

# Lex Mundi in Latin America and the Caribbean

## Key Market Developments 2019

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## World Ready

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# Lex Mundi in Latin America and the Caribbean

## Key Market Developments 2019

### About This Publication

This guide details the market outlook and key business and legal developments across jurisdictions in Latin America and the Caribbean. Lex Mundi member firms with deep local roots and extensive on-the-ground capability have provided this information to help in-house counsel as well as other corporate and financial decision makers stay apprised of important trends within industries, law and regulation, and transactional activity in an increasingly important region.

The guide will be updated as additional submissions become available from Lex Mundi member firms. For the most up-to-date version and other Lex Mundi client resources, please visit the Resources and Insights page on the Lex Mundi website ([www.lexmundi.com/lexmundi/resources.asp](http://www.lexmundi.com/lexmundi/resources.asp)). For information about the Latin America and Caribbean region please contact Jorge Carrillo, Head of Business Development and Strategy, Latin America at [jcarrillo@lexmundi.com](mailto:jcarrillo@lexmundi.com).

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# Argentina

Prepared by Marval, O'Farrell & Mairal, *Lex Mundi Member Firm for Argentina*



**GDP** of  
**USD \$626,000**  
**million**  
**43 million**  
**inhabitants**, and  
**270 million** in the  
**Mercosur**.

**Eighth largest**  
**country** in the world,  
**750,000 Km2** of  
**high**  
**potential**  
**mining areas**, **second**  
**reserve** of **shale gas**  
and **fourth** of **shale oil**,  
worldwide.

**First** world country  
**exporter**  
of soybean oil and  
**second** soybean flour.  
**Second** producer in  
lemons and limes. **Third**  
exporter of corn.

## What to Expect in 2019

Although Argentina is currently facing difficult times, analysts forecast that the economy will stabilize after the first quarter of 2019. The country has been experiencing high inflation and fluctuation of its currency. This crisis led to a bailout by the IMF in 2018. Since then, the government has been working hard to meet the Fund's fiscal targets to avoid recession.

Despite the economic contraction, and as politicians get prepared for this year's October presidential elections, it is foreseen that there will be an export-led recovery. Many industries began 2019 with the announcement of foreign investments, in particular in the energy and infrastructure sectors, while agricultural production has been rising in the last quarter.

## Trends and Projects

### Mining

Argentina is known worldwide for its geological resources. In the case of mining, the national government is focusing on lithium, which is mainly produced in the province of Jujuy. In five years' time Argentina aims to become the main worldwide supplier of this mineral, which is strategic at a global level.

### Energy

As the world's second country with the largest gas reserve and the fourth for non-conventional hydrocarbons, Argentina's energy industry is one of the most important. Nevertheless, renewable energies are increasing their presence in the country. The government is encouraging local and foreign investments in this industry by applying the RenovAR program. The government has established by law, intended and increasing thresholds of total renewable generated energy, with a goal of reaching 20 percent of total generation by 2025.

Regarding shale oil and gas, companies such as Vista Oil & Gas and Petronas have recently announced investments in the Vaca Muerta region, in the province of Neuquén.

### Infrastructure

Argentina launched Public-Private Partnership contracts bids mid-2018 for road projects totaling around 7,000 kilometers. By the end of the year, the government included a new framework in the *2019 Budget Bill* to generate further investments by setting out a more transparent and practical process.

### Anti-Corruption and Compliance

Argentina has passed new regulations on anti-corruption and compliance programs. Brazil's Lava Jato Scandal and Argentina's Notebooks Case have also had a strong impact in the region. As a result, more transparency is being seen in infrastructure and other major government projects, which is expected to make investments in these areas more attractive for foreign investors.

## Corporate

The fluctuation of the currency has boosted the interest of foreign companies to invest in Argentina. This condition and the government's policies place Argentina as one of the most attractive Latin American countries in M&A investments for 2019.

## Legislative News

### February 2019

**“Regulation of the procedure for the request of refund of taxes paid in excess by beneficiaries of the fiscal stability provided by Law 24.196”. Published on 02/27/2019. By Leonardo G. Rodríguez and Fernando M. Vaquero**

Through *Joint Resolution No. 4428/2019*, issued on 02/26/2019 by the Argentine Tax Authority (“AFIP”) and the *Secretariat of Mining Policy*, a procedure was regulated so that the mining undertakings that are beneficiaries of the fiscal stability established by the *Law of Mining Investments*, and have born a higher tax and/or tariff burden than the corresponding one, can request the credit or refund of the sums paid in excess.

### January 2019

**Resolution No. 6/2019 of the Secretariat of Mining Policy of the Ministry of Production and Labor Published on 01/31/2019.**

This *Resolution* approves the procedure and the conditions for the use of benefits regarding Income Tax established by *Law No. 24,196 of Mining Investments*. It is created to simplify the procedure to a single regulatory body that leads to the facility, speed, transparency and modernization for the use of the benefits regarding Income Tax established by *Law No. 24,196 of Mining Investments*.

**Resolution No. 9/2019 of the Secretariat of Mining Policy of the Ministry of Production and Labor Published on 01/31/2019.**

This *Resolution* approves the procedure to access the fiscal stability benefit in accordance with Article 8 of *Law No. 24,196 of Mining Investments*, in accordance with the Annex attached in *Resolution 9/2019*. The application for the fiscal stability benefit may only be requested by those registered in the Mining Investment Law Register.

According to Article 5 of the above-mentioned Annex, the fiscal stability obtained by a mining development will include new mineral resources or mineral reserves in addition to those declared in the original feasibility study, which are incorporated during the production stage.

The Application Authority will issue the certificate of fiscal stability in accordance with Article 10 of *Law N° 24.196 of Mining Investments*, for each jurisdiction involved. *Resolution No. 9/2019* provides for the *Feasibility Study Formulation Guide*.

This measure will be applicable to the procedures that are in progress on the date of its entry into force.

### November 2018

#### RenovAr Round 3

- The Secretariat of Energy issued *Resolution No. 100/2018* launching the third round of the RenovAr program.
- RenovAr Round 3 will be for a maximum capacity of 400 MW distributed by technology, region and province. Technology will be divided as follows: (i) wind/solar photovoltaic 350 MW; (ii) biomass 25 MW; (iii) biogas 10 MW; (iv) waste landfill biogas 5 MW; and (v) small hydro 10 MW. Wind and solar photovoltaic will also be distributed among different geographical regions.

## Open Access Implementation in Railway Transport

The Argentine Executive implemented *Law No. 27,132* to advance the execution of “open access” in cargo and passenger rail transportation.

## Amendments to the Argentine Public Administration Procurement Framework

*Decree No. 963/2018* adjusted certain aspects regarding the Regulation of the Argentine Public Procurement Framework that had become outdated since the last administrative reorganization.

## Changes to PPP Contracts’ Framework

The Argentine Congress passed the *2019 Budget Bill*, which includes several amendments related to the PPP Contracts Framework. Moreover, the Argentine Executive introduced amendments to the executive decree implementing *PPP Law No. 27,328*.

## Regulation of Distributed Generation Law No. 27,424

The Argentine Government approved the regulation of *Distributed Generation Law No. 27,424* that introduces the Distributed Energy Generation Incentive Program.

## Resolution No. 20/2018 issued by the Secretariat of Energy Policy Coordination on 10/12/2018, published in the Official Gazette on 10/16/2018

This Resolution called for registration of pre-qualified interested parties to participate in the bid for the Public Private Participation Project “Transmission Lines - Stage I: Extra High Voltage Line in 500 kV E.T. Diamante River - New E.T. Charlone, Transforming Stations and complementary works in 132 kV”.

## May 2018

### New Law on Buy Argentine Regime

On April 18, 2018, the Argentine Congress unanimously approved the reform of the Buy Argentine Regime, which had been approved by the Argentine House of Representatives on November 22, 2017.

## March 2018

### The End of the Emergency

Due to the Argentine Government’s decision not to extend the effects of the laws which successively declared the emergency of a vast range of matters, on January 1, 2018 the 16-year period of effectiveness of such declaration expired.

## Marval, O’Farrell & Mairal’s Highlights

### Bioceres Argentina SA

The agricultural biotech company signed a share exchange agreement with Union Acquisition Corporation. The transaction results in a combined company named Bioceres Crop Solutions with an anticipated initial value of USD 456 million. Bioceres is the first Latin American biotech company listed on the NYSE. Counsel to Bioceres Argentina SA. (2018).

## Shell

Raízen completed acquisition of SHELL's downstream operations in Argentina for USD 916 million. SHELL'S downstream business consists of a network of 655 gas stations, a refinery with a processing capacity of 108,000 bbls/day, a lubricant plant, three land terminals, two airport supply terminals and five LPG filling plants. Counsel to Shell (2018)

## Sociedad Química Y Minera De Chile S.A.

Advised over the agreement to transfer the entire stake of its subsidiary (SQM POTASIO) in MINERA EXAR SA to GANFENG. The agreement details that: (i) SQM POTASIO will sell to GANFENG its entire stake and other rights in EXAR; (ii) EXAR will repay the total amount of the loans received from SQM POTASIO; and (iii) SQM will receive payments for the services rendered to EXAR during the development of the project. SQM and SQM POTASIO will receive an approximate amount of USD 87.5 million. In addition, SQM POTASIO will have the right to obtain a deferred amount of USD 50 million from GANFENG Group, subject to compliance with certain product sales targets of the project. Counsel to SOCIEDAD QUÍMICA Y MINERA DE CHILE SA (2018)

## Shell

Transfer of Shell's downstream operations in Argentina to Raízen. Counsel to Shell (2018)

## 360 Energy S.A. and Energías Sustentables S.A.

360 Energy S.A. and Energías Sustentables S.A. sold to Genneia S.A. 75 percent of the share capital of the companies Ullum 1 Solar S.A., Ullum 2 Solar S.A. and Ullum 3 Solar S.A. and committed to transfer to Genneia S.A. the outstanding 25 percent of the share capital of the Companies once certain conditions are complied. Counsel to 360 Energy S.A. and Energías Sustentables S.A. (2018)

## General Electric (GE)

General Electric acquired 24.99 percent of the capital stock of YPF SA electricity generation unit (YPF Energía Eléctrica SA) for USD 275 million. Counsel to GE (2018)

## Minera Aquiline Argentina S.A.

Patagonia Gold Canada Inc acquired from Pan American Silver, Minera Aquiline shares for a total amount of USD \$15 million. Counsel to Pan American Silver (2018)

## Integración Eléctrica Sur Argentina S.A.

Issuance of Class 4 Short Term Notes ("VCP," after their acronym in Spanish) for an amount up to USD 50 million under the Global Program of Short-Term Notes of Integración Eléctrica Sur Argentina S.A. (INTESAR). The VCP were issued for the nominal value of ARS 123,535,244 at a variable rate, a margin of 16 percent basic points and due on October 1, 2019. Counsel to underwriter (2018).

## Transportadora De Gas Del Sur S.A.

Issued an aggregate principal amount of USD 500 million senior notes with maturity in 2025 alongside offer to purchase 9.625 percent notes due 2020. Counsel to the banks (2018)

## Ausol S.A.

Advised Autopistas Del Sol SA and Grupo Concesionario Del Oeste SA in the renegotiation of its concession contracts on the North and West access to the City of Buenos Aires. These are the first major public contracts to be fully renegotiated by the current administration of the Argentine government. Counsel to Autopistas Del Sol SA and Grupo Concesionario Del Oeste SA (2018).

## Lex Mundi Member Contact



A **LexMundi** Member

### **Sebastián Iribarne, Partner**

[smi@marval.com](mailto:smi@marval.com)

Tel: 54.11.4310.0100 ext. 1812

### **Roberto Silva, Partner**

[res@marval.com](mailto:res@marval.com)

Tel: 54.11.4310.0100

### **Marval, O'Farrell & Mairal**

Member Firm for Argentina

# Aruba

Prepared by VanEps Kunneman VanDoorne, *Lex Mundi Member Firm for Curacao*  
with offices in Aruba



## Tourism

constitutes

**33%**

of

**Gross Domestic Product**

**Total tourism expenditure: USD 854 million**

**annually. Gross Domestic Product** per capita: USD 24,400

Top **sectors** for **investing**

are: Sustainable Energy, Knowledge Economy, Sustainable Tourism, Logistics, Financial and Business

## What to Expect in 2019

### Tourism and Hospitality

Tourism currently provides the largest percentage of the country's income. Because of the rapid growth in the last twenty years, related industries like construction have also flourished.

### Shipping

Aruba's favorable geographic locations and reliable port services attract a large number of vessels annually. The cruise tourism accounts for a steady number of vessels each year.

The activities in the Aruban port include container transshipments, ship repairs, bunkering, cruise tourism and marine (underwater) surveys.

Aruba's jurisdiction has great conditions for arrests and judicial sales of vessels, through public auction or private sale. Claims (foreign or local) can be enforced very promptly and cost efficiently, while the claimant is in control over the whole process. Almost all costs incurred with the enforcement can be recovered from the sales proceeds. As a consequence of judicial sale in Aruba, the vessel will be freed from old claims so that the buyer of the vessel can easily re-register its vessel with a clean title.

### Aviation and Aircraft Registration

Aruba has a high standard regime for the registration of aircraft. In respect of aircraft financing, the Aruban legal system provides for a sound system of security interests that can be placed on aircraft as security for loans granted by lenders. For aircraft owners and operators, the Aruban legal system provides for the highest quality standards for effective safety oversight.

The Department of Civil Aviation of Aruba ("**DCA**") applies and follows the European Safety Agency Standards and the United States Federal Aviation Administration ("**FAA**") regulations. Aruba is rated a category 1 country for aircraft registrations by the **FAA**.

The above, together with the possibility to have the aircraft owned by or leased to a tax-exempt company, makes Aruba a favorable jurisdiction to register aircraft. As a consequence, Aruba experienced a significant increase over the last ten years in aircraft registrations.

## Trends and Projects

### Oil and Gas

The plan for the idle Citgo refinery in Aruba to be refurbished and converted into an oil upgrader, which was approved in 2016 by the Government of Aruba, has been put on hold due to sanctions imposed by the United States on Venezuela. The Venezuelan state oil company PDVSA is the owner of Citgo.

The facility's management and the Government of Aruba are planning to continue seeking solutions to avoid having to halt the project.

## Tourism

Tourism in Aruba remains one of the driving forces of the economy. There has been an increase in visitors from the United States offsetting the decrease of visitors from Venezuela and leading to a slight increase in the overall number of visitors to Aruba compared to the previous year.

## Legislative News

### Civil Code

The Aruban legislator is currently still busy with the introduction of book 2 of the *Aruba Civil Code*, which is meant to replace the *Aruba Commercial Code* with regard to legal entities.

## VanEps Kunneman VanDoorne's Highlights

- Assisting lenders (Maduro & Curiel's Bank N.V. & FirstCaribbean International Bank (Cayman) Limited) in syndicated secured debt financing of ANG 375 million (USD 210 million) for Aqualectra (Curaçao government owned water and electricity provider).
- Assisting with the acquisition of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) by consortium of Investors (Closing price approx. 300 million).
- Assisting Connected Capital LLC with regards to the development of 900 room hotel project in San Nicolas Aruba. Estimated value of this project is USD 80 million.
- Contract Management for Mota Engil Project Company N.V. regarding a new road on Aruba, the contract is valued at USD 160 million.
- Assisting Wingpark Urirama N.V. with a permitting issue location regarding a new wind park in Aruba.
- The promoters of the first retail luxury shopping center in Luanda which entailed advice on investment structures and real estate issues.
- Several clients in ongoing agricultural projects and associated investment structures. AIC assists several clients with foreign investment and foreign exchange issues in several industries (most notably, environmental, hydro-electrical, retail).

## Lex Mundi Member Contact



### Focco Lunsingh Scheurleer, Managing Partner

[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 160

### Michiel Gorsira, Head of Litigation & Commercial

[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 110

### Frank Kunneman, Head of Corporate & Banking

[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 254

### VanEps Kunneman VanDoorne,

Member Firm for Curacao with offices in Aruba

A **LexMundi** Member

# The Bahamas

Prepared by McKinney, Bancroft & Hughes, *Lex Mundi Member Firm for the Bahamas*



**One** of the most significant **advantages** is the the country's **tax free status** on **income**.

Gross Domestic Product is approximately **USD 5.7 billion**.

Tourism accounts for 50 percent, financial services nearly 20 percent and the balance spread among retail and wholesale trade, fishing, light manufacturing and agriculture.

**Currency**, which is on par with the U.S. dollar, is recognized for its **steady performance** and unwavering value. This stability anchors the Bahamian **economy** and creates a viable **investment** foundation.

## What to Expect in 2019

### The Bahamian Economy - General Overview

The Bahamian economy is displaying positive growth momentum as efforts to restructure and reposition it to meet the demands of the 21st century gather pace. Having protected its stellar reputation, The Bahamas is already exploring how it can turn legal reforms that brought it into compliance with the EU to its advantage by attracting international companies to establish headquarters, operations and other forms of physical presence within its shores in order to generate increased jobs and economic activity. A well-established international financial center, The Bahamas has designs on expanding to become a true international business center focused on the global trade in services.

After last year's full opening of the USD 4.2 billion Baha Mar mega resort, the Bahamian economy is forecast to grow by 2.1 percent in 2019. This follows the previous year's 2.3 percent expansion as forecast by the International Monetary Fund ("**IMF**"). Buoyed by this strong platform, the government is aiming to further grow the Bahamian economy through structural reforms that eliminate bureaucracy and red tape.

## Trends and Projects by Sector

### International Trade and the World Trade Organization

The Bahamas relies heavily on international trade of goods and services to contribute to its high standard of living. This trade is made up principally of the export in services and foreign investment inflows through foreign direct investment ("**FDI**"). With a population of approximately 400,000 residents, The Bahamas facilitates approximately USD 8 billion in international trade in goods and services. This international trade is fueled by the predominant sectors of the Bahamian economy which are tourism and financial services. Approximately 80 percent of all goods utilized in the Bahamas are imported from foreign suppliers, most of these goods are designated for use large hotel projects which themselves service international visitors. As the Bahamas continues to increase its activity in international trade, the country has sought to secure greater benefits through a rule-based organization. In this regard, as one of the last remaining countries that is not a member of the World Trade Organization ("**WTO**"), the Government of The Bahamas made the decision to accede to the **WTO** in 2001. The Government has intimated that it intends to conclude **WTO** membership negotiations before the end of 2019, with full accession subsequently occurring in 2020.

### Liberalization of the Economy

Between 1995 and 2018 the continuous liberalization of exchange control regulation in the banking sector has assisted in maintaining the competitive edge which The Bahamas enjoys as a leading offshore financial jurisdiction. Amendments to legislation and Central Bank policy guidelines in May 1995, September 2002, January 2006 and January 2010 provided for increased delegation of authority to commercial banks for current account transactions. This positively impacted trade and investment such as payments for imports, travel and services as well as capital

account transactions for overseas investments and the domestic capital markets. Additionally, the Central bank in 2018 further relaxed regulations on capital account transactions by, inter alia: decreasing premiums on investment foreign currency purchases from 5 percent to 2.5 percent, This allowed licensed businesses without prior approval to hold facilities outside of The Bahamas with certain thresholds for funding trade, and delegating the operation of the Investment Currency Market to commercial banks plus eliminating the need for Central Bank approval on an individual transaction basis. The reforms are designed to maintain a balance of foreign exchange supplies for trade related payments and to incentivize investment; it is expected that increases in returns in the tourism and financial services sectors of the economy will adequately support the demand for foreign exchange. Liberalization of exchange control and investment policy has coincided with the progressive liberalization of the Bahamian economy through the de-monopolization of other sectors of the economy such as telecommunications and electricity sectors.

## Conducting Business in The Bahamas

Every business in The Bahamas is required to obtain a business license or temporary business license. In applying for a business license a description of the activities to be conducted by the business along with details of the shareholders, estimated gross annual turnover and a primary contact person must be included in the application. Each business is also required to register with and receive a compliance certificate from the National Insurance Board (“**NIB**”). It should be noted that annual business license fees are payable each year a business is in operation and these fees are calculated based on a percentage of the business’ turnover for the preceding year.

The Government’s policy restricts certain businesses and economic activity in The Bahamas to Bahamian citizens. These include wholesale and retail operations, public transportation and security services.

Where a non-Bahamian (person or company) wishes to do business in The Bahamas it is necessary to obtain Investment Board approval from the National Economic Council (“**NEC**”), which is a subcommittee of the Cabinet of The Bahamas headed by the Prime Minister. The **NEC** is generally responsible for the management of the Government’s investment policy. The operational aspects of the investment policy are the responsibility of the Bahamas Investment Authority (“**BIA**”). The approval of the **BIA** is required to conduct any general business by a non-Bahamian in The Bahamas. This includes engaging in business pursuant to a contract with a local entity.

The Government has formulated a National Investment Plan which outlines its policy on investment in The Bahamas by non-Bahamians. There are areas of investment specifically identified for non-Bahamian investors, such as touristic resorts, banking and financial services, ship repair and offshore medical centers.

## Value Added Tax (VAT)

If a business expects to earn more than USD 100 thousand in gross turnover for the next 12 months or has had more than USD 100 thousand in gross turnover over the last 12 months then, save for certain exceptions, it must register for VAT. All businesses which VAT registrants must issue VAT invoices in the form mandated by the relevant legislation and charge VAT are unless the goods or services provided are exempt. VAT is either charged at the standard rate, which is presently 12 percent, or at 0 percent if the goods or services provided are deemed to be zero rated.

VAT registrants are required to file VAT returns and pay all VAT collected to the government on a regular basis. VAT paid on goods and services required for making/providing the taxable goods/services may be claimed as a credit and deducted from the amount of VAT to be paid to the government.

## Tourism

The Central Bank of The Bahamas recently reported that the tourism industry enjoyed its strongest growth in eight years in 2018, with total visitor arrivals increasing by 7.9 percent year-over-year to 6.6 million.

Higher-spending stopover arrivals, who stay in the country’s many hotels, grew by 16.7 percent in 2018, with those visiting Nassau increasing by 19.2 year-over-year. The growth surge was fueled by the buoyant U.S. economy, from

# The Bahamas

where The Bahamas draws more than 80 percent of its visitor base, and full opening of the multi-billion-dollar Baha Mar project. This added 2,300 new rooms to The Bahamas' total hotel inventory, together with the Grand Hyatt, Rosewood and SLS resort brands, offering multiple new experiences and providing fresh impetus to the Bahamian tourism industry.

The tourism industry continues to attract significant foreign direct investment ("FDI") dollars both in Nassau and the other islands. Among the major projects underway in the Bahamian capital are Sterling Global Financial's USD 250 million redevelopment of the former Hurricane Hole area on Paradise Island into a mixed-use facility featuring marina, office, residential and retail space, plus the USD 120 million GoldWynn condo hotel that will overlook the sea at Goodman's Bay. The government is currently assessing offers from multiple bidders to acquire Freeport's Grand Lucayan resort, the largest hotel property on Grand Bahama island.

The government has selected Global Ports Holding, the world's largest cruise port operator, to undertake a USD 250 million transformation of the Prince George dock that sits at the heart of its waterfront capital. Global Ports has plans to add two berths, able to accommodate the world's largest cruise ships, and substantially increase the port's capacity at a time when 90-100 cruise vessels are in construction. The cruise port's upgrade, which involves the construction of an amphitheater and international events destination on Nassau's waterfront, is also being viewed as a hoped-for catalyst that will spark the wider redevelopment of the city's downtown area.

Nassau is not the only Bahamian location drawing interest from the cruise lines. Attracted by the rich variety of experiences provided by the 700-island archipelago, cruise lines are investing hundreds of millions of dollars in new and upgraded private ports and islands. Carnival last month unveiled plans to develop its own USD 100 million port destination in Freeport, while Royal Caribbean is presently investing USD 250 million in its Coco Cay private island. Royal also has its sights set on Freeport Grand Bahama. Royal Caribbean, in partnership with ITM Group (a Mexican port developer) are in the process of exploring the possibility of acquiring the Grand Lucayan hotel and developing a cruise port in Freeport, Grand Bahama. Royal Caribbean and ITM Group have entered into a 90-day discussion period with the government as is expected to present its final proposal in the upcoming weeks.

Royal Caribbean is known world-wide for their one-of-a-kind guest experience and should the proposal be accepted, the Grand Lucayan will no doubt be transformed and will include water based, adventure and entertainment facilities. The cruise port development will include the construction of new cruise ship berths which will facilitate the increase of the port's current capability.

Disney Cruise Line has just signed an agreement with the government to invest between USD 250 million to USD 400 million in developing a new cruise destination at Lighthouse Point on the island of Eleuthera, while Mediterranean Shipping Company ("MSC") is spending a similar sum to develop a private island near Bimini.

McKinney, Bancroft & Hughes ("MB&H") represents Newworld One Bay Street Limited in the development a USD 200 million condo/hotel complex in The Bahamas known as One Particular Harbour at the Pointe Condominiums. Currently, MB&H is assisting in the preparation of various documents necessary for the sale of the condominiums.

The government is also moving swiftly to diversify the economy away from its traditional reliance on tourism and financial services. It has unveiled plans to revive The Bahamas' second city, Freeport, by transforming it into a technology hub able to attract firms from across the globe. Legislation to regulate the emerging crypto currency and block chain technology is firmly on the government's agenda, as it builds on the foundation provided by the country's long-standing industries.

## Financial Services

The government has enacted multiple legal measures since coming to office to ensure The Bahamas remains fully compliant with global best practices and international regulatory standards. It has upgraded its *Financial Transactions Reporting Act* and *Proceeds of Crime Act* to meet revised global anti-money laundering and counter-terror financing benchmarks, and progress in these areas was recognized in late 2018 when the Caribbean Financial Action Task Force ("CFATF") upgraded The Bahamas' compliance with 13 of these 40 standards.

To demonstrate it is fully committed to countering global tax evasion and avoidance, The Bahamas has also passed the *Commercial Entities (Substance Requirements) Act* and *Removal of Preferential Exemptions Act*. The *Commercial Entities Act* requires all entities operating in this nation to show they have a physical presence by conducting income-generating activities here. Management and control must also reside in this country. Headquarters operations, together with banking, insurance, fund management, financing and leasing, shipping, distribution or service center operations, and holding companies, are the business activities under the *Act* that must have a “substantial presence” in The Bahamas through offices and employees and be conducting “real business” activities. The *Preferential Exemptions Act*, meanwhile, eliminates all tax breaks and incentives previously available only to non-resident entities following an appropriate transition period. Tax evasion, too, has now been made a criminal offense.

The government has also introduced a *Register of Beneficial Ownership Act* to ensure regulatory and legal authorities have access to ownership details on all Bahamas-registered corporate entities. This does not, though, mean that ownership-related information will be made public, and the *Act* provides for the appropriate client confidentiality safeguards.

## Alternative Investment Fund Managers Directive Memorandum of Understanding with Germany

The *Alternative Investment Fund Managers Directive* (“**AIFMD**”) is a European Union directive that aims to place alternative investment fund managers (“**AIFMs**”) into a regulated framework, in order to monitor and regulate their activity. The Securities Commission of The Bahamas entered into a Memorandum of Understanding (“**MoU**”) for **AIFMD** with the German Federal Financial Supervisory Authority better known by its acronym “**BaFin**”. The **MoU** permits Bahamas based **AIFMs** to market and perform fund management services for Alternative Investment Funds (“**AIFs**”) in the German security market and in exchange German based fund managers to market and perform fund management services for alternative investment funds (“**AIFs**”) in The Bahamas security market. **AIFs** include hedge funds, private equity funds, real estate funds, managed futures, commodities and derivatives, contracts and such other funds held by institutional investors or accredited, high-net-worth individuals.

The bilateral cooperation agreement between The Securities Commission of The Bahamas and **BaFin** came into force on the February 15, 2019 which marks the 28<sup>th</sup> **AIFMD MoU** the Securities Commission of The Bahamas has entered into with European counterpart securities regulatory authorities. The Bahamas Securities Commission presently enjoys bi-lateral cooperation agreements with the following European jurisdictions:

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Spain
- Sweden
- The Netherland
- United Kingdom

## Legislative News

### Legislative Measures

The government's boldest reform measure to-date has been the *Commercial Enterprises Act*, which is designed to provide new international and Bahamian businesses with the assurance that they will rapidly receive work permits for senior executives and essential staff within 14 days of applying.

Sending a pro-growth message to business, the legislation enables companies in targeted industries to establish operations in The Bahamas without first needing to obtain work permits. Applications from businesses covered by the *Act* must be submitted within 30 days of the worker's arrival in The Bahamas, and the director of immigration must make a decision on their application within 14 days of the application's receipt.

A commercial enterprise is defined by the act as any enterprise established by a Bahamian (natural or legal), a non-Bahamian (natural or legal) with an investment of not less than two hundred and fifty thousand dollars, or a joint venture or partnership between a Bahamian and a non-Bahamian in the following areas:

- Arbitration
- Assembly of Manufactures
- Aviation Approved Maintenance
- Aviation Registration
- Bioinformatics and Analytics
- Biomedical Industries
- Boutique Health Facilities
- Captive Insurance
- Cell Centers
- Data Storage and Warehousing
- International Arbitrage
- International Trade
- Manufacturing
- Maritime Trade
- Mutual Fund Administration
- Nano Technology
- Software Design and Writing
- Wealth Management

Parliament has passed the *Fiscal Responsibility Act* as a means of introducing greater oversight, transparency and accountability into the government's management of the country's finances. It sets deficit and debt-to-GDP targets that the government must meet and establishes a pathway to achieving a budget surplus as early as the 2020-2021 fiscal year.

### Developments in Industry

The *Bahamas National Energy Policy for 2013 – 2033* seeks to commit at least 30 percent of its energy matrix to renewable energy by 2033. To achieve this objective, the Government of The Bahamas intends to implement the following policies:

- a net billing program which will enable 25-30 MWs of power being generated by residential and commercial customers with grid connection;
- the installation of solar PV systems in public buildings and assets; and
- Bahamas Power and Light Company Ltd. has agreed to install solar plants on 20 islands in The Bahamas.

The government has amended the *Electricity Act* to allow for renewable energy generating systems and inter-connection to the grid. By the end of 2018 approximately 5,412 households across The Bahamas were "off the grid."

## Privatization of Bahamas Power and Light

The primary electricity provider in the nation, Bahamas Power & Light (“**BPL**”), is a subsidiary company of the Bahamas Electricity Corporation which is owned by the Government of The Bahamas. An American company PowerSecure was brought in to manage **BPL** however in August 2018 that management agreement was terminated. The Minister with responsibilities for **BPL** has spoken of privatization of the entity.

In April 2018, it was announced that Shell North America had won a bid to build a power plant in conjunction with **BPL** which would utilize liquefied natural gas (“**LNG**”) in the power generation process, as well as diesel and heavy fuel oil. **BPL**’s Chief Executive has said that the Memorandum of Understanding with Shell North America calls for multi-fuel power plants for New Providence by 2022.

In March 2019, a deal was announced for a Finnish corporation Wärtsilä Oyj Abp to provide new power generation at a **BPL** power station.

## McKinney, Bancroft & Hughes’ Highlights

McKinney, Bancroft & Hughes is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in the cities of Nassau and Freeport. Established in 1945, the Firm’s philosophy of delivering superior levels of service by industry specialists was established by its founding partners, Donald McKinney, Sir Oswald Bancroft and Sir Leonard Knowles.

Founded principally as a corporate and commercial firm, today McKinney, Bancroft & Hughes is engaged in the general practice of law and services its clientele through the expertise of its attorneys in over 35 practice areas.

McKinney, Bancroft & Hughes has received wide acclaim for its litigation capabilities, being noted for its deep bench in this field of practice. The firm is active in an array of contentious cases, including high-value banking and insolvency disputes. When asked, clients will likely state that “if you have to litigate in The Bahamas, these are the go-to guys.”

The firm also has wider corporate and finance capabilities. The lawyers at **MB&H** are both knowledgeable and experienced in navigating the relevant legislation and obtaining the requisite approvals for public and private sector clients. They have fostered relationships with key persons within the regulatory authorities and are able to assist clients with managing and implementing policies who conduct business in a regulated market.

## Lex Mundi Member Contact



A **LexMundi** Member

**Justine A. Smith, Partner**

[JASmith@mckinney.com.bs](mailto:JASmith@mckinney.com.bs)

**McKinney, Bancroft & Hughes**

Member Firm for The Bahamas

Tel: 1.242.322.24195

# Barbados

Prepared by Clarke Gittens Farmer, *Lex Mundi Member Firm for Barbados*



## Third leading

destination for Canadian direct investment abroad, garnering **CDN \$68.3 billion** at the end of **2016**.

**Home** to more than 4,000 transnational **companies** that are involved in activities such as international banking, insurance, ships registration, international trade and commerce.

Company **activities** include, treasury management, private wealth management, trusts, contact centers, information communications technology and manufacturing.

## What to Expect in 2019

### General Economic Outlook

The Central Bank of Barbados in a press release published on its website on January 31, 2019 gave some key highlights for the outlook of the Barbados economy in 2019:

- Tourism is expected to perform favorably due to anticipated expansion of airlift, increase in ships docking at the port and special events such as the English cricket tour.
- Increased tourism activity is also supported by the emergence of Barbados as a hub for medical education.
- Several projects in the tourism, healthcare and distribution sectors have been identified for start-up in 2019.
- Downside risks which could have a negative impact on the economy are:
  - forecast for global growth has been revised downward by the IMF from 3.7 percent to 3.5 percent;
  - U.S. economy forecasted to grow by 2.6 percent;
  - Brexit developments impact on the UK economy; and
  - geopolitical factors' negative impact on international oil prices.

### Industry Specific Outlook

#### The International Business and Financial Services Sector

Effective January 1, 2019, Barbados enacted sweeping legislative changes to stem the threat of a negative listing by the Organization for Economic Cooperation and Development ("**OECD**") in connection with its Base Erosion and Profit Shifting ("**BEPS**") initiative. At the Forum on Harmful Tax Practice ("**FHTP**") held in Paris from January 9-11, 2019, Barbados presented its reforms and the **OECD** has indicated that all the attempts to comply were successful.

On March 12, 2019, the European Commission issued a press release updating its list of non-cooperative tax jurisdictions, on which Barbados was included as "blacklisted". The Government of Barbados as well as the Caricom Community, continue to intensify lobbying efforts and outreach against the European Union blacklisting, while defending its rights and those of other affected territories to fair treatment by the European Union.

## Trends and Projects

### Securities/Technology

#### Regulatory Sandbox

In October 2018, the Financial Services Commission of Barbados ("**FSC**") and the Barbados Central Bank ("**the Regulators**") jointly established the *Barbados Regulatory Sandbox Framework* ("**the Sandbox**"). The *Barbados Regulatory*

*Sandbox Framework*<sup>1</sup> provides that **the Sandbox** is a space for the live testing of innovative financial products, services, and delivery mechanisms, where the risks to ordinary financial consumers and the financial system have been strictly contained. **The Regulators** have indicated that the purpose of **the Sandbox** is: (i) for businesses to test the feasibility of their innovations in a real-world, but controlled, environment; and (ii) for **the Regulators** to have an opportunity to better understand the nature of the product or service and by extension to determine whether the existing regulatory framework is sufficient, or if a new type of legislation is necessary. **The Regulators** have further indicated that the ultimate aim is to ensure that innovative technologies are not stymied, while at the same time protecting Barbadian investors and the financial system.

To be eligible to participate in **the Sandbox** the applicant must be an entity with a product or service:

- where as a result of new technology or practices there is ambiguity as to the appropriate regulatory regime for the product or service;
- that uses technologies that are as yet unproven and whose failure would give rise to risks to consumers or financial stability;
- that has conducted adequate and appropriate assessments to demonstrate the usefulness and functionality of the product or service and to understand the associated risks; and
- demonstrating possession of the necessary resources (financial and human) to participate in **the Sandbox**, and to mitigate and reasonably control potential consumer risks and losses from activity within **the Sandbox**.

Application forms are available on **the Regulators'** websites. Each application must be accompanied by an application fee of BBD 5 thousand (approx. USD 2,500).

## Stock Exchange - the International Securities Market

The Barbados Stock Exchange ("**BSE**"), an internationally recognized stock exchange regulated by the Financial Services Commission of Barbados, launched the International Securities Market ("**ISM**") in March 2016. The **ISM** is a market for the listing and trading of securities by issuers who may or may not be incorporated in Barbados that would otherwise be listed and traded on other exchanges around the world. The **ISM** is a separate market from the domestic stock exchange. The **BSE** has stated that the **ISM** was created to accommodate the needs of a wide range of international business and has some of the following specific benefits:

- access to capital for earlier stage companies and smaller financings;
- quality corporate governance for investors;
- one-to-one mentorship by listing sponsors who are able to offer advice on the listing process and accompanying requirements; and
- cost leadership- a low fee structure, relative to competing jurisdictions.

## Stock Exchange – Digital Assets Platform

The **BSE** recently announced the pending launch of its special facility (the "**Special Facility**") for listing and trading digital assets, that may be described as cryptocurrencies, tokens or crypto- assets in popular nomenclature, on the **ISM**. The **BSE** has defined the term 'digital assets' to include the full range of commercial assets, which represented a cryptographically secured digital representation of a set of rights provided on a digital platform issued or created (or to be issued or created), for commercial exploitation or reward, and which are exchanged and traded or cleared on a network of inter-linked and secured decentralized digital records (blockchain). It is a requirement for the digital asset to be created to have a commercial value or created with the intention of reward. The possibility exists for the digital assets to be listed on the **ISM** and traded on another recognized platform for such digital assets. The listing of the digital assets on the **ISM**, under the regulation of the **FSC** however, may lend credibility to the digital assets since they will need to meet certain requirements for listing.

<sup>1</sup> The Barbados Regulatory Sandbox Framework may be accessed online at <http://www.centralbank.org.bb/Portals/0/Files/CBB%20-%20FSC%20Reg%20Sandbox%20Framework.pdf>

We understand that the **Special Facility** is under the pending review of the **FSC**. The **BSE** recently announced that it had entered into a Memorandum of Understanding with an end-to-end service provider to deliver security token trading capabilities on the **BSE** and to allow for the safe custody, listing, trading, clearing and settlement of digital assets for the market participants.

## Barbados Maritime Ship Registration

The Barbados Ships' Registry provides a high-quality service in all aspects of ship registration, including a network of nautical inspectors available to carry out annual ship safety inspections and to assist ship operators whenever required.

The Barbados Government has ratified, and Barbados Maritime adheres to all major international conventions to date, including *The International Maritime Organization Convention and Amendments of 1991 and 1993*.

In addition, the *Shipping Act 1994* permits bare-boat chartering in and out of the Barbados flag. Ships already registered with the Barbados flag may opt to bare-boat charter under another flag, while maintaining suspended registration status in Barbados. Mortgages may continue to be recorded by the Ship Registry and would be in operation under the laws of the 'secondary' flag.

## Registration of Aircraft and Aircraft Mortgages

Registration of aircrafts in Barbados is governed by the *Civil Aviation Act, Cap. 288B*, and the *Civil Aviation (Registration of Aircraft and Aircraft Mortgages) Regulations, 2007*. Civil aircrafts in Barbados use the registration sequence 8P-AAA to 8P-ZZZ.

A mortgage on an aircraft may also be registered in Barbados. A commercial lender holding a charge over an asset that inherently moves from jurisdiction to jurisdiction needs to be reassured that the aircraft is being operated under a trusted regulator and furthermore can be repossessed in the event that the owner does not meet its obligations under the mortgage agreement.

## Legislative News

### International Business and Financial Services Sector – Recent Legislative Changes

In response to the finding by the **OECD** that Barbados had a preferential regime in place available to certain entities, which the **OECD** deemed potentially harmful, the Barbados Government has made substantive changes to its corporate tax framework and to numerous pieces of legislation, which have the effect of removing all "ring fencing" which previously applied to the international business and financial services sector.

Several pieces of legislation have been either repealed or amended, including the following:

- *International Business Companies Act* (repealed) and succeeded by the *International Business Company (Repeal) Act*;
- *Societies with Restricted Liability Act* (amended);
- *Companies Act* (amended);
- *Exempt Insurance Act* (repealed);
- *Insurance Act* (amended);
- *International Financial Services Act* (repealed);
- *Financial Institutions Act* (amended);
- *Income Tax Act* (amended);

- *Stamp Duty Act* (amended);
- *Property Transfer Tax Act* (amended);
- *Shipping Corporations Act* (amended);
- *Value Added Tax Act* (amended)
- *Corporate and Trust Service Providers Act* (amended)

The legislative changes came into effect on January 1, 2019.

## The Income Tax Act

Of note, with effect from income year 2019, the corporate tax rates have been converged, resulting in a single sliding scale generally applicable to corporate entities, as follows:

Taxable Income (BBD)	Rate percent
Up to <= 1 million	5.5
1 million < Taxable Income <= 20 million	3
20 million < Taxable Income <= 30 million	2.5
Taxable Income > 30 million	1

Notwithstanding the above, the tax payable by insurance companies that were classified as qualifying insurance companies licensed under the *Insurance Act*, carrying on general insurance business before the 17th day of October, 2017; and that were entitled to apply for the foreign currency allowance, will now be 2 percent of taxable income for every income year commencing from income year 2019 and ending on the 30th day of June, 2021.

In addition, with effect from income year 2019 and every subsequent income year the rate of tax on the taxable income for general and life insurance business will be as follows:

- Class 1 licensee under the *Insurance Act, Cap. 310* will be 0 percent;
- Class 2 licensee under the *Insurance Act, Cap. 310* shall be 2 percent;
- Class 3 licensee under the *Insurance Act, Cap. 310* shall be 2 percent.

## New Legislation

The following new pieces of legislation have been enacted, namely the:

***Business Companies (Economic Substance) Act***, which provides for:

- the imposition of an economic substance test on companies carrying on business in Barbados;
- the determination of whether the test is met by assessing the extent of relevant activities carried out by such companies and taking appropriate enforcement action; and
- for related matters.

***Foreign Currency Permits Act***, which provides for:

- the grant of a foreign currency permit for any entity, whether a company or a society with restricted liability, that earns one hundred per cent of its annual income in foreign currency; and
- for related matters.

***Trusts (Miscellaneous Provisions) Act***, which provides for the creation and regulation of certain trusts and for related matters.

## ***Debt Holder (Approval of Debt Restructuring Act, 2018***

In order to allow for the restructuring of the domestic debt of the Government of Barbados, the Parliament of Barbados enacted the *Debt Holder (Approval of Debt Restructuring) Act, 2018-24* (“the **Debt Restructuring Act**”). The purpose of the **Debt Restructuring Act** was to facilitate the comprehensive debt restructuring program of the Government and to ensure equitable treatment among all persons holding specified debt instruments of the Government and certain state-owned enterprises (instrument holders) by giving them the opportunity to indicate their acceptance or non-acceptance of the debt restructuring proposals which were made by the Government. The Government was able to secure the approval of the restructuring proposals by the prescribed thresholds thereby leading to the acceptance of the comprehensive debt restructuring and the exchange of instruments to all instrument holders in accordance with the restructuring proposals.

## **Dematerialization of Government Securities**

The Parliament of Barbados recently introduced the *Dematerialization of Government Securities Act, 2018-26* to allow for the establishment of a register of dematerialized Government securities i.e. the issuance, registration, recording and transfer of Government securities in electronic form (the Register) which will be *prima facie* evidence that a person holds the legal title to any Government security entered on the Register. Every Government security will now be issued as a dematerialized security to allow for electronic transfer of Government securities without an instrument in writing. Payment of interest on a dematerialized Government security may also be affected by electronic means.

