investment from regional sources and, potentially, mezzanine capital from private sources. Legal structures are still a challenge in efforts to obtain the proper legal protection for the investor and current stakeholders.

When dealing with a distressed business, implementation of a turnaround is a frequently used method. Management capabilities and empowerment of professional senior management are critical issues in this process.

A vast majority of businesses in the MENA and Gulf region are owned and managed by families. As with many family-owned and managed businesses in Western markets, this leads to many challenges with corporate governance and defining proper authorities and responsibilities in a corporate turnaround situation.

The fragile economic conditions caused by the financial crisis have become improving, and businesses have slowly but steadily been recovering in the market.

"We anticipate a slow advance in the markets regionally," commented Mr Koinis.

"However, given the current political changes and instability in North Africa, it is expected to remain a cautious market. The recent increase in commodity prices, especially oil, is expected to improve the general business climate in the Gulf as long as it does not trigger a slowing of the global economy."

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Major problems of contribution of the rights to the knowhow (trade secret) as an investment in the charter (share) capital of a Russian company.

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Problem of definition

There is no generally accepted definition of the term "knowhow". Few jurisdictions (for example Russia) have the statutory definition of the knowhow. "Knowhow" under Russian law is information that: is not generally known to the public and public does not have legitimate access to this information; confers economic value on its holder; and is subject to measures of maintaining secrecy.

The measures of maintaining secrecy must meet the minimum requirements set by the Russian law on trade secrets in order to trigger protection. The owner at least must define the scope of trade secret, mark the media sources, implement access and utilization procedures and maintain control over the persons received the access to this information.

Before contributing the knowhow in the charter (share) capital, the primary task for the investor is to make sure that the information constituting the knowhow satisfies the requirements set by the Russian legislation. Otherwise such contribution can be later challenged by the Russian company.

Problem of contribution procedure

There are two ways to contribute knowhow to the charter (share) capital: to alienate the rights to the third party (which is a rare case for obvious reasons) or to grant the rights of use (license). Below we will discuss only the second option.

The parties of the license agreement are free to choose the law applicable to their rights and responsibilities under the agreement. But their choice will affect neither the operation of the civil law provisions defining the knowhow itself nor the minimum secrecy requirements.

License agreement for knowhow is not subject to registration with Russian state authorities, therefore there will be no double - check on the part of the Russian authorities.

In order to invest the rights for the knowhow in the charter (share) capital of a company the rights for the knowhow must be appraised (this procedure is compulsory for all in-kind contributions). Foreign appraisers can be engaged to avoid the risk of secret leak.

Problems of protection

Foreign investor must carefully negotiate provisions setting a duty of licensee to maintain secrecy of the knowhow by (a) limiting the number of employees having access to the information (b) split of the information among employees (c) non-compete and non-disclosure agreements made with employees.

At the same time, even carefully drafted agreement does not guarantee confidentiality in trade secret utilization by the licensee's employees. Often, foreign investors dealing in Russia face low standard of ethics and responsibility adhered by Russian contractors and employees. Russian labor law is not flexible enough to ensure effective protection which foreign investors may expect. The remedies for trade secret infringement are limited to direct, real damages incurred as the result of the trade secret infringement. Lost profit cannot be recovered.

The burden of proof of trade secret protectability and unlawfulness of the infringer's actions rests upon the plaintiff (licensor). It may present a problem since often the evidence presented by the plaintiff considered insufficient without disclosure of the trade secret information. In such situation the plaintiff may prefer to lose an action than to disclose the trade secret.

Implementation of an integral public policy for the Mexican maritime sector needed.

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No more than 12 years ago Mexico was regarded as the Latin American country with the largest registered tonnage of vessels in the region. The Mexican maritime register was composed of a fleet including container vessels, car carriers, tankers, dry cargo ships, and many others. However, the lack of a proper public policy for the development of the national merchant marine resulted in a deflagging process from the Mexican registry.

The lack of a strategic fleet results in a billions of dollars being paid every year by importers and exporters to foreign markets in relation to freight and insurance. According to the numbers published by the Mexican Central Bank-Banco de México, the amount rose to as much as USD 10 billion last year.

On the other hand, in 1994 the Mexican government has initiated a full reconversion program for increasing competitiveness of Mexican ports. Consequently, the rhythm in productivity grew significantly reaching rates of container/hour even better than those achieved in US ports. Nevertheless, the volume handled in the Mexican port system is still well below of those handled in traditional world ports such as Rotterdam, Singapore or Shangai.