## **Clarke Gittens Farmer’s Highlights**

We have worked on the following:

- First listing of a company on the ISM;
- Cross listing of a Barbados company on the Jamaica Stock Exchange;
- Provided advice to financial institutions re Government debt restructuring implications;
- Member of Working Group for Fintech Regulation in Barbados;
- Participation in first Barbadian case to be heard before Court of Arbitration for Sport; and
- Member of the Barbados International Business Association Task Force on the BEPS Initiative.

## **Lex Mundi Member Contact**



A **LexMundi** Member

### **Gillian Clarke, Partner – Head of Corporate Department**

[gillian.clarke@clarkes.com.bb](mailto:gillian.clarke@clarkes.com.bb)

Tel: 1.246.436.6287

### **Debbie Fraser, Partner – Head of Commercial Department**

[debbie.fraser@clarkes.com.bb](mailto:debbie.fraser@clarkes.com.bb)

Tel: 1.246.436.6287

### **Clarke Gittens Farmer**

Member Firm for Barbados

# Bolivia

Prepared by C.R. & F. Rojas – Abogados, *Lex Mundi* member firm for Bolivia



**Uyuni** is the **largest lithium reserve** in the **world**.

**Fourth** worldwide **Tungsten producer**. More than **10.7 trillion** cubic feet in **natural gas reserves**.

**World's** second place in Quinoa **production**. First **largest producer and exporter** of chestnut (Brazil nuts).

## What to Expect in 2019

Bolivia has experienced unprecedented growth in the last decade and according to the government, it expects to continue on the same trend, though, much will be decided in 2019's presidential election, as a possible change in political players could also influence the country's performance expectations.

A recent international court decision, issued in favor of Chile, regarding its alleged obligation to negotiate Bolivia's sovereign access to the Pacific Ocean, has driven Bolivia to reconsider its reliance on the Chilean ports of Arica and Iquique and seek out new alternatives as other international trade routes through Brazil, Peru, Paraguay, Argentina and Uruguay.

Economic growth has slowed down in comparison to former years, when in 2013 the GDP growth peaked at 6.8 percent. At that time, the Government was receiving significant income from oil rent and international commodity prices were high. However, despite this, the Bolivian economy continues to grow at a top rate compared to other countries in the region.

In that sense, consumption is high, and the financial sector has experienced an important growth. There is greater access to credit, partly due to more liquidity in the market and also because financial regulatory changes have helped channeling funds for sectors such as SMEs operations, housing, and agriculture. On the other hand, there is an ascending middle class demanding new services and goods.

Bolivia's gas reserves are still high, and the annual oil income has increased in comparison to 2017.

Public investment has surpassed private investment in the last decade. We can expect further public investment in roads and electricity.

International reserves grew up to USD 15 billion in 2015 and partly as a result of public spending, they have decreased considerably. In 2018, international reserves reached USD 9.7 billion.

The official exchange rate against the dollar is fixed. While neighboring countries have devalued their currency, Bolivia has done the opposite, making it difficult for exporters to compete in international markets.

Bolivia is still a small economy, highly dependent on commodities.

Helpful Resources:

**Banco Central:** <https://www.bcb.gob.bo/>

**Instituto Nacional de Estadística-INE:** <https://www.ine.gob.bo/>

**Fundación Milenio:** <https://fundacion-milenio.org/>

## Trends and Projects

### Investment Opportunities

The economic growth of Bolivia represents new investment opportunities across diverse sectors. The finance industry requires more technology (for instance in retail financial services), and the capital markets have been consistently growing and demand more sophistication. Urban growth requires more and better services in transport, sanitation, waste management, and health. An emerging middle class is keen for new products and services, for example acquiring experiences in the gourmet food industry and the acquisition of consumption goods. Tourism, still underdeveloped, continues to offer opportunities across the vast and diverse territory of Bolivia; a good signal is the arrival of several major international hotel franchises, such as Marriot, Sheraton, Radisson, and Hampton.

### Important Projects in Energy and Mining

The Energy Minister has stated that the Government expects to invest this year close to USD 1 billion in the energy sector for projects in electricity, lithium, nuclear medicine, and nuclear research.

#### Electric generation and exportation

Bolivia has an impressive potential in the generation of renewable energies, which is changing its energy matrix. It has great solar radiation, many rivers in the Amazonas and Plate basins, geothermal areas, and locations suitable for wind farms. Several projects in eolic, thermal, and hydropower generation are undergoing, and Bolivia has never invested in electricity more than in the last decade.

The hydroelectric generation, which produces 42 percent of the local energy, has an estimated potential of 40 GW. According to a 2018 study by the Development Bank of Latin America-CAF, Bolivia has 216 new hydroelectric projects, the main ten having the potential of producing around 1.500 MW, with an investment of approximately USD 3.5 billion.

Bolivia now has plans to export energy. It expects to sell 120 MW to Argentina commencing this year and is in the process of negotiating the export of electricity to Brazil.

Some other projects include:

The construction of three wind parks in Santa Cruz with the cooperation of the Danish Agency for International Development (Danida). The wind farms will consist of 30 generators producing 108 MWs, and they will be linked to the national interconnected system.

The photovoltaic plant in Uyuni, the biggest solar plant currently with a generation of 60 MW.

A recently inaugurated 12 hectare solar plant in Tarija built by the Spanish Bolivian consortium Emias-Elecnor , with more than 19,000 solar panels and an investment of around USD 11.4 million. One of the objectives of this plant is to export energy to Argentina.

The geothermal project at Laguna Colorada, which is in execution phase and it is expected to produce 100 MW.

- See all current projects here: <https://www.ende.bo/proyectos/ejecucion>
- See all projects in study phase here: <https://www.ende.bo/proyectos/estudio>

#### Biofuels and Agribusiness

The Bolivian Government has obtained the compromise of the private sector for investments in the amount of USD 1.6 billion until 2025 for the production and commercialization of biofuel and for the use of biotechnology. It is expected that this will increase the cultivated area of sugar cane from 150,000 to 305,000 hectares in the next seven years. Biofuels should also help reduce CO2 emissions. On the other hand, it opens the door for the use of transgenic crops (currently only transgenic soy is allowed).

## Lithium

Bolivia has the biggest lithium reserves in the world.

In late 2018, Bolivia and Germany entered into an agreement to incorporate the mixed company Empresa Publica YLB-ACISA E.M., between the German company ACI Systems Germany GmbH Sucursal Bolivia (49 percent) and the Bolivian public strategic company Yacimientos de Litio Bolivianos (51 percent), to exploit and industrialize Bolivia's lithium reserves.

With an approximate investment of USD 300 million, by 2021 and 2022, they expect to supply the European market with lithium, magnesium hydroxide and lithium batteries.

By late 2022, there are plans to incorporate a second mixed entity, to produce lithium batteries in Bolivia, equivalent to a yearly output of 10 GWh, sufficient to power 350,000 electric vehicles. This level of production would situate Bolivia as the second largest lithium salt producer of Latin America.

YLB has also signed an agreement with Chinese company TBEA Baocheng to install additional industrial lithium plants in other regions.

## Iron Ore Mining (El Mutún Project)

El Mutún is considered as one of the largest iron ore deposits in Latin America. The project will be undertaken by a PPP including Chinese company Sino Steel, and it has a proposed initial investment of USD 450 million, 85 percent of which is financed by a loan from China.

## Construction and Real Estate

Santa Cruz New City – the development of a new city by private investment with technical assistance from a Korean State company:

A Bolivian real estate company is constructing a new city adjacent to Santa Cruz and within what is the formation of a metropolitan area that has growth rapidly to 3 million inhabitants.

This ambitious project is in an area of 6,000 hectares; it includes business and residential areas, and projects such as universities, hospitals, a stadium, a botanical garden and an amusement theme park.

The company backing up the project and serving as project management advisor is the state-owned Korean Land & Housing Corporation, which has been involved in the construction of other cities around the world.

For promotional information about the project, please visit the following link:

- <https://drive.google.com/file/d/19PtYc-hIJfB49MQuDQMkglkkgbbO6kTO/view?usp=sharing>

## Infrastructure

Access to new trade ports; Bi-oceanic railway; and Viru-Viru airport hub:

Bolivia is a land-locked country situated in the center of South America, and despite its limitations for direct access to the oceans, its strategic location has played an attractive role as an alternative trade route for its neighboring countries; in this connection, ambitious plans are on the agenda to modernize infrastructure for roads, airports, railways and river, waterway and coastal ports to allow access to the Atlantic and Pacific oceans.

In an effort to counter Bolivia's dependency on Chilean seaports, the government and the private sector are seeking new trade route alternatives, the south eastern part of the country is relying on the Gravelal, Aguirre, Jennefer river ports at canal Tamengo and also Puerto Busch for direct access the Paraguay Paraná Waterway to reach the Atlantic Ocean. According to the Bolivian Institute of Foreign Commerce, in 2017, 1.6 million tons of cargo were moved using this route.

In the northeastern part of the country, other river ports such as Matarani, Peru, and Puerto Belo, Brazil, Puerto Villaroel, Puerto Siles, Bolivia, and Guajaramerin allow access to the Atlantic through Brazil.

The Bolivian and Peruvian governments intend to revitalize a new seaport trade alternative on the Pacific through the port of Ilo, Perú, and increase the flow of trade, by investing in expanding and improving infrastructure for import and export operations.

The bi-oceanic railway is a joint project between Brazil, Bolivia and Peru, to build a 3,859 km railway across the three countries with the purpose to join the Pacific and Atlantic oceans. The project is in a preliminary study phase. Bolivia announced an estimate cost of the project on USD 12 billion.

The Government publicly met with the representatives of potential investors to build the Viru Viru Hub. Among them are Groupe ADP International, Vinci Airports (France); Zurich Airport (Switzerland); Azimut Rostec (Russia); Mitsubishi (Japan); Finnova (Belgium); Corporación América Airports (Bolivia). This new infrastructure project shall modernize the current airport in Santa Cruz to convert it into a world class logistics hub, in what is being consolidated as the metropolitan area of the city of Santa Cruz, which includes adjacent municipalities.

This hub should be connected to the bi-oceanic railway and would be in a relative near and equidistant location in relation to the main current airports of South America in Lima, Buenos Aires, and Sao Paulo.

## Roads

Between 2006 and 2018, the Government has spent USD 8 billion in road infrastructure. Two important projects have been the additional lanes in sectors of the major highway connecting the three most important cities of the country, and the improvement of the 640 km highway that connects Bolivia to Brazil in the Pantanal region.

## Transportation

The demand for air transport has been consistently increasing, and this year three new airlines are entering into the market: LATAM Linhas Aéreas Brasil, Azul Linhas Aéreas Brasileiras and the Uruguayan company AeroVip.

A demographic explosion and a consequent massive migration from rural areas have populated urban areas in the last decade. Cities have experienced dramatic growth rates and now demand new services, such as sewage, electricity and transportation. In regard to the latter, La Paz has become an international example by building the longest cable car lines in the world with the help of a Swiss/Austrian corporation, leveraging on the particular serpentine topography of the city. The Government invested in the first phase of the project USD 234 million, and the second phase demanded more than USD 506 million. On March 9, Morales delivered the Silver Color Line, which completed a network of 10 cable transportation lines linking the cities of La Paz and El Alto. A third phase is expected which could potentially include other cities as well.

The cable car network not only has resulted in a transport solution: it has become a major tourist attraction, mainly because of the impressive views that it offers.

Urban and metropolitan train projects are also in a preliminary phase in the cities of Cochabamba and Santa Cruz, which would have massive impact modernizing these cities.

## Agribusiness

Agribusiness comprises one of the main economic sectors. Bolivia is one of the main world producers of quinoa, and the biggest producer of Brazilian nuts. An important percentage of our exports are soy and soy by-products. Sugar cane crops are being expanded for the production of sugar, ethanol, and biomass energy.

On the other hand, one of the main imports of Bolivia are agricultural inputs. Much of the significant investments in agriculture are foreign, and there is considerable transfer of technology and know-how.

## Legislative News

Bolivia has been in the process of implementing the Hague Apostille as a recent member of this Convention that abolishes the so-called chains of authentication. This has had an important effect in our day-to-day operations, for example in relation to the issuance and recognition of corporate documents for our international clients.

### Labor Legislation:

- Social businesses: Bolivia has adopted regulation that allows employees to take over a business that is declared bankrupt. The law also contemplates other possibilities for taking over a company: when the employer is absent for an extended period, and in particular cases of abrupt and collective labor termination.
- Labor termination: tighter regulations have made it even harder for companies to terminate labor agreements.
- Biofuel and transgenic organisms: new legislation allows the use of transgenic soy for biofuel and fosters biotechnology.
- Environmental licenses: New regulation reduces bureaucracy in the approval of environmental licenses.
- PPPs: Since 2018 Bolivia has specific regulation on public-private partnerships. A new decree on the matter signals good incentives for investors and expands the effects of the *Investment Law* and the *Law on Public Companies*, both also enacted in recent years.

Last year Bolivia signed the *UN Convention on Transparency in Treaty-based Investor-State Arbitration*, which entered into force in 2014. It is important to recall that in his first years of administration; this Government withdrew from the International Center for Settlement of Investment Disputes Convention (“**ICSID**”) and denounced all its bilateral investment protection treaties. However, investment arbitration is still possible under Bolivia’s arbitration laws.

## C.R. & F. Rojas - Abogados’ Highlights

C.R. & F. Rojas was founded in 1900 and is regarded as a traditional, “high-end” law firm in Bolivia, and a major player in day-to-day operations and corporate restructurings for multinationals. Our practice in aircraft law and aircraft finance projects is among the Firm’s leading activities, and also in the IP sector, particularly regarding trademark registration and litigation. Our labor department continues to grow defending clients against complex disputes involving unions, and successful negotiations in cases regarding labor compensation.

We have recently advised important deals in the energy sector, such as the construction of a center of nuclear research and technologies involving the Bolivian Nuclear Energy Agency and Rosatom; we have also assisted foreign oil & gas investors (such as Milner Capital UK Ltd.) in exploration projects, including reactivation of mature fields; and drafted and advised other multinationals on energy contracts and energy regulation.

Our litigation department is active in defending multinational companies’ interests and have been retained as defense attorneys for a series of cases involving compensation claims from local parties for termination of distribution agreements.

We have been involved in a number of international M&A transactions and due diligences across different sectors. Some recent work includes the acquisition of shares of Dutch giant Intersnack Procurement, the closing of a transaction involving a Peruvian corporation in the poultry sector, a due diligence for a multinational deal related to one of the major insurance companies in the national market, and an ongoing due diligence in relation to the buyout of all worldwide subsidiaries of a multinational company in the food & beverage sector by a private equity firm based in Singapore.

# Bolivia

Last year we were involved in an important infrastructure project for implementing a submarine optical fiber network from the Pacific Ocean through Peru, which would improve telecommunications in Bolivia. This was a complex transaction involving a state-owned Bolivian company incorporated in Peru - which plans to provide telecom services in Peru - a Chinese telecom multinational, and a London branch of a Chinese multinational Bank.

We have extended our practice to a new city, opening offices in Cochabamba, the third largest city of Bolivia.

We have structured a number of finance agreements during 2018 and this year for the acquisition of high-value fixed assets for an approximate value of USD 90 million.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Patricio Rojas, Partner**

[patricio@rojas-lawfirm.com](mailto:patricio@rojas-lawfirm.com)

Tel: 591.3.337.7474

### **Jose Manuel Canelas, Associate**

[jose@rojas-lawfirm.com](mailto:jose@rojas-lawfirm.com)

Tel: 591.3.337.7474

### **C.R. & F. Rojas – Abogados**

Member Firm for Bolivia

# Bonaire, St. Eustatius and Saba Islands - Caribbean Netherlands



Prepared by VanEps Kunneman VanDoorne, *Lex Mundi* Member Firm for Curacao with offices in Bonaire, St. Eustatius and Saba Islands

**GDP per capita** was **highest** on St Eustatius in **2016**, representing a value of **USD 26,100**. On Saba, **GDP per capita** amounted to **USD 24,200** and on Bonaire **USD 22,500**.

Bonaire's Marine Park offers a **total** of **86** named **dive sites** and is **home** to **over 57 species** of **soft** and **stony coral** and **more** than **350 recorded fish species**.

Virtually all age groups saw an **increase** in **labour participation** between 2016 and 2018, but it was **highest** among young **people** aged 15 to 24 years in particular.

## What to Expect in 2019

### Tourism and Hospitality

Tourism is one of the most important sectors for the economies of Bonaire, Saba and St. Eustatius. The tourism of Bonaire has been on an upward trend due to the increase of among others the cruise tourism to Bonaire.

The tourism sector of Saba and St. Eustatius have been on a downward trend as a consequence of the effects of hurricane Irma in 2017.

### Real Estate and Construction

The population of Bonaire has steadily increased due to the influx of immigrants from the Netherlands. This combined with the increase in tourism has led to an increase in real estate projects and construction on Bonaire.

### Medicine

One of the most important sectors for the economy of Saba is the Saba University School of Medicine which is attended by over 400 students.

## Trends and Projects

### Tourism

There are plans to expand the airport terminal at the airport in Bonaire.

### Water and Electricity

There are plans to build a 1.5 MW solar park in Saba including battery storage. This sustainable solar park allows the entire island of Saba to rely on sustainable energy produced during the daytime.

There are also plans for an increase of energy production in Bonaire by generators in combination with storage facilities as well as drinking water production using desalination units for the entire island.

### Medicine

There are plans to renovate and extend the only hospital on Saba.

### Maritime

The public entity Saba has plans to extend and renovate the harbor on Saba.

Due to the recurring legal and trade disputes surrounding PDVSA, various companies have been seizing assets, primarily oil from PDVSA in the Caribbean Netherlands. The court in St. Eustatius allowed for the sale by public auction of oil seized from PDVSA without a title of enforcement as the arbitration case was still ongoing, the proceeds were to be held in an escrow account pending the judgment in the arbitration case. This judgement by the court in St. Eustatius was groundbreaking and the first of its kind in the Caribbean Netherlands.

# Bonaire, St. Eustatius and Saba Islands – Caribbean Netherlands

## Legislative News

Implementation of a revised regulatory framework regarding energy and water supply for the Caribbean Netherlands.

## VanEps Kunneman VanDoorne's Highlights

We are assisting:

- an appeal case for the seizure and sale of oil on St. Eustatius;
- the purchaser of the Bonaire hotel Bamboo Bali Hotel with the share acquisition;
- the acquisition of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) by consortium of Investors (Closing price approx. 300 million);
- Victory Park Capital with acquisition financing with respect to acquisition by consortium of Investors of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) (Loan amount USD 125 million);
- Saba Electric Company N.V. with the tendering and realization of a 1.5 MW Solar Park including Battery Storage. This sustainable Solar Park allows the entire island of Saba to rely on sustainable energy produced during daytime;
- the Public Entity Saba with the tendering and realization of a USD 30 million extension and renovation of the harbor on Saba. It is a complex tendering project and challenging from a technical and legal perspective;
- Water- en energiebedrijf Bonaire N.V. with the tendering and realization of the drinking water production for Bonaire and assisting with the tendering and contracting of desalination units for the entire island;
- Water- en energiebedrijf Bonaire N.V. with Implementing a revised regulatory framework regarding energy and water supply for the Caribbean Netherlands;
- Water- en energiebedrijf Bonaire N.V. with negotiating a revised agreement for the increase of energy production on Bonaire by generators in combination with storage facilities;
- Saba Health Care Foundation with contracting for the renovation and extension of the only hospital on Saba;
- Bonaire International Airport N.V. with tendering and drafting contract documents regarding the expansion of the airport terminal; and
- NuStar Terminals N.V. with regards to permitting issues relating to the storage facility in St. Eustatius.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Focco Lunsingh Scheurleer, Managing Partner**

[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 160

### **Michiel Gorsira, Head of Litigation & Commercial**

[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 110

### **Frank Kunneman, Head of Corporate & Banking**

[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 254

### **VanEps Kunneman VanDoorne**

Member Firm for Curacao with offices in Bonaire, St. Eustatius and Saba Islands

# Brazil

Prepared by Demarest Advogados, *Lex Mundi Member Firm for Brazil*



**Fifth largest country** in the world. Has **trade relationships** with more than **100** foreign countries

**Sixth** biggest FDI recipient in the world, according to **UNCTAD**.

In **comparison** to the U.S. wherein the **average** monthly labor cost is \$1000, offers cheap labor with **cost** of just around \$450/month.

## What to Expect in 2019

Brazil is the world's ninth largest economy. Following almost ten years of strong growth (2002-2013), Brazil entered into the worst recession in its history in 2015 (-3.8 percent of GDP) and 2016 (-3.6 percent). This economic crisis was due to the fall of commodity prices, a drop in consumption and in investment and the failure of the government than in place to tackle and reduce public expenditures. However, the economy started to recover slowly in 2017 and the GDP recorded a 1 percent progression. Budgetary adjustment and favorable economic conditions have fostered the recovery. In 2018, the Brazilian economy confirmed its limited rebound and the country's GDP grew by 1.4 percent. The economy is expected to keep growing in 2019, reaching an estimated annual GDP growth rate of 2.4 percent (IMF). The passing of structural economic reforms and some much-expected privatizations could boost growth after a period of recovering of the Brazilian infrastructure (which depends on privatization). Expectations are high, but so are the risks.

Newly-elected President Jair Bolsonaro has plans to reactivate the economy, chiefly through structural macroeconomic reforms (the most important of which is the social security's), infrastructure projects and trade agreements. While fiscal consolidation is the government's main objective, a key target will also be social security and pension reform which, if passed in Congress, would create savings of more than USD 300 billion in the next ten years. The country's costly pension system has been hampering growth for years and, if the current government fails to address the pension system reform, it could jeopardize the stronger economic momentum.

The initial economic response to his victory was positive, in large part due to the appointment of a new Minister of the Economy, Paulo Guedes. The liberal economist Minister defends the formal independence of the Central Bank, the privatization of state-owned companies and a capitalization system for social security. Regarding foreign policy, the new President intends to focus on bilateral trade deals, allowing Mercosur members to negotiate free trade agreements bilaterally. The country has recently agreed to waive benefits at the WTO in exchange for support by the government of the United States to join OECD - many of the reforms necessary to join the OECD were already implemented. Joining OECD will provide access to Brazil to an important pool of capital coming from European, U.S. and Canadian pension funds that cannot invest outside markets that are part of it.

Brazil is the fourth largest FDI recipient in the world, and the largest in Latin America, attracting more than 40 percent of total flows of the region. Brazil is an attractive market for international investors due to several factors: a domestic market comprising a population of nearly 210 million, availability of easily exploitable raw materials, a diversified economy that is less vulnerable to international crises, and a strategic geographic position that allows easy access to other South American countries. Most of the formal barriers to foreign investors have been removed, particularly on the stock market, but difficulties still persist at the level of tax regulations, which are the most complicated globally and work as an extra layer of investment barriers - not only for foreigners, but also for Brazilians. A very large number of public companies have been privatized and many sectors were deregulated over the last fifteen years.

After the “Operation Carwash” (Operação Lava Jato) corruption investigation that mired Brazilian politics and affected numerous businesses in recent years, the government is trying to regulate relations between big corporations and the political administration. In addition to pursuing a strategy of macroeconomic reforms, there are plans to reform the complex Brazilian tax system, though this would need to pass through multiple legislative procedures and votes, in addition to facing strong resistance from federal, state and municipal entities. It is a multiple-year task, so the government must maintain a strong support base in congress to achieve this.

Provided that the reforms pass, the worst is very likely to be behind Brazil for now. If the government follows through on its key objectives, leveraging the continued economic momentum fueled by increasing investor confidence, the country is set to make steady progress in the years to come.

## In Summary:

Following general optimism in the proposed strategies of the new Brazilian government, economic growth is projected to gain momentum during 2019 and 2020, as a new monetary platform is being implemented to stimulate foreign investments. Financial markets are more optimistic, mainly due to the liberal agenda recently introduced, which includes proposals for trade liberalization, fiscal adjustments, economic reforms and privatizations. Moreover, the approval of the new pension bill and the new anti-corruption bill will undoubtedly result in an increase in the country’s investment rating. A key element for the continued success is the approval of structural reforms (such as social securities).

## Trends and Projects

### Banking and Finance

With new opportunities presented by Government, as well as controlled inflation and a stabilized interest rate, the outlook for the banking and finance sector looks promising. The prominence of fintechs, particularly involving open banking, innovation in the financial sector and anti-fraud, is already making a significant mark on the industry and looks set to show continued growth in the country. A resolution passed in 2018 establishes two types of fintech credit models: the Direct Credit Company (“**SCD**”) and the Peer-to-peer Loan Company (“**SEP**”). **SCDs** are financial institutions that carry out lending, financing and acquisition of credit rights through an electronic platform, with the use of equity. **SEPs** are financial institutions that make it possible to carry out lending and financing operations between people through electronic means. Cryptocurrency is another phenomenon that has entered the financial arena, although basic legislation is still needed to monitor and regulate activities.

Key mandatory changes in the sector include: cybersecurity; integrated risk management approach; anti-money laundering and administrative processes initiated by the Brazilian Central Bank for enforcement. Previously, a fine limit of up to BRL 500 thousand or, 2 percent of the previous years’ revenue, was established by the Central Bank. However, new legislation has increased this fine up to BRL 2 billion.

While innovations and investments continue to increase in the market, financial compliance is key to maintaining the forward momentum in the sector.

### Corporate and M&A: Private Equity and Investments

The years directly following the recession in Brazil saw a radical reduction in M&A and Private Equity deals. Part of the government’s recovery plans resulted in higher scrutiny on tax planning, culminating in both an increase in transactional costs and weakening of the market. With the ushering in of a pro-market government in early 2019, the intention to “jump start” the economy was high on the agenda, particularly through concessions and privatizations of public assets to recover non-recurring gains (e.g. health, sanitation, etc.). But the degree to which such plans are successful is highly dependent on how government negotiates with Congress. Consequently, there is a lower expectation for such plans to be carried out before the restructuring of the social security system is passed. There are likely to be marginal privatizations in the first half of 2019, but the bulk of the proposed plans

will be delayed to the second half of the year, expressly to avoid the political disputes that will impede progress. In contrast to this, the B2B market is showing increasing growth, with strengthening confidence from investors in the Brazilian economy and subsequent opportunities arising from such growth. Although the private equity market is also expected to play a larger role in the M&A market in the coming years, investors are still wary of regulation by the tax authorities, particularly in regard to income tax on capital gains.

Due to an overarching focus on compliance in business, contracts are becoming more sophisticated, such as an increasing prevalence of agreements that are open to Indirect Loss indemnification, which in turn significantly increases the range of indemnities that arise. Equally, there is a rise in the use of forensic due diligence, both for the purposes of reducing unforeseen risk and to anticipate potential violations.

Although Brazil is still rebounding from a crippling recession, the opportunities lie in the learning curve, and while the success of such a rebound depends greatly on approvals to the proposed reforms by congress, at least in the political sphere, investors will look to the private sector in the short term to foster growth and boost confidence in the market.

## Antitrust and Competition

With the new Government's stance of favoring business opportunities, the country expects to see an increase in privatizations, with a movement towards less infringement on transactions. Overall, however, stronger enforcement regarding cartels, bid rigging, unilateral conduct and merger control reviews is expected to continue.

In order to reduce corruption, cartel formation and bid rigging in relation to public bids, a distinctive innovation in the competition and antitrust domain is the introduction of the "Brain Project" – a pioneering initiative that is expected to aid investigations into public biddings in the Brazilian market through techniques to detect suspicious price patterns (in 2018 there were more than 3 million public bidding processes, which accounted for around 10 percent of the Brazilian GDP). The Administrative Council for Economic Defense ("**CADE**") is already utilizing the "Brain Project" algorithm to assist as an alternative arrangement to leniency agreements. In addition, *Draft Senate Bill 283 ("PLS 283")* is expected to be passed in order to reduce procedural bottlenecks and encourage resolution of damages claims.

## Energy: Oil and Gas

The Brazilian oil and gas sector is expected to have a great year in 2019. The flexibilization of the law allowing other operators in the pre-salt areas besides state-owned petroleum company Petrobras, adjustment to local content requirements and the extension of the Repetro (special customs tax regime for the sector), all contribute to renewed confidence from investors. Such reaction was evidenced by the bid rounds of 2018 as well as Petrobras' divestment program. Several companies returned to Brazil with commitments of large investments.

The main event of 2019 will be the bid round for the sale of interest in the areas granted to Petrobras under the *Transfer of Rights (Cessão Onerosa) Regime*. These are areas with low exploration risk and huge potential and Government expects to collect approximately BRL 100 billion as a result of the bid. Also, in 2019, the closing of certain relevant Petrobras divestment transactions are expected involving oil fields, gas pipelines, refineries, petrochemical plants and fuel distribution assets. Sectors that do not comprise the core business of Petrobras will be opened to new players, which in turn will foster investments and social development.

The divestment program of Petrobras aims to reduce the level of financial leverage of the company and to concentrate the investments in deep waters exploration. Petrobras president announce that the goal of the program is to divest additional assets of around USD 40 billion.

## Infrastructure

The 2019 macro-economic outlook for Brazil is positive following the election of Jair Bolsonaro and there is increased focus on incentivizing investments in Infrastructure and developing projects and new forms of financing. The Infrastructure opportunities are being structured by the Investment Partnerships Program ("**PPI**"), launched in May 2016 during former president Michel Temer's administration and renewed by President Bolsonaro, to

expand and accelerate private investments in the infrastructure sector, as well as to coordinate and supervise the concessions and privatization process in federal infrastructure projects. The PPI pipeline of projects comprises a broad scope of concessions and privatizations in Brazil in different sectors of Infrastructure. The assigned team, composed of experts in the fields of infrastructure, engineering, law and economics, has the role of supporting regulatory agencies and partner Ministries in expediting processes and facilitating the progress of each project. As of Bolsonaro's inauguration, PPI had 69 projects in various levels of development to be auctioned. According to the federal government, PPI is estimated to raise up to BRL 7 billion with the first group of projects to be auctioned in 2019, which includes concessions of airports, railways and port terminals.

In parallel, the investor market is rebounding as a result of the pro-business agenda of the new administration, which is reflected in stronger equity and bond activity which, in turn, increases appetite from international investors in Brazilian credit, as well as expansion of the private market for infrastructure debentures that is set to continue into 2019. International banks are also gradually returning to the Brazilian market following Lava Jato, which is expected to provide a much-needed boost to the infrastructure sector. Long-term credit in Brazil has been dominated by the national development bank BNDES, which created an uneven playing field that hampered the development of private investment financing resulting in a "crowding out" effect. The recent decision to phase out subsidies in its lending operations is also expected to allow a redefinition of the role of BNDES, establishing the conditions for a more sustained recovery of infrastructure investments in 2019 and coming years.

Established concessions, on the other hand, are finally beginning to change hands (from traditional Brazilian large infrastructure conglomerates involved in corruption probes to local and international investors) as international investors and local players become more acquainted with the risk matrix related to the assumption of control of entities involving in Lava Jato.

## Compliance

Although frequently associated with anticorruption laws and guidelines, in practice compliance comprises complementary elements of civil as well as criminal litigation for the enforcement and regulation of such laws. For 2019 and beyond, a key focus in the macroeconomic outlook for Brazil will be striking a balance between the growth expected through privatizations, infrastructure projects and the various incentives proposed by the new government, among others, and maintaining a level of transparency through compliance and corporate governance which is already an increasing trend across many sectors and industries. Brazil's anticorruption law, commonly referred to as the "*Clean Company Act*" (2014) and similar to the *FCPA* and the *UK Bribery Act*, not only holds companies responsible for corrupt acts of employees but is designed to encourage and foster a culture of accountability and transparency throughout the public and private sectors. This law has been pivotal in addressing both domestic and transnational corruption, having established a regulatory framework, preventive actions and enforcement procedures to deal with corruption. Yet while there is an increased focus on the enforcement aspects of compliance through anticorruption measures, conversely, it is important to recognize the laws of due process, access to justice and right to defense when upholding constitutional values on which these very laws of compliance are based.

Going forward, with the continued sophistication and accessibility to the laws, Brazil is expected to become a more informed and engaged society. In turn, an improved perception of enforcement against corruption, both locally and internationally, will encourage more responsible investment and transactions, for which the country and relevant authorities are already on course with taking effective actions to implement such measures.

## International Trade

Brazil is one of the top players in the global agribusiness trade. However, Brazilian industrial and services sectors represent a very low share of the global market. The last Brazilian trade policies did not focus on freer trade, as there was no significant reduction to import duties, in addition to other barriers to trade. Up to 2019, Brazil signed relatively few new bilateral or regional trade agreements and, subsequently, Mercosur is still the most important trade agreement for the country.

From January 2019, the newly-formed Brazilian Ministry of Economy is responsible for international trade policies. The new Brazilian government intends to take a more liberal approach regarding the economy as well as in the international trade field. The government expects to increase the country's participation in world trade and, in order to do that, Brazilian policies will focus on competitiveness gains. Another goal of the government is to revise its tariff policies by reducing import duties for inputs and capital goods, and possibly for other sectors. Efforts are in place to pass a broader tax reform. In addition, government expects to negotiate new free trade agreements, bilateral or regional, and implement measures to facilitate trade. Negotiations with the European Union for a free trade agreement are more advanced, but there are other negotiations ongoing (for example, Canada and EFTA), while the initiation of negotiations with the U.S. will also be on the agenda.

On a multilateral level, Brazil is making strong efforts to become an OECD member. Brazil considers that it is necessary to revise the WTO framework and, as such, Brazilian officials announced that Brazil would participate fully in the discussions on a reform agenda of the organization. Brazil expects to be ambitious on all negotiating fronts, from facilitation of investments to activities related to e-commerce.

Overall, Brazil's continued recovery and expected 2.4 percent GDP growth rate, coupled with the government's intention to increase trade deals and international competitiveness will culminate in improved trade relations and investor confidence, on both a regional and global level.

## Environmental Law

Brazil's environmental legal framework is internationally recognized as a thorough and complex system, due to a comprehensive set of federal and state regulations ruling a variety of environmental aspects (i.e. soil, air emissions, wastewater and hydric resources, forestry, biodiversity, environmental licensing, among others).

It should be also noted that Brazil is party to numerous multilateral environmental agreements, such as the *Climate Change Convention*, the *Biodiversity Convention*, the *Basel Convention on the Movement of Hazardous Waste*, the *Montreal Protocol*, and *UNCLOS*, among many others. Rules reflecting such agreements are being enacted at the national level so as to comply with relevant international obligations.

In addition, the environmental liabilities system also poses severe and broad penalties, resulting in three levels of liabilities, (i) administrative penalties; (ii) civil strict liability; and (iii) criminal imputations involving legal entities and their representatives. As a result, the country has been experiencing a growing level of litigation associated with environmental issues.

Consequently, the recently vested Federal Government has been proposing deregulation and self-declaratory measures as a way to decrease bureaucracy and boost investments, in opposition to the previous government's focus on command and control policies. In light of this, withdrawal from certain international agreements (such as the Paris Agreement) has been proposed, however it is not clear how those proposals would be effectively implemented.

On the other hand, recent major environmental accidents involving mining activities (known as the Brumadinho and Mariana cases) have also brought attention to the implementation of environmental licensing provisions, imposing additional concerns and stricter standards on the level of scrutiny of the administration in implementing such provisions. Those accidents are also expected to impact current legislative discussions associated with the proposed changes on the environmental licensing system (*Bill of law No. 3729/2004*).

In parallel, it is also important to highlight the following environmental trends:

- Implementation of the *National Forestry Code (Law No. 12,305/2012)*, in a countrywide effort to promote environmental compliance of rural properties. This law not only provides clearer regulation on deforestation and land management, but also establishes procedures for ensuring compliance for better environmental management and land use planning in Brazil, including the reforestation, restoration or offset of historically illegally deforested areas.

- Issues related to the access and use of biodiversity resources, in association with the deadlines and requirements for the implementation of the *Federal Law No. 13,123/2015*. The intention of the so-called *Biodiversity Law* is to redress previous excessive governmental control and sanctioning of activities regarding the exploitation of genetic assets (“**GA**”) and associated traditional knowledge (“**ATK**”), with the aim of simplifying the extensive bureaucracy involved in prior authorization of access.
- Take back systems for special products and wastes such as tires, lamps, electronics, oils, agrochemicals, medications and packages (including aluminum, steel, paper and plastic), in connection with *Federal Law 12,305/2010 – the Brazilian National Policy on Waste Management (“PNRS”)* – and the applicable state solid waste regulations. The **PNRS** provides for guidelines on joint and environmentally appropriate management of solid waste, and regulates issues such as joint management, proper allocation and disposal, and shared responsibilities.

## Energy: Power

The growth of the economy results, directly, in the increase of the demand for electric energy for the captive customers, for commerce and for industry. In order to tackle short-term demand, economic growth is projected to gain momentum during 2019 and 2020, following the announcement of a new monetary platform that is being implemented to stimulate foreign investments. Against this backdrop, robust investments would be required to expand the already diversified Brazilian energy matrix, as well as to carry out new auctions for the concession of new transmission facilities - necessary for the disposal of the additional energy that will be generated.

## Privatization of the Brazilian Electrical Sector

The Ministry of Mines and Energy (“**MME**”) is working to increase discussions and partnerships with the private sector in order to carry out a bold plan to grant concessions and privatize many national companies and assets. The privatization of assets in the Brazilian electric energy sector is expected to increase investments in its concession areas, with improvements in the quality of the service provided and to support the financial indicators of the energy distributor, generating more value for their shareholders.

## Distributed Generation

Distributed Generation is an approach that employs points of generation of energy nearby the points of consumption. Accordingly, the distributed generation system provides a number of potential benefits to the consumer, including home installation of powerhouses that generate renewable energy for their own consumption.

The National Electric Energy Agency (“**ANEEL**”) opened a public hearing to promote the expansion of regulatory discussions on distributed generation in 2019, in order to guarantee the expansion of the source with equilibrium and sustainability. With a possibility of changing regulation in distributed generation, the remuneration for the use of the distribution system would probably change, which would require adaptation and additional caution by the investor in Distributed Generation.

## Free Trading Environment - ACL

The free trading environment allows consumers to buy energy directly from generators or traders authorized by **ANEEL**, through bilateral contracts, with freely negotiation conditions, independent of the region and the local energy concessionaire.

In 2018, the free energy market reached 30 percent of all energy consumed in Brazil. This type of commercialization has grown in recent years in the country and has shown to be an alternative for consumers who aim to have more power to negotiate their own energy. Today, 27.7 percent of the energy produced in Brazil is marketed in the free market, almost 10,000 MW. With the supply of ever-increasing MWs from alternative sources, it is believed that 15,000 companies may be eligible to enter into deregulated input trading.

## Natural Resources

In 2018, the **MME** presented an energy investment plan in alternative sources, which aims to provide economically efficient outcomes that are unlikely to be challenged. Renewable energy projects provide for investment in alternative sources, especially solar and wind power, setting an increase from 9 percent to 18 percent in the energy matrix. Still, the Brazilian market is rapidly moving towards an opening of the financing conditions for clean energy projects, especially solar generation. Santander bank recently opened a new credit line to finance solar energy equipment.

## Upcoming Auctions

The Brazilian electricity market waits in expectation for the new investments planned for the sector in accordance with the liberal agenda recently introduced. For the segments listed above, significant improvements are expected. A first step has already been taken: the **MME** published *Decrees No. 151 and 152*, establishing an estimated schedule for the Purchase of Electric Energy from New and Existing Generation Enterprises, respectively, for the purposes of contracting of electricity by the distribution agents of the National Interconnected System ("**SIN**") during the period 2019 to 2021.

## Tax

### Possible reform in the Brazilian Tax System

The Brazilian tax system is vast and complex. It is not only a matter of tax burden. In fact, taxpayers have a lot of difficulty to implement and collect the taxes. Because of this, a number of discussions involving taxes arise almost on a daily basis and, consequently, Brazilian Courts have a backlog of cases waiting for a decision. In view of this situation, a reform in Brazilian Tax System is under discussion as a means of solving the problem, not only to make the tax burden more efficient, but also to simplify the collection process. Currently, three proposals are under consideration in Congress. In summary, all three intend to simplify the system and reduce the number of taxes. The main target of such proposals is also the most complex one, called ICMS (a state VAT). It is not possible to foresee which proposal will be approved and it is important to point out that these proposals may suffer considerable changes during the legislative proceedings. However, we are aware that such a reform is one of the main goals for the new government.

## Legislative News

### Pension Reform

Social security and pension reform which, if passed in congress, would create savings of more than USD 300 billion in the next ten years. The country's costly pension system, which is a mandatory cost of the government and has been hampering growth for years, must be approved both in the lower house of Congress and finally in the Senate. The proposed reform seeks to achieve a growth of costs at a pace that is slower than the general growth of the economy through measures such as increasing the retirement age for both men and women, in contrast to the current system in which there are no age limits. However, if the current government fails to address the pension system reform, economic momentum would stall and ultimately lead to another recession.

### Data Protection

Following closely after the establishment of the *General Data Protection Regulation* ("**GDPR**") in May 2018, Brazil set out to adopt a similar data protection framework, the result of which is the *General Data Protection Law* ("**LGPD**") – *Lei Geral de Proteção de Dados Pessoais, Lei nº 13.709/2018*, which adopts a number of principles set out in the EU privacy laws and will enter into force on August 14, 2020. In addition, legislature was passed to allow the establishment of new supervisory and enforcement institutions to regulate this law.

## Fintech Credit Models

According to the National Monetary Council (“**CMN**”) *Resolution No. 4.656*, of April 26, 2018, there are only two types of fintech credit models: The Direct Credit Company (“**SCD**”) and the Peer-to-peer Loan Company (“**SEP**”).

**SCDs** are financial institutions that carry out lending, financing and acquisition of credit rights through an electronic platform, with the use of equity.

**SEPs** are financial institutions that make it possible to carry out lending and financing operations between people through electronic means. Cryptocurrency is another phenomenon that has entered the financial arena, although basic legislation is still needed to monitor and regulate activities.

## Labor Reform

The *Labor Law Reform (Reforma Trabalhista)* – part of former president Michel Temer’s economic program – entered into force in November 2017, under *Law No. 13,467/2017*. The law aimed to modernize the legal framework governing employee relations in order to help re-vitalize the economy, as well as to reduce the number of labor lawsuits.

## Compliance

Brazil’s anticorruption law, referred to as the “*Clean Company Act*” (*Law 12.846/13*), similar to the *FCPA* and the *UK Bribery Act*, not only holds companies responsible for corrupt acts of employees, but is designed to encourage and foster a culture of accountability and transparency throughout the public and private sectors. Such law allows for extraterritorial jurisdiction, whereby enforcement can occur at a transnational level.

## Energy: Power

- *Public Consultation No. 33* – The regulatory and commercial models of the electric sector in Brazil show signs of exhaustion due to technological, social and environmental phenomena, but also because of problems arising from the rules. This is the diagnosis made by the Ministry of Mines and Energy (“**MME**”), which led to *public consultation No. 33*. The set of measures presented has the potential to change considerably the way the country has been administering its electric resources.
- *Decrees No. 495/2018* - Amends *Law No. 9.074*, of July 7, 1995, with the objective of reducing the load limits for the contracting of electric energy by the consumers.
- *Decrees No. 124/2019* - Creates a working group with the objective of coordinating the development of studies to support the revision process of *Annex C of the Itaipu Binational Hydroelectric Treaty*, located on the Paraná River.
- *Decrees No. 151 and 152/2019* - Establish an estimated schedule for the Purchase of Electric Energy from New and Existing Generation Enterprises, respectively, for the purposes of contracting of electricity by the distribution agents of the National Interconnected System (“**SIN**”) during the period 2019 to 2021.
- *Bill 10.332/2018* - Amends *Law No. 12,111*, of December 9, 2009, which regulates electric power services in Isolated Systems, and *Law No. 10,438*, of April 26, 2002, which regulates the expansion of the supply of emergency electric power, extraordinary tariff recomposition and creates the Incentive Program for Alternative Sources of Electric Energy – (“**Proinfra**”) and the Energy Development Account - (“**CDE**”) and provides for the universalization of the public electricity service.
- *Normative Resolution No. 824/2018* - Establishes the criteria for processing the Electric Energy Surplus Selling Mechanism by distributors.