Mexico is one of the most important players in the world foreign trade activity. Therefore, it is of the utmost importance for the Mexican government to realise the need of establishing a public policy that supports the development of the merchant marine on the same terms as in other OECD member countries.

Also, being one of the leading oil producers, Mexico needs more specialised and technically sophisticated vessels for exploitation of deep waters deposits. A new approach to maritime resources would also have an important impact on the tourism sector, the fishing activity, and all others maritime related economic activities.

According to Juan Carlos Merodio López, partner at M&L Estudio Legal and author of "Introduction to Maritime Law" Mexico, 2011, it is necessary to open the eyes of those in the government and congress to support the vast opportunities provided to Mexico by its patrimonial waters.

"The Mexican maritime sector is in a dire need of implementing a long-term integral public policy. Next year presidential election will take place in Mexico and some of the candidates have in their programs proposals for the development of the maritime industry. We shall wait and see if any of them will be implemented, restoring Mexico's reputation as prime maritime hub in the Latin America region."

In 2006 a new maritime legislation was enacted in Mexico. It included a chapter on incorporating special maritime procedures for certain matters such as arrest of ships, general average, salvage, limitation of liability, etc. As a result M&L Estudio Legal, one of the leading maritime law firms in Mexico, has been very active in representing clients before Mexican courts.

The firm was elected to represent leading Mexican and international insurance companies in one of the largest maritime court cases presented before the national courts. The firm has succeeded in setting important judicial precedents for the benefit of the national maritime community and the foreign maritime companies calling at Mexican ports.

Challenges facing US construction sector during economic crisis

Construction law deals with legal matters involving building construction and its related fields. These areas can include land acquisition, construction claims, bonds and sureties, building contracts, project financing, post project claims settlements, tendering, and outsourcing and consultancy contracts. Construction law in the United States affects all stakeholders in the construction industry including financial institutions, architects, engineers, planners and builders.

Construction spending in the United States retreated dramatically in the last two years due to the economic downturn. Over the last year, a decline in new residential and commercial construction has caused a downfall in growth for overall US construction. For the part of the construction industry that remains active, namely the government contractor sector, it is more important than ever that there are legal safeguards in place to protect the industry stakeholders.

Construction laws are not identical across the United States. While all 50 states are governed by the constitution and federal laws of the country, State and local laws can largely affect the outcome of legal disputes involving construction cases. As a general matter, there have not been any significant developments or amendments to legislation that change the basic landscape of construction law in the US.

Robert S. Peckar is the founding partner of Peckar & Abramson, one of the nation's leading construction law firms. The firm has seen a newly focused emphasis by the federal government and state government on finding fraud, waste and abuse in government contracting, and the construction industry in general and has responded to this development with the expansion of its departments expert in advising clients how to perform in compliance with government regulations as well as to respond to those circumstances where the government has targeted a contractor for investigation or prosecution. The firm has handled clients' needs throughout the United States and the world since its formation in 1978.

When asked to remark on the changes in the US construction sector Mr Peckar commented: "The construction industry in the US is suffering terribly from the global economic crisis and, particularly, the U.S. economic crisis. Many private developments that were planned were placed back on the shelf. Some projects underway were suspended and few new projects are on the horizon. Until the banks and investors are once again willing to finance these projects, this situation may continue for some time."

Construction in the public sector of the industry is still active but not as busy as in recent times. In previous years when private construction slumped, public spending on US construction helped balance the books. With the United States facing its own recession as well as the global economic crisis, the industry has a lot of obstacles to overcome.

Mr Peckar concluded: "Our firm has been fortunate to stay very busy in no small part because of the diversity of services we offer to our contractor clients, some of which are important to our clients even in an economic downtown. With the cancellation of major public works projects and the inability to move others forward, all in all, the situation in the US is not very favourable at this time."

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Redundancy in Bahrain poses challenges for employment law arena

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The Bahraini Labour Law is generally protective of the employee who is regarded as the weaker party in the relationship of employment. Any condition in the contract of employment which does not comply with the Labour Law is considered null and void except to the extent that it is more favourable to the employee.