## Tax

### Possible alterations to specific Brazilian Tax Legislation

There are two significant discussions regarding reduction of corporate income tax rates and taxation of dividends and extinction/alteration of JCP (interest on capital) payments:

- **Reduction of Corporate Income Tax Rates and Taxation of dividends:** Since 1996 the distribution of dividends is exempt in Brazil. Considering the tax reform that occurred in the United States reducing the corporate income tax rates, it is possible that the Brazilian legislation could also be altered in order to reduce the applicable corporate income tax rates of Brazilian entities. To balance such reduction, it is likely that the taxation of dividends will be reintroduced.
- **Proposal on JCP Payments:** There are several proposals in the Brazilian Congress aiming at extinguishing the possibility of Brazilian entities making JCP payments and/or limiting the deductibility of such payments. It is important to remark that such proposals may suffer considerable changes and it is not possible to ascertain the outcome of the legislative proceedings.

### Another important change in the legislation: *Complementary Law No. 160/17*

One of the biggest issues regarding Brazilian taxes regards ICMS (a state VAT). The states' Governments granted tax incentives in order to attract companies and develop the local economy. This situation is commonly referred as "tax war". In order to solve this, the Brazilian Congress issued *Complementary Law No. 160/17*, establishing requirements and procedures for validating the tax incentives granted without CONFAZ approval. The law was published in 2017, but taxpayers and state Governments are still verifying the consequences.

## Demarest Advogados' Highlights

Founded in 1948, Demarest is one of the most renowned law firms in Brazil and ranks among the largest firms in Latin America. Throughout its history, providing services in the most diverse practice areas of law, Demarest has always maintained a commitment to providing legal services of the highest standards of quality and excellence.

Our multidisciplinary model contributes to the agility and effectiveness of Demarest's work, perfectly integrating our professionals and creating a synergy across all teams. Chambers & Partners named the firm winner of the best client service among Brazilian firms in 2018. Our lawyers and practices are also consistently ranked and recommended in the major legal publications.

We provide services to clients from all over the world in both national and international transactions, while the firm's foreign desks have particular knowledge and expertise in specific regions such as China, France, Germany, Korea, Portugal, Spain and Latin America, in addition to its relations with the European Community and North America (the firm has a full-service office in New York).

We have over 2,000 active clients consisting of multinational companies and some of the largest Brazilian groups. Demarest is responsible for important domestic and cross-border transactions in a wide range of areas of business activities, especially those relating to mergers and acquisitions, project and structured finance, banking, securities, infrastructure, as well as concessions and privatizations.

## Banking and Finance

We have acted as:

- Special counsel for Hyundai companies, mainly the Korean financial institution and shareholder of the captive bank Hyundai Capital Services, while negotiating the terms and conditions of the JV with Santander, along with the establishment of the corresponding captive auto insurance brokerage company to be coupled with the new bank auto retail and wholesale products and services. Besides requiring numerous contract negotiation and drafting sessions, the course of this project has prompted the parties to intensely seek the most suitable set-up for a number of business details and operational contracts. Most importantly, Banco Hyundai Capital is a highly regulated legal entity and, as an entrepreneurship project, required constant supervision by the Brazilian Central Bank with full compliance with all regulatory norms as well as the National Monetary Council resolutions. Demarest interacted with the Central Bank officials, obtaining the mandatory Presidential decree enacted by order of the President of the Brazilian Republic.
- Special Brazilian counsel to CCBFL under the sale and leaseback of FSRU “Golar Nanook” (“**FSRU**”), to be purchased and owned by Compass Shipping 23 Corporation Limited and chartered to Golar FSRU8 Corporation under a bareboat charter arrangement. The FSRU will be further sub-chartered to Golar Nanook UK Ltd. and finally time chartered to Centrais Elétricas de Sergipe S.A. for operations in Brazil. USD 235.5 million.
- Advised the Dealers, i.e. BB Securities, Bradesco BBI, BTG Pactual U.S. Capital, Citigroup Global Markets, Deutsche Bank Securities, Morgan Stanley, and UBS Securities -, in connection with the offering and sale of USD 500 million principal amount of 5.5 percent Senior Notes due 2023 issued by Banco BTG Pactual, acting through its Luxembourg Branch.
- Special Brazilian legal counsel to The Goodyear Tire & Rubber Company (“**GY**”), as Borrower, under the refinancing formalized by means of the Amended and Restated Second Lien Credit Agreement, entered into by and among GY and several lenders from time to time party thereto, including, among others, Barclays Bank PLC, BNP Paribas, Credit Agricole Corporate and Investment Bank, Goldman Sachs Lending Partners LLC, HSBC Bank USA, NA and Merrill Lynch, Pierce, Fenner & Smith Incorporated. The negotiation entailed a complex multi-jurisdictional facilities agreement.
- Brazilian legal counsel to Banco do Brasil S.A. (“**BB**”), Banco Bradesco S.A. (“Bradesco” and, jointly with **BB**, the “Brazilian Lenders”) and JPMorgan, as administrative agent, on global syndicated credit facilities granted to General Motors group, including General Motors do Brasil Ltda. (“**GMB**”), in the total amount of USD 14.5 billion.

## Capital Markets

Demarest keeps the leading position in the most valuable and innovative issuances of Agribusiness Receivable Certificates (“**CRA**”):

- Advised BB-BI, Bradesco BBI, Itaú BBA, Banco J. Safra and Santander in a registered public offering of CRAs (CVM 400) issued by CIBRASEC – Companhia Brasileira de Securitização, amounting to BRL 961.7 million. The agribusiness credits backing the CRA arise from debentures of the second issuance of BR Distribuidora - the largest Brazilian ethanol distributor and subsidiary of Petrobras.
- In 2017, Demarest advised the placement agents in the BRL 1 billion Ipiranga’s CRA offering – the first CRA offering involving a company dedicated to fuel distribution. Ipiranga is the second largest Brazilian fuel distributor.

The CRA offerings below are landmarks for the sector:

- Advised the issuer Gaia Agro in a registered public offering (CVM 400) of CRAs for BRL 114.3 million. The agribusiness credit rights backing the CRA consisted of pulverized credit rights held by CCAB Agro against its clients, represented by trade notes or purchase orders linked to the respective Input Supply Agreement. Santander acted as leading placement agent. Demarest acted as a deal counsel in a registered public offering (CVM 400) of CRAs issued by Gaia Securitizadora, placed by the banks ABC Brasil, Fator and Votorantim, for BRL 120 million. The issuance was backed by agribusiness receivables resulting from a CDCA issued by Cocal.
- Advised Log Commercial Properties and Participações (“**LOG**”) in its registration with the Brazilian Securities and Exchange Commission (“**CVM**”) to publicly offer and trade equity securities, and the listing of its shares in Novo Mercado segment of B3 S.A. (Brasil, Bolsa, Balcão – “B3”). Approximately BRL 2 billion.

**LOG** shall become the only company primarily engaged in logistic and industrial warehouses listed on B3.

## Corporate and M&A: Private Equity and Investments

- Advised GIC Private Ltd, Singapore’s sovereign wealth fund, in the acquisition of a 15 percent stake in Brazilian hospital chain Rede D’Or. Two months following the acquisition, GIC acquired another stake (approximately 1 percent) in Rede D’Or São Luiz from Banco BTG Pactual, in a deal valued at USD 1.1 billion and that represents the single largest investment from a private equity firm in Brazil.
- Advised Digital Realty in the acquisition of Ascenty from the private equity firm Great Hill Partners. Digital Realty is a real estate investment trust that invests in carrier-neutral data centers and provides colocation and peering services. Ascenty is the leading Brazilian company in data center solutions in Latin America with an in-service portfolio of eight state-of-the-art data centers strategically located in the key Brazilian urban areas. This deal is divided in 4 steps: (i) main deal – Digital Realty acquires Ascenty; (ii) offering - Digital Realty offering in USA to fund the acquisition; (iii) financing, and; (iv) Deal with Brookfield – formation of a JV and acquisition of shares in Ascenty from Digital Realty. [USD 1.8 billion (*acquisition*) and USD 663 million (*JV*)]

Demarest assisted Bayer in two transactions related to:

- BASF’s acquisition of businesses and assets that Bayer offered to divest in the context of its acquisition of Monsanto. About 4,500 employees join BASF through the acquisition. The agreements include Bayer’s businesses and assets related to seeds, herbicides and related chemicals. [EUR 7,6 billion]
- BASF’s additional agreement to acquired Bayer’s assets in Brazil. The assets involved in the Brazilian transaction are herbicides, seed treatment products (Monsanto Midwest soybean germplasm and traits), non-selective herbicide research activities, digital agriculture, and exclusive rights to use Bayer’s microbial variety collection in traits researches. [EUR 5,9 billion]
- Tullet Prebon in the acquisition of 2 business units from ICAP for GBP 1.1 billion
- Advised Deere & Company on the signing of a definitive agreement to acquire the Wirtgen Group, a privately held international company that is the leading manufacturer worldwide of road construction equipment. [EUR 4.6 billion]
- Sale of GE’s global electrification solutions business carried out by GE Industrial Solutions’ units globally, to ABB Ltd., a pioneering technology company based in Switzerland, leader in electrification products, robotics and motion, industrial automation and power grids. [USD 2.6 billion]
- Anglo American in the sale of its phosphate and niobium businesses to China Molybdenum for USD 1.5 billion.
- Generali in the USD 1.7 billion sale of its Swiss investment banking division, with a presence in 10 countries, to Banco BTG Pactual S.A. (“**BTG**”).
- Vinci Highways in the acquisition of the Peruvian Lamsac, subsidiary of Invepar for BRL 4.5 billion.
- BASF and AkzoNobel in the BRL 2.1 billion sale of a business unit to AkzoNobel.

## Competition

- Representing large companies in the auto parts aftermarket, in an investigation for an alleged exchange of commercially sensitive information among competitors.
- Representing Banco Santander in an investigation of an alleged discriminatory conduct and abuse of dominant position in the market for credit cards. The investigation was opened due to a complaint presented by Nubank.
- Representing EBE, an engineering company in an alleged bid rigging cartel in the context of the construction of Brazil's nuclear plant Angra 3 operated by the state-run company Eletronuclear (Eletrobrás).
- Representing Galvão Engenharia, a large construction company, in an investigation of an alleged bid rigging relating to contracts executed with Petrobras.
- Representing Braskem in an investigation of an alleged discriminatory conduct in the market for BOPP (petrochemicals). The investigation was opened due to a complaint presented by Videolar.
- Representing Garmin in an investigation of the following alleged conducts: creation of difficulties to competitors, restriction to freedom of competition and abused of dominant position in the market for GPS. The investigation was opened due to a complaint presented by a distributor of maritime charts.
- Representing Bombardier in an investigation of an alleged cartel, bribery, corruption and fraud in biddings involving railroads in São Paulo.

## Energy: Oil and Gas

- Advised QPI Brasil Petróleo Ltda., affiliate of Qatar Petroleum, in a consortium with Exxonmobil Brasil, in the winning bid of Titã oil block, offered in the ANP's 5th Pre-Salt Production Sharing Bid Round. QPI has a 36 percent stake in the consortium. The total offered in signing bonus by the consortium was BRL 3.125 billion, with a percentage of surplus in oil of 23.49 percent to the Union.
- Advised QPI Brasil, affiliate of Qatar Petroleum, in:
  - a consortium with Exxonmobil Brasil, in the winning bid of 2 oil blocks (S-M-536 and S-M-647), offered in the ANP's 15th Bid Round. QPI has a 36 percent stake in the consortium in each block. The total offered in signing bonus by the consortium in the 2 blocks was BRL 214.5 million.
  - a consortium with Exxonmobil Brasil and Petrobras, in the winning bid of 2 oil blocks (C-M-753 and C-M-789), offered in the ANP's 15th Bid Round. QPI has a 30 percent stake in the consortium in each block. The total offered in signing bonus by the consortium in the 2 blocks was BRL 3.154 billion
- Advised Sat Participações in the sale of 10 percent of the stake in the Brazil-based fuel distributor Ale Combustíveis, holder of the Ale gas station network, with headquarters in Minas Gerais. Sat Participações maintained 22 percent of the stake in Ale Combustíveis. In this same operation, Asamar Group also disposed of all 50 percent stake in Ale Combustíveis, and the U.S.-based fund Darby sold 18 percent of the stake held in Ale Combustíveis. [BRL 1.7 billion]
- Advised Ocean Rig UDW Inc. in the submission of the antitrust filing, through which Transocean Ltd. acquired 100 percent of Ocean Rig's shares for approximately USD 2.7 billion.
- Advised Central Resources (international upstream company) in the amendments to the Risk Agreements and Services Agreements with Petrobras. Such agreements are related to the exploration and production of certain onshore fields.
- Advised ECOM in the formation of its Oil & Gas subsidiary called Petrom Produção de Petróleo e Gás Ltda., a newly formed entity to act in the onshore exploration and production activities.

## Infrastructure

- Advising Inter-American Investment Corporation (“IDB”), International Finance Corporation (“IFC”) and Goldman Sachs, in the portfolio management of the transaction, in connection with the financing granted to CELSE – Centrais Elétricas de Sergipe S.A. which is the owner of a 1,516 MW thermoelectric power plant and related LNG receiving and gas transportation infrastructure, located in Barra dos Coqueiros, in the State of Sergipe, Brazil. The financing transaction involved a combining project finance and capital markets structure through issuance of Debentures in Brazil and summed up an approximately BRL 5 billion (USD 1.8 billion), which represents the largest LNG-to-power financing in Latin America to date.
- Advised Azul Linhas Aéreas Brasileiras S.A. in the formation of a joint venture with Correios, the Brazilian official mailing service company, to create an air-cargo company focused on e-commerce. The new company will have its hub at Viracopos Airport, the main cargo airport in Brazil, and will develop an own infrastructure to operate in other airports. This may reduce BRL 200 million in shipping expenses per year.
- Advised Spanish group Cobra in the sale of Projetos Guaimbês, comprising 5 photovoltaic power plants of 180 MW, to AES Tietê for BRL 650 million. The project also involved assisting Cobra in an issuing of debentures (BRL 470 million) and EPC contracts (BRL 570 million) for the development of the power plants.
- The object of the bid is the concession of the Road System (almost 473.4 Km), which crosses 32 Municipalities of the State of Rio Grande do Sul. Due to its great importance, the public bid aroused interest on six groups, including CCR and Ecorodovias. The services effectively provided by Demarest were: (i) analysis of the public notice; minutes and its annexes; (ii) preparation of requests for clarification and the call for bid; (iii) organization and revision of the documents to be presented by EcoRodovias; (iv) elaboration of risk matrices; (v) support to EcoRodovias during the public hearings sessions of ARTESP; (vi) analysis of legal documents; and (vii) monitoring of administrative processes. [BRL 7 billion]. Ecorodovias Concessões e Serviços S.A (“Ecorodovias”)
- Advised Boulevard Acquisition Corp. II [NASDAQ: BLVD], a blank check company of Avenue Capital Group, in the merger with Estre Ambiental, a Brazil-based waste management company. As a result, Estre will become a publicly listed company with an anticipated initial enterprise value of approximately USD 1.1 billion.

## Compliance

- Assisting a large construction company focused in infrastructure in the assessment and implementation of an Integrity Program that will include aspects concerning the anti-corruption law, competition law, public bidding and contracts law, improbity administrative law, among others.
- Conducting training for a major multinational in prevention of money laundering and corruption.
- Assisting a pension fund that is being investigated because of previous investments and possible involvement of past administrators in crimes. We are conducting an internal investigation focused on issues of anticorruption, money laundering, conflicts of interest, civil and criminal liability of officers and directors.

## International Trade

- Representing Brazil’s National Industry Confederation in two WTO investigations initiated by the European Union and Japan against Brazilian industrial policies. It is also advising steel producers Arcelor Mittal, Gerdau and CSN in an investigation into dumping and subsidies of imports of hot-rolled steel flat products by Russia and China and helping the National Tyre Industry Association in an anti-dumping investigation on Brazilian imports of certain types of agricultural tyres from China.
- Represented the Brazilian subsidiary of the world’s largest manufacturer of frozen French fries and potato products in an anti-dumping investigation involving Germany, France, Holland, Belgium and Brazil. Demarest advised the group on all fronts of the defense. The case ended with the imposition of dumping duties that were ultimately suspended due to the Client’s signing of a price undertaking. The Company’s operation would have been significantly impacted by an imposition of dumping duties in the Brazilian anti-dumping investigation. Therefore, Demarest’s work in providing an alternative was vital to maintaining the companies’ business.

- Representing the domestic industry (Arcelor Mittal, Gerdau and CSN) in the Brazilian investigation of dumping and subsidies against imports of hot-rolled steel flat products. The dumping investigation is against imports originated from Russia and China. The subsidies investigation is against China policies. This is the first subsidy investigation against China ever initiated by Brazil.

## Environmental Law

- Advised Santander on environmental issues surrounding investment in the agribusiness industry, including reviewing the guidelines for borrowers seeking to obtain credit for rural activities.
- Assisted Rural Brasil in administrative defense, civil investigation and negotiations with the public authorities (environmental agency and Public Prosecutor) in order to release the embargo of the Company's activity, review the penalty of fine imposed and terminate the civil investigation instituted, as of the signing of a Conduct Adjustment Agreement ("TAC").
- Involved in the first collective action in Brazil on civil environmental liability – recovery of a tropical forest ("Serra do Mar" state park – the largest reserve of protected areas in the State of São Paulo).
- Advising Dow regarding environmental issues related to the major enterprise located in the "Serra do Mar" state park, a 332,000-hectare protected area on the Brazilian shore. There is an ongoing public civil action (type of class action) against the main chemical companies of the Cubatão municipality industrial complex, related to alleged occupation and impacts caused to environmental protected areas. This case is the first collective action in Brazil on civil environmental liability, filed in January 1986.
- Advising ANIP and their associates — Bridgestone; Continental; Dunlop; Goodyear; Levorin; Maggion; Michelin; Pirelli; Rinaldi; Titan and Tortuga — on the elaboration and negotiation with the Federal Government of a pneumatic sectorial agreement for the implementation of a reverse logistics system for tyres.

## Energy: Power

- Vale - Demarest advised on the deal which Vale S.A. signed an option to acquire with Salus – "Fundo de Investimento em Participações Multistrategica" on Ventos de São Bento Energias Renováveis S.A., Ventos de Santo Eloy Energias Renováveis S.A. and Ventos de São Galvão Energias Renováveis S.A. It was the first case of generation project financing with contracts in the free market.
- Itau - Demarest acted as a consultant to ITAU regarding all judicial issues concerning Contracts in the free contracting environment.
- Vivo - Demarest acted as a consultant to VIVO regarding all judicial-regulatory issues in order to implement a distributed generation project.
- Rede D'or - Demarest advised Rede D'Or on the revision of the consumer's contractual structure for migration into free negotiation market.
- ESBR - Demarest advised ESBR in a lawsuit against ANA, the Brazilian National Water Agency, regarding the mitigation measures of the Jirau Hydroelectric Power Plant. Demarest obtained favorable decision in Court to prevent the adoption of unnecessary works and removals by ESBR.
- CCEE - Demarest advises CCEE in demands related to recently events in the market, specially the hydric risk that impacted considerably the hydraulic power plants (issue involving the Generation Scaling Factor - GSF). CCEE had an important Court decision that (i) acknowledged CCEE rights regarding GSF and (ii) revoked the preliminary decision granted to one of the energy players.

## Tax

- Assisted in the global divestment of General Electric's Water Business to the French Suez Group and the Canadian Fund CDPQ (Caisse de Dépôt et de Placement du Québec). The deal encompassed several different jurisdictions (130 countries) and it involved a business that currently employs more than 7,500 people, but, due to some specifics of the Brazilian tax law, the closing of the transaction for Brazil needed to be postponed for more than 6 months. [EUR 3.2 billion (global value)]
- Advised Sustainable Teak Participações Ltda. in the negotiation and execution of Timber Agreements, Surface Right Deeds and Commitment for the Purchase and Sale of Land related to the Santa Marta Farm.
- The operation in question involved various agreements regarding the sale of forestry assets, surface rights and conditional purchase/sale options, which is under a very complex tax system in Brazil, particularly taking into account the lack of literature and precedents about the subject matter. Our tax department took part in the whole structuring of the business, considering the various applicable accounting and tax aspects.
- Represented Goodyear/Motorola in a number of cases that, after several years of litigation, we were successful in the recovery of amounts as well as the annulment of charges involving the following matters:
  - Insurance against Work Accidents – [SAT, Portuguese acronym];
  - Social Security contributions on worker cooperatives;
  - Social Security contributions on the purchases of medication.
- Represented Pfizer/Zoetis in a judicial proceeding that we filed to recognize that a legitimate ICMS credit, related to a division of Pfizer, already closed and could be recorded by another active Pfizer division. We were successful before the Court of Appeals, and it became a leading case.

## Lex Mundi Member Contact

DEMAREST

A LexMundi Member

**Paulo Coelho da Rocha, Managing Partner**

[procha@demarest.com.br](mailto:procha@demarest.com.br)

Tel: 55.11.3356.1822

**João Luis Ribeiro de Almeida, Partner**

**Head of Rio de Janeiro Office**

[jalmeida@demarest.com.br](mailto:jalmeida@demarest.com.br)

Tel: 55.21.3723.9804

**Demarest Advogados**

Member Firm for Brazil

# British Virgin Islands

Prepared by O'Neal Webster, Lex Mundi Member Firm the British Virgin Islands

Tourism and offshore finance **dominate** the **economy**, with financial and business services accounting for nearly half of the islands' **Gross Domestic Product**.

**Comprises** more than **40** **Caribbean islands** and **islets**.

Population is **20,600** and **area** is **153 sq km** (**59 sq miles**).

## What to Expect in 2019

The British Virgin Islands continues to recover from the 2017 hurricane season, when back-to-back hurricanes—Irma and Maria—tore through much of the archipelago. In many ways, the BVI that is emerging today in recovery is a much different one. In 2019, a few new developments are expected to be of interest to foreign investors.

### Infrastructure

Hurricane Irma destroyed an estimated 80 percent of the BVI's electricity poles, also crippling cable and internet services which were carried on the same. As a result, the primary local internet service provider is replacing the old copper wire transmission system with fiber optic cabling. Businesses and homes in a growing number of areas throughout the BVI are now receiving faster, safer, and more reliable internet service than existed prior to 2018. As other providers ramp up their own offerings in 2019, one can expect to see increased coverage and lower costs in this area.

### Economy

The BVI's economy continues to grow post-Irma and Maria. According to the Caribbean Development Bank, the BVI's Gross Domestic Product ("**GDP**") grew by 2.3 percent in 2018. Also, in 2018, the country achieved a fiscal surplus of 1.2 percent of **GDP**. Further, the bank forecasts that GDP will grow by 2.2 percent in 2019, indicating that a cautious, yet optimistic economic outlook for the BVI is on the horizon, especially with the ongoing boom in construction.

### Tourism

Even though the number of overnight visitors to BVI was down by 55.3 percent in 2018 compared to 2017, the number of overnight and cruise visitors has started to tick up again. In 2019, several larger luxury resorts, including Biras Creek, Peter Island Resort, and Little Dix Hotel, are expected to re-open. Scrub Island Resort, a Marriott Signature Collection Hotel, and several others are already open and welcoming visitors, where reported occupancy has been high. As more resorts come back online, visitor numbers are expected to increase. This sentiment is reflected in the recently announced plans for a USD 200 million development on Norman Island, a privately-owned island in the British Virgin Islands chain.

## Trends and Projects

### Infrastructure

In addition to fiber optic cabling, the BVI's roads and public buildings should all see an overhaul in 2019 that continues into 2020. After the 2017 hurricane season, the BVI government developed a Recovery and Development Plan, with a view to implementing changes designed to strengthen its infrastructure and environment and improve its resilience ahead of future natural disasters. The Recovery and Development Authority was established as an independent, quasi-government

agency to implement specific portions of this plan over the next five years, while ensuring transparency and efficiency in use of funds. Also, the BVI government has at its disposal over USD 16 million in funding from the Caribbean Development Bank to repair and update the BVI's roads network.

## Banking

In 2018, the Bank of Asia officially launched in the BVI. The global, digital, cross border bank is designed to fit the unique needs of the users of BVI offshore products. As the bank ramps up its offering, it is expected to improve access to banking facilities for BVI companies owned by high-net-worth individuals in Asia and elsewhere around the globe.

## BVI Financial Services

Despite the hurricanes' disruption in late 2017, new incorporations of BVI companies were slightly ahead of the 2016 numbers, with 2018 incorporations estimated to be more than 15 percent higher than 2017. This upward trend is expected to continue in 2019 and demonstrates the resilience and continued relevance of the BVI business company. Additionally, the new *BVI Limited Partnership Act*, which permits limited partnerships to have legal personality, has also encouraged the establishment of new partnerships and has gained respectable numbers, early on. This trend should continue in 2019.

## Crypto Currency and ICO Market

In 2018, the BVI was the second largest cryptocurrency market in the world, slightly behind the United States, with a trading volume of USD 78.5 billion. The BVI has already facilitated well-known Initial Coin Offerings ("ICOs"), notably because of the recognized flexibility and established benefits of using a BVI business company for transacting investment business. Specific rules for cryptocurrency, blockchain, or ICOs that would restrict their use by a BVI company currently do not exist. Yet, BVI regulators are in discussion as to the right level of regulation to implement. For now, the it is taking "a wait and see" approach, which is common among many leading jurisdictions. To date, the BVI has recognized digital currency in its legislation and has already introduced a regulatory "sandbox" to encourage fintech innovation. Expect some fine-tuning of regulations or guidance in 2019 designed to continue the growth of the ICO and crypto industries in the BVI.

Learn more here: <http://onealwebster.com/british-virgin-islands-gains-ranking-in-the-global-cryptocurrency-and-ico-market/>

## Economic Substance Legislation

A significant development is the coming into force with the BVI's *Economic Substance Act*—an EU requirement. Similar legislation has or is being passed in offshore jurisdictions, including those in the Channel Islands and others in the Caribbean. The BVI legislation affects most companies and partnerships that are engaged in certain "relevant activities," requiring them to have "substance" in the BVI in order to claim tax residency. The legislation has the potential to give a significant boost to the BVI economy by encouraging investment in human resources and physical premises in the Territory.

## Environment

The BVI government plans to introduce legislation to ban single use plastics throughout the island chain. This development is not only beneficial for the environment, generally, but will help sustain the beauty of the islands, and hence, its tourism product. There will also be opportunities in the recycling space.

## Renewable Energy Act

In 2018, the BVI government introduced legislation to make it easier to install alternative energy sources, such as solar and wind, and to connect to the national electrical grid. As newer buildings replace older ones and re-building efforts continue in 2019, expect residential and business owners to take advantage of the opportunity to implement solar or wind generating installations.

## Investment Promotion Agency

In May 2018, Junior Minister for Trade and Investment Promotion Hon. Marlon Penn announced plans to establish an Investment Promotion Agency (“**IPA**”), designed explicitly for facilitating direct foreign investment in the BVI. The agency will serve as a central hub or “One Stop Shop,” for the investor, assisting with all the different processes from the beginning to end and the investment’s whole aftercare. In addition, policies are being designed that provide significant benefits for companies establishing or acquiring assets in the Territory, or for entering into joint ventures with existing companies or BVI startups. Plans encourage innovation and leverage of BVI natural assets in environment and green-tech, building on the excellent international business infrastructure in its financial services sector and positioning technology as a key driver of investment and growth.

Learn more:

- <https://onealwebster.com/bvi-positioning-for-international-direct-investment/>

## Legislative News

### Limited Partnership Act (February 2018)

The BVI legislature passed a new *Limited Partnership Act* (“**LPA**”) that modernizes the former partnership law. Central to the **LPA** is the advent of limited partnerships with “legal personality,” advancing the concept by recognizing that a limited partnership is more than a relationship, but not a body corporate. Among the **LPA**’s legal personality rights are:

- The right to institute legal proceedings in the name of the limited partnership.
- The right to apply certain corporate law concepts to limited partnerships, such as merger, consolidation, and redemption of minority interests and arrangements.
- The right by an instrument in writing to create a charge over the assets of the partnership.
- The ability for a charge to be registered against the limited partnership and for such registration to provide priority under BVI law.

Existing limited partnerships registered in the BVI will continue under the old *Partnership Act* until they voluntarily re-register under the **LPA**. However, after ten years, all limited partnerships remaining under the old *Partnership Act* will be automatically reregistered under the **LPA** and will have two additional years to adopt a compliant limited partnership agreement.

Learn more:

- <https://onealwebster.com/british-virgin-islands-new-limited-partnership-act-offers-significant-changes/>

### Micro Business Company Act, 2017 (March 2018)

Highly regarded for its regulatory regime, political stability, and legal system rooted in English common law, the BVI continues to demonstrate its commitment to developing new and innovative financial services products with the introduction of the *Micro Business Company Act, 2017* (“**MBC**”). The **MBC** is designed to be much simpler than a standard BVI Business Company. It is transparent, affordable, and available on an internet platform that permits direct access to information and to **MBC** management from a computer or mobile phone.

The **MBC** regime is the first of its kind in the offshore arena and is attractive to small businesses in both emerging and established economies that are ready to begin selling their goods and services to overseas clientele, or for any person who needs an efficient small business or small holdings type of entity. Overall, the **MBC** and its accompanying platform provide a new way to automate both simple and complex multi-party business transactions with reduced costs and increased speed.

Learn more:

- <https://onealwebster.com/bvi-takes-lead-in-incorporation-for-microbusinesses-around-the-world/>

## Renewable Energy (November 2018)

In the aftermath of the 2017 hurricanes, Premier Orlando Smith coined a slogan for recovery: “Build back better, stronger, and greener.” Variations of the slogan appear everywhere throughout the BVI, including on billboards and social media. Thus, in November 2018, the BVI brought into force *Renewable Energy Regulations* made under a 2015 amendment to the *British Virgin Islands Electricity Corporation Act*. The *Renewable Energy Regulations* enhance the stronger, greener, more resilient and responsive environment that the BVI implemented during the post-hurricane recovery process. The new legislation provides an opportunity for anyone to become a consumer-generator and offers a broad range of renewable energy alternatives.

In addition, the new legislative framework provides for renewable energy infrastructure investments by establishing operations as an Independent Power Producer.

Learn more:

- <https://onealwebster.com/bvi-moves-forward-with-renewable-energy/>

## Economic Substance (*Companies and Limited Partnerships*) Act, 2018 (January 2019)

The European Union continues to push out new rules aimed at offshore financial center tax practices. Specifically, the Code of Conduct Group (“**CCG**”) within the EU’s Economic and Financial Affairs (“**ECOFIN**”) Council has created a guide for identifying and blacklisting non-cooperative jurisdictions that fail to satisfy the **CCG**’s requirement to end “preferential treatment” for non-resident companies.

While the BVI essentially meets the three main criteria—tax transparency, fair taxation, and compliance with the EU’s Base Erosion and Profit Sharing policies—the EU has reported that on “fair taxation” the BVI and other low or no tax jurisdictions need to do more by adhering to the principle that jurisdictions “should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.”

To address the **CCG** requirements and close any discrepancy, the BVI set out a framework for determining when certain BVI entities, or foreign entities operating in the BVI, may claim tax residence in the BVI. The framework was passed into legislation in December 2018 as the *BVI Economic Substance (Companies and Limited Partnerships) Act, 2018* (“**ESA**”) and came into force on January 1, 2019. The **ESA** makes several new, important distinctions that may impact BVI companies and limited partnerships. Yet, as always, the jurisdiction remains user-friendly and pro-business. Overall, navigating the **ESA** is fairly straightforward.

## O’Neal Webster’s Highlights

### Magnum Investment Trading Corporation & Niteroi Limited v. The AG of the Virgin Islands (July 2018)

In a landmark victory for the fundamental right of a citizen—individual or corporate—to due process, and specifically, to the right to privacy and confidentiality of information, the BVI High Court handed down its much-anticipated decision in the case of *Magnum Investment Trading Corporation & Niteroi Limited v. The AG of the Virgin Islands* in July 2018. The O’Neal Webster litigation team, led by Paul Dennis, Q.C., together with UK-based counsel Monica Carss-Frisk, Q.C., represented the successful claimants (Magnum).

The issue at stake was the right to privacy and confidentiality of information for BVI companies that are the object of the exercise by the Attorney General of the Virgin Islands (“**AG**”) and his intrusive powers under the *Criminal Justice (International Cooperation) Act*. The case was the first of its kind to successfully challenge the exercise of the AG’s powers under the Act.

The claimant companies were the object of a request made by the Investigative Committee of the Russian Federation for assistance from the **AG** to obtain evidence in aid of alleged criminal investigations in Russia. The **AG**, in his exercise of powers, issued a search warrant for the companies' registered agent's premises and the seizure of the companies' confidential records for transmission to Russia. While the documents obtained were in course of transmission through diplomatic channels, the claimants successfully applied for an interim injunction to abort their delivery to Russia. The claimants' put forth that the request was issued for improper purposes and formed part of an unfair and unlawful campaign by Russian entities and authorities against them and against entities and persons connected with them. In a sixty-nine-page decision, the BVI High Court handed down judgment in favor of the claimants, quashing all three of the challenged decisions. The **AG** was ordered by the court to reconsider his decision to transmit the documents to Russia, this time taking into account the representations of the claimants.

## Shareholder Dispute (\$33 billion)

O'Neal Webster partners Christopher Simpson and Nadine Whyte are advising on a court approved "plan of arrangement" in relation to the capitalization of debt in excess of JPY 3.62 billion owed by a BVI company for the benefit of the estate of the company's deceased sole shareholder. The debt arose from loans to the company following certain losses it suffered as a result of the collapse of Lehman Brothers in 2008. The plan of arrangement process facilitated by section 177 of the *BVI Business Companies Act* is a unique way of obtaining court approval of a corporate transaction and has only been used a handful of times in the BVI.

Court approval typically facilitates certainty of the transaction, and once approved, guarantees the desired outcome. In this case, a court approved settlement in Tokyo, procured by the estate's executor, but mandated a form of court approval in the BVI or the consent of a third party which was simply not possible. Accordingly, the plan of arrangement route was pursued. If the plan of arrangement is approved by the court at the scheduled hearing, the capitalization itself will significantly reduce the potential tax liabilities of the company, thereby ultimately benefiting the estate.

## Pockwood Pond Power Generation Station

O'Neal Webster was engaged to complete the tender documents and the design and build contract for the BVIEC Pockwood Pond Power Generation Station on Tortola, including the earthworks contract, the cabling contract, and financing contract. The deal was significant as it upgraded the plant adding much needed baseload capacity for the BVI, which is undertaking several new industrial and infrastructure projects. The Pockwood Pond Power Generating station serves all 11 islands with sub-marine cables. O'Neal Webster was able to close the deal within the client time frame, saving approximately USD 12 million due to the exchange rate.

## Fairfield Sentry Liquidation

The case, valued at USD 1 billion, involves complex proceedings in multiple jurisdictions related to claw back claims by the Liquidators of Fairfield Sentry Limited, the largest Madoff "feeder fund," following the collapse of the mutual fund, which was operated as a Ponzi Scheme. The court ultimately dismissed the Defendant's Section 273 application. The Defendants appealed the decision, which was heard by the Court of Appeal in January 2017 and the Court has reserved its decision. On being successful on the 273 application, the Liquidators immediately applied for sanction from the BVI Court to continue proceedings in the U.S. The Court declined to grant the Liquidators sanction. The consequence of this decision protects the Defendants from the costs of the Liquidators pursuing the U.S. proceedings. The Liquidators appealed the decision. The court of Appeal allowed the appeal and granted the Liquidators sanction to continue the U.S. proceedings. In consideration of the stakes involved, the complexity of the appeals, invoking Section 273, and multiple jurisdictional venues, make this a highly unique case, which has also garnered significant media attention, as it relates to the notorious Madoff Ponzi scheme.

## British Virgin Islands Electricity Corporation

The BVIEC is the sole electricity provider for the Virgin Islands and was party to a contract with Delta Petroleum (Caribbean) Limited as exclusive supplier of fuel for its electricity generation plant. In June 2015, Delta attempted to cancel the contract with immediate effect. O’Neal Webster obtained a mandatory injunction compelling Delta to continue to supply fuel under the contract and issued a claim where BVIEC sought a declaration of breach of contract, specific performance of the contract, and liquidated damages, as provided for in the contract, for Delta’s failure to maintain minimum fuel storage levels. The court declared that Delta’s action was a breach and ordered specific performance in favor of BVIEC, awarding liquidated damages. The court granted specific performance because it found that damages would not adequately compensate BVIEC for the unquantifiable and non-compensable losses that persons other than BVIEC would suffer, as well as for the attendant loss of reputation and goodwill of BVIEC. Delta appealed the decision. On appeal by Delta, the court found that Delta must honor the remainder of the contract period and pay BVIEC approximately USD 385,000 in liquidated damages and 90 percent of the corporation’s appeal costs.

## Lex Mundi Member Contact



A **LexMundi** Member

**Vanessa King, Managing Partner, Head of Corporate, Commercial, and Banking Practices**

[vking@onealwebster.com](mailto:vking@onealwebster.com)

Tel: 1.284.393.5800

**Kerry Anderson, Head of Investment Funds and Regulatory Practice; Head of New York City Office**

[kanderson@onealwebster.com](mailto:kanderson@onealwebster.com)

Tel: 1.914.200.3596

**Paul Dennis, Head of Litigation, Shipping, and Admiralty Practices**

[pdennis@onealwebster.com](mailto:pdennis@onealwebster.com)

Tel: 1.284.393.5800

**O’Neal Webster**

Member Firm for the British Virgin Islands

# Chile

Prepared by Claro & Cia., Abogados, Lex Mundi Member Firm for Chile



The **world's leading copper producer**, and its **exports of minerals, wood, fruit, seafood**, and **wine drive GDP growth**.

The **overall regulatory framework facilitates entrepreneurial activity and productivity growth**.

Has a successful record of attracting **FDI**, supported by its **market-oriented policies**.

## What to Expect in 2019

In the aftermath of Mr. Sebastian Piñera (a center-right candidate from the Chile Vamos Coalition) presidential election, announcing changes aimed at promoting investment in 2018, the first semester of 2019 and the outcome of 2019, have been in Chile (as well as Latin America) a period of time that has seen a large number of political, legal and regulatory changes, basically focused on further catching up with other OECD countries in terms of economic, social and environmental outcomes.

Among the most relevant legal and regulatory changes, Chile has undertaken the amendment to the *Banking Law* and the creation of a sole regulatory supervisory body (the "**CMF**"), the amendment of the *Consumer Protection Act*, the enactment of new anticorruption and anti-money laundering laws, as well as being involved in current tough political discussions in the Congress for the purposes of implementing strong tax and pension reforms. Coupled with that, the government has announced its priority for infrastructure and renewable energy projects.

The above, has impacted our clients' businesses and investment decisions and created on one hand uncertainty by a sector of foreign and local investors looking to exit Chile and cash-out their former investments, but on the other hand, appetite for local assets and an increasing trend in corporate/m&a transactions, antitrust matters as well as capital markets opportunities (equity and debt) driven by the current liquidity of the Chilean Pension Funds and insurance companies.

In terms of the economy, according to the Central Bank of Chile, the Chilean economy grew 4 percent in 2018, with positive growth in the first half of 2018, and a slowdown in growth in the second half, mainly due to a decrease in copper and other minerals production and a decrease in output in the manufacturing sector.

In 2019, Chilean economic activity is expected to be slower than in 2018, partly due to tariff increase in the United States and China and, to a lesser extent, tighter access to financing. However, these projections are subject to changes based on a number of factors, including a protracted period of global economic, political and social uncertainty, financial tensions, negotiations of post-Brexit arrangements, and other non-economic factors. Negative risks to economic and financial stability include a possible shift toward inward looking policy platforms and protectionism in the U.S., harsher global financial conditions that could negatively impact the EU and emerging market economies, increased geopolitical tensions, and a more severe economic slowdown in China.

Nevertheless, it is expected that in the second half of 2019, the Chilean economy will recover a higher rate of growth, expecting an estimated figure around 3.5 percent growth at the end of the year.

The legal services market is currently undergoing a period of significant change as well. An increasingly digitized landscape has presented new opportunities for organizations of all sizes to progress, with a diverse and competitive legal market providing variety for consumers and the wider economy as well as new foreign players are seeking to enter the Chilean market.

## Trends and Projects

### M&A (Banking, Agribusiness, Infrastructure and Energy Sectors)

- Grupo Soid in the USD \$6.5 billion merger of Scotiabank Chile and BBVA Chile (representing Grupo Soid, 25 percent shareholder), subsequent to USD \$2.2 billion acquisition by The Bank of Nova Scotia of 68.19 percent stake in BBVA Chile.
- Nutrien Ltd. in the USD \$5.2 billion sale of a stake (32 percent) in Sociedad Química y Minera de Chile S.A. ("**SQM**") to Tianqi Lithium Corp.
- DP World in the USD \$700 million acquisition of Puertos y Logística (Pulogsa) from Minera Valparaíso and other shareholders associated with the Matte Group through a tender offer.
- Toesca Infraestructura Fondo de Inversión, an investment fund managed by Toesca S.A. Administradora General de Fondos, on the acquisition of: (i) acquisition of 49 percent of Sacyr's concessions unit in Chile, for a total consideration of USD \$400 million, including debt; and (ii) 49 percent of Sociedad Concesionaria Ruta del Algarrobo, for a total consideration of USD \$171 million, including debt.
- AES Gener in the negotiation and execution of a USD \$300 million Share Purchase Agreement with Generadora Metropolitana SpA, ("**GM**", a joint venture between EDF Chile Holdings SpA, a subsidiary of EDF (Électricité de France) and AME SpA, a subsidiary of Andes Mining and Energy) for the sale of Sociedad Eléctrica Santiago SpA, a Chilean company which owns 750 MW energy generation assets in Chile.

### Finance and Capital Markets (Real Estate, Infrastructure and Energy Sectors)

- Secondary sale of Nutrien Ltd. Series B shares, in SQM in a public auction at the Santiago Stock Exchange for a USD \$1 billion consideration.
- Alto Maipo SpA, a joint venture of the local subsidiary of the US company The AES Corporation, AES Gener, and Antofagasta Minerals S.A., as sponsors, in the ongoing restructuring of the financing granted by IFC, IDB, Overseas Private Investment Corporation ("**OPIC**"), Banco Itaú, Corpbanca, BCI, Banco Estado and DnB Nor and KfW for up to USD \$3 billion.
- Rutas del Loa Sociedad Concesionaria S.A., a local subsidiary of Colombia's ISA, in the financing granted by Banco Santander-Chile and Euroamérica S.A. for up to USD \$310 million for the upgrading of a 110-kilometre stretch of the road and building a bypass, linking the cities of Antofagasta and Calama in the north of Chile.
- The Selling Shareholders in the USD \$533 million initial public offering ("**IPO**") of the Chilean commercial mall operator Mallplaza, the biggest ever launch on the Chilean Stock Exchange.

### Litigation (Telecommunication Sector)

Entel—one of the mayor telecommunications company in Chile—in the so called by the media as the "Telecommunications' War" against the Undersecretary of Telecommunications for immobilized some of Entel's telecommunications concessions.

## Legislative News

### Consumers' Protection

Consumers' level of protection has been raised by granting new supervision authorities to the National Consumers' Service (*Servicio Nacional del Consumidor* or "**SERNAC**") and by amending the rules applicable to consumers' indemnification and punitive proceedings.

## Anticorruption

The *Criminal Code* and other laws were amended in order to improve the prevention, detection and prosecution of corruption. The present amendment also introduces the crime of corruption between private individuals and/or legal entities, by penalizing any individual or legal entity who offers or consents to give any kind of benefit to an employee or agent –whether in favor of the latter or a third party– with the purpose of propitiating the entrance of an agreement with an offeror over another, or due to the commission of such propitiation.

## New Regulator for the Insurance, Securities and Financial Markets

A new regulator for the insurance, securities and financial markets was recently created. It corresponds to the Commission for the Financial Market (*Comisión para el Mercado Financiero* or “**CMF**”), which consists of collegial entity vested with stronger supervisory and investigation powers than its predecessors.

## Tax Legislation Amendments (Bill of Law)

On August 21, 2018, a bill was submitted to the Chilean National Congress aimed at reforming the tax legislation. Among other modifications (such as capital gains taxation, the definition of “residence” and international taxation rules), such bill proposes to unify the tax regime applicable to taxpayers subject to corporate tax, under which a general corporate tax rate of 27 percent would apply, which would be fully creditable against final taxes. To date, this bill is still under discussion by the Chilean National Congress.

## Chilean Pension Funds Reform

President Piñera sent a bill to Congress containing a proposed reform to the pension fund system, which includes a gradual increase in the level of mandatory contributions and implements new policies in relation to the workers’ election with respect to their pension fund administrators. To date, this bill is still under discussion by the Chilean National Congress.

## Claro & Cia., Abogados’ Highlights

See *Trends and Projects* section above.

## Lex Mundi Member Contact



A **LexMundi** Member

### José María Eyzaguirre, Partner

[jmeyzaguirre@claro.cl](mailto:jmeyzaguirre@claro.cl)

Tel: 56.2.2367.3034

### Rodrigo Ochagavía, Partner

[rochagavia@claro.cl](mailto:rochagavia@claro.cl)

Tel: 56.2 2367.3047

### Felipe Larrían, Partner

[flarrain@claro.cl](mailto:flarrain@claro.cl)

Tel: 56.2 2367.3026

### Claro & Cia., Abogados

Member Firm for Chile

# Colombia

Prepared by Brigard Urrutia, *Lex Mundi Member Firm for Colombia*



Has positioned itself as the **fourth friendliest destination** in **Latin America** to do **business** according to **Doing Business 2018**.

**Awarded** the **investment grade rating** by the **top three risk-assessment firms** in the **world (S&P, Fitch, and Moody's)**.

Has the **32<sup>nd</sup> largest economy** in the **world** and the **fourth** in **Latin America**.

## What to Expect in 2019

Despite a chequered past, Colombia continues to provide a safe-haven of sustainable and steady economic growth and improving socio-demographic factors, with GDP set to rise by approximately 3.6 percent and 3.7 percent in 2019 and 2020, respectively, according to the IMF. Much of this forecast growth will continue to be driven by the country's ambitious and expansive infrastructure programs after many years of neglect, both in the form of new projects and those carried over from the previous presidency.

For example, the USD 24 billion 4th Generation (4G) road infrastructure program, initially launched in 2013, involves the upgrade of significant transport connections which, once completed, are expected to reduce transport costs by as much as 28 percent and boost GDP by 1.5 percent annually as a result of improved logistics, trade facilitation and subsequent job creation.

However, delays to some projects have posed major financing challenges, with the Colombian financial development agency Financiera de Desarrollo Nacional estimating that an additional USD 6.2 billion may still be required to fund new and ongoing transport developments through to the end of 2024. Of this, USD 17.7 billion will be for major road projects, with rail and maritime logistics developments also highlighted as key areas of investment opportunity.

The recently elected Colombian Government led by President Duque now faces the challenge in 2019 of the implementations of the historic peace accord with the FARC after over 50 years of civil war, which comes with significant financial and social commitments around the integration of former combatants, the migratory crisis from neighboring Venezuela and the pressures on the employment, healthcare and education systems that these factors bring. Nevertheless, the ongoing implementation of the 2016 peace deal has undoubtedly improved the country's image abroad and lowered perceived risk, whilst the new tax and fiscal reforms implemented in the *Financing Law* passed in January 2019 is clearly designed to further stimulate domestic and foreign investment.

While the new law should encourage investment, ratings agency Fitch warned that the tax cuts given to businesses were likely to be detrimental to government finances in the short to medium term, especially if offsetting factors such as higher oil prices prove less favorable than the authorities initially estimated.

Apart from supporting the ambitious infrastructure programs nationally, a significant part of the *Financing Law* is aimed at continuing the successful strategy of reducing poverty levels in Colombia and growing the increasingly significant middle class, with improved access to healthcare, education and general living standards across the country. In just over 10 years, according to World Bank methodology, Colombia has successfully reduced the percentage of the population living in poverty from 49.7 percent in 2002 to 26.9 percent in 2017 (forecast to reach as low as 13 percent by 2020), whilst in the corresponding period the middle class has burgeoned from 16.2 percent to 30.5 percent of the national population, which is fast approaching 50 million.

Colombia continues to offer an open and dynamic trading environment at the geographic heart of the Americas, with more than 16 trade agreements in force, enabling preferential access to more than 60 countries and nearly 1.5 billion consumers across markets including the United States, the European Union, Brazil, Mexico, Chile, Peru, Costa Rica and South Korea. Further negotiations are underway with new markets to be added soon, such as Israel and Panama, with which Colombia has signed agreements. Additionally, Colombia is negotiating a Free Trade Agreement with Japan and an associate state figure through the Pacific Alliance with Canada, Australia, Singapore and New Zealand.

## Trends and Projects

### Infrastructure and Transport

As mentioned above, infrastructure investment continues to grab the attention of international players, and now the pipeline of projects reaches far beyond roads and includes social infrastructure projects, mass transport, urban regeneration, especially in Bogotá where the current administration continues to develop an important portfolio of projects.

The undoubted jewel in the crown continues to be the much-vaunted USD 4.4 billion Bogota Metro project, which now has financing secured and seven international consortia confirmed in the qualification process, with the Empresa Metro de Bogota ("**EMB**") due to award the contract in September 2019.

Aside from the Metro, in November 2018, the city government of Bogotá also announced that it was planning to launch new PPP projects with a combined capex of COP 5.2 trillion (USD 1.7 billion). The mayor named road PPPs, hospitals, emergency health treatment centers, an administrative center and underground parking facilities as the principle PPP projects in development. However, no tender has yet opened in 2019. All of the above-mentioned projects form part of mayor Enrique Peñalosa's COP 15.5 trillion (USD 5 billion) 'Bogotá Mejor Para Todos' campaign, a 2016-2020 pledge to upgrade Bogotá's creaking infrastructure.

Outside of the capital city hub of Bogotá, there is also an important pipeline of PPP and private initiative projects across the spectrum of ports, airports, rail and road infrastructure, as the government seeks to integrate previously disconnected areas of the country and provide trading access to drive the economic growth forward and drive social inclusion.

- For more information, visit: [http://pipeline.bu.com.co/home/index\\_en](http://pipeline.bu.com.co/home/index_en)

### Energy and Renewables

Colombia's primary energy production is hydro-electricity, thanks to its abundance of water, followed by fossil fuels such as oil, gas and coal. Given its privileged geographic location and natural wealth, Colombia also has the potential to become a key player in the development and application of alternative technologies. Consequently, an area of increasing activity and international interest is in the Colombian energy sector, firstly with regards to guaranteeing energy autonomy in the medium to long-term and the government's strategy to diversify the current matrix away from over dependence on hydroelectric projects to alternative renewable sources.

In February 2019, Colombian authorities unfortunately had to call-off the country's long-term energy auction, as competition requirements were not entirely fulfilled, despite receiving proposals for 1.5 GW in projects from 27 companies covering 17 solar energy, 4 wind, and 1 biomass power plants. There were also 12 companies interested in the purchase and subsequent distribution of this clean energy. Nevertheless, according to the agency of planning for energy and mining ("**UPME**"), the authorities decided to abandon the process due to a lack of sufficient competition, which meant they could not ensure savings in the final price for consumers. Nevertheless, given the positive interest in the tender and the quality of the players involved, the future looks positive and the authorities have declared their intentions to initiate a second process by 2Q19.

On a more positive note, Colombia's Ministry of Mining and Energy ("**MINMINAS**") recently announced on March 1 that it awarded 250.55 GWh per day of power in the recent reliability charges tender, guaranteeing energy through to 2023. Of the award, 37.37 GWh actually corresponded to new capacity to be installed in the electricity system, whilst 6 percent of the awarded capacity goes to solar and wind power projects that will contribute to diversify the energy matrix. The winning projects will have to commence operations between 2022 and 2023.

## Oil and Gas

On February 4, The National Hydrocarbons Agency ("**ANH**") relaunched with modified terms a previously delayed E&P tender for more than 20 licenses, the first tender process for five years signaling a positive trend for the industry. The modified terms include a provision allowing operators to nominate attractive blocks and have them added to the auction list. Royalty payments for offshore licenses will also increase by at least 5 percent, attracting more revenue for the government. Contracts are due to be awarded in July 2019 according to the published schedule.

2019 also promises to be an important year for Colombia's nascent offshore oil and gas industry, with both Shell and Ecopetrol committing to invest in the region of USD 350 million between them, combined with further commitments in the Caribbean basin from NOC and Petrobras to spend an additional USD 140 million to restart work in the Tayrona block. These commitments will undoubtedly provide reassurance and major opportunities to service providers that Colombia may yet deliver on its promise to be the next frontier for offshore development in the region.

## Buenaventura Regasification Plant

Colombia is also due to tender a 20-year private agreement for the design-build-finance-operate-maintain ("**DBFOM**") of a regasification plant and associated gas pipeline in the second semester of 2019. The project will consist of a 400,000 cubic feet per day regasification plant to be installed in the Bay of Buenaventura, storage capacity of 170,000 m<sup>3</sup>, as well as a 30-inch diameter, 110 km underground gas pipeline to the town of Yumbo in Valle del Cauca Department. The developer will also install a floating storage and regasification unit in an initial phase until land-based storage is constructed.

## Tourism

The year 2018 continued to show record visitor numbers of foreigners coming to Colombia, some 4.4 million according to the country's Ministry of Commerce, Industry, and Tourism ("**MinCIT**") and up 10 percent from 2017. Since the signing of the historic Peace Agreement in November 2016, tourism has played an important role in boosting and diversifying Colombia's GDP growth. Many regions, once off limits to visitors due to security issues, are now beginning to receive travelers looking for off-the-beaten-track adventures, generating increasing interest from international air carriers, cruise ship operators and investors in the hospitality industry.

The Financial reform implemented in January, also included a series of measures to incentivize growth in certain targeted sectors including Tourism, setting corporate income tax at 9 percent for a period of 10 to 20 years for new or refurbished hotels, new theme park projects, ecotourism parks and agro-tourism developments, depending on the type of activity.

## "Orange Economy"

Following the recent *Tax Reform*, entrepreneurial activities in technological and creative industries will also be eligible for a tax exemption on earnings below 80,000 tax units, equivalent to around USD 850 thousand the exemption period being seven years for tech and creative industries. These measures tie into efforts to develop Colombia's so-called "Orange Economy", made up of the arts, publishing and tech sectors, identified by the government as a key potential source of revenue. Telecommunications infrastructure in Colombia are capable of supporting world-class operations with 10 submarine cables that are part of a network of more than 42 thousand km of fiber optics, 24 thousand kilometers of land fiber and almost one hundred stations for Internet connection.

The IT and digital content industry exported more than USD 169 million in 2017 thanks to the strategies for internalization and strengthening of export capacities made between the ICT Ministry and Procolombia. These efforts have allowed the country to consolidate as one of the preferred destinations in Latin America for multinational providers of digital security services and online infrastructure networks.

## Agribusiness

The agricultural sector is also central to the government's plans to diversify the economy and generate employment and reintegration opportunities during the post-peace accord implementation period. The *Financing Law* also provided for tax exemptions in the Agricultural sector for up to 10 years. As parts of the country open up to investment due to improved security, new crops such as Haas Avocado and citric fruits are becoming increasingly attractive and profitable alternative to Colombia's traditional crops of coffee and sugar.

Of note in the agricultural sector is the growing medicinal cannabis that is grabbing greater attention following the federal *Bill 1787 of 2016* that regulates and authorizes possession, seeds, and cultivation, as well as production and manufacturing procedures for medicinal or scientific purposes. Colombia is consolidating its position as a leading market for the production of medical cannabis and its derivatives. Since August 2017, when the Justice Ministry passed a resolution that established criteria for licensing small and medium-sized growers, producers and traders, a total of 170 permits have now been granted for cannabis exploration, including those attached to the Health Ministry. To date, the Justice Ministry has authorized 19 permits for seeds use, 62 for psychoactive cultivation and 89 for non-psychoactive cultivation. In 2019, the number of licenses is expected to double, and the market is expected to grow up to USD 1 billion in value.

## Legislative News

In Latin America, Colombia is the country that has undertaken the most reforms to improve its negotiating environment. Since 2006, the country has implemented 34 reforms. (Doing Business 2018, World Bank). The government is clearly committed to providing incentives for investment and stability for investors.

## Tax Legal Framework

Colombia kicked off 2019 with a raft of new tax and fiscal reforms designed to stimulate domestic and foreign investment, though there are concerns that some measures could hinder growth in the short to medium term.

Headlining the changes in the *Financing Law* (implemented on January 1, 2019), is the progressive reduction of corporate income tax from 33 percent this year to 30 percent in 2022, along with the repeal of the previous 4 percent surcharge on corporate earnings. The law will also see the gradual repeal of a presumptive income tax, an alternative tax based on a percentage of net equity from the previous year, which is now set to fall from last year's rate of 3.5 percent to zero by 2021.

In 2018, Congress also approved the agreement signed by Colombia and United Kingdom and North Ireland Governments for the avoidance of double taxation in income tax.

## Intellectual Property Legal Framework

Furthermore, as part of Colombia's accession to the OECD Group of Countries and to provide further assurances to international investors, *Law 1915 of 2018* modified regulations regarding intellectual property rights bringing regulation further in line with international conventions and free trade agreements.

## Technology Media and Telecoms Framework

In 2018, the Colombian Congress approved the *Budapest Convention on Cybercrime*, whilst *Bill 152* was presented with the objective modernizing the TIC Sector in line with the international standards and further promoting foreign investment in the IT and Telecoms industries.

## Infrastructure Legal Framework

*Law 1882 of 2018* was adopted to modify regulations about civil works contracts, especially for infrastructure projects, to promote free competition and avoid corruption practices.

## National Development Plan

Colombia's National Congress is currently discussing The National Development Plan for the next four years (2018-2022) that include the National Government projects that are focused on the country's primary needs, designed to implement an action plan to achieve continuous growth and greater competitiveness around the key pillars of peace, education, and social equity.

## Brigard Urrutia's Highlights

Founded in 1934, and with more than 80 years of experience, Brigard Urrutia is recognized as a leading law firm in Colombia and one of the most prestigious in Latin America.

We advise a global client base that includes leading domestic and international companies, financial institutions and multilateral agencies on all aspects of their business activities in Colombia.

Brigard Urrutia has been repeatedly recognized by leading legal publications, as one of the elite law firms in Colombia, mainly due to the firm's wealth of experience in sophisticated corporate matters and for advising on cutting edge issues in specialized industries as well as having niche practices.

Despite a year with presidential elections, where businesses tend to be slower, Brigard Urrutia continued to lead the market in both the value and volume of transactions.

During 2018, we advised or represented:

- Primax Peru in the acquisition of Distribuidora Andina de Combustibles S.A. (former Exxon Mobil de Colombia) through its subsidiaries in Colombia, from an independent party purchaser which in turn had temporarily acquired it from the Chilean company COPEC.
- Citibank in connection with the agreement with Scotiabank, who acquired the consumer business of Citibank Colombia S.A. and Citivalores Comisionista de Bolsa S.A.
- Valorem S.A., a Colombian diversified investment holding company, listed on the Colombian Stock Exchange, in connection with the sale of Danzas Holding AG, a subsidiary of Deutsche Post DHL Group, 100 percent of its direct and indirect interests in Colombian logistics services company Suppla S.A and 3 other companies comprising the Suppla group.
- Veolia Environment in the acquisition, through its group entities, of 100 percent of the shares of Aseo Urbano S.A.S., the holding of Grupo Sala which operates, through around 18 subsidiaries, in 137 cities (including 8 capital cities) in Colombia and Panama. The deal allowed Veolia to expand its already robust presence in Colombia in the waste management business.

- Celsia by both in-house legal counsel, as well as M&A and Regulatory counsel in the transaction to Empresa de Energía del Pacífico EPSA S.A. E.S.P. (“EPSA”). The deal included (i) two operative Hydroelectric Plants (Hidromontañas and Rio Piedras) located in Antioquia, Colombia; (ii) one Hydroelectric construction project (San Andrés) located in Antioquia, Colombia; (iii) more than 15 real estate properties for the construction of solar energy farms located in Bolívar, Santander and Tolima, Colombia; and, (iv) the majority stake of the issued and outstanding shares of Begonia Power S.A.S. E.S.P., a corporation duly organized under the laws of Colombia, which will carry out a wind energy project with construction of wind farms located in la Guajira, Colombia.
- By means of this transaction, Celsia is implementing a strategic change and consolidating as a key holding within the energy market in Colombia, and expects to expand its presence through its affiliate, EPSA.
- Cargill, an American food producer and seller, in the acquisition, through its controlled Pollos El Bucanero, of 100 percent of the company Campollo, a company in the poultry industry, and some of the debt of the Company, given it is involved in a reorganization proceeding before the Superintendence of Companies. The transaction was very demanding given the complexity and size of the reorganization procedure.

The firm has also received the following recent recognitions:

- The prestigious publication Chambers and partners recognized Brigard Urrutia with the Client Service Award 2018.
- The prestigious English publication International Financial Law Review (“IFLR”), recognized us as National Firm of the Year, Capital Markets Firm of the Year and Debt & Equity-linked deal of the year in its latest awards edition.
- The Legal 500 also awarded us with the highest recognition in several practice areas, being the top-ranked firm in Colombia.
- The global lawyers’ directory Who’s Who Legal, from Law Business Research, recognized us as Firm of the Year on 12 occasions (2006 – 2016 & 2018).

## Lex Mundi Member Contact

**Brigard  
Urrutia**

A **LexMundi** Member

### **Carlos Umaña Trujillo, Partner**

[cumana@bu.com.co](mailto:cumana@bu.com.co)

Tel: 57.1.346.2011 ext. 8223

### **Sergio Michelsen, Partner**

[smichelsen@bu.com.co](mailto:smichelsen@bu.com.co)

Tel: 57.1.346.2011 ext. 8224

### **Manuel Fernando Quinche, Partner**

[mquinche@bu.com.co](mailto:mquinche@bu.com.co)

Tel: 57.1.346.2011 ext. 8212

### **Brigard Urrutia**

Member Firm for Colombia

# Costa Rica

Prepared by Facio & Cañas, *Lex Mundi Member Firm for Costa Rica*



## First exporter

in  
**LATAM**  
of  
**high-technology**  
and  
**high R&D**  
**intensity goods.**

**Top** five cities  
in the **world**  
for **cost-**  
**benefit**  
of **doing business.**

## Economy

is **highly**  
**stable.** Foreign  
**investors**  
maintain an **interest** in  
the **country** due to its  
**political stability** and  
its **high indices**  
of **education.**

## What to Expect in 2019

Costa Rica is actively promoting the reactivation of the local economy. Specific insights and examples are set out below:

### Trends and Projects

#### New “PAC” Administration

On February 4th, 2018, Costa Rica elected Carlos Alvarado Quesada as President. Carlos Alvarado Quesada belongs to the incumbent party called “Citizen Action Party” and succeeded former President Luis Guillermo Solís Rivera.

Mr. Alvarado took up a challenge in the Bicentennial of the Republic of Costa Rica, to refresh the name of his party and to return the credibility in the political class to the citizenship. Therefore, among the most important pillars of the current administration the following appear: (i) strong fight against corruption; (ii) finding a solution to the Costa Rican fiscal deficit; and (iii) the economic reactivation of the country.

#### OECD

Related to the above, the current Costa Rican government, following a process already begun, is making great efforts to culminate with the country’s accession to the Organization for Economic Cooperation and Development (“**OECD**”).

The **OECD** Council announced on April 9, 2015, the beginning of discussions on the adherence of Costa Rica to the organization. The latest **OECD** report on Costa Rica (carried out in 2018) noted that the country has made impressive progress in terms of economic growth, significantly improving areas such as education, health and pensions. Now, the **OECD** points out in the same report that Costa Rica should focus on improving the following areas in order to achieve an end to the organism’s adherence: recover the sustainability of public financing, develop important policies to combat poverty and reduce inequality.

#### Infrastructure

Costa Rica’s economy will be benefiting from its Government’s devotion to bolstering its national transit infrastructure. To do so, the government has implemented investment plans, that will mobilize over 4.6 billion dollars, in order to address unpostponable road projects throughout its territory. The most notable transit projects include the construction or improvement of national highways that will connect the capital of San Jose with important cities and provinces such as San Ramon, Cartago and Limon. In order to carry out these goals, the country has acknowledged that it will have to work hand in hand with the private sector, utilizing concessions. Therefore, it has strengthened the National Counsel of Concessions (body in charge of administering and assigning funds pertaining to concessions).

Early on this year, Costa Rica inaugurated its new cargo terminal in Limón (Caribbean coast). Said cargo terminal will promote Costa Rica as a Latin-American leader in port connectivity. It is expected that the capacity of this port will exceed that of the Panama Canal.

## Digital Transformation

Costa Rica understands the necessity of improving its information and communication technologies in order to improve the socioeconomic development of the country and the quality of life for all its citizens. Therefore, Costa Rica has embarked on the digital transformation of all its public institutions. In order to meet said goal, President Carlos Alvarado presented an executive order titled “Costa Rican Digital Transformation Strategy”. Said proposal aims to accelerate the productivity and competitiveness, taking advantage of the fourth industrial revolution and knowledge societies, to ensure the welfare of all its inhabitants, in an inclusive manner, and promote sustainable development.

- For more information: <https://micit.go.cr/transformaciondigitalcr/TransfDigitalCR.pdf>

## Cybersecurity Strategies

Due to the exponential increase in the utilization of information and communication technologies, Costa Rica’s Ministry of Science, Technology, and Telecommunications has acknowledged the cybersecurity threats said movement entails. Therefore, said ministry has published a National Strategy of Cybersecurity with the aim fostering coordination and cooperation of all interested parties (public and private institutions) to promote measures of education, prevention and mitigation of all risks in order to achieve a more secure and reliable environment.

- For more information: [https://micit.go.cr/images/imagenes\\_noticias/10-11-2017\\_Ciberseguridad/Estrategia-Nacional-de-Ciberseguridad-Costa-Rica-19-10-17.pdf](https://micit.go.cr/images/imagenes_noticias/10-11-2017_Ciberseguridad/Estrategia-Nacional-de-Ciberseguridad-Costa-Rica-19-10-17.pdf)

## Carbon Neutrality by 2021

Following its motto of being a “Small country with big goals”, Costa Rica initiated a plan, in 2012, that would make it the first carbon-neutral nation in the world by 2021. In order to meet said goal, the country has actively continued approving legislative projects that will aid in reducing carbon emissions. Such as the *Law of Incentives and Promotion for Electric Transportation (2017)*, that exonerates all electric vehicles from almost all taxes and tariffs.

## Tourism

Costa Rica can expect more than three million tourists in the year 2019 and expect a healthy growth from that point onwards. The National Tourism Institute has put forth a plan, named National Tourism Development Plan 2017-2021, in order to assure said growth. The main objective of said plan is to achieve an increase of one million tourists for the year 2012.

## Legislative News

### New Tax Reform

The *Law on Strengthening Public Finances (number 20,580)*, enacted on December 3, 2018, is a law approved in Congress in order to improve and strengthen public finances, given the fiscal deficit that exists in Costa Rica. This law is not only a tax reform, but also constitutes a reform to public spending.

Among the most important aspects adopted in this law are: inclusion of rules that fight against general elusion; the implementation of the Value Added Tax; reforms in Taxes on Capital Gains and adoption of measures to contain public spending.

Likewise, a period of tax amnesty was opened, all in order to achieve a quick improvement of the state finances. Although the strongest revenue from the reform (coming from the Value Added Tax) will be materialized until mid-2019, the good results of the approval of this law can be already seen, since the country closed 2018 with a fiscal deficit of 6 percent of the Costa Rican gross domestic product, below the 7.2 percent of the gross domestic product that was expected.

This measure is a great advance for Costa Rica in relation to the main issues that were pending to be addressed for its incorporation into the **OECD**.

## Labor Law Reform

As of 2017, Costa Rica, has bolstered its anti-discrimination laws granting a larger protection scope (age, gender, race, and religion) in favor of the labor force, both in public and private sectors. The *Labor Reform* also included major changes to judicial procedure rules.

## Facio & Cañas' Highlights

### Our Trajectory

Facio & Cañas will be celebrating its 80th anniversary on 2022, reinforcing its reputation as one of the most notable law firms, with a remarkable trajectory in Costa Rica and Central America.

### Essential Costa Rica

Recently, Facio & Cañas was awarded with the certification of "Essential Costa Rica", a country brand created to boost the country's reputation through tourism, investment, or the acquisition of products through exports.

### Branch Opening in Guanacaste

Facio & Cañas has recently opened a branch office in Flamingo, Guanacaste (Pacific Coast), constituting a strategic location for tourism and business development.

## Lex Mundi Member Contact



A **LexMundi** Member

**Carlos Manuel Valverde Retana, Partner**

[cvalverde@fayca.com](mailto:cvalverde@fayca.com)

Tel: 506.2105.3600 ext. 739

**Sergio Solera Lacayo, Managing Partner**

[ssolera@fayca.com](mailto:ssolera@fayca.com)

Tel: 506.2105-3603/8844

**Facio & Cañas**

Member Firm for Costa Rica

# Curaçao

Prepared by VanEps Kunneman VanDoorne, *Lex Mundi Member Firm for Curaçao*



**Major exports** include **tourism**, which is **26%** of **gross domestic product**.

**Over one million tourists** visit annually. Total **tourism** expenditure is **USD 750 million annually** (2014).

Has a very diversified **economy** with the following **sectors** as the most important: international financial services, tourism, trade and distribution, oil refinery and renewable energy, technology and transnational education.

## What to Expect in 2019

### Shipping

Curaçao's favorable geographic location and reliable port services attract a large number of vessels annually. The cruise tourism and presence of the oil refinery and ship repair yard in Curaçao account for a steady number of vessels each year.

The activities in the Curaçao port include container transshipments, ship repairs, bunkering, cruise tourism and marine (underwater) surveys. As a result of the flexible fiscal regime, reliable legal infrastructure and the presence of specialized service providers, Curaçao is an attractive option for registration of vessels.

Curaçao's jurisdiction has great conditions for arrests and judicial sales of vessels, through public auction or private sale. Claims (foreign or local) can be enforced very prompt and cost efficient, while the claimant is in control over the whole process. Almost all costs incurred with the enforcement can be recovered from the sales proceeds. As a consequence of judicial sale in Curaçao, the vessel will be freed from old claims so that the buyer of the vessel can easily re-register its vessel with a clean title.

### Oil and Gas

The oil refinery on Curaçao is currently being leased by Venezuelan state oil company PDVSA. The refinery has been idle since May 2018 due to sanctions imposed by the United States of America on Venezuela and a legal dispute between PDVSA and U.S. producer ConocoPhillips. PDVSA's contract to operate the facility will expire end 2019. The government of Curaçao is actively seeking a party willing to handle the operation of the facility in the long run and probably to take over operations of the facility before the end of the lease term.

### Special Economic Zones

Curaçao currently has two active Free Trade Zones, one in the harbor, and one at the airport. The special incentives make it very appealing for businesses to operate in any of the Free Trade Zones of their choice. Routine customs formalities related to import and export are free of charge during regular office hours, while other administrative matters are reduced to a minimum.

## Trends and Projects

### Oil and Gas

The government of Curaçao is actively seeking a party willing to handle the operation of the refinery facility in the long run and probably to take over operations of the refinery facility before the end of the lease term in December 2019. The refinery would need to be upgraded and refurbished, this would lead not only to an influx of investments but also to economic growth due to the refinery commencing operations again. The refinery being idle has been one of the main drags on the growth of the Curaçao economy.

## Tourism and Hospitality

The tourism sector remains one of the driving forces behind the Curacao economy. Tourism in Curaçao continues on an upward trend due to numerous investments in this sector, such as new hotels. A few of the most notable investments are the arrival of the Corendon airline company and the new Corendon hotel which should finish construction (phase 1) before the end of 2019 and become one of the largest hotels on the island.

## Aviation

The Curaçao based airline company Insel Air has been declared bankrupt. The bankruptcy of Insel Air is currently being settled. The bankruptcy of Insel Air has led to other airline companies entering the Curaçao market and others investing more to fill the void left by Insel Air.

## Telecommunications

The shares in the largest telecommunications provider on the island, United Telecommunication Services (“UTS”) has been purchased by Liberty Latin America.

## Energy and Water

The Curaçao water and power company Aqualectra recently closed the largest locally funded financing in the history of Curaçao, amounting to ANG 375 million (approximately USD 210 million).

## Legislative News

- Income tax legislation has been amended in 2018 resulting in a change to the income tax brackets.
- The government is planning on increasing the sales tax in 2019.

## VanEps Kunneman VanDoorne's Highlights

- Assisting lenders (Maduro & Curiel's Bank N.V. & FirstCaribbean International Bank (Cayman) Limited) in syndicated secured debt financing of ANG 375 million (USD 210 million) for Aqualectra (Curaçao government owned water and electricity provider).
- Assisting with the acquisition of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) by consortium of Investors (Closing price approx. USD 300 million)
- Assisting Victory Park Capital with acquisition financing with respect to acquisition by consortium of Investors of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) (Loan amount USD 125 million).
- Assisting lenders (Maduro & Curiel's Bank N.V.) in syndicated secured construction loan financing of USD 34,500,000 for the renovation and construction of the Marriott Hotel, Curaçao.
- Assisting with the acquisition of the shares in the Curaçao government owned telecommunications company United Telecommunication Services to Liberty Latin America.
- Assisting with the acquisition of a local insurance company in Curaçao and Sint Maarten.
- Assisting and advising the Curaçao Multi Commodity Center in obtaining the necessary permits for the center.
- Administrator in the suspension of payment (surseance van betaling) and currently bankruptcy trustee in the bankruptcy of local airline Insel Air.
- Inquiry proceedings in a Curaçao company in connection with a shareholders dispute between two shareholders from the middle east and a leading 5 star hotel in Düsseldorf.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Focco Lunsingh Scheurleer, Managing Partner**

[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 160

### **Michiel Gorsira, Head of Litigation and Commercial**

[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 110

### **Frank Kunneman, Head of Corporate and Banking**

[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 254

**VanEps Kunneman VanDoorne**  
Member Firm for Curaçao

# Dominican Republic

Prepared by Pellerano & Herrera, Lex Mundi Member Firm for the Dominican Republic



## Second largest and most diverse

Caribbean country, **situated** just two hours south of Miami, less than four hours from New York and eight hours from most European cities

## Strong

**economic growth** in recent years, averaging **5.1 percent annually** between 2008 and 2018.

## Population

of over **10 million people**, has **territory** stretching 48,442 square kilometers (18,704 square miles).

## What to Expect in 2019

### Banking and Finance

Our Executive Power has declared the year 2019 as the National Year of Innovation and Competitiveness, which will be reflected in all sectors of the national economy. The banking and financial industry will not be the exception. In fact, since 2018 the Dominican Republic has begun to witness regulatory trends from the authorities that oversee the sector. The most important one to be highlighted is the new *Cybersecurity and Information Regulation*, which imposes certain obligations and standards on Dominican financial entities with regard to their electronic platforms; translating into a safer financial environment for the users of this sector. Such regulation will enter in full force and effect on November 2019, considering that it contemplated a period of adaptation. Consequently, in this year 2019 we expect an important improvement from the financial entities that operate in our market, in search of greater cybersecurity. This step is vital for the banking sector this year. The reality of our financial services is not different from the rest of the world, since this year a significant digitization of the banking industry is expected, in other words, the use of more technological components to provide financial services.

### Stock Market

After several years of discussions between the participants and the regulator of the sector, on December 19, 2017 the *Law No. 249-17* that regulates the Stock Market of the Dominican Republic was enacted, definitely repealing the former and outdated *Law No. 19-00*.

As mentioned in the grounds of *Law No. 249-17*, the comprehensive renewal of the regulatory system for this sector was necessary to sustain, promote and maintain its growth in the Dominican Republic, considering the need to incorporate principles and objectives of an essential nature for a transparent, organized and efficient stock market.

Additionally, the technical characteristics of the securities market require flexible legal frameworks from the structural point of view, which have effective mechanisms for constant updating, while maintaining a robust framework regulation that allows maintaining cohesion with the rest of the system.

In general terms, we expect the stock market to continue its development, and its particular dynamization through the issuance of securities of a different nature to those already existing, under the scope of this new legal instrument.

For both the banking and capital markets sectors, we expect our authorities to continue the application of the recent regulations related to the prevention of money laundering and terrorist financing. By way of background, as a result of the joint efforts made by the different sectors involved in the prevention of asset laundering to promote the legal framework against such illegal activity and the financing of terrorism, on June 1st, 2017, the *Law against Money Laundering and Terrorism Financing No. 155-17* was enacted in the Dominican Republic, replacing a former outdated law. In accordance with the provisions of this law, the Executive

Branch has been issuing the corresponding regulations for execution and application of this new law. It should be noted that this new legislation constitutes an important progress for the Dominican Republic, given that it introduces new international standards into our legal system regarding the prevention of asset laundering and terrorism financing, pursuant to the recommendations of the Financial Action Task Force on Money Laundering (“**FAFT**”), issued in February 2012 and updated in year 2016.

## Telecommunications

In recent years the telecommunications sector in the Dominican Republic has been in constant change and evolution which has led to remarkable growth rates in recent decades. The country has been promoting a technological transformation (or tech revolution) through a determined public-private effort, that leads to the “Republica Digital” (in English, Digital Republic), a concept developed by the government a few years ago to promote the use of computers in the whole country. The four largest telecommunications companies, Claro, Altice, Wind and Viva, have each announced huge sums of infrastructure investment, and a significant portion of that amount will go towards building newer and better fiber optic networks, not only to upgrade the quality of connection for Dominicans who use the web, but also to expand coverage to many of those in the other half who cannot. With support as well from international players, the goal is to have 100 percent coverage in municipalities and 70 percent coverage of the total population by 2020. The successful implementation of these initiatives will definitely accelerate the country into the future.

## Trends and Projects

### Banking and Finance

The trend this year for these industries is fintech. The current situation regarding fintech in the Dominican Republic is not very different from the rest of Latin America. Although the presence of the fintech is starting to be significant (there are no local official statistics on the matter), given the rise in the use of the internet for e-commerce, social networks and the development of electronic platforms, there is no doubt that start-ups of this nature will continue to emerge more and more. Moreover, this reality is evident considering that multiple banks in our country have incorporated new technologies into their lines of business and will continue to do so during 2019. As evidence of this imminent development, on May 2018 the Dominican Association of Fintech Companies (“**ADOFINTECH**” by its acronym in Spanish) was incorporated, initially with 19 member-companies, with the aim of promoting the growth of fintech finance in our country.

Although certain authors have highlighted several disadvantages in fintech, such as the vulnerability of users’ financial information, they could be significantly mitigated through the approval, implementation and, above all, the execution of an appropriate regulation in the matter. For this reason, the financial technologies, beyond their intrinsic risks due to the high technological component of the industry, undoubtedly represent a great opportunity for the financial system and its related service providers and in particular, an opportunity for growth and expansion to segments of the population where previously the use of financial services was unviable. In the particular case of formal financial institutions, a regulation to mitigate this risk is already in place, which we have already mentioned above. In other words, it is expected that this developing industry will allow wide improvements in our country to access to the financial system for those users who have not had it historically through traditional banking.

In the specific case of the Dominican Republic, the main challenge regarding the development of fintech companies is and will be the regulatory aspect. The Dominican Central Bank has already publicly stated that proposing a regulation for fintechs is part of their 2019 agenda. The first steps have been taken. A special commission from the Inter-American Development Bank recently visited our country to explore and analyze our market in order to determine our “financial ecosystem” and propose the guidelines of the regulation that is going to be drafted and proposed by the authorities.

The behavior of fintech's development in the Dominican Republic to date, and the continuance of the aforementioned development in accordance with expectations, raises not only the need but also the obligation of a proper regulation duly adjusted to the nature of this new industry, and its combination with financial services, their risks and the participants involved.

By virtue of the above, it would be expected that in the short term there will be a proposal for a fintech regulation to address the need of this industry and its participants and specifically establish the obligations and rights of all participants of the fintech industry. We are very confident that the market will have at its disposal the appropriate regulation for the consistent, stable and coherent development of financial services through fintech, in the face of the undoubted growth of this sector in the near future.

## Telecommunications

The telecommunications sector is predicted as one of the more sustainable growing economic sectors in the Dominican market, and it has been fully supported by the government. In 2019, the National Cybersecurity Council approved an implementation plan of National Cybersecurity Strategy 2018-2021, securing the property, privacy and security rights of the Dominicans in the use of the internet.

In addition, the Dominican Telecommunications Regulator ("**Indotel**") has published the *Good Practices Guide for Electronic Commerce* to enhance the comprehension of electronic commerce to entrepreneurs and freelancers, supporting the Micro, Small and Medium Enterprises ("**MIPYMES**", by its acronym in Spanish).

Finally, the homologation service of telecommunications equipment will only be requested through the internet to efficiently manage the approval process and the issue of the pertinent certification.

## Energy and Power

The Dominican Republic is currently employing its efforts in improving the conditions of the sector not only for the consumers and the Dominican society but also for economic participants of the market such as the generators.

One of the most important tasks of the government is promoting the execution of an Electric Pact among the different stakeholders of the industry. The main purpose of this pact is to organize and reform the sector in an efficient manner and also will aim to resolve the financial sustainability of the distribution entities.

According to announcements made by the authorities of sector, renewable energy projects will grow in the country in 2019, based on the interest that is being showed by national and foreign investors since last year, investments in the development of renewable energy projects amounted to approximately USD 500 million. Currently, there are projects being developed for a total of 240.3 MW, from which 182.3 MW correspond to wind power and 58 MW to solar, taking advantage of the weather and climate conditions of the Dominican Republic which are very much favorable to these types of projects.

The country is also working on the project for "Energy Transition, Promotion of Renewable Energy to Implement the Climate Objectives of the Dominican Republic" which is financed by the Federal Ministry of Environment, Nature Protection and Nuclear Security of the Federal German Republic and executed by the *Deutsche Gesellschaft für Internationale Zusammenarbeit* ("**GIZ**"), as a result of the 2030 agenda for Sustainable Development incorporated in the national strategy and action plan of the Dominican Republic, among other countries of Latin America and the Caribbean.

In addition to the above, the *Corporación Dominicana de Empresas Eléctricas Estatales* ("**CDEEE**") which is, among other things, a regulating body of the generation, distribution and transmission of power in the Dominican Republic, has initiated a process for facilitating generation companies that currently operate with fuel oil, to convert to natural gas hence lowering generation costs. Those entities that decide to proceed with the conversion will be benefited with PPAs for 7 to 10 years.

In light of the above, the **CDEEE** has entered into negotiations with generating entities consisting in the conversion of power plants of at least 730 MW located in the eastern portion of the country, such as *Empresa de Generación Eléctrica* ("**EGE Haina**") for the conversion of its 215 MW power plant Quisqueya II to natural gas, as well as Barrick Gold Pueblo Viejo's Quisqueya I of 215 MW which utilizes its power for self-consumption but inserts into the grid the exceeding power. Another motivator for the conversion has been the announcement made by AES Dominicana that it will construct a pipeline from its terminal at Andrés, Boca Chica to San Pedro de Macorís.

Finally, there is an intention to capitalize the thermal power plant Punta Catalina located in Baní, Peravia Province, which when reaching its maximum capacity will inject 337 net MW into the grid; said capitalization is foreseen to happen within this or next year.

## Tourism

Tourism has always been one of the pillars of the Dominican economy and the main direct and indirect source of employment of the country, creating in 2018 more than 350,000 jobs among which 54 percent of those are occupied by women.

Foreign investment in the sector increased from USD 340 million in 2017 to USD 750 million in 2018. The Dominican Republic has reached the record of 7.6 million of visitors and vacationers, which generated income for the country in foreign currency up to USD 7.5 billion in 2018, thus contributing to the country maintaining its position as leaders of the Caribbean and Central America.

During 2018, more than 10,800 rooms were built. For the year 2019, the Council for Promotion of Tourism ("**Confotur**") is working on several projects throughout the country at the same time the existing infrastructure is being improved or developed.

Among the main transactions or developments in the sector during 2018 and 2019, is the USD 119.5 million financing by IFC and IDB Invest for the resort Tropicalia located in Miches (in the southern shores of Samaná Bay) as their first sustainable high-end resort in Latin America and the Caribbean. Tropicalia is expected to start operations in 2021.

Other relevant transactions in the sector include the acquisition of the Silver Sun Gallery Commercial Plaza and the Hotel Embassy Suites by HES Group with the purposes of repositioning the hotel and promoting the business tourism in the center of the city of Santo Domingo; the commencement of construction of new five-star Hotel Infiniti Punta Cana with a capacity of 345 rooms and an investment by BG Hotels (established in Spain) of approx. RD 2.51 billion; and the development of a luxury Condo-hotel called Captiva in the eastern portion of the country by Ankrom Group.

Other trends that are envisioned to grow in the country this year are ecotourism, health tourism and sustainable hotels.

## Legislative News

In August 2015, a *Law on Restructuring and Liquidation of Commercial Entities and Merchants* was enacted but it provided for a vacation legis of 18 months; thus, it entered into force at the beginning of 2017. Its main object is to protect both creditors against the financial difficulties of their debtors, and debtors against such difficulties. It pursues to ensure the operational continuation of commercial entities or merchants (Restructuring procedure) and when not feasible, it provides the proceedings for the liquidation of assets and the payment of debts (Liquidation procedure).

In January 2017, the *Law on Defense of Competition* entered into full force with the appointment of the Executive Director of the National Committee on Defense of Competition ("**Procompetencia**"). It constitutes the legal framework for any agreements, acts or behaviors which may restrict the free competition in the Dominican market. It rules all economic agents doing business in the country regardless they may be private or public, for or non-for

profit, nationals or foreigners. Among anticompetitive practices, it sanctions the abuse of dominant position and unfair competition. Since such entry into force, **Procompetencia** has performed research and studies in certain economic sectors to promote and guarantee an effective competition that leads to increase the economic efficiency in such markets.

In June 2017, the *Law Against Money Laundering and Terrorism Financing* was enacted. Said law introduces in our legal system the new international standards pursuant to the recommendations of the Financial Action Task Force (“**FATF** or **GAI**” by its Spanish acronym) issued on February 2012 and updated on 2016. It defines the acts classified as asset laundering, its precedents offenses and terrorism financing; also, it establishes a system for the prevention and detection of asset laundering operations, special investigation techniques and mechanisms for international cooperation and judicial assistance, the institutional framework to avoid the use of the national economic system for asset laundering, terrorism financing and the proliferation of weapons of mass destruction.