The employment law arena is currently facing challenges concerning the redundancy and dismissal of employees from companies that are down-sizing, undergoing stressed mergers or acquisitions, subject to voluntary liquidation or insolvency proceedings or otherwise facing financial difficulty in view of the global financial crisis.

The termination of a fixed term or indefinite term contract of employment, without legitimate cause, constitutes a breach by the employer. Depending on the circumstances, the employee could be entitled to compensation for this breach. As the Bahraini Labour Law is generally protective of the employee, the employer will bear the burden of proving that the dismissal of an employee was with legitimate cause, explained Amel Al Aseeri, a lawyer with Zeenat Al Mansoori & Associates.

"Although 'redundancy' is a term commonly used by employers as ground for dismissing an employee, the Court will not readily accept redundancy as a legitimate cause for termination. Careful consideration should be given and employers should obtain legal advice before terminating a contract of employment. Employers should also be aware of the legal implications and risks under Bahrain's Labour Law before enforcing 'pay-cuts' or changes of the positions or the roles, duties and obligations of their employees."

The law, however, recognises the companies' right to 'reorganise' the business. The employer must demonstrate to the Court that the reorganisation is genuine and must satisfy the Court of the redundancy of the employee's position. Ms Aseeri noted that when an employer has a surplus of workers and thus releases employees, Article 13 of the Labour Law gives Bahrainis preference over other nationalities, provided that the Bahrainis possess the requisite competence and qualifications.

Unlike many other jurisdictions, under Bahraini law there is no formula or guidance on the calculation of compensation (if any) for the termination of a contract of employment without a legitimate case. Compensation is discretionary and the Court will consider the circumstances in which damages occur for certain in each individual case.

This calculation is outlined in the new Employment Law that is presently being drafted to replace the current Labour Law. The draft sets out a formula for the calculation of the compensation payable for the termination of the contract of employment for an unlimited term and for a fixed term contract.

Zeenat Al Mansoori & Associates was established in 1989 and today is one of the largest full service law firms in Bahrain. The firm provides clients with tailored solutions based on a thorough understanding of their business needs.

"We have a track-record of obtaining favourable results in the resolution of employment disputes by mediation, negotiation, statutory arbitration or litigation. Our clients include local and international companies in various sectors and employees in various senior positions," said Ms Aseeri.

UK insolvencies expected to rise under the current government

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In the current financial crisis, one might have expected to see an increase in insolvencies during 2010. However, various factors, including the low level of the pound and record low interest rates, have enabled individuals and businesses to service their debts. These factors and a "softly softly" debt recovery approach by HMRC under the previous government contributed to an overall decrease in formal insolvencies during last year. Nevertheless, HMRC have now hardened their attitude and this is likely to fuel greater pressure on businesses already experiencing difficulties.

Begbies Traynor report suggests that insolvencies for UK firms are set to rise by around 10% during 2011. Mark Phillips of Pitman Cohen Recoveries LLP considers this estimate reasonable but could increase significantly if interest rates rise.

This would affect those businesses/individuals with marginal cashflow who are reliant upon bank funding and could prove the final straw. The slump in the property market has minimised equity levels. Therefore any increase in interest rates may prove the difference between making ends meet and cashflow insolvency.

Government spending cuts will dramatically impact on businesses, particularly businesses directly contracted to government agencies or local authorities. Mr Phillips believes this will cascade down to indirectly connected businesses with likely job losses restricting individuals' ability to service repayments. This will have a knock on effect as consumer spending reduces impacting on retail and service sectors. Therefore, Mr Phillips anticipates an increase in formal insolvencies of 10-15%.

Businesses in a marginal financial position must re-evaluate their business modules and streamline costs. Contractual relationships should be commercially viable. With owner managed businesses, this can be difficult since owners may be too close to staff, customers and suppliers to be objective.

Consideration should be given to consultation with professional advisors who can consider any contingent liabilities arising from restructuring. Any significant event affecting the business's solvency can then be reviewed to allow consideration of available options.

It is important to be proactive in seeking new business and exploring possible diversification. This should put the business in a position to "plug" any gaps caused by failure of customers and/or trading partners.

While mainstream lenders continue to appear reluctant to increase lending there are lenders prepared to take a more flexible, although more expensive, view, asset-based lenders for example.

There are also companies and individuals looking to invest in businesses to increase their return on capital. Whilst this may necessitate owners giving up a proportion of the business, the injection of capital, and often expertise, allows the business to become more profitable increasing the value of the shares overall.

Mr Phillips considers it vital to establish that a business's core activities are capable of being profitable, cash generative, sustainable and capable of growth. A critical review should be undertaken to establish possible savings. Existing finance arrangements also factor heavily as these are instrumental in the business's continued ability to trade.

New merger communiqué reduces notifications in Turkey

The primary legislation on the control of merger concentrations in Turkey is Article 7 of the Act on Protection of Competition No.4054. The legislation envisages two cumulative tests for the control of concentrations, creating or strengthening dominant position and Significant Lessening of Competition (SIEC). Although during enforcement from the Turkish Competition Authority (TCA), concentrations are forbidden on the basis of a pure dominance test.

Article 7 also authorises TCA to regulate the legal scope of control of concentrations through Communiqué and Notices, explained Dr M. Fevzi Toksoy, partner at ACTECON Competition & Regulation Consultancy.

As the number of transactions has increased in recent years, the former Merger Communiqué of 1997 could not meet the needs of the current business environment and amendments on EU legislation and developments in practice.

To correct for this Turkey enforced a new Merger Communiqué from 1st January 2011. This is the most significant development in Turkish competition law. In addition, the Draft Guideline on Relevant Undertakings, Turnover and Ancillary Restraints and Draft Guideline on Acceptable Commitments are positive steps taken to enforce the Merger Communiqué more effectively and transparently. Due to the changes especially on thresholds, the number of notifications decreased since the enactment.

According to Dr Toksoy the Merger Communiqué stipulates the principles of control of concentrations by introducing crucial changes such as new turnover thresholds, legal basis for commitments, self-assessment for ancillary restraints and economic-based notification forms.

Consequently the authorisation of TCA is required for the transactions, in case total turnover of the transaction parties exceeds 100 million TRL and turnover of each of at least two of them exceeds 30 million TRL; or worldwide turnover of at least one of the parties exceeds 500 million TRL and turnover of at least one of the other parties to the transactions exceeds 5 million TRL.

"Nonetheless, turnover thresholds are not the only condition to be satisfied by undertakings," highlighted Dr Toksoy. "The Merger Communiqué requires that an affected market has to be emerged as a result of the transaction concerned. An affected market condition is deemed satisfied where parties are overlapped in a relevant product market or one of the parties operates in downstream or upstream markets of any product market in which another party operates. If there is no affected market, even if the parties exceed the turnover thresholds, the authorization of TCA is not required."

The new regime asks parties to notify the transaction along with either final or draft agreement in any case before realisation of change of control. The authorisation procedure takes six to eight weeks for a Phase I transaction and at least six months for Phase II.

ACTECON assess each aspect of a merger transaction using a range of specialists such as economists, lawyers and financiers including academicians and former TCA experts. This team of experts constitutes the main structure of ACTECON. ACTECON develop solutions and lead comprehensive and interactive projects with TCA during proceedings.

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Hernández Barbosa & Huerga (HBH) operates in Mexico City and Guadalajara, Mexico, being the largest Mexican member firm in Consulegis, servicing clients across the Mexican Territory. HBH was created from the sum of principles and experience of its founders with more than 15 years in their area or practice.

As a result of its non-stop search for high added value, HBH is proud of having the trust of worldwide known Mexican and multinational companies as a result of the adoption of the practice model of a multi-boutique law firm. The firm covers a full range of services including corporate law as well as real estate and infrastructure, joint ventures, mergers & acquisitions, banking and securities law, commercial law and contracts, foreign investment, intellectual property law, due diligence, civil and commercial litigation, tax and administrative litigation, labour litigation and consulting.

The reputation of the firm and its team of high calibre lawyers is the result of perseverance in a specific professional practice with ethics. HBH is known for its high quality standards as well as personalised attention with adequate response times for the handling of any situation. These values have allowed HBH to achieve long term relationships with clients.

In addition, the firm's main differentiators have allowed it to be seen by the largest Mexican firms. These include its: integrated boutique firm specialists; wide experience with international clients and local firms with global service; team work; a personal approach; understanding communication with clients; state-of-the-art technology; long term relationships; as well as high quality standards and accountability.