In December 2018, the President submitted to Congress a *bill on Public-Private Alliances* (“**APP**” by its acronym in Spanish) which creates the legal framework for the start, selection, award of the contract, execution, follow up and extinction of the **APPs**, covering all contracts whereby the public agencies which are not part of the finance sector put in charge of private agents (who shall receive certain temporary exemptions); the design, construction, operation, repair, expansion or maintenance of a good of social interest or the rendering of services of the same nature while it excludes the concessions administrative permits ruled by sectorial laws. It amends (or abrogates) several provisions of the in-force *Procurement Law*.

On January 29, 2019, the Senate approved a bill which creates the *System of Reciprocal Guarantees* with the purpose to improve the access of Micro, Small and Medium Enterprises to formal financing which shall derive in an incentive to the development of said sector by creating new employment, among other benefits.

Important legislation for the regulation of the telecommunications sector in the Dominican Republic were enacted including *Decree No. 230-18* that establishes and regulates the *National Cybersecurity Strategy*; *INDOTEL Resolution No. 062-17* establishing the *Rules on Rights and Obligations of Users and Providers of Public Telecommunications Services*, among others.

On February 20th, 2019 the President promulgated the law to eradicate illicit trade, smuggling and falsification of medical products, hydrocarbons, alcohol and tobacco (the regulated products) by establishing that illicit trade of goods, smuggling and falsification of regulated products is a criminal act while defining the criminal (including the tax crime against General Tax Directorate or Customs Office) and administrative sanctions; it includes the operations performed under Free Zones regime and Logistic Centers. Among administrative sanctions you may find the temporary suspension or permanent cancellation of the license, temporary or permanent closing of the operations, confiscation of goods, demolition of infrastructure, among others.

On February 28, 2019 the President submitted several bills to Congress, mainly:

- Amendment to the *Social Security Law* concerning the employer's accrued charges for delay payment subject to immediate or scheduled payment, strengthening the Social Security Treasury and the Direction for the Defense of Affiliates by granting them juridical personality as well as to an adjustment on the scheme of Pension Fund Administrators' commissions, and regularization of more than 150,000 employees in the Social Security System.
- Dissolution of the Dominican Institute of Social Insurance (“**IDSS**” by its acronym in Spanish language) since after enactment of Social Security Law new entities were created which derives in duplication of functions.
- Amendment to the *Law on Development of the Mortgage Market and Trusts* which shall increase the number of beneficiaries of the program of low-cost houses construction to reduce the housing shortage.

## Pellerano & Herrera's Highlights

Pellerano & Herrera has been the leading law firm in the Dominican Republic for more than 30 years and has participated in the largest and most important cases and transactions in the country. The firm has the most complete and multidisciplinary team of lawyers, with vast experience in more areas of practice than any other firm in the country.

The firm's recent transactions include:

- Assistance to underwriters in more than 15 bond offerings of the Dominican State. In the last year, we acted as:
  - Counsel to the underwriters, Citigroup Global Markets Inc. and J.P. Morgan Securities LLC, in two 144A/Reg. S offerings, including a USD 1 billion aggregate principal amount of bonds due in 2048 and a DOP 40 billion aggregate principal amount of bonds due in 2023. BanReservas acted as co-manager for both series of bonds. The Dominican Republic used the net proceeds from the sale of the bonds for general purposes of the government, including the partial financing of the 2018 budget. This deal was recognized by LatinFinance 2018 Deal of the Year Awards in the category "Sovereign Issuer of the Year".
  - Local counsel to underwriter J.P. Morgan Securities LLC, in a USD 1.3 billion bond offering by Dominican State. The transaction was closed on July 12, 2018. The Dominican Republic intends to use the net proceeds from the sale of the bonds for general purposes of the government.
  - Assistant to buyer, Parkland Fuel Corporation, one of North America's fastest growing independent marketers of fuel and petroleum products, in their acquisition of 75 percent of the shares of Sol Investment Limited, an owner of Esso gas stations in the Dominican Republic. Pellerano & Herrera served as counsel both for the acquisition and for the acquisition finance.
  - Assistant to Tofane, a Paris-based company, provider of telecom and digital services for carriers, in acquisition of Altice International Wholesale ("**AIW**") consisting of the Altice Group's international inter-operator carrier activities (roaming) in France, Portugal and in the Dominican Republic. Annual revenues of the acquired company stand at over USD 500 million.
  - Assistant to CAVALI S.A., a Peruvian company that provides registration of securities, in the sale of their shares of CEVALDOM, a Dominican company that provides registration of securities, for over USD 10 million, to several local financial institutions. This is one of few transactions in the Dominican securities market. Cevaldom is the only centralized deposit of securities in the Dominican Republic, involving the main financial institutions of the country.
  - Advisor to Uber, American international transportation network company, on all aspects of doing business in the Dominican Republic, in preparation for their entry into the market. In 2017 the firm assisted Uber in launch of UberMOTO service and launch of both Uber and UberMoto their services in Puerto Plata, a very popular tourist location. In 2018 the firm advised on launch of Uber Eats, a food delivery solution, in Dominican Republic.
  - Counsel to the defendant, a Dominican company wholly owned by a private client, in a USD 110 million dispute regarding ownership of a 4.4 million m<sup>2</sup> land plot in Punta Cana, in the La Altagracia province.
  - Representative of Task Arga, Spanish real estate company in dispute against Central Romana Corporation, agricultural, real estate and tourism company, for 3,000 m<sup>2</sup> land plot, which will be used for potential construction of hotel by Spanish investor.

# Dominican Republic

- Assistant to International Finance Corporation and IDB Invest in financing of the real estate complex “Tropicalia”, which is developed in Miches, Dominican Republic, by the renowned Venezuelan Cisneros Group. Tropicalia is a sustainable resort in the Dominican Republic expected to start operations in 2021 and is expected to create 1,800 jobs during construction, 500 jobs during operations and an inclusive supply chain that will link dozens of local entrepreneurs and farmers to hotel and tourist demand.
- Counsel to FMO (Netherlands Development Finance Company) in the USD 38 million refinancing granted to Taiwanese energy company General Energy Solutions, for the development of the second phase of Monte Plata Solar, the largest solar energy plant in the Dominican Republic Pellerano & Herrera also participated in the first phase of Monte Plata Solar which was inaugurated in Monte Plata in the Dominican Republic in 2016. This is one of few renewable energy projects that is up and running in the Dominican Republic, and that was welcomed and supported by the Dominican government.

## Lex Mundi Member Contact



A **LexMundi** Member

**Ricardo Pellerano, Managing Partner**

[r.pellerano@phlaw.com](mailto:r.pellerano@phlaw.com)

Tel: 1.809.541.5200

**Pellerano & Herrera**

Member Firm for Dominican Republic

# Ecuador

Prepared by Pérez Bustamante & Ponce, *Lex Mundi Member Firm for Ecuador*



Has **71,000 km** of **fiber optics**, **first** place in **Latin America** and **28th world** wide with the **fastest 4G technology**.

Has **electric energy coverage** in over **97.24%**, among the **highest** of the **region**.

**Double taxation treaties** signed with **more than 20 countries**.

## What to Expect in 2019

2019 heralds interesting prospects for Ecuador in many aspects. A significant shift in public policy regarding private investment has taken place, along with a free trade agreement with Europe, which provide opportunities for foreign investors in the country.

After a significant decrease in public revenue due to the fall in oil prices and hefty public expenditure by the former administration, the economy saw conservative growth in 2018 and appetite for mining, agribusiness, infrastructure and fishing have remained constant.

Yearning for capital in strategic sectors such as oil and gas, mining, electricity, infrastructure and tourism, the government has taken a full approach to promote private investment by implementing several strategies such as:

The New tax law (*Tax Law to Foster Productivity and Reactivate the Economy*) that offers a tax amnesty and a set of tax advantages and investment protection to several sectors including: pharma, tourism, agribusiness, manufacturing, renewable energies; and to several essential industries such as hydrocarbon refining, petrochemicals, casting and refining of copper or aluminum, among others.

Several concessions of public works and public-private partnerships have been announced by the government in sectors such as electricity, infrastructure and transportation.

Alignment with international organizations that will foster confidence and strengthen relationships with key partners and stake holders.

Ecuador increased its status from an “observant” to “associate” country to The Pacific Alliance. Thus, allowing the country to reinforce commercial relationships with Peru, Colombia, Chile and México, and paving the way towards free trade within the Alliance.

On another front, the government has also taken the first steps to become a member of the Organization for Economic Cooperation and Development (“**OECD**”) with the intent to apply best practices to public policies regarding social, economic and environmental matters. The executive branch believes that this alignment will pave the way to foreign investment and better credit conditions, encouraging oil and gas, mining, electricity and construction which are sectors of the Ecuadorian economy that typically attract foreign capital and long-term growth.

In the hydrocarbon industry, the government is promoting a series of oil bidding rounds, offering a production sharing agreement instead of the service contracts offered in past tenders. The new production sharing contract provides a formula in which the production shared between the private contractor and the state fluctuates depending on international oil prices. When the price increases, the state share increases in the proportions negotiated. The government expects this formula to create a stable contract which shares the risk of oil price fluctuations with the contractor.

Regarding the Mining Sector, President Moreno's administration has acknowledged the importance of developing this industry, with a more peaceful coexistence between miners and environmental activists. For this reason, a popular consultation was held, setting the basis for responsible mining, assuring that protected areas such as natural reserves will be preserved. Other significant changes regarding the mining industry involve the elimination of windfall tax and the reduction of capital gains tax, among others.

In regulatory and legal matters, a new law to simplify processes was enacted. Although some industries have powerful regulatory agencies that require significant initial licenses such as the food, medicine, agrochemical and telecommunications industries. The law speeds up certain day-to-day procedures and waives certain requirements.

In dispute resolution matters, local arbitration for commercial disputes is available in the largest urban centers. A set of procedural reforms from 2016 moving towards an oral litigation system has also helped to speed up the ordinary justice system.

In light of the above, the business environment in Ecuador is more favorable given the public sector's push to increase its collaboration and positive interactions with the international community and private sector, encouraging foreign investment.

## Trends and Projects

### Infrastructure

#### Road Projects

- Santo Domingo – Buena Fe Road Corridor
  - Design, financing, reconditioning, 4-lane expansion, construction, operation and maintenance. Total amount of investment: USD 591,040,000  
[https://www.obraspublicas.gob.ec/corredor\\_vial\\_santo\\_domingo-buena\\_fe/](https://www.obraspublicas.gob.ec/corredor_vial_santo_domingo-buena_fe/)
- Buena Fe – Babahoyo – Juan Road Corridor
  - Design, financing, reconditioning, 4-lane expansion, construction, operation and maintenance. Total Amount of Investment: USD 726,080,000  
<https://www.obraspublicas.gob.ec/corredor-vial-buena-fe-babahoyo-juan/>
- La Cadena – Jipijapa – La Pila – Motecristi
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_LA-CADENA-MONTECRISTI.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_LA-CADENA-MONTECRISTI.pdf)
- Mitad del Mundo – Calacali – Los Bancos – La Concordia
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_MITAD-DEL-MUNDO-LA-CONCORDIA.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_MITAD-DEL-MUNDO-LA-CONCORDIA.pdf)
- Manta – Rocafuerte – Tosagua – Chone – Flavio Alfaro – El Carmen – Santo Domingo
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_MANTA-SANTO-DOMINGO.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_MANTA-SANTO-DOMINGO.pdf)

- Ambato – Pelileo – Baños – Puyo
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_AMBATO-PUYO.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_AMBATO-PUYO.pdf)
- Cuenca – Azogues – Biblian – Cañar – Suscal. La Troncal – El Triunfo
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_CUENCA-EL-TRIUNFO.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_CUENCA-EL-TRIUNFO.pdf)
- Balbanera – Pallatanga – Cumandá
  - Private Enterprise under a Public-Private Partnership. Information to be released on submitting expressions of interest. Concession Duration: 10 years  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_BALBANERA-CUMANDA.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_BALBANERA-CUMANDA.pdf)

## Port Projects

- Providence Port
  - First construction of an International River Port in Ecuador.
  - The private enterprise proposes a concession contract for 50 years of operation of both the cargo terminal and passenger terminal, including 3 years for the design and construction of the cargo terminal. Estimated Investment: USD 499 million
  - Private enterprise under a Public-Private Partnership. IP presented by Grupo Comercial Manta Manaos.  
[https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP\\_2017\\_MTOP\\_ESP\\_PUERTO\\_PROVIDENCIA.pdf](https://www.obraspublicas.gob.ec/wp-content/uploads/downloads/2017/01/APP_2017_MTOP_ESP_PUERTO_PROVIDENCIA.pdf)

## Hydroelectric Projects

- Integrated management of the waterfall hydroelectric plants: Mazar, Molino and Sopladora
  - Paute Mazar: Installed Capacity: 170 MW
  - Average Annual Generation: 820 GWh
  - Paute Molino: Installed Capacity: 1,110 MW
  - Average Annual Generation: 4,872 GWh
  - Paute Sopladora: Installed Capacity: 487 MW
  - Average Annual Generation: 2,800 GWh
  - Regulatory Framework:
    - *Organic Law for Public-Private Partnership Incentives*
    - *Organic Public Power Sector Law*
    - *Organic Code for Production, Trade and Investment*
  - Investment: USD 2 billion
  - Management Model: Public-Private Partnership

- Location:
  - Province: Azuay, Cañar and Morona Santiago
  - Canton: Sevilla, Azogues and Santiago
  - Sector: Mazar, Amaluza, Guarumales and Sopladora

<http://investecuador.ec/es/projects/integrated-hydroelectric-centrals-mazar-molino-y-sopladora/#mercado>

## Legislative News

### Recent Relevant Legislation

- *The Ecuadorian Law for Productive Development, Investment Attraction, Job Creation and Tax Stability*: Enacted on August 21, 2018, encourages investment by providing tax advantages and investment protection to several sectors including: pharma, tourism, agribusiness, manufacturing, renewable energies.
- *The Organic Law for Optimization and Efficiency of Administrative Formalities*: Published on October 23, 2018, streamlines and simplifies administrative formalities and reduces processing costs.

### Upcoming Legislation

- *Code of Commerce*: A massive bill that regulates merchants' rights and obligations in commercial operations as well as commercial transactions and contracts. It introduces and regulates types of contracts that have heretofore been governed by custom or doctrine.
- *Organic Health Code*: This bill seeks to establish a system for universal access to healthcare. It regulates the operation of the National Health System and establishes the applicable policies.

## Pérez Bustamante & Ponce's Highlights

Pérez Bustamante & Ponce advises:

- Corporación Quiport, since 2003 in the project finance, construction and operation of Quito's International Airport, the largest greenfield project in Ecuador.
- Several technology companies in their disembarkment and day to day operation in Ecuador.
- CODELCO, the Chilean national mining company that operates the largest copper mining enterprise in the world, in its negotiation process with the government of Ecuador.
- TECPETROL (Tecpecuador, Pardaliservices, Tecpeservices y Tecsip) in its oil and gas operation in Ecuador, including legal and regulatory advice.
- Companies such as Avianca, Decameron, Nokia, Lundin Gold, in labor matters in Ecuador.

Pérez Bustamante & Ponce advised:

- Exxon Mobil Corporation in the sale of its local oil and fuel business in Ecuador to Copec.
- In the acquisition of nearly 50 percent capital stock of Pronaca C.A. leading agribusiness and company in Ecuador.
- DP World in the structuring of Ecuador's first PPP involving a 1.2-billion-dollar investment to build and operate high capacity post-panamax ships to dock in Ecuador. Additionally, PBP advised on financing of the project for USD 500 million, under a project finance structure.

- Several clients in defining the best way to take advantage of the tax amnesty offered by the Ecuadorian Government on 2018, which resulted in payments of USD 500 million. This amounts to 50 percent of the total tax collected through this amnesty procedures by the Ecuadorian State (USD 1 billion).

## Lex Mundi Member Contact



A **LexMundi** Member

### **Sebastián Pérez-Arteta, Managing Partner**

[sperez@pbplaw.com](mailto:sperez@pbplaw.com)

Tel: 593.2.382.7640

### **Diego Pérez-Ordóñez, Executive Partner**

[dperez@pbplaw.com](mailto:dperez@pbplaw.com)

Tel: 593.2.382.7640 ext. 7867

### **Ximena Bautista-Uribe, Marketing and Business Development Director**

[xbautista@pbplaw.com](mailto:xbautista@pbplaw.com)

Tel: 593.2.382.7640

### **Pérez Bustamante & Ponce**

Member Firm for Ecuador

# El Salvador

Prepared by Romero Pineda & Asociados, *Lex Mundi Member Firm for El Salvador*



Only  
**country**  
that has **developed**  
a **full synthetic**  
**cluster** in **Central**  
**America.**

Has one of the  
**most**  
**competitive**  
labor costs in  
Central America,  
including fringe  
**benefits**  
and a qualified  
workforce that  
outstands in the  
region.

**2.9**  
**million**  
**people,**  
**56%** of  
whom are  
**40 years**  
or **younger.**

## What to Expect in 2019

During the year 2019 there will be a change of government due to presidential elections held last February. As a consequence, many of the government portfolios will change their Directors and managers.

Notwithstanding the above, to date, a harmonious climate is perceived for investments in our country, and many projects are in the process of development or in the negotiation stage.

The areas that most strongly present investment opportunity in 2019 are clean energy, specifically based on natural gas, commercial airlines, possible development of ports (Specially Acajutla Port), and continuous expansion of the international airport, among others.

So far, the recently elected president has shown an open attitude toward those foreign investors and will be focused on generating positive conditions for investment. Also, the elected president held several meetings with international financial corporations in order to request financing for many future projects.

## Trends and Projects

The electric clean power generation sector is highly booming this year. To date, the development of a clean energy generation project based on natural gas of 355 MW is underway, constituting approximately one third of the energy consumed by our country.

Bidding processes have been awarded for the generation of photovoltaic energy (Project Bosforo) and we know that there are processes for the generation of wind energy.

In addition to the above, two airlines have recently entered into the airline market, those are of low cost, and one of them is planning to establish its Hub in El Salvador. Throughout the years, the intention of other commercial airlines to enter the Salvadoran market has been known.

In relation to banking, there are to date some mergers that have taken place between financial entities, and have generated better conditions in commercial banking technology.

FOMILENIO II has started its projects in our country, consisting of the second stage of funds from the United States, who are in favor of the coastal area of our country. At this time, thanks to these funds, two of the main roads that connect with the coast are in the process of expansion and remodeling. Also, as of 2018 and to date, there are several construction projects in execution including shopping centers, corporate offices and housing apartment buildings, generating a boom in the construction area and generation of jobs in an area that was previously inactive.

Please find information related to FOMILENIO II and other ongoing projects in El Salvador in the links listed below:

- <https://www.fomilenioii.gob.sv/expansion-de-la-carretera-del-litoral--3>
- <http://www.energiadelpacifico.com/proyecto.html>
- <http://www.aes-elsalvador.com/comunidad/noticias/2018-05/megaproyecto-solar/>
- <https://elmundo.sv/un-tercio-de-la-energia-en-el-salvador-sera-eolica-y-solar-en-2020/>
- <https://www.elsalvador.com/noticias/negocios/485486/la-zona-rosa-se-reaviva-con-nuevos-proyectos-inmobiliarios/>
- <https://www.estrategiaynegocios.net/empresasymanagement/1243196-330/interjet-inicia-operaciones-en-el-salvador>
- <https://www.scotiabank.com.sv/acerca-de-scotiabank/scotia-noticias/comunicados-de-prensa/comunicados-de-prensa.aspx>
- <https://www.elsalvador.com/noticias/negocios/576982/lomas-verdes-en-la-colonia-escalon-es-el-primer-districto-tecnologico-del-pais/>

## Legislative News

By the end of 2018, the Supreme Court of Justice declared unconstitutional the *Tax Over Banking Operations Law*, repealing a tax that was paid to the issuance of checks above USD 1,000 and electronic transactions greater than USD 5,000.

Likewise, the Public Administration System has been updated, enacting two laws of great importance that come to strengthen those administrates before any arbitrariness committed by the public administration.

The laws are, the *Law of Administrative Procedures (Ley de Procedimientos Administrativos)* and the *Law of the Contentious Administrative Jurisdiction (Ley de la Jurisdicción Contencioso Administrativa)*. With them, citizens are well empowered and will have access to a more efficient public administration. Other regulations that will come to strengthen the public administration will be enacted in the near future.

In addition, the *Fiscal Incentives Law* for the promotion of renewable energies in generation has been enacted, and promotes tax incentives in favor of energy generation projects that do not exceed 10 MW.

- <https://www.elsalvador.com/noticias/negocios/491681/corte-suprema-declara-inconstitucional-el-impuesto-a-las-operaciones-financieras/>
- <http://www.secretariatecnica.gob.sv/subsecretario-de-planificacion-abordo-la-recien-aprobada-ley-de-procedimientos-administrativos/>

## Romero Pineda & Asociados' Highlights

Romero Pineda & Asociados has recently conducted many major transactions in different areas in the past year and some of them are ongoing, including:

## Project Bosforo

BOSFORO, is an important project finance for the construction of 100 MW photovoltaic renewal energy plants created by two companies involved in the regional energy sector (AES and CMI Energy). Both companies have joint ventured to generate energy for supplying local distributors in El Salvador. Our firm was appointed by the Senior Lenders of this transaction as local counselors to provide proper advice on securities, loan documents, real state, tax implications, all the contracts involved and multiple project finance documents. The myriad of Senior Lenders advised by the firm in this transaction include the Central American Bank for Economic Integration (“**CABEI**”); Overseas Private Investment Corporation (“**OPIC**”); Netherlands Development Finance Company (“**FMO**”); and Finnish Fund for Industrial Cooperation (“**FINNFUND**”). This transaction includes the construction of one of the largest Photovoltaic energy projects in our country.

For more information on this project:

- <http://www.aes-elsalvador.com/nuestra-empresa/bosforo/>
- <https://www.estrategiaynegocios.net/centroamericaymundo/1266955-330/el-salvador-entra-en-operaci%C3%B3n-la-segunda-etapa-del-proyecto-b%C3%B3sforo>

## Acajutla Project

Acajutla Project, is an investment project for the construction of 355 MW natural gas generator, jointly ventured by INVENERGY and Energía del Pacífico (“**EDP**”) to sell energy in the local market.

Our firm was appointed as local counsel by a well-known group of Senior Lenders including Overseas Private Investment Corporation (“**OPIC**”), International Finance Corporation (“**IFC**”), FINNVERA (the Official Export Credit Agency for Finland) and Kreditanstalt Fur Wiederaufbau (“**KFW**”).

This transaction implies the construction of the largest private clean energy generator in El Salvador and the biggest project in El Salvador history with more than 1,000 direct jobs in the construction phase. This will allow promotion of the use of natural gas as a source of energy, in its many appliances in the commercial and industrial sectors and will produce a positive environmental impact and social and investment impact in the city of Acajutla.

This project was reported last year and since then our firm has conducted a due diligence of the project and is currently working with senior lenders in finance structure and securities of the project.

More information on the project here:

- [https://www.estrategiaynegocios.net/centroamericaymundo/1268995-330/eeuu-aprueba-us350-m-para-financiar-generadora-el%C3%A9ctrica-en-el-salvador?utm\\_source=NewsletterEYN&utm\\_medium=email&utm\\_campaign=NewsletterEYN](https://www.estrategiaynegocios.net/centroamericaymundo/1268995-330/eeuu-aprueba-us350-m-para-financiar-generadora-el%C3%A9ctrica-en-el-salvador?utm_source=NewsletterEYN&utm_medium=email&utm_campaign=NewsletterEYN)
- <https://sv.usembassy.gov/es/opic-aprueba-proyecto-de-desarrollo-de-350-millones-en-el-salvador/>

## Interjet

INTERJET is a Mexican LCC (Low Cost Carrier) airline company, which is positioned among the first three airlines in market shared in the airline industry in Mexico and, according to recent data from public airlines, Interjet is one of the most profitable and efficient in Latin America and the world.

In the first months of 2018, Interjet chose ROMERO PINEDA to advise them throughout the process of obtaining an Operation Permit in order to operate the routes Cancun - El Salvador and Mexico City - El Salvador.

The role developed by RPA contemplated the advice on corporate, compliance matters before the different Public Institutions to achieve the proposed goals and start operations in El Salvador this year. This will include but it is not limited to, changing the Bilateral Treaty among Mexico and El Salvador on air transport, to open air transport between both countries.

More information on the project here:

- <https://www.laprensagrafica.com/revistas/Romero-Pineda-felicita-a-Interjet-por-iniciar-operaciones-en-El-Salvador-20181221-0240.html>

## AIG

Our firm is currently advising AIG Group in the migration of their reinsurance operations in Europe due to Brexit. Our advice consists of obtaining authorizations from the Local Regulator (Financial Superintendence) for reinsurance operations in UK and Luxemburg. AIG is one of the largest Insurance and Reinsurance group worldwide known.

More information on the project here:

- <https://www.reuters.com/article/us-aig-restructuring/aig-receives-uk-approval-for-brexit-restructure-idUSKCN1MZ2ML>
- <https://www.businesswire.com/news/home/20181025005774/en/AIG%E2%80%99s-Brexit-Restructure-Approved>

## Calidad Inmobiliaria, Construction of INSIGNE Building

Our firm has advised our client Calidad Inmobiliaria for more than 7 years. RPA is finishing a new project INSIGNE, an office building with 21 floors.

This year we advised clients in the following areas:

- allocating and securing commercialization of the office building;
- relationships with local banks that finance the project and managing of securities for each type of the construction phases;
- establishing the internal rules for owners for the entire building and their administrators; and
- energy supplier contracts (Commercializations) and other providers.

This project is of great importance for El Salvador not only by the job generation and the importance of level developments in our country, but has also generated a complete restructure of a principal part of San Salvador for the development of other projects in the area.

More information on the project here:

- <https://www.elsalvador.com/fotogalerias/noticias-fotogalerias/insigne-el-nuevo-y-moderno-edificio-ubicado-en-san-salvador/557998/2019/>
- <https://www.estrategiaynegocios.net/empresasymanagement/1252207-330/calidad-inmobiliaria-inagur%C3%B3-al-edificio-insigne-el-salvador>

## San Miguel Pet (SMI)

SMI is a Peruvian based company with three factories in El Salvador, leader in the South, Central and Caribbean region in rigid packaging products specialized in pet products.

Our firm advised SMI in the last stock market issuance on the New York Stock exchange with a value of more than 300 million dollars to finance future projects and development of their activities in the region. Each of their subsidiaries including their three companies in El Salvador became codebtors of the issuance and securing party and allows the group to invest in new technology and expansion of their activities in the region, creating opportunities to grow in the manufacturing of bottles and other pet products

SMI has been our client for the last 5 years, this is their second issuance during that time period.

## GASPRO EL SALVADOR

GASPRO is a national company of Central American investors, which is currently positioning itself in the Latin American Region in the production and distribution of industrial and medical gases.

One of the most ambitious projects of the company is the start of an acetylene production plant, which would be positioned as the second in the Central American region.

Our firm helped Gaspro to process and obtain all permits required for the installation including environmental and construction permits.

This is an important case for our country since, before the incursion of the company, all industrial and medical gases were in a natural monopoly. With the establishment of this new competitor the government has taken a broader look at the industry and our firm has helped to establish regulations in the sector.

More information on the project here:

- <https://www.elsalvador.com/noticias/negocios/407432/gaspro-invierte-4-millones-en-inicio-de-operaciones-en-el-salvador/>

## Lex Mundi Member Contact



A **LexMundi** Member

**José Roberto Romero, Managing Partner**

[jose@romeropineda.com](mailto:jose@romeropineda.com)

**Roxana Romero, Partner**

[roxana@romeropineda.com](mailto:roxana@romeropineda.com)

**Francisco Martinez, Corporate Department Manager**

[fmartinez@romeropineda.com](mailto:fmartinez@romeropineda.com)

**Romero Pineda & Asociados**

Member Firm for El Salvador

Tel: 503.2505.5555

# Guatemala

Prepared by Mayora & Mayora, S.C., *Lex Mundi Member Firm for Guatemala*



Ranks  
**first  
place**  
for  
Central America  
in doing  
**business.**

**Exports**  
more than **4,075**  
**different**  
**products** to more  
than **140 markets**  
around the **world.**

Had a  
**10,000%**  
**growth**  
between  
**2004-2011.**

## What to Expect in 2019

2019 is a general election year in Guatemala. Elections for president and vice president, members of congress, and municipal corporations (local governments) are held on June 16, 2019. If no winner emerges from the presidential race by simple majority, a runoff between the two leading candidates will be held on August 11, 2019. The country's supreme court and court of appeals will also be renewed this year, through a process of selection carried out by commissions, which submit a list of proposed justices who are then elected by congress. The new courts must be installed in October.

These circumstances are highly relevant due to various reasons:

- Renewal of all three branches of state power will take place during the same year (it is not always so, since congress and the executive have a period of four years, while the judiciary has a five-year period).
- It is the first election held after important amendments to electoral law came into force which, among other things, seek to improve safeguards against illicit campaign finance, a matter at the heart of political turmoil in recent years.
- It is the second election after investigations by the state attorney's office, in conjunction with a UN commission against impunity ("**CICIG**"), led to the resignation of the president and vice president in 2015, and the first after the current president and congress have mounted a national and international confrontation with the commission, leading to diplomatic tensions with the UN and some foreign governments. Also, the former state attorney during these events is now running for the presidency.

As such, Guatemala's general business environment will undoubtedly be heavily influenced by the electoral process. As in any country, markets will react to signals sent by the leading candidates regarding their proposals in specifically economic matters. Due to restrictions on campaign time-frames set by the amendments to electoral law previously mentioned, no specific proposals have yet been released at the time of writing.

However, the country has experienced a growing political tension since the events of 2015 and throughout the current presidency, which will manifest itself in the elections. The political crisis has called into question the country's rule of law (or lack thereof), a key component of a business environment. The ruling party and its congressional allies have proposed and passed some amendments and new legislation on economic issues, and this could be an important part of the electoral debate, since the apparently main opposition (which supports the former state attorney's presidential bid) is left-leaning in economic and social matters.

According to analysis from Guatemala's central bank, the country's economy is expected to grow between 3 percent and 3.8 percent in 2019. It projects all economic activities to register growth, including a modest growth in mining activities, which suffered a significant setback in 2018 due to continuing conflicts

with local populations and judicial decisions to suspend activities based on non-compliance with indigenous peoples' right of consultation under *ILO Convention 169*. However, a survey of economic expectations carried out by the central bank with private analysts shows that confidence in the country's economic climate is still struggling and is not expected to improve much during the year.

## Trends and Projects

### Energy and Power/Mining

As mentioned before, the country's energy and power and mining sectors have been perhaps the most troublesome for many years now. Guatemala has been part of *ILO Convention 169* since the 1990s. However, no national legislation has been enacted to regulate procedures for carrying out the consultation with indigenous peoples required by the convention. Since a vast sector of the population consists of indigenous peoples, this has led to many problems and conflicts. Courts, including the country's supreme court and constitutional court, have ruled to suspend operations in various cases where consultation has not been carried out. A bill is pending before Congress, based on a proposal formulated by the Executive in coordination and consultation with ILO and local indigenous populations.

### Infrastructure

Infrastructure has also been a problematic issue for the country in recent years. Not only was the country involved in the global Odebrecht scandal, but other cases of corruption were uncovered which also affected the country's ability to maintain and execute infrastructure projects. Recently, specific legislation was enacted to facilitate improvement of one of the country's main highways, and a bill is under discussion which would create a new autonomous authority to handle all matters related to highway infrastructure. Another important highway is being handled through a public-private partnership project, as explained below.

### Public Private Partnership

Guatemala has specific legislation and institutions for public-private partnerships. The most advanced project is the construction and improvement of a highway to one of the country's main ports, which is currently in the bidding phase. Other projects under study are: renovation of the national airport; a new Metrorail public transportation system; an intermodal dry port; and an expressway for the northeastern part of the country.

### Finance

According to the National Bank's projections (previously referenced), the economic growth forecast for 2019 includes an improvement in bank credit to the private sector, as well as general stability in rates of inflation. The year began with increases in bank credit to small businesses, microcredit and mortgage loans for housing. 2018 was a dynamic year for credit to industry, with interest rates remaining at a historical low.

### Taxes

The country's tax authority has recently begun improvement of its online electronic invoicing system. It is currently in a first phase aimed at having certain types of taxpayers migrate to the system, with the ultimate goal of it being used by all taxpayers within a few years.

## Competition/Antitrust/Merger Control

Guatemala is one of the few countries without a comprehensive regulation of competition law, although there are some general rules included in constitutional, commercial, criminal and intellectual property laws. A bill is currently pending before congress for a national *Competition Act*. The commitment to enact it arises from an international agreement with the European Union and, as such, should have entered into force a couple of years ago.

## Private Investment

A study on economic perspectives for 2019 by a local think-tank concludes that this year, marked mainly by the electoral process as explained before, will bring reduced levels of foreign investment. Private investment in general is also affected by the elevated rates of polarization among the population, uncertainty regarding the competing political options, and limited perspectives for results to be expected from the current government in its last year.

## Legislative News

Many business-related amendments or new laws were enacted during 2017 and 2018, which should play an important role in 2019. The most relevant are:

- two amendments to the *Commercial Code*. One is aimed at making it easier and less costly to create and register business entities, including the use of electronic means for private and public communications and notices related to commercial matters. The other introduces a new type of legal entity designed specifically for startup companies, with corresponding fiscal incentives.
- a new act which specifically regulates factoring and discounting contracts, including fiscal matters related to them.
- amendments to the *Chattel Mortgage Act*, which replaces the country's entire regulation on guarantees based on moveable property, and includes changes aimed at simplifying their registration and enforcement.
- the country's adherence to the *United Nations Convention on Contracts for the International Sale of Goods*.

There are various bills pending before congress (some of them mentioned above), of which we may point out:

- an act regulating Legal Stability Agreements and related aspects linked to foreign investment;
- an act to specifically regulate leasing contracts;
- the *Competition Act* (mentioned above);
- an act to reform the country's existing consumer protection system, by creating an oversight institution similar to those of other countries (currently, it is an office of the Ministry of the Economy, with relatively "limited" powers);
- the *Consultation of Indigenous Peoples Act* (mentioned above);
- an act to substitute the country's existing regulation on bankruptcy; and
- the *General Highway Infrastructure Act* (mentioned above).

## Mayora & Mayora, S.C.'s Highlights

The Corporate and M&A practice group advised on a landmark case for client PAN AMERICAN SILVER CORP., a global silver mining company headquartered in Canada and the second largest in the world. The case dealt with the client's acquisition of all outstanding and issued shares of Tahoe Resources Inc., in order to grow its assets and profits. The client owns mines in Guatemala, Mexico, Peru, Argentina, Bolivia and Canada. Partners Eduardo Mayora Alvarado, Sandra Castillo and Paola Galich led the case worth approximately USD 1.067 billion.

For more information visit:

- <https://www.panamericansilver.com/investors/news-releases/detail/76/2019-02-22-pan-american-silver-completes-acquisition-of-tahoe-resources>
- <http://www.globallegalchronicle.com/pan-american-silver-corp-s-1-067-billion-acquisition-of-tahoe-resources-inc/>
- <https://lexlatin.com/noticias/actualizacion-pan-american-silver-compra-tahoe-resources-y-domina-mercado-mundial-de-la>

Two practice groups spearheaded a major case to assist Guatemala's largest energy distributor, ENERGUATE (Distribuidora de Electricidad de Oriente y Distribuidora de Electricidad de Occidente and a subsidiary of IC Power) in multiple bids to purchase energy, resulting in an increase in the energy available in Guatemala. This included bonds being issued in their favour from a special trust offshore. The matter was handled by two of the firm's practice groups—Energy and Infrastructure and Banking and Finance. Lead partners were Eduardo Mayora Alvarado, the firm's managing partner, and Rafael Briz, senior partner and renowned energy expert. The deal's approximate value was USD 300 million.

For more information:

- <http://lexlatin.com/noticia/energuate-emite-bonos-usd-330-millones/>

The firm's Banking and Finance practice group organized option plans for employees for multinational pharmaceutical company, SANOFI-AVENTIS. This is the third time the firm was asked by the client to do so, after being such a success the first two times. Claudia Pereira was lead partner on the case with support from banking and finance expert and senior associate, María Fernanda Morales Pellecer. The approximate value of the case was USD 25 million.

For more information:

- <https://mediaroom.sanofi.com/en/press-releases/2018/sanofi-launches-action-2018-a-worldwide-employee-stock-purchase-plan/>

The firm's Banking and Finance practice group counselled and structured the grant of multiple promissory notes for SUCDEN AMERICA in order to build an alcohol plant in Guatemala. Sucden is a United States based company that specializes in the coffee, sugar and cocoa trade. Claudia Pereira, senior partner, led the case with assistance from María Fernanda Morales Pellecer, banking and finance expert and senior associate. The matter's approximate value was USD 15 million.

# Guatemala

The firm represented ENERGUATE (Distribuidora de Electricidad de Oriente y Distribuidora de Electricidad de Occidente and a subsidiary of IC Power) in an important arbitration. In the seventies, the government of Guatemala awarded the client a government contract to construct infrastructure for the transportation and distribution of energy in exchange for an agreed upon amount of compensation. The government did not utilize the infrastructure, though it was successfully built, and does not wish to compensate the client. The arbitration is to help ENERGUATE gain their investment back, plus any other relevant damages. Rafael Briz, energy expert and senior partner, is leading the matter. The approximate value of the case is USD 15 million.

The firm's Energy practice group handled all the legal aspects for the construction of a hydroelectric generation plant for energy giant, GRUPO COBRA. The project is significant because the plant will generate around 700 MWs and will reduce the cost of the rate of electric energy for the citizens of Guatemala. The case is still ongoing, and its value is around USD 1.5 million.

The firm handles every-day corporate work and labor matters for multiple multinational companies such as PAYLESS SHOESOURCE and GBM (an IBM alliance company). The firm also represents the Stock Exchange of Guatemala in all corporate and commercial matters.

## Lex Mundi Member Contact

**MAYORA & MAYORA, S.C.**  
ABOGADOS  
EST. 1966

A **LexMundi** Member

**Eduardo Mayora Alvarado, Managing Partner**

[emayora@mayora-mayora.com](mailto:emayora@mayora-mayora.com)

**Rafael Briz, Senior Partner**

[rbriz@mayora-mayora.com](mailto:rbriz@mayora-mayora.com)

**Kristin Volpicella, CEO**

[kvolicella@mayora-mayora.com](mailto:kvolicella@mayora-mayora.com)

**Mayora & Mayora, S.C.**

Member Firm for Guatemala

Tel: 502.2223.6868

# Honduras

Prepared by GUFA LAW, *Lex Mundi Member Firm for Honduras*



**Recognized internationally for the favorable climate for investment,** climbing 12 places in the **Global Competitiveness Index 2015-2016** of the **World Economic Forum.**

In the most recent **Doing Business Report**, published by the **World Bank**, was included among the most **attractive countries to invest** in Latin America.

Positioned among the **leaders** in the **export of textiles** to occupy the **first position** as an **exporter of cotton shirts** to the United States and the **fifth of textiles** in **worldwide.**

## What to Expect in 2019

2019 will be a difficult year for Honduras. We are coming out of a post-electoral crisis that has divided the country. The government has been focusing more in the political issues rather than strengthening the economy and promoting investment. Rule of law must be a key factor of the government to attract new investors to the country.

Nevertheless, in the adversity, there are opportunities. Industries such as energy, mining, infrastructure, tourism and textile, will continue to be the references in our country.

## Trends and Projects

### Energy

Honduras is in the desperate need to increase its energy capacity production. Important regions as San Pedro Sula (industrial capital of the country) and the department of Olancho (eastern part of the country) have serious energy problems. OPIC has visited our country several times, offering financial aid for energy projects.

Honduras has focused in changing its energy matrix from bunker-based plant generators, to renewable energy projects (hydro, wind and solar). There will be a lot of opportunities for these types of projects. The government has also been discussing the construction of a gas pipeline.

Even with these many opportunities, there is a real concern from the investors focused on the social component of the projects.

### Mining

Honduras has a big future in the mining industry. The country is rich in geological resources such as gold, zinc, silver, iron oxide, etc. Nevertheless, the social component is also crucial for such projects and it continues to be a big concern for investors.

### Infrastructure

The Honduran Government has focused on improving all the main roads and highways of the country. New toll roads and highways are being built across the country and the government has a big portfolio of projects in this area.

## Legislative News

The following laws were issued in 2018:

- The *Law of Control of Firearms, Ammunition, Explosives and Related Materials*;
- The *Special Law of Adoptions*; and
- The *Law of Social Contribution of The Social Sector of The Economy*. (*Hondupalma, Law of Cooperatives of Honduras*).

## GUFA LAW's Highlights

GUFA LAW is one of the leading law firms in Honduras. For more than 45 years we have been guiding local and foreign investors in their legal needs.

GUFA LAW has experienced lawyers in commercial, labor, tax, energy and mining law, among others.

GUFA LAW is actively involved in foreign investment and works closely with the American Chamber of Commerce of Honduras, as well as with other associations and institutions that promote investment in Honduras.

We advise:

- the biggest mining exploration project of the country;
- the construction project of the new U.S. Embassy in Honduras;
- a major energy company that is developing a hydro energy project in Honduras;
- several clients are nonprofit organizations that make social projects in the country; and
- since 2018 we are providing advice to one of the biggest local banks in Honduras.

## Lex Mundi Member Contact



A **LexMundi** Member

**Mauricio Villeda Jr., Managing Partner**

[mao.villeda@gufalaw.com](mailto:mao.villeda@gufalaw.com)

**Mauricio Villeda Bermúdez, Senior Partner**

[Mauricio.villeda@gufalaw.com](mailto:Mauricio.villeda@gufalaw.com)

**Eduardo Pedemonte Lara, Partner**

[Eduardo.pedemonte@gufalaw.com](mailto:Eduardo.pedemonte@gufalaw.com)

**GUFA LAW**

Member firm for Honduras

Tel: 504.2238.3412

# Mexico

Prepared by Basham, Ringe y Correa, S.C., *Lex Mundi Member Firm for Mexico*



With **124 million inhabitants**, it will be the **seventh largest economy** by 2050.

Third-lowest **country** for **cargo tax**.

Has a **network** of **agreements**, **promotions** and **reciprocal protections**.

## What to Expect in 2019

In recent years, Mexico has positioned itself as a relevant player on the global stage of trade and investment. The country has completed a transformation from a low skill manufacturing hub to a more developed, diverse and sophisticated economy, with key sectors including high-tech manufacturing, financial services, energy, among others.

Mexico arrives at the turn of the decade boasting macroeconomic stability and a favorable investment environment, but amidst skepticism towards the newly elected administration headed by President Lopez Obrador. His election, which came accompanied by a majority in congress for his left-wing coalition, marks a paradigm shift after 18 years of right-leaning governments. Coupled with the complex geopolitical stage throughout North and Latin-America and in Europe, so far, the country has not slowed its tempo, but the main actors remain expectant.

In the first months of the new government, there have been inspiring developments, such as the "war on corruption", structural reforms including a complete rehaul of the labor justice system, the endorsement of SUMAC – the new North America trade agreement, and social programs aimed at tackling poverty and improving education.

Other events have instead raised eyebrows, for instance, the cancellation of the already under-construction new, Mexico City airport, hints at overturning the recent education reform, and renewed relations with foreign governments deemed problematic by our long-term partners, the U.S. in particular.