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For more detailed information please visit: www.hbclaw.com.mx

Greek government taking repressive measures to tackle business crime

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Greece is one of the countries which have been affected by the recession most severely. Currently, Greece is in the middle of a major financial crisis. An unprecedented wave of economic measures is sweeping over the country, aiming primarily at the collection of taxes. Additionally, there have been cutbacks in salaries in the public sector and pensions. As expected, a side effect of the foregoing is the increase in crime, especially business crime.

According to the recent statistics, fraud cases have increased 38% in the last two years.

The same is applicable to the field of void cheques. The total value of them in the year 2010 has reached €712 million, while for the whole 2009 the amount did not exceed €237 million.

Naturally, the Greek government, as all governments that have difficulties on the economic front, attempts to shore up its popularity by bringing in repressive measures on the criminal justice side. During the last few months there have been several discussions on the subject and further legislation is proposed. For the same reason the Greek Department of Justice is ready to establish two new departments in the Public Prosecutor's Office of the First Instance which will handle exclusively economic crime cases.

Severe economic difficulties, which Greece is now in, also affect the legal aid system as cuts are imposed to fees payable to legal aid practitioners. However, this should not be considered as a real problem for Greece because the legal aid system in the country is not well organised and therefore not quite popular.

Taking the above into consideration it is absolutely necessary for companies having activities in Greece which are victims of business crime to seek advice of an attorney who is specialised in the field of the economic criminal law.

The cooperation with a specialist from the first stage of a potential criminal case increases the chances of a successful outcome. Within this same framework, a well organised financial department as well as an adequately staffed legal department may be preventive measures which can be put in place.

Georgios D. Pyromallis Law Office has extensive experience in the field of economic criminal law. The firm consults and represents numerous international and domestic corporations and institutions from the energy, defence, construction, financial services, telecommunications, healthcare, pharmaceuticals and media sectors, as well as governments and governmental organisations.

George Pyromallis is the head of Georgios D. Pyromallis Law Office founded in 2006. Over the years, Mr Pyromallis has been involved in most of the leading Greece business crime cases. His accumulated considerable knowledge guarantees that he is able to bring to his cases an understanding of the commercial needs and expectations of his clients.

Furthermore, in order to satisfy his clients' needs and to safeguard their interests he cooperates with financial consultants, auditors and other specialists who are familiar with business crime cases and have extended experience in participating in criminal trials as expert witnesses.

As a criminal law practitioner Mr Pyromallis specialises in business and financial crime, and has participated in most significant white collar and business crime cases in Greece during the last 15 years. He has extensive experience in most types of business crimes, financial fraud, money laundering, corruption practices, anti-terrorism, insider trading, medical malpractice, product liability, subsidies fraud, European Arrest Warrant, extradition and mutual assistance. He is also an expert with diverse and extensive experience in a wide array of litigious and non-litigious business disputes.

In recent years Mr Pyromallis has handled the most famous extradition cases in Greece ('A. Symeou' and 'Crete 6') where British citizens were surrendered to Greece following the execution of European Arrest Warrants. Mr Pyromallis also legally represents in Greece the National Centre for Missing and Exploited Children, based in Virginia USA, as well as GS1 AISDL, based in Belgium.

Mr Pyromallis was admitted to the Athens Bar in 1996. He has served in the Special Legal Department of the Ministry of Foreign Affairs of the Hellenic Republic (in the Human Rights' Department). He was a member of the Greek Committee for the drafting and translating of the Statute of the International Criminal Court (ICC) and participated in several task forces in the field of international criminal law. He also participated as the sole representative of Greece in the seminars (held in Trier – ERA) for defence counsels before the ICC and he is entitled to appear before the ICC in Hague.

Since 2007, he cooperates with Fair Trials International and he is a member of the Legal Experts Advisory Panel thereof. He was a member (as the representative of the Athens Bar Association) of the Central Scientific Council for Prisons of the Greek Ministry of Justice.

His other memberships include the Hellenic Criminal Bar Association, the European Criminal Bar Association (he was invited as a speaker in the Spring 2009 Conference in Madrid), the International Criminal Law Network, the European Law Network (ELAN), the A.I.D.P., the European Criminal Defence Lawyers (ECDL), the European Criminal Law Advisory Panel, the Proceeds of Crime Lawyers Association and other Greek scientific associations. On 18th June, 2010 the Hellenic Criminal Bar Association awarded its prize to Mr Pyromallis.

He is proficient in Greek, English, German and French languages. He has published several case comments and articles, including an article on Tadic-case before the I.C.T.Y in the leading Greek journal for Criminal Law 'Poinika Chronika'.

Rising demand for an equitable solution of the interconnection tariff feuds in Mexico

The telecommunications sector in Mexico has developed during the last decade significantly. A primary objective was to ensure an efficient and continuous provision of telecommunication services and to form a wide range of options for customers. The Mexican Government has endeavored to create such an environment in an attempt to end or divest the monopoly of dominant carriers. Nevertheless, interconnection tariffs are still an ongoing problem on the market.

In recent years, legislative changes have been made to achieve fair competition amongst telecommunication service providers and permit equal access to their relevant networks and infrastructure. For instance, historically, the process of obtaining a concession or permit or amending existing concessions or permits to provide new telecommunication services was cumbersome, time consuming and subject to the workload of the SCT (i.e. the Ministry of Communications and Transportation which supervises telecommunications in Mexico). In an effort to counter such difficulties and allow the provision of Triple-Play services, the SCT issued the Convergence Agreement to permit concessionaires of public telecommunication networks to expand their range of services to provide fixed and/or restricted television and audio services, through a simplified application process.

Also relevant was the issuance of the Interconnection Plan (Plan de Interconexión e Interoperabilidad) designed to reinforce the obligations of dominant carriers in specific regions to allow other carriers interconnection to their networks, a first step in the solution of the ongoing interconnection tariffs problem amongst Mexican carriers. The successful implementation of number portability in Mexico, the first in all Latin America, and the recent public auctions for the use of spectrum frequencies were all designed to provide the general public with a higher quality service and a broader range of options.

New technologies and the convergence of telecommunications have accelerated the need to update existing legislation to address the ever dynamic telecommunication industry. Notwithstanding the foregoing, Telmex, the historically dominant carrier, and the rest of the Mexican carriers are currently feuding over interconnection tariffs. The Mexican carriers have formed various fronts against Telmex and have requested implementation and enforcement of pro-competition regulation from the relevant authorities. Ultimately, an equitable solution of the interconnection tariff feuds would considerably help to reduce the high costs of telecommunication services for customers in Mexico.

In the near future, the SCT, the Federal Telecommunications Commission (a/k/a COFETEL) and the local telecommunications service providers will need to work together to achieve common immediate objectives, including effective interconnection and tariff reduction, among others.

> "New technologies and the convergence of telecommunications have accelerated the need to update existing legislation to address the ever dynamic telecommunication industry."

As Mauricio Martínez González, partner at Jáuregui, Navarrete y Nader, S.C. noted, telecommunication service providers will gradually depend more on other service providers to outsource infrastructure, equipment, management and processes in order to be able to shift their resources to service perfection instead of CAPEX investments.

"The close interaction and communication between the authorities and the telecommunication services providers will be required for the successful development of the telecommunications industry in Mexico," concluded Mr Martínez González.

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New securities law sanction is introduced in Japan

In 2010, Japanese securities law was amended when a new type of sanction was introduced under the Financial Instruments and Exchange Law ("FIEL"), the main statute of securities law. The new sanction, which is an injunction under Article 192, will target a company not registered as a Financial Instruments Firm ("FIF") with a local finance bureau, but conducting any financial instruments business ("FIB") in Japan and/or with Japanese residents. The FIEL prohibits such non-registered companies from conducting FIBs.

"Article 2, paragraph 8 of the FIEL stipulates the types of activities and businesses which fall within the definition of FIB," explained Kenji Kawahigashi, partner at Keiwa Sogo Law Offices. "If any company (domestic or foreign) conducts any FIB without necessary registration, the company will be subject to a wide range of sanctions and liabilities, including the injunction under Article 192. Some financial service providers (e.g. FX firms) located outside of Japan but targeting Japanese investors through internet marketing channels, are recently being put on the publicly-available blacklist (of non-registered firms) announced in the website of the Japanese Financial Services Agency ("Japan FSA"). Those indicate that Japan FSA is strengthening its oversight on illegal FIBs."