Yet the general outlook remains favorable, with many investment projects that were put on hold in past months now beginning to reactivate and a growing domestic market which promises to further the trend into a more evolved economic environment.

## Trends and Projects

### Energy and Power

#### Oil Refinery in Tabasco

Construction of a new oil refinery in Dos Bocas, Tabasco State, which is expected to have a capacity for processing 340 thousand barrels daily and will refine crude oil of 22° API.

Tender procedure to award the contract for the construction of the new refinery is expected to take place between March and April 2019.

The project aims to decrease the import of gasolines and diesel from abroad and making Mexico self-sufficient, while also aiming to increase the oil production capacity mainly from the State-Owned Productive Company, PEMEX.

The project intends to create up to 135 thousand direct jobs and is to be developed in a surface area of approximately 566 hectares located within a strategic area where oil extracted from Tabasco shores and the region known as "sonda de Campeche" may easily be transferred to the new refinery for its refining process.

Investments for the construction of the new refinery are expected to be approximately MXN 160 million, this is, approximately USD 8 billion.

More information on the project can be found here:

- <https://www.reuters.com/article/us-mexico-refinery/mexicos-president-elect-sets-out-plan-for-new-8-billion-oil-refinery-idUSKCN1LK2V0>

## Rehabilitation of Existing Refineries

Rehabilitation of the six existing refineries owned by the State-Owned-Productive Company, PEMEX with a total refining capacity of approximately 1.5 million barrels of crude oil per day. Projects include:

- **Salamanca:** Maintenance programs as to increase its productivity to 75 percent;
- **Minatitlan, Madero and Cadereyta:** Rehabilitation;
- **Salina Cruz:** Works seek to increase the refining capacity to 70 percent; and
- **Tula:** Rehabilitation of the plant known as “H-Oil” which as of this date is unproductive.

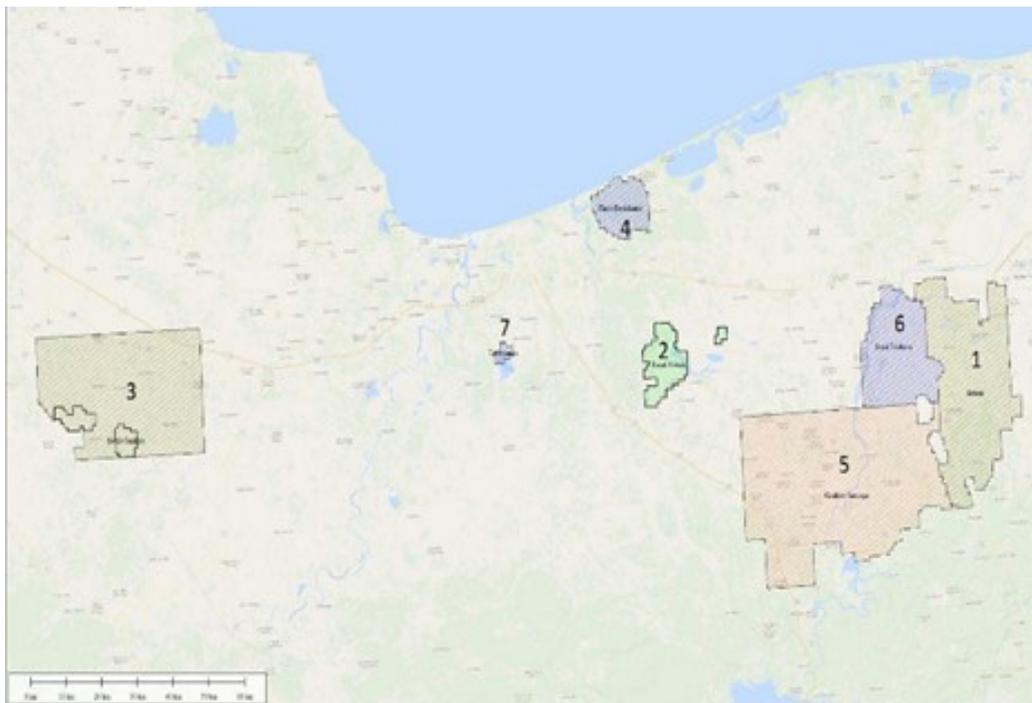
## PEMEX Farm-Outs

Tender procedure known as CNH-A6-7 Asociaciones/2018, which seeks to choose partners for PEMEX for the development of six different onshore oil and gas blocks.

The onshore blocks are located in the Mexican States of (i) Chiapas; (ii) Tabasco; and (iii) Veracruz, with an estimated surface area of 4,580.08 square meters.

The seven farm-out blocks pending to be awarded are known as (i) Artesa; (ii) Bedel Gasífero; (iii) Bacal Nelash; (iv) Cinco Presidentes; (v) Giraldas Sunuapa; (vi) Juspí Teotleco; and (vii) Lacamango.

Blocks to be farmed out:



Expected resources in these areas would be (i) light oil; (ii) dry gas; (iii) wet gas; and (iv) condensate oil and gas.

Publication of prequalified companies that will be able to submit an economic proposal for these areas is August 29, 2019. Filing of economic proposal and awarding of contracts will take place in October 09, 2019.

As of publication, 11 companies have begun the prequalification process, among them, Deutsche Erdoel México, S. de R.L. de C.V.; ECP Hidrocarburos México, S.A. de C.V.; Petrobal S.A.P.I de C.V.; Tecpetrol Internacional S.L.U.; California Resources Corporation; China Offshore Oil Corporation E&P México, S.A.P.I de C.V.; Compañía Española de Petróleos, S.A.U.

The farm-outs open the opportunity for PEMEX to have one or more partners and, jointly, carry out the exploration and extraction of the areas to be awarded.

As of publication, three farm-outs have been awarded by CNH: (i) Offshore Trion block, to BHP Billiton Petróleo Operaciones de México (Australia); (ii) Onshore Cardenas-Mora block, to Cheiron Holdings Limited (Egypt); and (iii) Onshore Ogarrío block, to DEA Deutsche Erdoel AF (German).

More information on the project can be found here:

- <https://rondasmexico.gob.mx/eng/>
- <https://rondasmexico.gob.mx/eng/farmouts/2018-pemex-farmouts/cnh-a6-7-asociaciones2018/>
- <https://rondasmexico.gob.mx/eng/farmouts/2018-pemex-farmouts/cnh-a6-7-asociaciones2018/bidding-process-documents/bidding-guidelines/>

## CENEGAS Strategic Storage Project for Natural Gas

Tender procedure by the National Centre of Natural Gas Control (“**CENAGAS**” for its acronym in Spanish) to award a service agreement for the storage of natural gas in a field considered as unproductive. As of this date **CENAGAS** continues reviewing the final bidding guidelines to be released for this project, which will include the criteria to participate in the tender.

Includes services such as (i) construction of the infrastructure required and needed for the storage of natural gas; (ii) design, engineering, construction, operation and maintenance of the referred infrastructure; and (iii) drilling and maintenance of wells, among others.

This project aims to increase the strategic storage up to 45 billion of cubic feet of natural gas by 2026.

*Note: Project begun prior the new federal government and could be subject to revision.*

More information on the project here:

- <https://www.gob.mx/cenagas/acciones-y-programas/proyecto-de-almacenamiento-estrategico-156833>

## Fenicias/Invenergy Wind Park Construction

Fenicias has started building a wind park in northern Mexico, with an investment of USD 268 million dollars, which will have a capacity of 286 MW solely powered by wind energy. Fenicias looks forward for long-term electricity auctions with big energy consumers, as they are rapidly growing throughout Mexico. The park will consist of 68 wind turbines, delivering net energy of 1,039.41 GWh per year. This places Fenicias as one of the largest wind parks in Latin America.

More information on the project can be found here:

- [https://issuu.com/mexicobusinesspublishing/docs/mer\\_2018\\_to\\_show](https://issuu.com/mexicobusinesspublishing/docs/mer_2018_to_show)
- <https://www.bnamericas.com/project-profile/en/parque-eolico-fenicias-parque-eolico-fenicias>

## Infrastructure

### Mayan Railroad

A railroad project comprising a 1,525 km (95 miles) railroad to link key tourism sites in the Yucatan peninsula.

Tender calls to develop the first four sections are expected to be released during April 2019. Each section with an approximately cost of USD 100 million.

The total investment for this project is estimated in approximately USD 8 billion.

This project seeks to promote and strengthen the development of the southeast Mexican region. Proposed structure would be under public-private partnerships from which most investment will come from the private sector. Contracts will include development and maintenance for 30 years.



More information on the project can be found here:

- <https://www.citylab.com/environment/2019/02/mexico-travel-mayan-train-yucatan-tourism-economic-development/583405/>
- <https://www.gob.mx/foatur/prensa/el-tren-maya-presenta-modelo-financiero>

### Highway Infrastructure

The federal government has announced a new highway program which aims to construct paved roads in different municipalities throughout Mexico, as well as to put into operation highways that as of today are either in bad condition or were not finished during the last administration.

An estimated USD 3.9 billion is to be invested to benefit approximately 40,500 km of highways throughout Mexico. An average of 197 thousand jobs are expected to be created. There will also be investments of approximately USD 1.3 billion in public-private partnerships aimed to construct 299 km of additional highways.

Municipal governments will oversee handling and managing funds to be received for the construction of their municipal roads.

Tender guidelines are expected to be released during 2019.

More information on the project can be found here:

- <https://www.gob.mx/sct/articulos/programa-nacional-de-infraestructura-carretera-2018-2024-185945?idiom=es>

## Mexico City International Airport

Upon the cancellation of the ongoing construction of the previously proposed new international airport in Mexico City, the new administration has shifted the project to a Mexican Army site 29 miles north of the current airport. The Department of Defense is to oversee construction.

The project has been allocated a budget of approximately USD 750 million. In addition, the governmental bonds issued for the construction of the now-cancelled airport were repurchased at USD 1.8 billion, to maintain Mexico's position as a country that intends to attract foreign investment.

More information on the project can be found here:

- <https://www.eluniversal.com.mx/english/amlo-mexican-army-build-santa-lucia-airport>
- <https://www.cnbc.com/2018/12/21/reuters-america-update-2-mexico-president-says-alternative-airport-plan-to-begin-in-january.html>

## Automotive

### New BMW Plant

BMW's new plant in San Luis Potosí, central México is at 99 percent progress and expected to begin production in 2019.

With approximately 2,000 employees to be hired at the start of the plant's operations and 170 suppliers installed in Mexico because of their investment, BMW has started tests in production and quality areas.

Approximately USD 39.5 million have been recovered through taxes on investments triggered by BMW's arrival. Yearly production is estimated to be of 175,000 vehicles.

More information on the project can be found here:

- <https://www.bmwgroup-werke.com/san-luis-potosi/en/plant-information/plant-overview.html>
- <https://mexico-now.com/index.php/article/4619-bmw-san-luis-potosi-plant-to-feature-more-output-capacity-than-originally-planned>

## Finance

### New Stock Exchange

Bolsa Institucional de Valores ("**BIVA**") is the new stock exchange that launched in Mexico in July 2018 after 5 years of preparations, and thus breaking the 43-year old monopoly held by the Mexican Stock Exchange ("**BMV**").

**BIVA** will trade the same instruments as the **BMV** but will offer more sophisticated and updated technology such as the one used by Nasdaq, it hopes to promote competition between both stock exchanges and offer new sources of financing for emerging companies as well as more options for investors.

**BIVA** seeks to be seen as a technological and innovative stock exchange and to give the Mexican market and its companies more visibility around the world by following international trading standards, as declared by **BIVA's** CEO.

More information on the project can be found here:

- <https://www.nasdaq.com/article/a-new-exchange-in-town-biva-launches-in-mexico-city-cm996078>
- <http://www.elfinanciero.com.mx/mercados/mexico-tendra-dos-bolsas-de-nuevo-tras-mas-de-cuatro-decadas>

## Legislative News

### Labor Law and Minimum Wage Reforms

The *Mexican Labor Law* is set to face an important reform that will overhaul the labor justice system, seeking to adopt the guidelines established in Chapter 23 of the *USMCA* and the principles of the International Labor Organization.

A major change consists of replacing with judicial courts the Conciliation and Arbitration Boards currently part of the executive branch. Another important aspect relates to the protection of free association rights.

Existing collective bargaining agreements would be affected since new mechanisms would be implemented to protect this right of the employees.

In addition to these reforms, the Mexican minimum wage increased this year by approximately 125 percent compared to 2015 when the last increase was made.

More information on the project can be found here:

- <https://www.gob.mx/profedet/articulos/propuesta-de-reforma-laboral-en-materia-de-justicia-laboral-y-negociacion-colectiva>
- [http://dof.gob.mx/nota\\_detalle.php?codigo=5547224&fecha=26/12/2018](http://dof.gob.mx/nota_detalle.php?codigo=5547224&fecha=26/12/2018)

### Guaranteed Prices

As part of efforts to bolster the agriculture and stockbreeding sectors, producers of key crops and livestock will be paid minimum guaranteed prices to protect from abuse by brokers and intermediaries.

The Mexican government has created the Mexican Food Security Agency that will administer this program.

Guaranteed prices have been implemented in the past in Mexico but were removed since they affected the market negatively and did not reach their purpose. The new Mexican administration has expressed its hopefulness regarding the implementation of guarantee prices assuring that Mexicans will benefit from these measures and that issues (such as excessive corruption) that have caused this program to fail in the past will not be a problem in this administration.

More information on the project can be found here:

- <https://www.forbes.com.mx/los-precios-de-garantia-no-distorsionaran-el-mercado-villalobos/>
- <https://www.elfinanciero.com.mx/opinion/manuel-sanchez-gonzalez/los-costos-de-los-precios-de-garantia>

### Tax Incentives

The 2019 budget includes tax incentives for sectors such as production of diesel and biodiesel production, natural gas, and mining. There will also be new benefits for employers who hire persons with disabilities, as well as reductions to the profit sharing “tax”.

More information on the project can be found here:

- <http://www.basham.com.mx/Blog/paquete-economico-2019/>

## Young People Building the Future

Mexico is among **OECD** countries with the highest proportion of unemployed people, amounting to 22 percent of the population aged 18 to 29. Mexican youth has faced difficulties to find jobs due to the lack of opportunities to access higher education.

Young People Building the Future is a program that intends to solve the issues mentioned above in collaboration with small, medium and large public and private sector companies and organizations in Mexico.

More information on the project can be found here:

- <https://lopezobrador.org.mx/wp-content/uploads/2018/09/Manual.-JovenesConstruyendoElFuturo.pdf>

## New Fintech Law

Mexico's first *Fintech Law* was published in March 2019 with the purpose of regulating financial technology institutions as well as transactions carried out with cryptocurrencies.

The new law particularly recognizes crowdfunding and electronic payment services.

More information on the project can be found here:

- <https://www.bankingtech.com/2018/09/mexicos-fintech-law-now-published-and-live/>
- <https://www.eluniversal.com.mx/english/mexicos-fintech-law-has-now-come-effect>

## Circuit Court Issues Ruling on Corporate Veil

In July 2018 a ruling was issued regarding the lifting of the corporate veil in Mexico. The ruling makes distinctions as to the use of the corporate entity as an instrument for the violation of the law or abusive practices carried out by taking advantage of the limitation of liability.

## Amendments to Industrial Property Law

*Mexico's Industrial Property Law* underwent two key amendments during 2018.

Highlights include the extension of validity of industrial designs registration from 20 to 25 years and the modification of the definition of industrial design to make it more comprehensive, the addition of sound and scent trademarks, as well as the incorporation of trade dress.

Another relevant change to the law is that it allows the possibility for trademark owners to approve the registration of third parties.

More information on the project can be found here:

- <https://www.forbes.com.mx/el-trade-dress-nueva-arma-contra-la-pirateria/>

## New Deductibility Rules for Tax Losses

In June 2018, Mexico implemented new deductibility rules for tax losses through an amendment to the *Federal Tax Code*, allowing the Tax Administration Service ("**SAT**") to make a presumption that a taxpayer wrongfully claimed deductions when it detects claimed deductions based on tax losses in different scenarios.

The amendment also establishes that the **SAT** may presume that a wrongful tax deduction was carried out when it identifies that a taxpayer deducting tax losses was part of a corporate restructure, merger, spinoff.

More information on the project can be found here:

- <https://veritasonline.com.mx/new-anti-abuse-rule-for-tax-losses-schemes/>

## Cannabis Legalization

In early 2018, the General Health Law was amended to include exceptions to the prohibitions of cannabis to allow cannabis-based pharmaceuticals, industrial uses, and scientific investigation purposes.

In November 2018, Federal Sanitation Commission (“COFEPRIS”) issued regulations in such regard, establishing procedures and thresholds in the active component tetrahydrocannabinol (“THC”). Moreover, it allowed and regulated how pharmaceuticals may acquire permits and authorizations for the cultivation and processing cannabis for medical use and scientific research.

Currently, a new law has been proposed to congress which will likely be voted during 2019. This law would create a new institute in charge of all types of permits and authorization, as well as to further regulate cannabis. This law includes the possibility of free recreational consumption; however, production and sale would require specific licenses.

More information on the project can be found here:

- <https://www.npr.org/2018/11/14/667699301/mexico-hopes-to-legalize-marijuana>
- <https://www.cbc.ca/news/world/mexico-marijuana-legal-bill-1.4898122>

## Basham, Ringe y Correa, S.C.’s Highlights

### Crown Holdings’ Incremental Amendment to An Existing Loan Agreement With Deutsche Bank

Parties agreed to increase the facility amount from the existing Loan Agreement (for a total amount of USD 100,000,000) for an additional amount of USD 1,150,000,000, and EUR 750,000,000, as well as to increase the Revolving Commitments in Dollars to a total amount of USD 20,000,000 and increase the Revolving Commitments in Multicurrency to a total amount of USD 230,000,000.

Certain amounts of the aforementioned were used to finance the acquisition of the Signode Industrial Group by Crown, this acquisition concluded on April 3, 2018. As part of the refinancing, on July 17, 2018, the existing loans, guarantees and security were recognized, and restated, and additional security interests were granted by newly created subsidiaries, including ten pledges on shares issued by the Mexican subsidiaries of Crown Holdings, Inc.

In Mexico, Basham, Ringe y Correa advised Crown Holdings, Inc with Miguel Angel Peralta, Pedro Said and Pedro Strobl.

More information on the project can be found here:

- <http://www.globallegalchronicle.com/crown-holdings-incremental-amendment-to-an-existing-loan-agreement-with-deutsche-bank/>
- <https://lexlatin.com/noticias/crown-holdings-refinancia-creditos-con-deutsche-bank-para-pagar-compra-de-signode>
- <https://www.leadersleague.com/en/news/basham-advises-crown-holdings-on-loan-amendment>
- <https://www.abogados.com.ar/basham-ringe-correa-asesoro-a-crown-holdings-en-credito-por-1150-millones-de-dolares-y-750-millones-de-euros/21954>
- <https://latinlawyer.com/article/1173011/basham-ringe-in-manufacturing-loan-amendment>

## Turkish Airlines Starts Istanbul-Mexico City Cargo Operations

Eversheds Sutherland in London and Basham, Ringe y Correa in Mexico City have helped Turkish Airlines obtain a license to operate two cargo flights between Istanbul and Mexico City.

Basham Ringe represented the airliner before Mexican civil aviation authorities, helping the company obtain several permits. Its advice also included the negotiation of slots in Mexico City's international airport.

Partners Alejandro Barrera and Sergio Barajas, counsel Ricardo Lan, and associates Yizus Rangel, Mónica Pérez and Nicolás Estrada in Mexico City

More information on the project can be found here:

- <https://latinlawyer.com/article/1176490/turkish-airlines-starts-istanbul-mexico-city-cargo-operations>
- <http://www.globallegalchronicle.com/turkish-cargos-inclusion-of-mexico-city-to-its-cargo-flights-network/>
- <https://lexlatin.com/noticias/turkish-cargo-inaugura-vuelo-entre-estambul-y-ciudad-de-mexico>

## CM Hotel's USD 157 Million Loan

CM Hotel, operating as a subsidiary of Sunwing Travel Group, secured a USD 157 million loan from Banco Santander México. Proceeds will be used to finance the development of a Planet Hollywood five stars hotel in Quintana Roo.

Planet Hollywood Resorts are located in: Costa Rica and coming soon to St. Maarten and Mexico (Cancun).

Basham, Ringe y Correa advised CM Hotel, S.A. de C.V. with Juan Carlos Serra, Jorge Campuzano, Jorge Cobos, José Massas, Jorge Escobedo and Ricardo Evangelista.

More information on the project can be found here:

- <http://www.globallegalchronicle.com/cm-hotels-157-million-loan/>
- <https://lexlatin.com/noticias/cm-hotel-obtiene-prestamo-para-desarrollar-hotel-planet-hollywood>
- <https://www.leadersleague.com/en/news/basham-advises-on-229m-five-star-hotel-development?token=58dfbd38774c5a4396f0cc>

## Flavour Makers Get Antitrust Approval in Mexico For USD 7.1 Billion Deal

Basham, Ringe y Correa in Mexico City, through its partner Amilcar Peredo, has helped Israeli flavour extract producer Frutarom get antitrust approval in Mexico for its global merger with U.S. counterpart International Flavors & Fragrances (IFF).

Cleary Gottlieb Steen & Hamilton LLP in New York, Washington, DC, Paris, London and Brussels acted as global legal advisor to the buyer, IFF.

The USD 7.1 billion global deal closed on October 3 after obtaining antitrust approval in all the involved jurisdictions. The companies struck the deal in May.

More information on the project can be found here:

- <https://latinlawyer.com/article/1176027/flavour-makers-get-antitrust-approval-in-mexico-for-usd71-billion-deal>
- <https://www.leadersleague.com/en/news/international-flavors-fragrances-completes-7-1bn-combination-with-frutarom>
- <https://lexlatin.com/noticias/actualizacion-multinacional-de-saborizantes-iff-paga-usd-7100-millones-por-israeli>

## **Lyondellbasell-Schulman Merger Gets Approval in Mexico and Brazil for Its USD 2.25 Billion Merger with U.S. Counterpart Schulman.**

U.S. plastics and chemicals company LyondellBasell has hired Basham, Ringe y Correa in Mexico City and Levy & Salomão Advogados in São Paulo to obtain antitrust approval in Mexico and Brazil for its USD 2.25 billion merger with U.S. counterpart Schulman.

Skadden, Arps, Slate, Meagher & Flom LLP in New York and Wilmington advised Schulman. The same Basham Ringe team also scored a place advising Schulman.

The global deal closed on August 21, 2018.

Partner Amilcar Peredo and associates Carmina Paredes and Manuel Iglesias in Mexico City.

More information on the project can be found here:

- <https://latinlawyer.com/article/1175561/lyondellbasell-schulman-merger-gets-approval-in-mexico-and-brazil>
- <https://www.leadersleague.com/en/news/basham-ringe-y-correa-advises-on-lyondellbasell-s-2-25bn-acquisition-of-schulman>
- <https://www.owler.com/reports/a.-schulman/a.-schulman--basham-ringe-y-correa-advises-on-lyon/1536912460070>
- <https://lexlatin.com/noticias/actualizacion-cofece-autoriza-fusion-de-lyondellbasell-y-schulman>

## **Owens & Minor's USD 710 Million Acquisition of Halyard's S&IP Business**

Simpson Thacher & Bartlett LLP's New York office, Mexican firm Basham, Ringe y Correa, Azevedo Sette Advogados in Brazil and BLP's Honduran office have helped healthcare giant Owens & Minor complete the Latin American leg of its acquisition of Halyard Health's surgical and infection prevention business for USD 710 million in cash.

Halyard Health sought counsel from Alston & Bird LLP in Atlanta and Washington, DC, Brazilian firm Demarest Advogados and Arias' Tegucigalpa office.

The deal closed on November 26, 2018.

Advisors include partners Alvaro González-Schiaffino and Jorge De Presno, Carlos Velazquez de Leon and Rodrigo Gardner and associates Deborah Iglesias, Julio Copo, Ricardo Evangelista and Roberto Serralde in Mexico City.

More information on the project can be found here:

- <https://lexlatin.com/noticias/owens-minor-compra-division-de-sip-de-halyard-health-por-usd-710-millones>
- <http://www.azevedosette.com.br/noticia/owens-minor-compra-division-de-sip-de-halyard-health-por-usd-710-millones/5165>
- <https://www.dfdl.com/resources/news/dfd-thailand-advises-owens-minor-on-its-acquisition-of-halyard-healths-surgical-infection-prevention-sip/>
- <https://latinlawyer.com/article/1177622/us-healthcare-company-closes-latam-leg-of-global-acquisition>
- <http://www.globallegalchronicle.com/owens-minors-710-million-acquisition-of-halyards-sip-business/>

## Bayer Clears Divestments for Monsanto Takeover

Freshfields Bruckhaus Deringer LLP in New York, London and Brussels, Machado Meyer Advogados in São Paulo, Tauil & Chequer Advogados in association with Mayer Brown in São Paulo, Basham, Ringe y Correa in Mexico City, through its partner Amilcar Peredo, and Gómez-Pinzón in Bogotá have helped German chemical company BASF acquire the remaining seed and herbicide businesses of multinational pharmaceuticals maker Bayer for USD 9 billion as a requisite of the latter's global takeover of Monsanto.

More information on the project can be found here:

- <https://latinlawyer.com/article/1174890/bayer-clears-divestments-for-monsanto-takeover>
- <https://lexlatin.com/noticias/cofece-autoriza-basf-adquirir-negocio-de-agroquimicos-de-bayer>
- <https://www.demarest.com.br/en/brazilian-enforcers-want-petrobras-divestments/>

## Exxon's USD 300 Million Investment Plan in Mexico

Exxon Mobil Corp will invest in Mexico's retail fuel market about USD 300 million over 10 years.

Exxon Mobil Corporation operates petroleum and petrochemicals businesses on a worldwide basis. The company led by Darren W Woods, Andrew P Swiger and Mark W Albers, in 2016 recorded 198 Billion revenues.

Basham, Ringe y Correa S.C. advised ExxonMobil with Juan Carlos Serra, Adolfo Athie, Gloria Niembro y Jorge Escobedo.

More information on the project can be found here:

- <http://www.globallegalchronicle.com/exxons-300-million-investment-plan-in-mexico/>
- <https://latinlawyer.com/article/1152107/basham-helps-exxonmobil-expand-in-mexico-percentE2percent80percentt99s-downstream>
- <https://lexlatin.com/noticia/exxonmobil-lanza-plan-de-inversiones-a-10-anos-por-usd-300-millones-con-asesoria-de-basham>
- <http://www.iberianlawyer.com/latin-america/news-latin-america/7102-basham-guides-exxonmobil-s-expansion-in-mexico>

## Vichisa's USD 200 Million Investment in Chihuahua Production Plant

Basham, Ringe y Correa's Monterrey office has helped Mexican bottling company Vichisa obtain licences, third-party contracts and real estate for a manufacturing facility that will supply a nearby Heineken production plant.

The new plant has a total production capacity of 150 Million tons of glass bottles.

Basham, Ringe y Correa advised with a team led by Carlos Velázquez de León and including Jorge Medina and Pedro Strobl.

More information on the project can be found here:

- <https://latinlawyer.com/article/1147147/heineken-supplier-hires-basham-to-open-new-factory-in-mexico>
- <http://www.globallegalchronicle.com/vichisas-200-million-investment-in-chihuahua-production-plant/>
- <https://lexlatin.com/noticia/vichisa-invierte-usd-200-millones-construccion-planta-chihuahua-asesoria-basham>
- <http://www.iberianlawyer.com/awards-menu/top/inspiralaw-celebrates/6941-basham-instructed-on-vichisa-200-million-new-investment-in-mexico-ppu-advised-lenders-on-435-million-energy-financing-in-chile>
- <https://www.abogados.com.ar/vichisa-invierte-usd-200-millones-asesorado-por-basham-ringe-y-correa/20607>

## Basham Ringe y Correa Advises Blue Equity on Sale of Mexican Resort

Basham, Ringe y Correa, through its partner Juan José López de Silanes Molina and associates Gerson Vaca Avendaño and Mónica Mora Ávila, has advised Dinsmore & Shohl and its client, the private equity firm Blue Equity, in the first phase of the auction/sale of a Mexican resort.

The resort, located in Tulum, is named Mukan, Tulum Sian Ka'an Reserve and is owned by the Mexican subsidiary of Blue Equity.

More information on the project can be found here:

- <https://www.leadersleague.com/en/news/basham-ringe-y-correa-advises-blue-equity-on-sale-of-mexican-resort>
- <http://www.globallegalchronicle.com/blue-equity-llcs-auction-sale-of-a-resort-located-in-tulum-quintana-roo-mexico/>
- <https://lavca.org/2018/11/22/blue-equity-executes-first-phase-for-the-sale-of-mexican-resort/>
- <https://www.abogados.com.ar/index.php/basham-ringe-y-correa-asesoro-a-blue-equity-en-proceso-de-subasta-de-un-resort-en-tulum/22609>
- [https://www.ahorravueltas.com/ciudades/173/noticias/detalle/?f=06\\_12\\_2018](https://www.ahorravueltas.com/ciudades/173/noticias/detalle/?f=06_12_2018)

## Highlights:

- The International Bar Association (IBA) announces new management board, in which our partner Daniel Del Río has been named as IBA Asst. Treasurer/LPD Asst. Treasurer.
- Our partner Carlos Velázquez de León current Board Member – Technology officer on Board of the ABA and Board Member elected by Lex Mundi (May 2019)
- Teresa Espinosa, CIPT, senior associate in our IT/Data Protection practice, has become KnowledgeNet Chair of the IAPP- International Association of Privacy Professionals in Mexico.
- Our partner in the Labor area Jorge de Presno has been listed and recognized as Lawyer of the Year in the practice of Labor and Employment Law, by the important publication Best Lawyers in its 2018 edition.
- Our partner, Gerardo Nieto, has been awarded as Transfer Pricing Lawyer of The Year 2018 by the international publication Lawyer Monthly.
- The Prestigious publication FINANCE MONTHLY has shortlisted our partner Miguel Ángel Peralta and the associate Pedro Said based on their transactional work, highlighted by their particular contribution and role within the following transaction: Crown Holding raises credit for 1.5 billion dollars
- Our firm was shortlisted as Mexico Law Firm of the Year by Chambers and Partners Latin America Awards 2019.

## New rankings:

- Sergio Barajas (International Trade) in Chambers and Partners Latin America, Chambers and Partners Global, Legal 500 and Best Lawyers.
- Tax Practice Group has been included in Chambers and Partners Global.
- Víctor Barajas in Private Wealth Law by Chambers and Partners, Legal 500 and Who's Who Legal in Corporate Tax.
- Tax Practice Group has been ranked in International Tax Review in two new categories: Transactional Tax and General Corporate Tax.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Daniel Del Rio, Senior Partner**

[delrio@basham.com.mx](mailto:delrio@basham.com.mx)

Tel: 52.55.5261.0496

### **Gerardo Nieto, Partner**

[nieto@basham.com.mx](mailto:nieto@basham.com.mx)

Tel: 52.55.5261.0496

### **Carlos Velazquez de León, Partner**

[carlosv@basham.com.mx](mailto:carlosv@basham.com.mx)

Tel: 52.81.8299. 2109

### **Basham, Ringe y Correa, S.C.**

Member Firm for Mexico

# Nicaragua

Prepared by Alvarado y Asociados, *Lex Mundi Member firm for Nicaragua*



**Preferential access** to a **global market** of over **1.5 billion consumers**.

**Approximately, 76%** of the **population** is **under 39 years of age** and over **35,000 new professionals** joined the **labor force** in 2017.

**Trade agreements** with **50 countries** and counting.

## What to Expect in 2019

Recent episodes of social unrest have caused changes in the political and institutional landscape and have increased uncertainty regarding policy direction and outcomes are potentially weaker than previous years.

Despite the unfavorable investment atmosphere, the unstable political situation, investment flows, the outflow of deposits from the national financial system, and many economic sectors that were affected such as commerce, tourism and construction; other sectors like mining and telecommunications seem to be stable and functioning.

As counsel to companies that have a presence in many different sectors, we have been witness to the reorganization many companies are implementing in order to be more effective and continue to operate in Nicaragua.

The country faces many economic challenges; however, the private sector is acting swiftly to rescue the ailing economy and if the crisis continues throughout 2019, sanctions from the United States and Europe will play a key role in the dynamics of economic activity.

## Trends and Projects

News	Date	Link
Presentation of Development Policies and Projects to Enhance Investment during the 2019-2021 Period, under the theme: "Nicaragua, Grow Together"	January 7, 2019	<a href="https://www.tn8.tv/nacionales/465604-nicaragua-potenciara-inversiones-del-2019-al-2021/">https://www.tn8.tv/nacionales/465604-nicaragua-potenciara-inversiones-del-2019-al-2021/</a>
Document of Development Policies and Projects to Enhance Investment during the Period 2019-2021	December 18, 2018	<a href="https://www.mific.gob.ni/INICIO/PolpercentC3percentADticasyproyectos/tabid/1414/language/en-US/Default.aspx">https://www.mific.gob.ni/INICIO/PolpercentC3percentADticasyproyectos/tabid/1414/language/en-US/Default.aspx</a>
Municipalities of Nicaragua announce investment plan 2019	December 18, 2018	<a href="https://www.tn8.tv/nacionales/464470-alcaldias-de-nicaragua-anuncian-plan-de-inversiones-2019/">https://www.tn8.tv/nacionales/464470-alcaldias-de-nicaragua-anuncian-plan-de-inversiones-2019/</a>
Monthly Inflation Report, January 2019	February 2019	<a href="https://www.bcn.gob.ni/publicaciones/periodicidad/mensual/inflacion/inflacion_enero.pdf">https://www.bcn.gob.ni/publicaciones/periodicidad/mensual/inflacion/inflacion_enero.pdf</a>

## Trends and Projects

News	Date	Link
Statistical Data January 2019	February 2019	<a href="https://www.bcn.gob.ni/publicaciones/periodicidad/mensual/inflacion/IPC_enero.pdf">https://www.bcn.gob.ni/publicaciones/periodicidad/mensual/inflacion/IPC_enero.pdf</a>
Investor's Guide 2017-2018	2018	<a href="https://www.mific.gob.ni/Portals/0/FILES/2018/1/DB172018.pdf">https://www.mific.gob.ni/Portals/0/FILES/2018/1/DB172018.pdf</a>
Tax Incentives to be enjoyed by companies that use Free Trade Zones according to the National Commission of Free Trade Zones	2019	<a href="http://cnzf.gob.ni/es/incentivos-fiscales">http://cnzf.gob.ni/es/incentivos-fiscales</a>

## Legislative News

Type of Norm	Name of the Norm	Data of the Publication	Link
Presidential Decree	<i>Presidential Decree No. 01-2019, Decree for the Suspension of the Veda for the Cut, Use, Transport and Commercialization of Trees of the Pine Species.</i>	Published in the Gazette, Official Newspaper of Nicaragua, number 7 of January 14, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=94FBBC48E689AF4F-062583850072FACB&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=94FBBC48E689AF4F-062583850072FACB&amp;action=openDocument</a>
Presidential Decree	<i>Presidential Decree No. 02-2019, Decree for the Suspension of the Veda for the Cutting, Harvesting, Transport and Commercialization of Trees of the Cedro Real and Pochote Species.</i>	Published in the Gazette, Official Newspaper of Nicaragua, number 8 of January 15, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=45A0A072CCD-6FE770625838B0050A030&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=45A0A072CCD-6FE770625838B0050A030&amp;action=openDocument</a>

## Legislative News

Type of Norm	Name of the Norm	Data of the Publication	Link
Presidential Decree	<i>Presidential Decree No. 03-2019, Decree regulating the procedure for the approval and implementation of forest incentives.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 13 of January 22, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=D5D61F5C800BDF-360625838D00711324&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=D5D61F5C800BDF-360625838D00711324&amp;action=openDocument</a>
Law	<i>Law No. 985, Law for a Culture of Dialogue, Reconciliation, Security, Labor and Peace.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 17 of January 28, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=5B219B60A3E-3CFC306258391005A061F&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=5B219B60A3E-3CFC306258391005A061F&amp;action=openDocument</a>
Presidential Decree	<i>Presidential Decree No. 04-2019, Creation of the Single Window for the Simplification of Procedures to the Economic Agents of the Electric, Hydrocarbon and Mining Sectors.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 19 of January 30, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=8640A8BCD-400202F062583970076A1B0&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=8640A8BCD-400202F062583970076A1B0&amp;action=openDocument</a>
Presidential Decree	<i>Presidential Decree No. 06-2019, Decree on Amendments to Decree No. 975 "General Regulation of the Social Security Law" approved by the Board of Directors of the Nicaraguan Social Security Institute (INSS), in session number 325, held on April 28 January 2019.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 21 of February 1, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=A306B32137B84B-40062583970057DE97&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=A306B32137B84B-40062583970057DE97&amp;action=openDocument</a>

## Legislative News

Type of Norm	Name of the Norm	Data of the Publication	Link
Presidential Decree	<i>Presidential Decree No. 07-2019, Decree to Establish the National Policy on Mitigation and Adaptation to Climate Change and the Creation of the National System of Response to Climate Change.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 27 of February 11, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=2AA845F404D-355C6062583A0005A2819&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=2AA845F404D-355C6062583A0005A2819&amp;action=openDocument</a>
Decreto Legislativo	<i>Decree No. 8517, Approval Decree of Loan Agreement No. 6020620006 signed on January 22 of the year two thousand nineteen by the Import and Export Bank of the Republic of China and February 4 of the year two thousand nineteen by the Republic from Nicaragua.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 36 of February 22, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=A3A3D6C4DC-66641D062583AC006BC707&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=A3A3D6C4DC-66641D062583AC006BC707&amp;action=openDocument</a>
Law	<i>Law No. 987, Law on Amendments and Additions to Law No. 822, Law on Tax Concertation.</i>	Published in the <i>Gazette, Official Newspaper of Nicaragua</i> , number 41 of February 28, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=CC88B8A39B27B4B-7062583B3007ACB85&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=CC88B8A39B27B4B-7062583B3007ACB85&amp;action=openDocument</a>

## Legislative News

Type of Norm	Name of the Norm	Data of the Publication	Link
Law	<i>Law No. 988, Law on Amendments and Additions to Law No. 595, General Law of Civil Aeronautics</i>	Published in the Gazette, Official Newspaper of Nicaragua, number 47 of March 8, 2019.	<a href="http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=26B62F6B-02038738062583BA00721721&amp;action=openDocument">http://legislacion.asamblea.gob.ni/Normaweb.nsf/xpNorma.xsp?documentId=26B62F6B-02038738062583BA00721721&amp;action=openDocument</a>
Presidential Decree	<i>Presidential Decree No. 08-2019, Decree of Amendments and Additions to Decree No. 01-2013, Regulation of Law No. 822, Law on Tax Concertation.</i>	Published in the Gazette, Official Newspaper of Nicaragua, number 53 of March 15, 2019.	<a href="https://www.dgi.gob.ni/pdfLegislacion/1061">https://www.dgi.gob.ni/pdfLegislacion/1061</a>

## Lex Mundi Member Contact



A **LexMundi** Member

**Gloria Maria de Alvarado, Managing Partner**

[gmalvara@alvaradoyasociadoslegal.com](mailto:gmalvara@alvaradoyasociadoslegal.com)

**Luz Marina Espinoza, Partner**

[luzme@alvaradoyasociadoslegal.com](mailto:luzme@alvaradoyasociadoslegal.com)

**Jose Antonio Alvarado, Founding Partner**

[jaalvarado@alvaradoyasociadoslegal.com](mailto:jaalvarado@alvaradoyasociadoslegal.com)

**Alvarado y Asociados**

Member Firm for Nicaragua

Tel: 505.2278.7708 / 505.2277.2417

# Panama

Prepared by Arias, Fábrega & Fábrega, Lex Mundi Member Firm for Panama



## Rated

the **third most competitive country** in Latin America, according to the **World Economic Forum**.

One of the **fastest growing** in the **world** with an **average growth domestic product** of **8.56%** over the **past 10 years**.

Debt is **ranked "Investment Grade"**, only **three countries** in **LatAm** have **this status**.

## What to Expect in 2019

2019 is an election year in Panama. On May 5, Panamanians elected both a new president as well as a new legislature. As part of their proposed policy agenda, virtually all of the presidential candidates have expressed a desire to amend the country's constitution. This makes it likely that Panama's constitution will be amended at some point during the new president's and new legislature's five-year term. Policy changes regarding particular economic sectors like health care and agriculture can also be expected.

## Trends and Projects

### Energy and Power

With the start of operation of AES's Costa Norte LNG plant in Colón in the second half of 2018, Panama's electricity generation sector reached a level where power generation is now largely in line with the country's near and mid-term demand growth expectations. As a result, very few large green field electricity generation projects are currently being constructed or planned. The focus of the energy sector is now shifting towards internal transmission, distribution and regional integration projects. ETESA, the state-owned company in charge of electricity transmission, is currently in the process of awarding the contract for the construction and operation ("BOT") of the fourth high-voltage power line that will connect Panama's western provinces with the country's densely populated central region, a project that will exceed USD 1 billion in investment. This will be the first time that a private company will be allowed to operate a major transmission line, as electricity transmission remains a state monopoly in Panama. The shift to a BOT model for the fourth high-voltage power line may result in reforms to existing power transmission regulations, although a full privatization of this service is highly unlikely at this time.

### Infrastructure

Both the completion and the beginning of construction of several large infrastructure projects are scheduled for 2019, many of them aimed at alleviating traffic congestion between Panama City and the populated areas on the western shore of the Panama Canal. The second line of Panama City's metro system, a USD 1.875 billion project, was recently inaugurated, and construction is due to begin on a fourth bridge over the Panama Canal near its Pacific entrance, a USD 1.518 billion project. This project is closely linked with the construction of Panama's third metro line (a USD 2.826 billion project), which will cross the Panama Canal by way of this new fourth bridge. Several important road and highway expansion projects are also underway in the province of Western Panama, which are aimed at facilitating the daily commute of tens of thousands of Panamanians and improving access to Panama's western provinces and some of the country's most popular beaches and other tourist destinations.

Projects that were completed in 2019 or are near completion also include the new South Terminal of Tocumen International Airport (the country's main airport and an important regional hub), which will substantially increase the capacity of the airport, and the third bridge over the Panama Canal near its Atlantic entrance.

## Mergers and Acquisitions

The main trend in Mergers and Acquisitions remains the entrance of large foreign players, including private equity investors, in various Panamanian consumer and retail markets. Late 2018 and early 2019 so far witnessed the closing of the sale of several important local companies to foreign investors, including in the telecommunications (the acquisition of Cable Onda S.A., a leading provider of broadband internet, pay-TV, fixed telephony and B2B telecommunications services in Panama, by Millicom), retail (the sale of Grupo Rey, a large supermarket chain, to Corporación Favorita from Ecuador) and automobile sectors (the sale of shares in Ricardo Perez, the local Toyota distributor, to Japanese investors, and the acquisition by UK's Inchcape of Grupo Rudelman, distributors of Suzuki in Panama and Costa Rica). M&A activity involving the entry of global players in consumer and retail markets is expected to continue so long as the regional consolidation trend in consumer markets continues.

## Banking and Insurance

Continuing a trend from last year, 2019 is expected to bring further consolidation in Panama's banking and insurance sector, one of the largest and most important financial centers in the region. The trend appears in part driven by increasing competition and regulatory and compliance costs. Another trend that is expected to continue is the increased access by local banks of international debt markets.

## Legislative News

The most relevant recent legislative news relates to changes to the local tax system. Three changes in particular are of noting: (i) the criminalization of tax evasion, with the underlying purpose of making the country compliant with international standards; (ii) the enactment of a new *Tax Procedure Code* which, among other things, aims to regulate the aforementioned tax evasion proceedings and modernize, clarify and facilitate certain other existing tax proceedings, including the creation of a public-defender of tax payers under administrative and judicial tax proceedings; and (iii) the designation of certain local financial entities as withholding agents on behalf of debtors in connection with real property tax that may be applicable to certain mortgage loans and other guaranteed loans, provided that the debtor consents to the bank applying such withholding.

In addition, there has been a modification to the *Multinational Company Headquarters Law* ("**MCH**") which has, as of 2018, attracted 146 multinational companies to the country with tax incentives, labor, immigration and other benefits. Among the modifications, the applicable tax regime has been updated, in part to comply with BEPS international standards. To continue to attract more **MCH**, new applicants will become automatically included in the Investment Stability Regime, which protects **MCH** from adverse changes in local employment, taxation and custom laws for a period of up to 10 years.

As to legislation that may come into force in the near future, discussions are ongoing in connection with new legislation on the reorganization and liquidation of banks, for purposes of correcting deficiencies and modernizing the current applicable regulatory framework. As mentioned above, 2019 is an election year and close attention should be paid to upcoming legislative news in the second half of the year by the then-newly elected government.

## Arias, Fábrega & Fábrega's Highlights

Advising diverse actors in the interlinked multiple phases of a grand scale public infrastructure project seeking to alleviate the current vehicular traffic between the Panama City, the west side cities and beach resorts on the Pacific side:

- Advising Acciona Construcción, S.A. in the USD 240 million infrastructure project to expand to eight lanes the Pan-American Highway between the Bridge of the Americas (Puente de las Américas) and Arraiján. The receivables purchase (factoring) facility was granted by Factor Global Inc. and the Bank of Nova Scotia to Consorcio Loma Cová (comprised by Acciona Construcción, S.A. from Spain and Constructora MECO S.A. from Costa Rica).

- Advising the Central American Bank for Economic Integration (CABEI) in financing the phase 1 of the beach highway project, in the order of USD 450 million; and Scotiabank in the USD 280 million phase 2. The beach project consists includes the expansion of the Pan-American highway to six lanes, three in each direction, with an approximate length of 36.3 km.

Challenging Panama City Metro System financings. The Panama City Metro project is the single most important public infrastructure project ever undertaken in Panama City in terms of dollar amount and general impact, and the first of its kind in Central America.

- In 2011, we represented Citibank, N.A. London Branch and other financial institutions as COFACE Mandated Lead Arrangers in connection with a USD 298 million COFACE guaranteed facility agreement granted to the Republic of Panama to finance, among other things, the acquisition of the rolling stocks and other goods of French origin for the Line 1 of the Panama City Metro Project.
- In 2012, we represented Citigroup Global Markets Inc. and Bank of Tokyo-Mitsubishi UFJ as Joint Global Coordinators and Lead Arrangers in structuring a USD 250 million facility to the Government of Panama guaranteed by the MIGA (Multilateral Investment Guarantee Agency), for the construction of the Line 1 of the Panama City Metro Project.
- In 2014, our team advised Bank of Tokyo-Mitsubishi UFJ, Ltd., and Sumitomo Mitsui Banking Corporation, in connection with the USD 212 million Receivables Purchase Agreement to finance a 2 km extension of the mentioned Line 1 of the Panama City Metro Project.
- In 2017, our team advised UBS in the financing of the Line 2 of the Panama City Metro Project. It was the first ever receivables purchase facility under which the receivables issued by a government entity, other than the Republic of Panama itself, would benefit from a guarantee issued by the latter. In addition to this factor the transaction is the largest ever of its kind in Panama.
- We are currently advising one bidding consortium for the construction of the Line 3 of the Metro of Panama.
- The firm is already preparing for a possible participation in the extension of the mentioned Line 2.

Working hand in hand on the expansion of the Tocumen International Airport. Since day one, ARIFA has been an active part of the various transactions related to the construction of the new South Terminal of Tocumen International Airport, a project involving the first time that a corporation wholly owned by the Republic of Panama has issued a 144A Reg S notes.

- In 2015, our team advised Banco General, The Bank of Nova Scotia and Global Bank, as arrangers, in connection with a USD 150 million factoring facility agreement with Constructora Norberto Odebrecht, providing financing for completing the construction of the new South Terminal of Tocumen International Airport.
- In 2016, our team advised Citigroup Global Markets Inc., in the amendment by Aeropuerto Internacional de Tocumen, S.A. of its existing USD 650 million 5.75 percent Secured Notes due 2023 and acting as Sole Initial Purchaser of the international offering by Tocumen International Airport of its USD 575 million secured bonds due 2036, the largest cross-border bond issuance by an entity wholly-owned by the Panamanian government.
- In 2018, our team advised Citigroup Global Markets in the second (USD 225 million) and third (USD 650 million) Tocumen Airport debt bond issuances.

Playing our part in introducing new energy sources into the Panamanian energy matrix. Advising an AES affiliate company, in the financing of the single largest natural gas-powered generation facility complex to be built in Panama, representing close to 20 per cent of the total power generation capacity of the country.

- During 2017-2018, the firm participated in the negotiation of the contract for the operation of the first project for generation of energy through Liquefied Natural Gas ("**LNG**") through a Floating Storage and Regasification Unit ("**FSRU**").

- ARIFA acted as Panamanian counsel to the International Finance Corporation ("IFC"), the Central American Bank for Economic Integration (CABEL), Bancolombia S.A., Banco General, S.A. and Global Bank Corporation, among others, as senior lenders in connection with a USD 291.5 million project finance credit facility to Costa Norte LNG Terminal S. de R.L. and Gas Natural Atlantico S. de R.L., partly-owned subsidiaries of AES, for the construction of a 380 MW LNG power plant and related LNG transport and storage terminal near the Atlantic entrance of the Panama Canal in Colón, Panama.
- In 2018, our team advised co-borrowers Banco BAC Credomatic (USD 18 million) and Banco Nacional de Panamá (USD 25 million), in a USD 43 million Terminal Use Agreement (TUA loan agreement) related to the LNG Costa Norte project in Colón.

The power behind the power distribution. Contributing to the growth of Panama's power distribution capacity through the representation of financial institutions that have granted financing to distribution companies.

- In 2018, our team advised lenders providing financing for ETESA (Empresa de Transmisión Eléctrica), the government-owned company in charge of constructing and managing Panama's electricity transmission infrastructure.
- In 2018, our team advised Citigroup in the USD 400 million finance for ETESA for the 3rd energy transmission line.
- The firm is already advising clients participating in the prequalification process for the tender of the 4th energy transmission line.

ARIFA advised Grupo Rey in the sale of a 73 percent controlling interest in Rey Holdings Corp., Panama's leading supermarket, successfully closing the first Public Tender Offer in approximately 10 years.

In 2018, our team advised United Airlines, Inc. in a complex loan and alliance structure between United Airlines, Avianca Holdings, and the two main Avianca shareholders, including:

- The USD 456 million secured term loan agreement with affiliates of Synergy Aerospace Corp., a Panamanian company and AVH's majority shareholder, and
- Certain arrangements in respect of AVH shares with Kingsland Holdings Limited; AVH's other significant shareholder.

In 2018, our team advised Assicurazioni Generali S.p.A. in an asset sale agreement with respect to its Panamanian operations to ASSA Compañía de Seguros, S.A. for USD 172 million; the largest acquisition in the Panamanian insurance sector in recent years and most importantly, one of the largest asset purchase agreements across any industry in Panama's recent history.

Exceptional application of arrest rules. In 2018, our shipping litigation team became the first law firm to innovate in the application of the rules of wrongful arrest ("Apremio") to lift the administrative precautionary measure in the registry, such as the "flag arrest", by successfully having admitted the motion on the grounds that the plaintiffs had previously agreed not to pursue any arrest or similar action against the vessel, which is one of the grounds to obtain to challenge an arrest, as a wrongful one.

In 2018, our team advised The Inter-American Development Bank, as the leading provider of development financing to Latin American and the Caribbean issued bonds in the Panama Stock Exchange for the first time. ARIFA was the transaction counsel to Inter-American Development Bank, and in a minor role to Citigroup, in the issuance of USD 1 billion Callable Step-Rate Bonds through the Panama Stock Exchange, due September 26, 2048. The transaction could pave the way for other multilaterals to place notes in the Panamanian Market.

## Lex Mundi Member Contact



ARIAS, FABREGA & FABREGA

A **LexMundi** Member

**Ricardo M. Arango, Partner**

[rarango@arifa.com](mailto:rarango@arifa.com)

**Estif Aparicio, Partner**

[eparicio@arifa.com](mailto:eparicio@arifa.com)

**Arias, Fábrega & Fábrega**

Member Firm for Panama

Tel: 507.205.7000

# Paraguay

Prepared by Peroni Sosa Tellechea Burt & Narvaja, *Lex Mundi Member Firm for Paraguay*



Average **gross domestic product growth** of over **five percent** over the last **eight years**.

Has one of the **lowest taxation rates** worldwide.

Second **world producer** of **Stevia** and fourth **world exporter** of **energy**.

## What to Expect in 2019

According to official projections, Paraguay's economy is set to grow 4.5 percent in 2019. This marks the fifth consecutive year of steady economic growth, stemming from the optimism of local and international investors as well as continuously sound economic policies from the public sector, contrary to that of its neighbors.

The increasing international demand for Paraguayan agricultural and protein products has created a dynamic local economy with a growing service industry and numerous investments in construction from both the public and private sectors. The increasing diversity of its exportable products such as soybean, cotton, meat and others, projects a bright future for the Paraguayan economy.

Its natural resources, such as the Parana and Paraguay Rivers, amongst the largest in the world, allow for large extension of productive land, but also feed the Itaipu, Yacyreta and Acaray Dams. These massive powerplants bring electric power to much of this region of South America, including metropolis' such as Sao Paulo and Buenos Aires, and account for a large part of Paraguay's export dollars.

## Trends and Projects

### Energy and Power

The most notable aspect in terms of energy generating infrastructure in the country is the abundant availability of hydroelectric power. Paraguay's power production capacity (close to 60,000 GWh/year), is one of the largest in the world in terms of electricity generation per inhabitant (9,000 kWh per inhabitant). Less than 17 percent of this energy is used in the domestic market. Electricity is a major export to neighboring countries Brazil and Argentina. Paraguay shares control over the ITAIPU Dam (14,000 mWh) with Brazil and over the YACYRETÁ Dam (3,200 mWh) with Argentina.

Recently, Paraguay has increased efforts to take greater advantage of available electricity in order to promote industrial and commercial development. Investments in long distance power lines and towers have been made in order to extend reach of electricity to developing areas. Treaty terms have established that Paraguay sell the energy it does not consume to Brazil in the case of Itaipu and to Argentina in the case of Yacyreta, in both cases at below market prices. Treaty terms affecting the sale and price of energy will be renegotiated in 2023.

### Maquila

The maquila sector is attracting more and more foreign investment to Paraguay. According to the data presented by the Economic Commission for Latin America and the Caribbean ("**ECLAC**"), Paraguay grew 11.1 percent as a destination for foreign capital with the implementation of maquila industries. In 2018, maquila exports are estimated to have been approximately USD 600 million, a 61 percent increase from the previous year. These types of investments have proven to be very successful and an excellent opportunity for foreign investors looking to do business in Paraguay.

## Infrastructure

Paraguay has recently seen major investments in infrastructure from both the private and public sector. Investments in highways, overpasses, river ports and the Asuncion airport have helped the growing economy keep up with logistical demands for the transportation of goods. Construction on the Ruta Bioceanica, joining the Atlantic and Pacific Oceans, will pass through the historically overlooked Paraguayan Chaco, which promises to bring economic development to this vast territory. Interest in investments in urban transportation have also gained steam in recent years.

## Finance

For over a decade, the Paraguayan Central Bank and the National Treasury have established strong policies to prevent inflation and stabilize currency. The governments work in terms of financial stability has allowed Paraguay to avoid regional crises and stay on the path of economic growth. Joint efforts with the private sector to fight money laundering have been successful and confidence in the economy can be seen by looking at investments in infrastructure and stable interest rates.

## Technology

In October 2018 *Law 6207* created the Ministry of Information and Communication Technologies (“**MITIC**”) and establishes its Charter. The **MITIC** has unified the former National Secretariat of Information and Communication for Development (“**Sicom**”) and the National Secretariat of Information and Communication Technologies (“**Senatics**”). The Ministry has become the technical entity and governing body of public policies related to communications and information technologies in Paraguay.

The **MITIC** has been supporting technological projects with a capital of USD 10,000. The ministry is now working on a digital district in Asunción, which aims to be a physical hub to host startups, tech companies and programs to support the development of innovation and technology.

The National Council of Science & Technology (“**Conacyt**”) is providing assistance to mature projects with up to USD 90,000 and to innovative early-stage tech ventures with up to USD 25,000 through its contest ProInnova PY.

Furthermore, today, Paraguay is one of the cheapest places for bitcoin mining, with an average price of 5ct/Kwh.

## Entrepreneurship

In 2016 Congress passed *Law No. 5669* creating a regulatory and institutional framework for the promotion of entrepreneurs and start-ups in the formal economy. In that same sense, there are three bills currently being studied in Congress seeking to simplify the creation of micro, small and medium enterprises (“**MSMEs**”), in addition to facilitating the conditions of access to credit. Nowadays, it takes an average of 35 days for the formation of companies. One of the bill’s proposals is a new business organization which simplifies the procedures to 100 percent online, shortens the processes to one day, lowers the cost and smooths the path of **MSMEs** to formality. A second bill proposes the inclusion of inventory, operating capital, accounts receivable and equipment as guarantees in a loan request. Moreover, a third bill, in the event of insolvency, seeks to provide a procedure that gives the indebted company an option to restructure the debt so that it continues to operate making sure the jobs are guaranteed and the money is totally recovered. These laws will enable Paraguay to climb positions in the “Doing Business” ranking, a classification of the World Bank, where it is currently ranked 113.

## Legislative News

### Tax Legal Framework

The national government is pushing tax reform legislation in order to raise taxes. The plan proposes an across the board 10 percent VAT and recommends limiting income tax deductions (“**IRP**”), among other things. This proposed legislation is yet to be studied and decided on by congress.

### Financial Legal Framework

#### General Regulation for Stock Market

The National Securities Commission (*Comisión Nacional de Valores* or “**CNV**”) has issued *Resolution CNV CG N° 1/19* that sets forth the *General Regulation for the Stock Markets* that regulates *Law N° 5810/17 “On the Securities Market”*; *Law N° 5452/15* on investment funds; *Law N° 1163/97* on commodity exchanges, and its modifications *Law N° 5067/2013*, and *Law N° 3899/09* on risk rating and functioning of risks assessing organizations.

This regulation is important because it will help to develop the Stock Market in Paraguay. The resolution regulates the following:

- qualification of institutional investors;
- registration of rating agencies;
- incorporation, governance and registration of stock exchange, brokerage firms, fund investments, and their administrators;
- the registration of issuers (SAE, SAECA, PYMES, multilateral development agencies, foreign issuers);
- requirements of the securities issues (debt securities, mortgage bonds, subordinated bonds, exchange-traded bonds, stock); and
- guidelines for the transparency regime of the securities market, corporate governance rules for entities supervised by the CNV, and rules applicable to external activities of auditors

### Oil and Gas Legal Framework

Foreign and local companies obtained permits granted by law for refining, storage, transportation, distribution and marketing of oil and gas products.

### Corporate

In October 2017, Paraguay passed *Law 5895 “Establishing rules of transparency in the regime of Stock Corporations”*. This law was passed as one of the key measures to prevent money laundering and tax evasion through the use of stock corporations. However, it was not until June 2018, that the Executive Branch signed the bill into law, establishing the rules of transparency, formalities and the enforcement mechanisms for the exchange of bearer shares to nominative shares.

Previously, equity could be represented by bearer shares which did not identify the legal owner on the share certificate. Ownership was entitled to whomever held the share certificates in possession. This anonymity encouraged money laundering, tax evasion, terrorism and smuggling worldwide.

Corporations have until October 2019 to exchange their bearer shares to nominative shares and communicate the fulfillment of this obligation to the corporate surveillance authority (*Abogacia del Tesoro*).

## Litigation

As of November 1, 2018, an electronic filing system was implemented in all the Civil and Commercial Courts of the city of Asunción, which includes filing, review and notification to parties and the incorporation of digital signatures in Court resolution.

It is expected that in the course of the year the electronic filing system will reach other regions of the country as well as the Court of Appeals of the Capital.

## Member Firm Highlights

### PETRÓLEO BRASILEIRO S.A. – PETROBRAS

The matter involved the sale of Petrobras International Braspetro B.V's petroleum distribution outfit and 179 service stations to Paraguayan company Copetrol S.A., for a value of USD 383.5 million.

PSTBN acted as local Paraguayan counsel for PETROBRAS, working together with PETROBRAS U.S. counsel Baker Botts of Houston, Texas. This is the largest M&A transaction in Paraguay in the last 10 years.

More information on the project can be found here:

- <http://www.adndigital.com.py/copetrol-pago-us-3835-millones-179-estaciones-petrobras-paraguay/>
- <http://lexlatin.com/noticia/copetrol-acuerdo-adquirir-petrobras-paraguay>

### Vimerica S.A.

PSTBN advised VIMERICA S.A., in obtaining a 25-year gaming license from the National Commission of Games of Chance (CONAJZAR). The investment of USD 150 million was made for an Integral Resort and Casino, infrastructure, from VIMERICA, S.A. a subsidiary of VIIMERICA LLC, Las Vegas.

The development timeline for the first phase is estimated at 42 months and it would create around 5,000 jobs.

More information on the project can be found here:

- [https://www.lanacion.com.py/negocios\\_edicionimpresa/2017/09/05/vimerica-invertira-us-148-millones-en-moderno-casino/](https://www.lanacion.com.py/negocios_edicionimpresa/2017/09/05/vimerica-invertira-us-148-millones-en-moderno-casino/)
- <http://lexlatin.com/noticia/pstbn-asesora-vimerica-licitacion-construir-operar-hotel-casino-paraguay/>
- <http://g3newswire.com/paraguay-vimerica-invest-us148m-limpio-city-casino-paraguay/>

### American Tower Corporation

PSTBN advised American Tower Corporation on the acquisition of 1,400 wireless communications towers from Tigo Paraguay (Millicom), which created the first tower operation company in Paraguay.

This is one of the biggest Telecom deals in recent years and involved a matter of USD 129,000,000.

### Barcelona Group

PSTBN is advising BARCELONA GROUP in one of the most important real estate investments in Asuncion: Torres Mirador, four modern apartment buildings in Asunción that will incorporate a new vision on real estate financing. This matter involves a value of USD 50,000,000

## **PETROLERA SAN ANTONIO S.A. / MERCOPAR S.A.C.I. / NAVIOS SOUTH AMERICAN LOGISTICS INC.**

PSTBN advised PETROLERA SAN ANTONIO S.A., MERCOPAR S.A.C.I. and NAVIOS SOUTH AMERICAN LOGISTICS INC. on a Loan Agreement of USD 100,000,000 with Morgan Stanley Senior Funding Inc. (NY)

- <http://lexlatin.com/noticia/grupo-navios-firma-contrato-prestamo-usd-100-millones-morgan-stanley>

## **LATAM Airlines Group S.A.**

PSTBN is advising LATAM Airlines on a financial and operational leasing of an Airbus A-320 aircraft as well as the Interchange Agreements of 22 aircrafts with Transportes Aéreos del Mercosur S.A.

PSTBN drafted the respective contracts and followed up the whole registration process and authorization of the Aeronautical Authority from the very beginning. The matter involved a value of USD 50,000,000.

## **Marubeni America Corporation**

PSTBN represents Marubeni America Corporation, in a lawsuit related to the foreclosure of a financing agreement with Azucarera Iturbe S.A., a Paraguayan manufacturer of organic sugar.

## **Vemarcorp S.A.**

PSTBN provides overall counsel to VEMARCORP S.A., a British /Canadian subsidiary owned by Mr. Majid Mangalji. The firm worked on the implementation, set up and start-up of a steel mill in the Greater Asuncion Area (Villa Hayes) and drafted and obtained approval from two Ministries for a special tax break of USD 50 million filed under Tax Incentive Law No. 60/90. The mill is currently in full operation.

More information on the project can be found here:

- <http://www.ip.gov.py/ip/nueva-industria-autorizada-para-operar-en-paraguay-dara-casi-300-empleos/>
- <http://www.lanacion.com.py/2015/12/25/aceria-preve-una-produccion-de-15-mil-toneladas-por-mes/>
- <http://www.ultimahora.com/vemarcorp-operara-acero-2015-millonaria-inversion-n855685.html>

## **Terminal Occidental S.A. (TOSA)**

PSTBN is actively assisting TOSA in obtaining a concession for the first Service Free Trade Zone in Paraguay. This concession must be granted by the Executive Power, through a Presidential Decree. Furthermore, PSTBN has worked closely with TOSA in obtaining tax benefits under Investment Law. This matter involves a value of USD 22,000,000.

## **Latitude20 Capital Partners**

PSTBN is assisting Capital Partners with two loans granted to two major agribusiness companies in Paraguay for a value of USD 18,000,000. Services rendered include transactions, elaboration of several security documents in order to guarantee the loans, the incorporation of a Trust with a Paraguayan Bank, and the assignment of soybeans purchase contracts signed by the borrowers with different multinational purchasers.

## Lex Mundi Member Contact



A **LexMundi** Member

**Guillermo Peroni, Senior Partner**

[Guillermo.peroni@pstbn.com.py](mailto:Guillermo.peroni@pstbn.com.py)

**Esteban Burt Artaza, Senior Partner**

[Esteban.burt@pstbn.com.py](mailto:Esteban.burt@pstbn.com.py)

**Peroni Sosa Tellechea Burt & Narvaja**

Member Firm for Paraguay

Tel: 595.21.319.9000

# Peru

Prepared by Estudio Olaechea, *Lex Mundi Member Firm for Peru*



In 2017, **private investment** reached a figure close to **USD 37,000 million** and **foreign investment** represented approximately **18.29% (USD 6,769 million)**.

**High level of net international reserves** has been **maintained, exceeding USD 64 billion**.

**Monetary and fiscal policies** of the **past two decades** have allowed Peru to register in **2017 one** of the **lowest debt ratios** in **Latin America** (25% of GDP).

## What to Expect in 2019

The Central Reserve Bank maintained the growth projection of the Peruvian economy in 2019 by approximately 4 percent. Economic activity has definitely increased in the last months of 2018 and will continue to grow for 2019.

This year there will be an increase in mining investment as the main support of GDP expansion. Construction has begun on three copper mines: (i) Quellaveco; (ii) Mina Justa; and (iii) Toromocho expansion and two other smaller mines. The main growth support will be private investment; on the sectoral side, the activities more oriented to meet the demand for mining investment will stand out, such as construction, non-primary manufacturing, and services, as well as the activities that faced transitory difficulties in 2018 and that this year will operate under more normal conditions (mining and hydrocarbons, which on the expenditure side will be reflected in exports). (BBVA Research Department - Peru Economic Outlook – First Quarter 2019).

According to the Central Reserve Bank other highly relevant sectors that will show growth in 2019 are: agricultural sector will grow 4 percent, electricity and water maintain growth expectations equal to 4 percent, in contrast to the construction area, which goes from 7 percent to 6.9 percent, commerce will grow by 3.4 percent, and services will grow by 3.9 percent.

Peru's private investment policy is based on unrestricted and free access and competition in all economic sectors, including those that were reserved for the State. Private property is fully guaranteed, and expropriations are only allowed after compensation, in cases of national security or public interest. Foreign as well as domestic investments enjoy the same rights and duties. Foreign investors are allowed to send foreign currency abroad freely for the full amount of their capitals. Moreover, they are guaranteed access to local sources of credit and may sign stability agreements. There is no discrimination with respect to prices, tariffs, fees, taxes or exchange rates.

Peru has attracted direct foreign investment not only through the sale of State-owned companies and the granting of concessions to the private sector but also through the new legal framework aimed at promoting and protecting such investments.

The structural reforms show consistency of government policies and the public's attitude toward private investment. As a result of increasing political, social and economic stability, Peru has built itself a new image abroad of a country prepared to deal with ongoing market globalization, internationalization of capital flows and development of communications, resulting in more efficient ways to position goods and services in an increasingly competitive world market.

In the local exchange market, the Peruvian currency continued to show a tendency to depreciate at the end of 2018, mainly due to external factors: escalation of trade protectionist measures and greater concerns about the global growth deceleration, all this in an environment in which monetary policy in the United States was still in its course of adjustment.

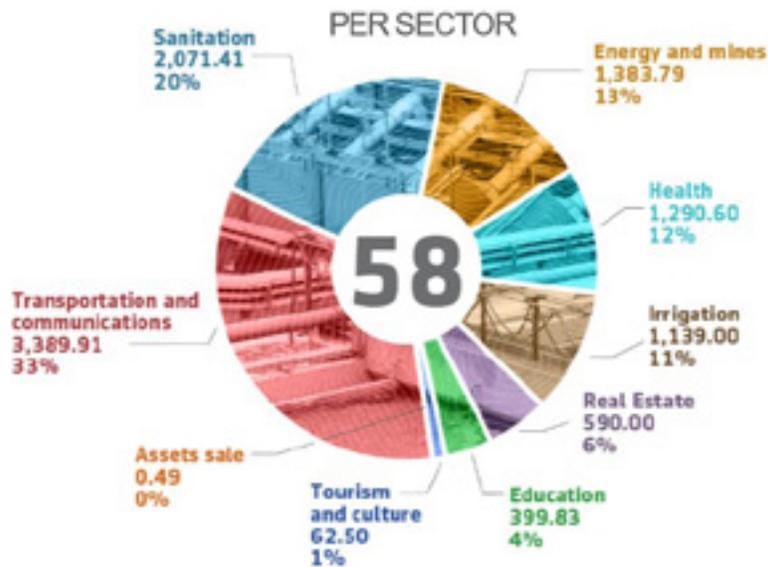
## Trends and Projects

For 2019-2021 there is a projection of 58 new projects in Peru that will be mainly focused on transportation and communication. From these projects, 16 will be developed in 2019 and will be divided in the following sectors: (i) energy and mines; (ii) transportation and communications; and (iii) sanitation.

### 2019 – 2021 Projects

Total investment: USD 10,327 million

Source (including infographics): [www.proinversion.gob.pe](http://www.proinversion.gob.pe)



### 2019 Projects

Total investment: USD 2,466 million

Source (including infographics): [www.proinversion.gob.pe](http://www.proinversion.gob.pe)



The main projects for 2019 - 2020 will be:

## Transport Infrastructure

### Lima – Ica Railway (2018-2019)

Design, finance, build, operate and maintain passenger cargo railway of approximately 323 km with intermediate stations located in the cities of Lima and Ica.

Total investment – USD 3,263.9 million

### Third Group of Airports (2018-2019)

Operation, modernization and maintenance of 8 regional airports in the country in the cities of Jaén, Huáncayo, Jauja, Ilo, Rioja, Chimbote, Yarinaguas and Tingo María.

Total investment: USD 600 million

### New Port Terminal of San Juan De Marcona (2019)

Design, finance, build, operate and maintain new port terminal of public use, providing specialized services of storage and load of concentrates of iron and copper, as well as the supplies of mining production

Total investment - USD 540 million

### Longitudinal Sierra Highway Section 4 (2020)

To provide for improvement and rehabilitation works (117 km), initial periodic maintenance (503 km) and maintenance and operation of approximately 970 km of the Longitudinal Sierra Highway, a major national road connecting 12 departments across the entire Andes.

Total investment - USD 464 million

### Peripheral Ring Road (2020)

To build a 33.2 km long beltway from “200 miles Circle” to “Circunvalación Avenue”.

Total investment - USD 2,049 million

## Hydrocarbons

### Wide-Scale Use of Natural Gas. Central and Southern Peru

To design, finance, build, operate and maintain natural gas distribution pipeline networks in seven regions of Peru's Center and South, and their transfer to the Peruvian State at the end of the concession period.

Total investment - USD 400 million

## Water and Sanitation

### Wastewater Treatment System for Lake Titicaca Basin

Development of a solution to the treatment and final disposal of wastewater from townships in the Lake Titicaca basin.

Total investment - USD 262.83 million

## Headwaters and Pipeline Works for Lima's Potable Water Supply (2020)

Design, financing, construction, operation and maintenance of the following new works:

- Expansion of Pomacocha and Huallacocha Bajo reservoirs (to 90 MMC);
- Trans-Andean tunnel (10 km);
- Huachipa II water treatment plant (5 m<sup>3</sup>/s);
- Additional reservoirs (137 000 m<sup>3</sup>);
- South branch line (40 km) inc. 7 reservoirs;
- Interconnecting lines (90 Km);
- Includes the O&M of the following existing facilities:
  - Huachipa water up-take
  - Huachipa I Plant (5 m<sup>3</sup>/s)
  - North branch line (27 km) incl. 4 reservoirs

Total investment: USD 720 million

## Mining

### Algarrobo Mining Project

Exploration, mining operations through an underground mine and processing a mineralized deposit located in the mining concessions Tambo Grande N° 4, Tambo Grande N° 5, Tambo Grande N° 9 and Tambo Grande N° 10, which form "El Algarrobo Project". Design and implementation of water infrastructure projects, using a management model focused on comprehensive sustainable development of mining operations, contributing to water supply for the communities.

Total investment - USD 350 million

## Legislative News

- On February 28, 2019, *Supreme Decree 344-2018-EF*, which approves the regulations of the *Public Procurement Law* became applicable. These new regulations seek to modernize Public Procurement in Perú, allowing the use of trusts as guaranty of payment, as well as modernizes the compliance regulations in order to reduce and avoid corruption cases.
- While the Ministry of Transportation and Communications has already published the priority projects to receive private initiative proposals between April 1 and May 15, 2019 (Lima-Ica railroad and Junín, Huánuco, Cajamarca, Moquegua, Áncash, San Martín, Huánuco y Loreto airports), it is expected that in the near future, other sectors will also publish the list of high-priority projects.
- In October 2018, the new PPP law and its regulations entered in force, and 2019 will be the first year of its implementation. There are still some directives pending to be issued, however, the new regulation should make the PPP bids faster and introduces new mechanisms such as "competitive dialog" (dialogo competitivo) for high complexity projects, which should allow a growth in the PPP market.
- A project to modify the Investment Regulation of Insurance Companies pre-published by the Superintendence of Banking, Insurance and AFP which permits to amplify the scope of the investments of the insurance companies, allowing investment in ETFs and real estate investment funds, among other instruments formerly ineligible for investment by insurance companies.

- Currently, due to certain acquisitions in the past years such as the acquisition of certain media by Grupo El Comercio and the acquisition of one of the main pharmacy chains Mifarma by its largest competitor Inka Farma, the Congress and the executive have been aligned in the promotion and regulation of merger control. While the matter the details of the regulation are still under discussion, the issuance of regulations on merger control is imminent and likely to occur during 2019.
- *Resolution of Superintendence N° 00011-2019-SMV/11* published on February 27, 2019 by the Superintendence of the Securities Market, which modifies the *Latin American Intermediate Market Regulation (Reglamento MILA)* in order to amplify the connection between the Chilean, Colombian and Peruvian securities markets.

More information on the project can be found here:

- [http://www.smv.gob.pe/Frm\\_SIL\\_Detallev1.aspx?data=9DB1E02D2E5DFD8F91340ECD5CC4022555A22C4077CCD450](http://www.smv.gob.pe/Frm_SIL_Detallev1.aspx?data=9DB1E02D2E5DFD8F91340ECD5CC4022555A22C4077CCD450)
- <https://andina.pe/agencia/noticia-smv-busca-elevar-interconexion-dentro-mercados-colombia-chile-y-mexico-742339.aspx>
- On February 4, 2019, the Superintendence of the Securities Market pre-published the *Guidelines for the Qualifications of Independents Directors*, which introduces the obligation of regulated and listed companies to have independent directors, establishes certain qualifications these directors must have, as well as guidelines for the number of directors the company must have.

More information on the project can be found here:

- [http://www.smv.gob.pe/Frm\\_ConsultaCiudadana.aspx?data=68A0A0F9222AD2430BE96413BAE51BB6A06C027236](http://www.smv.gob.pe/Frm_ConsultaCiudadana.aspx?data=68A0A0F9222AD2430BE96413BAE51BB6A06C027236)
- *Superintendence Resolution N° 0009-2019/SMV/01* in which modifies the *Assets Securitization Processes Regulation* which allows the securitization of real estate income trusts.

More information on the project can be found here:

- [http://www.smv.gob.pe/Frm\\_SIL\\_Detallev1.aspx?data=2F17BEEF9443FBFDD362B8199414C87BB3A258E891EAC2A4](http://www.smv.gob.pe/Frm_SIL_Detallev1.aspx?data=2F17BEEF9443FBFDD362B8199414C87BB3A258E891EAC2A4)

## Member Firm Highlights

- Legal advice to Capital Square Partners fund in the transnational acquisition of Aegis Ltd of Essar Group, including the due diligence process and negotiation of procurement contracts and related documents for Peru. The transaction exceeded USD 300 million.
- Legal advice to Excellence Logging Limited - EXLOG, an international oil field services company headquartered in the UK specializing in surface data logging, in the acquisition of the surface data logging business of Weatherford International plc.
- Legal advice to the Canadian mining company Cameco in the acquisition of the largest uranium deposit in Peru, including the negotiation of the acquisition contracts and investment plan for more than USD 500 million.
- Legal advice to the Chilean company Euroamérica in the due diligence process and negotiation of the contracts for the acquisition of 50 percent of shares of Rigel Perú Compañía de Seguros.
- Legal advice to Ravago, leading plastic company, in the acquisition of a local company ("Dispercol") which business is focused on plastic resins in Peru.
- Our firm advised Scansource Inc. in the acquisition of the Intersmart Group of companies.

- Legal advice to Nokia Siemens Network in its merger with Alcatel-Lucent.
- Legal advice to PAI Partners in the acquisition of Swissport International and Swissport GBH Peru for EUR 654 million.
- Legal advice to Macquaire Capital (as part of the consortium between Sempra and Techint) in the evaluation and negotiation for the acquisition of South Peruvian Gas Pipeline.
- Legal advice to SURA Group's AFP Integra in the legal analysis of their investments. We supported AFP Integra in its investments of a Private Equity Funds such as Coller VIII and Hellman & Friedman IX (approximately total commitment of USD 100 million).

## Lex Mundi Member Contact



A **LexMundi** Member

**José Antonio Olaechea, Managing Partner**

[joseantoniolaechea@esola.com.pe](mailto:joseantoniolaechea@esola.com.pe)

**Carlo Viacava, Senior Partner**

[carloviacava@esola.com.pe](mailto:carloviacava@esola.com.pe)

**Estudio Olaechea**

Member Firm for Peru

Tel: 51.1.264.4040

# St. Maarten

Prepared by VanEps Kunneman VanDoorne, *Lex Mundi Member Firm for Curacao* with offices in St. Maarten



## Economy

is based on

## tourism.

Restaurants, hotels, and other tourism-related sectors account for about 45 percent of gross domestic product.

Became a

semi-

autonomous island

## country

within the

## Dutch Kingdom

in 2010.

The financial sector

is important to the

## economy

as it facilitates

## financial

mediation for its

thriving tourism

sector.

## What to Expect in 2019

### Tourism and Hospitality

The economy of St. Maarten is based almost entirely on tourism. It is estimated that 85 percent of all employment is related directly and indirectly to tourism. St. Maarten has one of the highest per-capita incomes in the Caribbean. After hurricane Irma in 2017, which destroyed most of the island, tourism dropped significantly. Thanks to the rebuilding process funded by the Netherlands through the World Bank and the return of large cruise liners to the island the tourism sector in St. Maarten is on an upward trend.

### Shipping

St. Maarten's favorable geographic location and reliable port services attract a large number of vessels annually. The cruise tourism accounts for a steady number of vessels each year.

The activities in the St. Maarten port include container transshipments, ship repairs, bunkering, cruise tourism and marine (underwater) surveys. As a result of the flexible fiscal regime, reliable legal infrastructure and the presence of specialized service providers, St. Maarten is an attractive option for registration of vessels.

St. Maarten's jurisdiction has great conditions for arrests and judicial sales of vessels, through public auction or private sale. Claims (foreign or local) can be enforced very promptly and cost efficiently, while the claimant is in control over the whole process. Almost all costs incurred with the enforcement can be recovered from the sales proceeds. As a consequence of judicial sale in St. Maarten, the vessel will be freed from old claims so that the buyer of the vessel can easily re-register its vessel with a clean title.

### Real Estate and Construction

St. Maarten is currently in the rebuilding process after hurricane Irma in 2017 destroyed large parts of the island. The Netherlands has made considerable funds (EUR 550,000,000) available to St. Maarten through the World Bank to fund the rebuilding process of the island.

## Trends and Projects

### Real Estate and Construction

St. Maarten is currently in the rebuilding process after hurricane Irma in 2017 destroyed large parts of the island. The Netherlands has made considerable funds (EUR 550,000,000) available to St. Maarten through the World Bank to fund the rebuilding process of the island.

This has and will lead to a large amount of construction work being available. Not only small-scale construction work with regards to housing but also large-scale projects such as hotels, the reconstruction of the airport, construction of a new hospital and reconstruction of the harbor.

## Tourism and Hospitality

The tourism sector in St. Maarten is also on the upswing after the effects of hurricane Irma. There is an increase in cruise tourism since the return of large cruise lines to the island due to the quick and effective recovery of cruise-related facilities and activities on St. Maarten. There are plans to start the reconstruction of certain large hotels on the island which will also lead to an influx of work in the construction and hospitality sector.

## Public Sector

As a part of the rebuilding process of St. Maarten there are plans to construct a new hospital which would lead not only to more construction work but also provide better health care facilities for the St. Maarten population. Furthermore, the airport and harbor will also be rebuilt using the funds available from the Netherlands through the World Bank.

## Telecommunications

The largest telecommunications provider on the island, United Telecommunication Services (“**UTS**”) is in the process of being purchased by Liberty Latin America.

## Legislative News

### Tax Legal Framework

Most notably, the income tax brackets have been increased.

## VanEps Kunneman VanDoorne’s Highlights

Assisting:

- Maduro & Curiel’s Bank in the appeal case against a St. Maarten travel agency which is reclaiming 5 years’ worth of license fees, paid to Maduro and Curiel’s Bank for their international transactions worth approximately ANG 250,000.
- JLA Productions in a case against the local insurer Nagico regarding a serious accident which was caused by an employee of JLA Productions on the French side of St. Maarten. JLA Productions paid the damages to the victim and invoked its liability insurance with Nagico. Nagico refused full coverage due to the insurance contract containing a coverage limitation of ANG 90,000. The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba decided in the favor of JLA Productions. This judgment is unique because the Joint Court of Justice ruled that a provision in French St. Maarten law qualifies as a priority rule that needs to be applied on a Dutch St. Maarten insurance contract.
- St. Maarten with an appeals case against several limited liability companies (naamloze vennootschappen) and the State St. Maarten to conduct an examination of witnesses and to make provisional arrangements for the harbor of St. Maarten and the criminal activities being conducted there.
- With the acquisition of a local insurance company in Curaçao and St. Maarten.
- With the acquisition of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) by consortium of Investors (Closing price approx. 300 million).

# St. Maarten

- Victory Park Capital with acquisition financing with respect to acquisition by consortium of Investors of the Caribbean Financial Group (with subsidiaries in Aruba, Bonaire, Curaçao and St. Maarten) (Loan amount USD 125 million).
- With the acquisition of the shares in the St. Maarten government owned telecommunications company United Telecommunication Services to Liberty Latin America.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Focco Lunsingh Scheurleer, Managing Partner**

[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 160

### **Michiel Gorsira, Head of Litigation & Commercial**

[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 110

### **Frank Kunneman, Head of Corporate & Banking**

[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)

Tel: 599.9.461.3400 ext. 254

### **VanEps Kunneman VanDoorne**

Member Firm for Curacao with offices in St. Maarten

# Uruguay

Prepared by Guyer & Regules, *Lex Mundi Member Firm for Uruguay*



## Offshoring

**services** represent  
**18 percent** of total  
**exports**.

The **operations** are  
**focused** on Spanish-  
speaking Latin  
American countries,  
**Brazil, America**  
as a **whole** or  
**globally**.

According to the  
**World Bank**,  
the **Worldwide**  
**Governance**  
**Indicators 2016**,  
Uruguay is the #1  
Democracy Index.

## Reforms

in **recent years**  
have **streamlined**  
the **regulatory**  
**environment**  
but **increased**  
**incorporation costs**.

## What to Expect in 2019

### Uruguay's Outlook from a Global Perspective

The global economic outlook made a U-turn. The intensification of the trade war between the U.S. and China was a turning point. A year ago, international financial press talked about boom; the word recession is now increasingly appearing. This change in global perspectives is determinant for EMs where short run fluctuations in economic activity are mostly explained by external factors. The story is different for the long run where structural reforms that improve competitiveness are key.

Thanks to the tensions generated by the trade war with China, consumer and business confidence in the U.S. look down after hitting record levels in September 2018. The Federal Reserve explicitly revealed its concern and announced to be very patient with the interest rate hike. After a sharp increase observed since 2017, the 10-year T-bonds rate declined from above 3 percent to close to 2.5 percent.

All indicators of progress in the manufacturing industry are synchronized stagnant, both in advanced economies and in China. The IMF has just reduced its global growth projections and suggests that it may have fallen short. In Europe, the slowdown is widespread. Business expectations in the manufacturing industry reached its minimum in five years and consumer confidence shrinks. China is also cooling off. Retail sales grow much less than before. Mobile sales fall and, for the first time in 28 years, car sales also fell. If the Chinese tighten their belts, the Chinese economy naturally suffers but also the global companies feel a strong shake up in their sales.

Paradoxically, the cooling of global growth could be good news for us. This paradox was clearly seen last year, when the global economy was flying, but the expectation of rising interest rates stopped investment in EMs. On average, the stock markets of emerging economies fell almost 20 percent in 2018.

A pause in interest rate increases is a window of opportunity for EMs in general and Latin America in particular. Although we will have lower growth in external demand due to the global economic slowdown, this effect could be more than compensated by fresh FDI ("**Foreign Direct Investment**") inflows.

An interest rate hike pause also affects the international price of foods that are commodities whose price tends to move inversely to interest rates. If the expectation of a rise in the global interest rate declines, investment funds look for better alternatives in commodities, which pushes up their price.

There is a window of opportunity. However, in order to attract new **FDI**, Uruguay should significantly improve its competitiveness to compete with other Latin America's economies. It is critical for the public authorities to introduce an agenda of reforms that includes trade liberalization, regulatory simplification and infrastructure improvements. Uruguay is able to do that and offer again attractive investment projects in agribusiness and tourism: the competitive-advantage sectors of the economy.

## Trends and Projects

### M&A Opportunities

Guyer & Regules is currently managing several disposal mandates along various industries. Each of these projects are at different stages, with some of them getting to the stage of receiving non-binding offers while others are still in preliminary stages. The most relevant are:

- 50 MW on-shore wind-farm located in Uruguay, with a 20-year PPA agreement on a take-or-pay basis with the state-owned electric company;
- elderly care operations in Uruguay;
- port-logistics operator;
- local chain of boutique hotels;
- free-trade zone and industrial parks;
- advertising agency;
- real estate projects focused on premium residential homes or premium office buildings seeking for investors at equity level; and
- relevant agricultural lands.

### Upcoming Large Infrastructure or Energy Projects

Guyer & Regules is currently working in very interesting and big projects mainly related to infrastructure (PPP Projects) and renewables projects (either for the sponsor, equity investments and /or financial institutions). Those projects and others are mentioned below.