When a foreign firm wishes to start financial businesses targeting Japanese investors, the firm will need to establish an office in Japan (as a local corporation or a branch of the firm) and register the office with Japan FSA. A firm can be register as a bank, securities broker, investment adviser or an investment manager. "Unlike European countries, Japan still distinguishes between the banking and securities business. Thus the scope of permissible businesses differs depending on each relevant registration. For example, in principle, banks are not permitted to participate in securities brokerage business. Also, unlike in the US, the concept of investment manager is different from that of investment adviser under the FIEL," said Mr Kawahigashi.

Mr Kawahigashi expressed the hope that 2010 marked the end of the worst period for the Japanese economy and securities market since the start of the economic crisis in 2008. He said that 2011 will be the beginning of a new era for the Japanese securities market. Part of the expected revitalisation may come from China's expanding presence in the region. "Chinese investors have become more and more active in the Tokyo market recently. Securities investments and M&As involving Chinese players in Japan will increase even more in the coming years. Keiwa Sogo has a Chinese national attorney qualified for these types of China-related matters and deals," said Mr Kawahigashi.

Singapore and many other Asian securities markets are likely to introduce additional regulations in relation to the funds business, for example fund registration requirements. As no additional fund-related regulations are going to be introduced in Japan, the country is and will still be attracting large numbers of investors. "Some Japanese fund players who used to be in other markets are returning back to Japan due to the negative environmental change in those ex-Japan markets. Also, because of the very strong yen, more Japanese listed companies are active in overseas acquisitions and alliances, and the prices of those companies' listed shares will be high."

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The seven partners at Keiwa Sogo have in-depth knowledge of general corporate, employment and litigation areas of practice and highly specialised areas such as corporate finance, merger and acquisitions and inter-corporate alliance, turnaround business, bankruptcy and intellectual property. Each partner shares their expertise and experiences with other colleagues and by so working together Keiwa Sogo operates as a mid-sized but highly skilled firm which effectively provides high quality legal services in a wide range of areas.

The firm provides comprehensive advice on securities and investment related laws and regulations (including the Banking Law and the FIEL) to domestic and overseas institutional clients. The advice includes those on setting up company compliance program and internal control systems in line with applicable regulations, e.g., various guidelines, inspection manuals of financial regulators.

Advice on insider trading, timely disclosure and other securities regulations is among our daily legal services. Keiwa Sogo also advises on asset securitization projects, for example, (i) securitization of a major Japanese non-bank money lender's loans and (ii) real estate securitization transactions (including J-REITs).

Kenji Kawahigashi, partner of Keiwa Sogo Law Offices, is an international securities and corporate lawyer with 20 years of experience. Mr Kawahigashi is one of the very few lawyers in Japan who has both experiences of working as in-house counsel at a financial institution, and working as an inspector of the Japan FSA (the Securities and Exchange Surveillance Commission ("SESC") of Japan).

With his background as a former inspector of the SESC, Mr Kawahigashi often advises and represents financial institutions registered with the Japan FSA (such as broker/dealers, asset managers) when those institutions are being inspected and/or investigated by the Japan FSA and the SESC. He also provides legal advice on cross-border transactions, finance deals, insolvency matters, securities regulations, mergers and acquisitions, and securitization. Financial institutions (domestic and global) and funds (Tokyo, New York, London, Hong Kong, and Singapore) are among his clients.

Mr Kawahigashi acted as a visiting lecturer at Hosei University in Tokyo in 2000 and 2001. He has also lectured at seminars sponsored by Japan Securities Dealers Association (JSDA), the Tokyo Stock Exchange (TSE), the Association of Japanese Corporate Legal Departments, and so on. He was appointed as a visiting lecturer at Duke University, School of Law in 2004.

Recovery of the Mexican M&A market

During the last few years, Mexico has become an important target for foreign investors in order to commence businesses to implement cross-border transactions, such as mergers & acquisitions ("M&A"). Among other reasons, the conclusion by Mexico of a variety of Free Trade Agreements has become an important motivation for investors around the globe. However, the global economic crisis has importantly affected the performance and development of M&A in Mexico due to the fact that some of the major worldwide entities or its subsidiaries have entered financial restructurings as a consequence of the lack of liquidity to assume debts and guaranty obligations before their respective lenders or creditors. Nonetheless as of 2010, airspace, eolic energy and oil & gas sector have called the attention of foreign investors; hence M&A transactions in Mexico are envisioned in these fields during the upcoming years.

Regarding the acquisition processes, purchasers have put greater importance on legal due diligence, since the global economic downturn has shown that in order to effectively avoid contingencies and risks resulting from a particular acquisition process, a profound legal due diligence has to be carried out. In Chacon & Rodríguez, S.C.'s ("C&R") opinion, this thoughtful need to accomplish cautious due diligence processes arises from the fact that most of the target entities have fallen into an economic and financial crisis, in some cases caused by the lack of generation of income and, as mentioned above, the need to perform financial restructurings.

The key legal challenge involved in the acquisition of businesses in Mexico is, apart from the necessity to carry out professional due diligence processes, regular communication between the parties and their respective legal teams during the performance of a transaction. C&R has the sufficient expertise to focus on these issues in order to accomplish a successful result for its clients.

Mergers in Mexico are governed by the by-laws of the respective merged company and the merging company and the relevant provisions of the General Law on Commercial Corporations. The procedure to carry out a merger in Mexico implies the execution of a merger agreement, setting forth the terms and conditions of the merger, and various legal steps for the conclusion of the merger (including corporate, commercial, foreign investment, regulatory, as applicable).

There is an important draft bill in the Mexican Congress regarding the creation of new legislation directly involving M&A transactions from an antitrust perspective. Specifically, and despite such bill is still being analysed, it contemplates important increases in sanctions and fines to be imposed by the Federal Competition Commission upon breach of competition laws as well as criminal liability to the economics agents, as the case may be. Therefore, entities involved in M&A transactions will have to be extremely careful to perfectly comply with all legal applicable provisions associated with M&A.

C&R can ensure that the implementation of M&A transactions in Mexico is an excellent instrument through which several domestic and foreign investments can be accomplished to develop their businesses and investments in Mexico.

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Litigation in Mexico related to IP and other matters

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Litigation practice in Mexico is broad - from commercial or civil disputes, through criminal matters, to administrative and even constitutional cases involving not only the protection of constitutional rights, but also the solution of controversies among public and private entities. The legal frame that governs litigation in Mexico includes the Mexican Constitution and vast procedural legislation applicable to every distinct kind of litigation.

Alanis, Serrano & Doblado, S.C. provides an integral legal advice and service to its clients in an efficient and cost-effective way, offering not only consulting services but also handling different litigation matters when these arise. The firm's medium size allows it to be competitive in quality and price, accommodating to the requirements of large international corporations as well as medium size national and international entities.

Particularly, the firm's litigation expertise comprises a strong team able to handle constitutional, administrative, commercial and international cases that include intellectual property matters, such as trademark, patent, trade secrets, unfair competition, copyright, licensing and franchising related matters, as well as cases having to do with energy, environmental, public bids, advertisement, consumer protection, telecommunications, anti-trust, foreign trade, health regulation and other administrative areas.

With regard to the IP litigation practice, the firm brings together highly experienced IP attorneys that can advise their clients from the registration procedure of their IP portfolio, to the enforcement and protection of such rights in all administrative instances before the Mexican Industrial Property Institute, the Federal Administrative Tribunal, Federal Courts in "amparo" claims, and finally, the possibility of claiming damages before federal or local courts.

On this subject, recent statutory amendments have restricted the possibility of claiming damages to exhausting all remedies available to determine the infringement of IP rights. "This separation of the administrative infringement decision and initiation of damages claims on the judicial side could sometimes take several years, and litigation costs may be high," explained Raúl Pérez Johnston, partner at Alanis, Serrano & Doblado, S.C.

"Therefore, our multidisciplinary approach counsels clients in order to weight the convenience of litigating vis à vis any other possibility of negotiating or conciliating matters, based on a cost-benefit analysis that takes into account our clients' business decisions and needs. Consequently, the decision to accept a case and the setting of fees is most of the time a flexible and tailor-made proposal, based on the particularities of the case and the needs of our clients."

In order to understand the constrains and practices of foreign clients, Alanis, Serrano & Doblado, S.C. has assembled a team of attorneys educated in the most prestigious universities in Mexico and abroad, in some cases with experience from foreign law firms which is used to comply and advise under the requirements of local or international legislation imposing corporate and transparency practices when doing business in Mexico.

"That being said, we consider our firm as an excellent and very competitive option in the Mexican legal services market by mixing experience, quality, cost effectiveness and a multidisciplinary approach uncommon in many competitors," concluded Mr. Pérez Johnston.