### Industry/Private Investment

#### New UPM Pulp Mill

The Uruguayan government signed an investment agreement with UPM (Nasdaq Helsinki: UPM1V) for the installation of a second pulp mill in the country. If the investment is completed, the new pulp mill would be located in the department of Durazno creating important business opportunities. According to the dimensions of this project, it is considered one of the most relevant for the country due to the direct impacts it will generate. For example: increase in annual exports, increase in annual collection for the government and the creation of a significant number of jobs, direct, indirect and induced by the new production chain.

### Oil/Public Tender

#### ANCAP will open a permanent process for the public tender of blocks

Within the oil exploration policy that Uruguay has been carrying out, national oil company ANCAP has decided to change the format of the public tender in different rounds and announced that a "permanent process for the public tender of blocks" will be called for. Different from the format used before, the new format will set certain tender conditions and will leave blocks permanently open to receive bids from companies. This new format allows the companies to bid at the time they deem right and it does not set specific conditions to each of the bidders.

## Energy

### Investment Opportunities on Renewables Energy Projects

Investment opportunities and project bonds: In 2008 Uruguay decided to change its energy matrix under an Energy Public Policy approved by all parties. As a consequence, almost 1,200 MW were installed in the last 4 or 5 years under wind farm projects. Considering the characteristics of such projects (off taker is UTE - the main state-owned company in electricity, long term -20 years-, expected returns, payments in USD, adjustment of the price, Sovereign Guaranty, etc.) those projects have attracted much interest from investment funds (which decided to enter into the equity after COD). Also, some international financial institutions and sponsors are considering the possibility of refinancing the original financing (project finance structures) through “project bonds”.

## Legislative News

The following laws have been approved recently:

### **Law No. 19.670 – Government Budget Approval Act**

The Year 2017 Budget Approval Act is an appropriation act that entered into force on January 1, 2019 in general. Such law provides for funds to specific government projects, but also includes plenty of non-budgetary provisions, like powers for collection of fines, new rules on data privacy (approving for Uruguay the General Data Protection Regulation Rules), interpretation of port regulations and entrance permits, medical mutual insurance provisions and many more provisions.

Text of the law:

- <https://www.impo.com.uy/bases/leyes-originales/19670-2018>

Reports:

- Personal data: [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-cambios-a-normativa-sobre-proteccion-de-datos-personales/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-cambios-a-normativa-sobre-proteccion-de-datos-personales/)
- Tax and Customs: [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-ley-19-670-ley-de-rendicion-de-cuentas-y-balance-de-ejecucion-presupuestal-ejercicio-2017/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-ley-19-670-ley-de-rendicion-de-cuentas-y-balance-de-ejecucion-presupuestal-ejercicio-2017/)

### **Law No. 19.659 – Banking Bankruptcy Process Act**

The Banking Bankruptcy Process Act newly regulates the closing process of a defaulted bank and the rules for the protection of savings and deposits. For doing so, it amended the main laws on banking and financial institutions of the country, in different regulations of the Banking Intermediation Act (Law 15.322, as amended), the Charter of the Central Bank of Uruguay (Law 16.696, as amended), the Financial System Restructuring Act of 2002 (Law 17.613, as amended) and the General Bankruptcy Act (Law 18.387, as amended).

Text of the law:

- <https://www.impo.com.uy/bases/leyes-originales/19659-2018>

General report:

- [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-ley-de-proceso-de-resolucion-bancaria/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-ley-de-proceso-de-resolucion-bancaria/)

## **Law No. 19.636 – International Arbitration Act**

The *International Arbitration Act* provides for general rules on international commercial arbitration, in defect of multilateral or bilateral agreements (such as investment treaties), in a modern regulation that updates the subject in the country. This regulation is specific to all international commercial arbitration and is additional to the voluntary national arbitration proceedings provided by the *General Judicial Proceedings Code*.

Text of the law:

- <http://www.impo.com.uy/bases/leyes-originales/19636-2018>

General report:

- [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-uruguay-se-alinea-con-el-mundo-se-aprueba-por-ambas-camaras-la-ley-de-arbitraje-comercial-internacional/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-uruguay-se-alinea-con-el-mundo-se-aprueba-por-ambas-camaras-la-ley-de-arbitraje-comercial-internacional/)

## **Law No. 19.731 – Credit, Debit and Electronic Cards System Regulation Act**

The *Card System Regulation Act* provides the first comprehensive regulations on the use of credit, debit and electronic money cards, as well as determining by law liabilities on card cloning, client identification and relations between issuer, cardholders, merchants and acquirers. The main focus of the law is in card-present transactions, and most of its solutions are not entirely compatible with e-commerce transactions and the most modern standards in the card industry.

Text of the law:

- <https://www.impo.com.uy/bases/leyes-originales/19731-2018>

General report:

- [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-nueva-normativa-sobre-tarjetas-de-creditotarjetas-de-debito-e-instrumentos-de-dinero-electronico/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-nueva-normativa-sobre-tarjetas-de-creditotarjetas-de-debito-e-instrumentos-de-dinero-electronico/)

## **Laws No. 19.729 And 19.691 – Disabilities Paid Leave and Employment of Disabled Workers Acts**

The *Disabilities' Paid Leave Act of 2018* (Law No. 19.729) amends the prior *Disabilities' Paid Leave Act of 2008* (Law No. 18.345) and creates new paid leave days for workers who are parents of children with disabilities in case of medical controls of the child, and provides a certain amount of paid hours in case of terminal diseases of close relatives.

The *Employment of Disabled Workers in the Private Sector Act* (Law No. 19.691) provides that companies with more than 25 employees must provide for mechanisms to employ a certain minimum number of people with disabilities (either physical or mental) within 4 years of the entrance into force of the law, and with milestones of hired people set for each year until the end of the term.

Text of the laws:

- <https://www.impo.com.uy/bases/leyes-originales/19729-2018>
- <http://www.impo.com.uy/bases/leyes/19691-2018>

Report:

- Law No. 19.729: [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-novedades-en-materia-laboral-y-de-seguridad-social-para-el-2019/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-novedades-en-materia-laboral-y-de-seguridad-social-para-el-2019/)
- Law No. 19.691: [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/on-line-news/informe-especial-aprobacion-de-ley-de-empleo-en-el-ambito-privado-para-personas-con-discapacidad/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/on-line-news/informe-especial-aprobacion-de-ley-de-empleo-en-el-ambito-privado-para-personas-con-discapacidad/)

## **Law No. 19.655 – Sustainable Use of Plastic Bags Act**

The *Sustainable Use of Plastic Bags Act* provides for a general frame for regulating the import, sale and taxing of plastic bags to the general public, in order to discourage its usage. With the application of the tax and the setting of a minimum sale price, no plastic bags shall be free. The law was afterwards regulated by a Presidential Decree, and the first regulations shall enter into force in July 2019.

Text of the law:

- <https://www.impo.com.uy/bases/leyes/19655-2018>

General report:

- <https://www.guyer.com.uy/es/uncategorized/informe-especial-proyecto-de-ley-de-control-de-uso-de-bolsas-plasticas/>

## **Law No. 19.678 – Insurance Policies Act**

The *Insurance Policies Act* was approved in 2018 and was the first major overhaul of the insurance contract and policy regulation since the approval of the *Commerce Code in 1865*. It regulates the relations between policyholders and the insurers and reinsurers, providing new compulsory regulations on the contracts and excluding certain rules from the contracts that can be signed with clients. The law shall only apply to those new insurance contracts or renewals of prior insurances granted after its entrance into force in November 2018.

Text of the law:

- <https://www.impo.com.uy/bases/leyes/19678-2018>

General report:

- <https://www.guyer.com.uy/es/uncategorized/informe-especial-aprobacion-del-nuevo-regimen-legal-aplicable-a-los-contratos-de-seguro/>

## **Bill on Common Public Acquisition Proceedings in the MERCOSUR**

The *Treaty on Common Public Acquisitions Proceedings in the MERCOSUR*, signed in Brasilia, Brazil, on December 21, 2017, was submitted to the Parliament for approval and validation as a law. The Treaty provides for a unified process of purchase of goods and services for all State Members of the MERCOSUR, as well as the derogation of any national treatment against the products or services of other MERCOSUR members in public acquisitions.

Text of the bill:

- [https://parlamento.gub.uy/documentosyleyes/documentos/repartido/representantes/48/1104/0/pdf?width=800&height=600&hl=en\\_US1&iframe=true&rel=nofollow](https://parlamento.gub.uy/documentosyleyes/documentos/repartido/representantes/48/1104/0/pdf?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow)

## **Bill on The Integral Treatment of Residues**

The proposed bill regulates the prevention and reduction of the adverse impacts of waste and residues, providing for compensation measures such as soil remediation, water waste treatments and compulsory plans for waste disposal.

Text of the bill:

- [https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/48/1919/0/PDF?width=800&height=600&hl=en\\_US1&iframe=true&rel=nofollow](https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/48/1919/0/PDF?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow)

Briefing:

- <https://www.guyer.com.uy/es/news/informe-especial-n82-alerta-del-grupo-regulatorio-y-ambiental-gr-proyecto-de-ley-de-gestion-integral-de-residuos/>

## **Bill on Health Warnings on Food**

The bill provides for specific rules in labeling of foods which were not packed in the presence of the client. These health warnings to be added are related to similar rules applied in other countries, but the bill provides a different standard (in accordance to a Presidential Decree that was already enacted in 2018 and that shall enter into force in 2019).

Text of the bill:

- [https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/48/2118/0/PDF?width=800&height=600&hl=en\\_US1&iframe=true&rel=nofollow](https://parlamento.gub.uy/documentosyleyes/documentos/versiones-taquigraficas/senadores/48/2118/0/PDF?width=800&height=600&hl=en_US1&iframe=true&rel=nofollow)

Related report:

- [https://www.guyer.com.uy/es/what\\_we\\_do/news-knowledge/guyer-en-busqueda/contenido-guyer-en-busqueda/nuevo-rotulado-frontal-de-alimentos/](https://www.guyer.com.uy/es/what_we_do/news-knowledge/guyer-en-busqueda/contenido-guyer-en-busqueda/nuevo-rotulado-frontal-de-alimentos/)

## **Guyer & Regules' Highlights**

Guyer & Regules is considered Uruguay's blue-chip firm and the first choice for international and domestic complex legal, accounting and tax work. Such reputation is grounded on the largest group of the most experienced partners in the country, who lead a solid team of internationally trained professionals with experts in every field of business law and promote a culture of innovation within the firm.

### **Main International Areas of Practice and Work Highlights**

#### **Banking and Finance**

Guyer & Regules' leadership is undisputed advising 66 percent of the private banks active in Uruguay and two out of three large private pension fund managers. It has also been the only Uruguayan firm in the past 30 years in Uruguayan sovereign debt deals. Recent deals include: acted as deal counsel in the second issuance of the record breaking USD 450 million notes program on behalf of toll road operator Corporación Vial del Uruguay (CVU), in what is thought to be the country's largest ever corporate offering on the local market; helping Uruguay's Central Bank adopt an electronic version of its own currency, becoming the first country in history to do so, which was recognized as "Deal of the Year" by Latin Lawyer in 2018; assisting the joint book-runners BBVA Securities Inc., Citigroup Global Markets Inc., HSBC Securities (USA) Inc. for Uruguay's longest global debt bond issued in its history made by the Government.

#### **Corporate/M&A**

As Chambers & Partners states, Guyer & Regules "continues to set the pace in the corporate sphere" having participated in 63 percent of major M&A deals made public in Uruguay over the past years and representing 8 of the top 12 Uruguayan leading exporting companies in 2018. As a few highlights, the firm participated in the most important Uruguayan M&A transaction of the year to date assisting COCA-COLA FEMSA in its takeover of Montevideo Refrescos SRL, the local subsidiary of The Coca-Cola Company. Advised an affiliate of Merck Animal Health in the acquisition of Prondil S.A., a Uruguayan corporation that produces and commercializes animal vaccines for export being this transaction, one of the most important acquisitions in Uruguay during 2017. And assisted Chile's Enjoy in the purchase of 55 percent shares held by U.S. based Caesars in the Uruguayan Casino Conrad Punta del Este.

## Tax and Accounting

The team is recognized for its “heavyweight practice at the forefront of the market with a respected bench of practitioners” by Chambers and Partners. It is by far the most senior team on the market, formed by lawyers and CPAs which allows for greater depth and breadth on tax matters. Recent work highlights include advising the banks in the tax planning for the first global bond in nominal pesos issued by the Republic of Uruguay in the international market, assisting Agropecuaria del Litoral S.A. to structure the creation of a financial trust that issued USD 50 million of “mixed” securities (“títulos mixtos”) in Uruguay and advising Goldman Sachs in its first investment in Uruguay with the USD 140 million acquisition of approx. 60 percent stake in Tienda Inglesa, a Uruguayan supermarket chain.

## Projects and Energy

Our Projects and Energy team is the largest of its kind in Uruguay. Guyer & Regules is “highly sought after to advise on the full range of energy and natural resources matters”, as Chambers & Partners states, with an impressive market share of renewable and oil and gas transactions. Partners and associates are dedicated to the energy and infrastructure sector in consulting, contracting, financing and in the day to day business. Our excellent and reputable team has advised clients spanning the entire industry, from the developers behind Uruguay’s first solar project to the major oil and gas companies involved in the country’s nascent offshore sector. In the infrastructure field our professionals have assisted sponsors and also financial entities. Guyer & Regules is leading the market. The pioneering role we play means clients regularly demand our counsel for power purchase agreements, PPPs, concession agreements, project financing and engineering procurement and construction agreements and EPC and OyM agreements. Our compact, top-notch team is a solid pick for even the most complex of deals. Clients highlight the breadth of the team’s expertise, whose recent achievements include advising Total on a 35 percent farm-out agreement with ExxonMobil and a 15 percent farm-out agreement with Statoil, assisting Acciona (Spain) in all legal aspects of the Central Railroad Project (a USD 1000 million project) including the bid process, permits and authorizations, corporate and tax structure, bankability issues and other related aspects. And also advising Inter-American Investment Corporation in the financing of two Uruguayan companies owned by Atlas Energy Group which have developed two solar plants in Salto, Uruguay for the production and sale of energy to the Administración Nacional de Usinas y Trasmisiones Eléctricas - UTE (National Administration of Power Stations & Power Transmissions). The Firm counts with the greatest and experienced Energy & Infrastructure team in Uruguay.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Alvaro Tarabal, Partner**

[atarabal@guyer.com.uy](mailto:atarabal@guyer.com.uy)

Tel: 598.2902.1515 ext.178

### **Nicolás Herrera, Partner**

[nherrera@guyer.com.uy](mailto:nherrera@guyer.com.uy)

Tel: 598.2902.1515 ext.120

### **Guyer & Regules**

Member Firm for Uruguay

# USA, Puerto Rico

Prepared by McConnell Valdés LLC, *Lex Mundi Member Firm for USA, Puerto Rico*



All manufactured goods can be labeled as **Made in the U.S.A.**, a **sign of credibility** that **inspires trust** and **confidence** among **customers** around the world.

**Top export**  
Over 2,000 businesses related to the **creative industry** and **tech/innovation endeavors employ** more than **14,000 people**.

**Eleven state-of-the-art seaports** that literally **circle the island**, together account for hundreds of thousands of tons of cargo **import/export** per year.

## What to Expect in 2019

Puerto Rico is on the road to recovery after the major impact that Hurricanes Irma and Maria had on the island's infrastructure and economy. The significant damages and losses caused by the hurricanes combined with the slow economic growth that Puerto Rico endured for 12 years, placed Puerto Rico at the beginning of 2018 on a very difficult path. Yet, these challenges have brought new opportunities for Puerto Rico in 2019.

It should be noted that Puerto Rico is an unincorporated territory of the United States of America. As such, Puerto Rico is subject to the authority of the United States Congress. In addition, Puerto Rico and its residents are also subject to most federal laws. The U.S. Congress has granted Puerto Rico broad authority over matters of internal governance—notably, by approving Puerto Rico's constitution in 1952.

In 2016, the U.S. Congress approved, and President Barack Obama signed a federal law, commonly known as *PROMESA*, authorizing the Government of Puerto Rico to restructure its debt and establishing a Financial Oversight and Management Board for Puerto Rico with broad powers of fiscal control.

Among the important sectors and trends for Puerto Rico for 2019 and beyond are the following:

### Disaster Relief and Recovery Spending

The recovery phase, after the damages Puerto Rico suffered as a result of Hurricanes Irma and Maria, is being financed by different sources of recovery funds. It is expected that Puerto Rico will receive approximately USD 82 billion during the next 10 years coming from insurance proceeds and from diverse federal recovery programs. The assignment of these funds provided a major push to the Puerto Rico economy during 2018 and during the first quarter of 2019. These funds are expected to keep causing a positive impact in the economy during the next years. It is expected that the construction industry, in particular housing construction, as well as other infrastructure projects will be strongly impacted once the federal funds are received.

### Growth in Energy and Power Sector

New initiatives are being introduced that will have a lasting impact on the island's economy, for example, Puerto Rico laws enacted to privatize a large portion of the operations of the government-owned energy company that currently provides energy to the whole island. Many other energy-related initiatives are underway such as the development of independent power grids throughout the Island as well as to provide resilience to the energy system in case of new disasters.

## Government of Puerto Rico's Public-Private Partnerships (P3s)

The Government of Puerto Rico developed a model of Public-Private Partnerships ("**P3s**") that was deployed for the administration of the island's largest international airport and for the administration of large section of its highways. Currently, additional public-private projects are being developed using the same model, including potential projects in the energy sector, regional airports and maritime ports.

## Opportunity Zones

In 2017, U.S. Congress enacted the *Tax Cuts and Jobs Act* to encourage long-term investments in low-income communities in the United States, including Puerto Rico. This law provides federal tax benefits (such as deferral, reduction, and exemption of capital gain taxes) to entities and individuals that invest their capital gains in economically-distressed areas, known as "Opportunity Zones". In the case of Puerto Rico, 98 percent of the Island qualifies as an Opportunity Zone, therefore the Island is becoming a magnet for investment coming from the U.S. in exchange for the tax benefits. A local law is being considered to provide similar incentives to investors subject to Puerto Rico taxes.

## Trends and Projects

### Disaster Relief Spending

The Puerto Rico Fiscal Plan, certified by the Financial Oversight and Management Board for Puerto Rico, projects that USD 82 billion of disaster relief funding in total, from federal and private sources, will be disbursed in the reconstruction effort. According to the Puerto Rico Fiscal Plan, it will be used by state and local governments, non-profit organizations, citizens and businesses for a mix of individual assistance (e.g., reconstruction of houses, personal expenditures related to the hurricane such as clothing and supplies), public assistance (e.g., reconstruction of major infrastructure, roads, and schools), and to cover part of the Government of Puerto Rico's share of the cost of disaster relief funding (states often must match some portion of federal public assistance spend). The disaster relief funding will assist in the development of housing projects (rehabilitation, new housing and other initiatives), retail and commercial facilities, industrial/manufacturing complexes, hotel development, business incubators and accelerators, revitalization of urban centers, infrastructure initiatives, mitigation projects (including USD 2 billion to energy related projects) and many other initiatives.

The Government of Puerto Rico's recovery effort represents an opportunity to transform the Island by implementing solutions that are cost effective, resilient and forward looking that harness innovative thinking and best practices and revitalize economic growth.

### Public-Private Partnerships and Infrastructure

**P3s** initiatives continue to be key on achieving the island's recovery and transformation in the wake of Hurricanes Irma and Maria. New business opportunities will be presented in Puerto Rico, with a focus on infrastructure sectors such as transportation and energy.

The Puerto Rico Public-Private Partnerships Authority is currently in the procurement process for several priority projects under the **P3** mechanism, including: (i) managing and operating Puerto Rico's electric power transmission and distribution ("**T&D**") system, including the administration of federal disaster recovery funding, pursuant to a long-term contract; (ii) the optimization of the Puerto Rico Aqueduct and Sewer Authority's ("**PRASA**") "metering system and customer experience"; and (iii) the reparation, expansion, finance, maintenance and operation of certain marine cruise terminals in the San Juan Bay.

## Energy and Power Sector

The Puerto Rico Electric Power Authority (“**PREPA**”) the vertically integrated utility that is the sole supplier of retail electricity on the Island, is undergoing a radical transformation. **PREPA** used to be a self-regulated utility until the passage of the *Energy Transformation and RELIEF Act of 2014*, when the Puerto Rico Energy Commission, now known as the Puerto Rico Energy Bureau (“**PREB**”), was created. The **PREB** performs functions similar to those of public utility commissions in the United States, including among others, the approval of **PREPA**'s plans to serve the load supplied by the electric grid and its rates.

More recently, the government has promulgated legislation to provide the framework for the sale or transfer of **PREPA**'s assets, functions and services. Generally, the proposed transactions would be carried out through the **P3** under the *Public-Private Partnerships Act of 2009*. The operation and administration of **PREPA**'s **T&D** system would be transferred to a private concessionaire, with **PREPA** retaining ownership of the system. Meanwhile, **PREPA**'s generation assets would be sold.

The first phase of **PREPA**'s transformation involving the transfer of the **T&D** system is currently underway, with several shortlisted companies participating in a request for proposals. The second phase involving the sale of **PREPA**'s generation assets has yet to commence.

Recent Puerto Rico legislation regarding the energy sector also promotes:

- Integration of renewable energy resources, including generating 100 percent of the energy delivered by the grid with such resources by 2050.
- The creation of microgrids and their interconnection with the grid.
- Integration of distributed energy resources and expedited interconnection procedures.

## Opportunity Zones

The Opportunity Zones program is a new community development program established by the U.S. Congress in the *2017 Federal Tax Reform (the Tax Cuts and Jobs Act of 2017)* to encourage long-term investments in low-income urban and rural communities in the United States, known as Opportunity Zones. This new program provides federal tax incentives for investors to re-invest their capital gains from prior investments into Qualified Opportunity Funds (“**QOF**”) that are dedicated to investing into Opportunity Zones. For Puerto Rico, a new special rule was approved to assist the island with the recovery after Hurricanes Irma and Maria. This rule provides that in Puerto Rico each population census tract that is a low-income community is automatically designated as an Opportunity Zone. In light of this rule, 98 percent of the Island is considered an Opportunity Zone.

## Offshore Banking

With over 80 combined international banking entities (“**IBEs**”) and international financial entities (“**IFEs**”), Puerto Rico's financial sector continues providing significant tax incentives and strategic opportunities for offering financial services and products in U.S. dollars to clients outside Puerto Rico, from a reputable jurisdiction that also offers excellent financial and communications facilities and networks. **IFEs** are licensed and regulated by the Office of the Commissioner of Financial Institutions pursuant to *Act No. 273* of September 25, 2012, as amended (“**IFE Act**”) and *Regulation No. 5653*. The **IFE Act** replaced the International Banking Entities (“**IBEs**”) under the former *International Banking Regulatory Act, Act No. 52* of 1989, and offers tax incentives to **IFEs** requirements established under the **IFE Act**.

## Legislative News

### Opportunity Zones

The Opportunity Zone program was established through a recently enacted U.S. law that provides tax benefits to investors subject to federal taxes. In addition, a bill was filed before the Puerto Rico legislature to provide similar tax benefits to Puerto Rico investors on their capital gains. Under the pending Puerto Rico bill, the funds established, pursuant to the federal law, to invest in Opportunity Zones in Puerto Rico will receive favorable tax treatment in its Puerto Rico source income subject to Puerto Rico taxes. The bill being considered is currently pending in a Conference Committee of the Puerto Rico's House of Representatives and Senate.

### Puerto Rico Tax Reform

On December 10, 2018, *Act No. 257-2018* (the "**Tax Reform**") to amend the *Puerto Rico Internal Revenue Code of 2011*, as amended, was enacted. The **Tax Reform** seeks to address imperfections in the Puerto Rico tax system to stimulate economic growth, promote voluntary compliance with tax laws, redistribute the tax burden, and implement mechanisms to combat tax evasion. Following are a few highlights:

- The limitation of Net Operating Losses carryover deduction increased from 80 percent to 90 percent of net income.
- The corporate normal tax is reduced from 20 percent to 18.5 percent. The highest corporate income tax rate is thus reduced from 39 percent to 37.5 percent.
- The source of income rules is modified to provide that services rendered to any agency or instrumentality of the Government of Puerto Rico, public corporation, the Legislative and Judicial branches, and municipalities will be considered Puerto Rico source income even if the services are rendered outside Puerto Rico.
- The concept of Successor Taxpayer is introduced when a taxpayer acquires the assets or an interest in a business and there is substantial similarity in the operations and owners of both entities before and after the transfer. The successor taxpayer becomes jointly and severally liable for taxes with the person principally liable for the tax.
- Puerto Rico's Department of the Treasury is authorized to enter into agreements with government vendors to offset any pending invoice against any outstanding tax debt other than the Sales & Use Tax and convert the amounts owed by the government into tax credits.

### Puerto Rico Tax Incentives Code

The Government of Puerto Rico is proposing a new *Tax Incentives Code* that will compile existing tax incentives programs into one uniform code and regulatory process to maximize the efficiency and transparency of incentives programs in Puerto Rico. The new *Tax Incentives Code* will continue to promote economic growth through capital investment, technological innovation, and the creation of jobs.

If enacted in 2019, the new statute will adapt the programs to Puerto Rico's fiscal reality and implement accountability methods to assure compliance and quantify the aggregate impact of the incentives on the economy of Puerto Rico. The *Code* will continue to promote the development of industries such as tourism, manufacturing, technology, export services, film, and international finance.

### Energy Reform

McConnell Valdés published on June 25, 2018 a brief summary of the *Puerto Rico Electric Power System Transformation Act*, that governs the establishment of public-private partnerships ("**P3**") with respect to assets, services, and facilities of the Puerto Rico Electric Power Authority ("**PREPA**"), and the sale of its generation assets. A link to this summary is provided here: [Puerto Rico Electric Power System Transformation Act \(Act 120-2018\)](#)

## Sports Betting

Sports gaming legislation is most likely to be approved during 2019. The venues to be authorized by legislation remain to be seen but the Government of Puerto Rico is inclined to open the market beyond casinos and include mobile wagering.

## McConnell Valdés LLC's Highlights

Founded in 1946, McConnell Valdés is Puerto Rico's largest and oldest law firm. With more than 100 attorneys, it is also the largest in the Caribbean, and one of the largest Hispanic-owned law firms in the world. All our attorneys are bilingual (Spanish and English), and many are licensed and practice in federal and state courts, both in Puerto Rico and in various U.S. jurisdictions. As Puerto Rico's premiere law firm, we cover all aspects of Puerto Rico law. The firm is divided into six practice groups: Corporate; Environmental, Energy and Land Use; Labor and Employment Law; Litigation; Real Estate and Finance; and Tax.

### Government Affairs Practice Area

McConnell Valdés has the largest – and one of the most influential – government affairs groups in Puerto Rico, has grown exponentially and has given its Corporate Practice Group a distinctive advantage in view of the implementation of the *Puerto Rico Oversight Management and Economic Stability Act* ("**PROMESA**") and the award by the U.S. Congress of over USD 20 billion to support long-term disaster recovery for Puerto Rico after being affected by two major natural disasters (Hurricanes Irma and María) ("**Recovery Funds**"). Both **PROMESA** and the **Recovery Funds** have dramatically changed Puerto Rico's governmental, financial and commercial landscape. In each case, new challenges and opportunities have arisen for the Corporate Practice Group to assist clients to jump-start Puerto Rico's economy and help the island achieve long-term, sustained economic growth.

The firm's ability to work on multi-point complex transactions has allowed it to address our clients' needs in facing the challenges brought by these changes, especially on three major areas of recent growth: (i) Oversight Board/**PROMESA** Restructuring Processes; (ii) Community Development Block Grant – Disaster Recovery ("**CDBG-DR**") Program Funds/Opportunity Zones Program Incentives; and (iii) Public Private Partnerships ("**P3s**").

### PROMESA Task Force

This pioneer group is unique and was created upon enactment of **PROMESA**, a bankruptcy-like restructuring processes under U.S. federal law. It draws on the skill sets and expertise of some of the most experienced practitioners in the restructuring, insolvency, government affairs, real estate, creditors' rights, and corporate and financing practices, both in Puerto Rico and in Washington, D.C. We are currently active in litigation and representation under debt adjustment proceedings under Title III and negotiations and approval of Qualifying Modifications under Title VI, as well as representing clients before the Oversight Board, the Government of Puerto Rico and its instrumentalities, among other

### PROMESA-related matters

Recovery Funds. Its Recovery Financing Practice Team combine substantive experience and detailed knowledge of federal recovery programs, affordable housing finance programs, public financing and procurement, and have access to key decision-makers, both in Puerto Rico and Washington, D.C. With offices in Puerto Rico, Washington, D.C. and Florida, we are uniquely positioned to guide clients with the financing of their recovery efforts as well as with their housing, infrastructure and economic development projects.

## Public-Private Partnerships

We have extensive experience in project finance and complex **P3** transactions and have been a leader in developing public-private partnerships for high-profile infrastructure projects. From toll roads to alternative solar and wind power energy projects, our full-service Infrastructure/Private-Public Partnerships Practice group regularly counsels clients involved in Puerto Rico's most significant **P3** projects. We made history by representing the Abertis/Goldman Sachs consortium in the toll-road related USD 1.1 billion transaction that was the first public-private partnership established under the *Puerto Rico Public Private Partnerships Act of 2009* (the "**P3 Act**"). We currently represent Aerostar Airport Holdings, the operator of the Luis Muñoz Marin International Airport, which was the second public-private partnership established under the **P3 Act**, as well as several clients involved in the management of major entertainment venues, such as the Coliseo de Puerto Rico and the Puerto Rico Convention Center. We also advised in the formation of the Puerto Rico P3 Association and continue serving as its counsel.

## Energy Sector

Represented and advised major U.S. nonprofit organization in connection with a USD 20 million transaction involving the installation of microgrids in approximately 100 public schools throughout Puerto Rico, which would serve as shelters during emergencies. Such microgrids would power essential areas including the kitchen, the shelter area, and water pumps.

Represented and advised a Fortune 50 pharmaceutical company in connection with the negotiation of a combined heat and power purchase agreement involving a 3 MW system which would supply the majority of the electrical and thermal energy needs of its manufacturing facility.

## Tax

Assisted client with all Puerto Rico tax and complex tax incentives aspects of merger between Dow and DuPont, including the reorganization of the Puerto Rico operations, and the sale of the stock in DuPont Agrichemical Caribe Inc. to Terumo. Work included tax planning, grant amendments and transfers, and negotiating closing agreement with Puerto Rico Treasury Department to adjust *Act 154* excise tax employment baseline to continue claiming *Act 154* excise tax credits.

## Banking and Financial Services

Represented major Puerto Rico banking institution, as agent to a bank syndicate, in the negotiation for the termination of two irrevocable guaranties issued by the Government Development Bank for Puerto Rico ("**GDB**") and the Puerto Rico Tourism Development Fund ("**TDF**"), respectively for an amount of up to USD 158,000,000.

Represented Bank of Nova Scotia in the sale of a promissory note in the original principal amount of USD 200,000,000.00. The Note was issued by Puerto Rico Electric Power Authority a public corporation and government instrumentality of the Commonwealth of Puerto Rico (currently in a restructuring process under **PROMESA** Title III), as borrower, to Scotiabank de Puerto Rico, as holder.

## Mergers and Acquisitions

Served as Puerto Rico counsel to GE Industrial of PR LLC, GEA Caribbean Export, LLC and Caribe GE International of Puerto Rico, Inc. in the sale of the industrial solutions business to ABB Verwaltungs Ltd, the Swiss power technology and automation group ("**ABB**"), as part of a global asset and stock purchase transaction. In Puerto Rico, the transaction encompassed advising the client on corporate, real estate, tax, employment, land use and environmental matters in the asset sale of the industrial solutions business (which included five sites and close to 1,000 employees) and the subsequent sale of equity to **ABB**.

## Lex Mundi Member Contact



A **LexMundi** Member

**Arturo J. García Solá, Managing Director**

[ajg@mcvpr.com](mailto:ajg@mcvpr.com)

Tel: 1.787.250.5632

**Rubén Méndez Benabe, Chair, Corporate Practice Group**

[rbmx@mcvpr.com](mailto:rbmx@mcvpr.com)

Tel: 1.787.250.5621

**Patricia George-Iguina , Vice Chair, Real Estate and Finance Practice Group**

[pgi@mcvpr.com](mailto:pgi@mcvpr.com)

Tel: 1.787.250.5809

**McConnell Valdés LLC**

Member Firm for USA, Puerto Rico

# Venezuela

Prepared by LEGA, Lex Mundi Member Firm for Venezuela



**Oil revenues** account for about **98 percent** of **export earnings**.

Apart from **petroleum**, the **country's natural resources** include **natural gas, iron ore, gold, bauxite, diamonds** and **other minerals**.

**Industries** include, agricultural products, livestock, raw materials, machinery and equipment, **transport equipment**, construction materials, medical equipment, **pharmaceuticals, chemicals, iron** and **steel products**.

## What to Expect in 2019

As it has been during the last years, 2019 will be another key year for the future of Venezuela. After seriously questioned presidential elections held on May 20, 2018, Nicolas Maduro was re-elected for a 6-year term, starting on January 10, 2019. Those elections were called by a National Constituent Assembly ("**NCA**") which was unconstitutionally called by Maduro to face an increasing unrest of the population during 2018. In order to assure full control of the **NCA** Maduro did not call for a public vote to decide if an **NCA** should be called or not, as the *Venezuelan Constitution* mandates. On the contrary, Maduro called the elections for the **NCA** and the National Electoral Council accepted that call without questioning. Those elections were against any electoral law principle and the government's party took 100 percent of the positions that compose the **NCA**.

The **NCA**, which according to the *Constitution*, is only competent to draft a new *Constitution*, started to take decisions to affect the day-to-day politics in the country. One of them was to call for a presidential election on May 20, 2019, more than 7 months before the end of the presidential term, and under conditions that were not acceptable by the opposition. After winning an election in those terms, most of the international community did not recognize the validity of the new term, which was supposed to start on January 10, 2019. Assuming that those elections were null and void, the *Venezuelan Congress*, the National Assembly, considered that there was no elected president to start the new presidential term, and on the basis of article 233 of the Venezuelan Constitution, the President of the National Assembly assumed the Presidency of the Republic until a new President, duly elected, takes office. Mr. Juan Guaido, as a president of the National Assembly, took office as the interim Venezuelan president, while Nicolás Maduro took office before the **NCA**. Juan Guaido has been recognized as the Venezuelan president by most of the western hemisphere, while Nicolas Maduro is still recognized by another group of countries.

Meanwhile, the business environment deteriorates on a day-to-day basis, as also do the living conditions of the population. The outcome of the political battle during the next months of 2019 will determine the future of Venezuela for a long time. It can be foreseen that the economic situation is unbearable for the government since it has been subject to sanctions by the U.S. that affect the country's finances, and the oil production has dropped below 1 mbd, an unbelievable situation for a government that has increased the dependency on oil revenues. Additionally, the population is being punished with the highest hyperinflation rate in the world, a worthless currency, lack of public utilities, scarcity of foods and medicines, unemployment, and all kind of economic and social difficulties. With this scenario, it can be expected that Nicolás Maduro, who is the president who control the policies in Venezuela, will be forced to apply some policies in order to allow the economy to flow in order to maintain some level of governance.

If Guaido prevails and manage to assume the presidency in full, with a free and complete control of the government, the long expected political change in

Venezuela would have arrived. With a clear set of goals, once the transition government is installed, there will be a requirement to appoint a new National Electoral Council that will be in charge of perform an exorcism in the institution in order to eliminate all the obstacles for holding fair elections in Venezuela: a depuration of the electoral registry and the modification of several features of the electoral system that have been set in order to favor the chavista movement. Once that task is completed, the new National Electoral Council will be able to call for elections in order to have a new government.

Guido has revealed that the (then) opposition, now interim government, has a plan for the reconstruction of Venezuela which will require levels of investment that have not been seen in the country (and probably in the whole region) in its history. The goals of the Plan País are: (i) the restoration of the free market and elimination of economic controls, (ii) the re-installment of the independent judiciary and the rule of law, (iii) the recovery of oil production by a new opening to private national and foreign investment, (iv) the recovery of public utilities (power, water, telecommunications, etc.) by opening those markets to private investment, (v) encouraging the Venezuelan capital markets and the re-capitalization of the banks, (vi) the re-institutionalization of the State: elimination of the unlimited re-election, strengthening the control functions of the National Assembly, take the decentralization policy back, amongst other things.

It is not an easy task to foresee the Venezuelan future, but just taking a look at the goals set in Plan País, if the political change finally occurs, Venezuela is going to be the next preferred destination for investments in the region.

## Trends and Projects

Once the political change occurs, some of the main initiatives provided for in Plan País are:

- A new opening of the oil industry in Venezuela for private national and international investment.
- A liberalization of the public utilities (electricity, water supply, telecommunications, etc.) in order to have private national and international investment in order to recover the level of service.
- The promotion of private investment in infrastructure.

Until that change occurs and given the economic limitations of the government presided by Nicolás Maduro, it is difficult to identify project that can be developed since there is no financing possibilities. The private sector has been heavily hit by the crisis but there are still some initiatives in the real estate industry in Caracas, particularly.

## Legislative News

### *Hydrocarbons Bill*

The *Bill* provides for the state property of oil fields (as it is provided for in the *Constitution*) allowing private investment with a majority share in oil projects. A new tax regime increases the gas and oil production. The creation of the Venezuelan Hydrocarbon Agency as a regulatory authority for the oil industry.

Bill for the activation and strengthening of national production. This bill has the goal of promoting national production of goods and services, and economic growth.

- [http://www.asambleanacional.gob.ve/documentos\\_leyes/ley-para-la-activacion-y-fortalecimiento-de-la-produccion-nacional.pdf](http://www.asambleanacional.gob.ve/documentos_leyes/ley-para-la-activacion-y-fortalecimiento-de-la-produccion-nacional.pdf)

## **Electricity Service Bill**

Sets the guidelines for the provision of power supply in Venezuela and the regime of the industry. It provides for private companies to participate in the industry, which fragmented in different activities in this project.

- <http://www.asambleanacional.gob.ve/leyes/proyecto-de-ley-organica-del-servicio-electrico>

## **Reform to the Decree-Law of Mines**

A modification to the regime of concessions.

- <http://www.asambleanacional.gob.ve/leyes/proyecto-de-ley-de-reforma-parcial-del-decreto-n-295-con-rango-y-fuerza-de-ley-de-minas>

Reform of the *Organic Law Reserving to the State* the goods and services connected to the primary hydrocarbons activity. This modification aims for the participation of private companies in the provision of services to the oil industry.

- <http://www.asambleanacional.gob.ve/leyes/proyecto-de-ley-de-reforma-de-la-ley-organica-que-reserva-al-estado-bienes-y-servicios-conexos-a-las-actividades-primarias-de-hidrocarburos>

## **LEGA's Highlights**

- LEGA is actively advising an integrated geoscience company with a leading market position, offering geology, geophysics, geoconsulting, geosoftwre and data management services in connection with a potential agreement with PDVSA for the acquisition of marine seismic data in the Venezuelan seabed. In this sense, LEGA's energy team is advising the client in understanding the applicable oil and gas regulatory framework, as well as related matters, such as labor regulations and applicable exchange control regulations, in order to allow the client to prepare a business proposal for PDVSA.
- LEGA is advising a U.S.-based company, providing waste management services to the refinery industry, including petroleum waste treatment and environmental remediation on a potential agreement to be entered with PDVSA to set up and operate a petroleum waste management plant in Venezuela. In this context, LEGA's energy team is advising the client to understand the applicable public procurement and oil and gas framework, as well as the customs regime. PDVSA is offering a financing schedule which involves payment in kind with crude oil and diesel. In this sense, LEGA is advising the client on the comprehensive legal implications of such a structure.
- We advised the client in relation to its participation in a project with the Government of the State of Sucre in Venezuela for the development of the salt mines located in the Gulf of Paria in eastern Venezuela, which are the major salt mines in the country. We advised and participated in the strategic alliance agreement with the government of the State of Sucre for the exploitation of the mines and the commercialization of the salt produced for human and industrial consumption. As a key part of our work, we had to analyze several aspects of the capacity of the State to enter in this contract, the competence of the governor, the constitutional and legal regime applicable to the exploitation of non-metallic minerals and the special regime applicable to the salt mining.
- For the past four years, LEGA has been handling all the legal matters concerning a Colombian food and drinks producer's operations in Venezuela. Since the company has important commercial activities in the country and, given the current political and economic climate, we have provided substantial assistance in order to help them comply with the legal framework and keep the legal risks to the minimum. From the corporate standpoint, the first task that we set was to update its corporate obligations, which in return made the daily operations easier to manage.

- LEGA has advised a Panamanian travel insurance company throughout the internationalization of its operations in Latam. In this regard, LEGA led the incorporation process of a new subsidiary in Chile and has been conducting a project regarding the incorporation of a new shareholder through a shareholder agreement to be signed in the first quarter of 2019. The quick completion of the incorporation of the Chilean subsidiary was particularly significant because it allowed the client to fulfill the requirements for a concession agreement with the Arturo Merino Benitez de Santiago International Airport Administration. On the other hand, the entry of a new shareholder in the company, was a complex matter due to contractual restrictions.
- Assistance in the release of a cargo ship. In this case, the firm assisted a company dedicated to the lease of vessels for the transportation of different oil-based products. After insisting on the significant damage to the equity of our principal caused by the preventative measure that was preventing the vessel from sailing, and the fact that our principal had no responsibility in the crime under investigation, particularly considering that because of the diligent notice given by the ship's crew about the irregularity of the documents it was possible to stop the completion of the crime. In this regard, the firm applied for these purposes all the legal remedies provided by the Venezuelan laws and after prolonged legal discussions with both the judge and prosecutors, and after defending our client's innocence by presenting solid arguments based on factual and strong evidence supporting those grounds, the third trial judge decided to revoke the measure imposed. The vessel sailed freely on February 21st, 2018.
- The firm assisted a multinational company in (i) establishing new compensation options or packages for their employees, (ii) creating new employment benefits without direct impact on the salaries and without collateral increases in the employment packages, and (iii) establishing policies for employee retention. To achieve these objectives, the following steps were necessary: to create new remuneration systems, draft employment agreements, as well as company rules and policies to implement the new schemes. The execution of said policies and actions for retaining and attracting talent have allowed our client to be more competitive in the market. In this case, the company chose a two-kind of bonus payment in dollars, to increase the remuneration of certain employees. This required an analysis of the structures and the selection of the best structure suited to the needs of the client.
- Submission and follow-up of over 40 requests for Authorization of Workers' Dismissal invested or vested with labour immobility, interposed by the Labour Inspectorates of the Metropolitan Area of Caracas, the States of Miranda, Carabobo, Táchira and Zulia.
- Our client was a product marketer that counts with different stores at a national level and whose main operative line of sale is focused on food. In this sense, an important part of the product commercialization carried out by the company is selling products to meet the needs of the Venezuelan population. The client, in the exercise of its corporate purpose, is responsible for the sale and distribution of food and other products prioritized for citizens, and thus the importance of having responsible employees who do not put the distribution of these types of products at risk, products necessary so that the Venezuelan State can guarantee the fulfillment of one of its objectives such as guaranteeing the supply to the population, for this reason, the presence in the stores of officials of the Superintendence for the Defense of Socio-Economic Rights ("**SUNDDE**") is usual, they supervise the distribution and sale of goods and services of the stores, safeguarding the rights of the Venezuelan population and continuously attentive to any activity that could constitute an illegal act in accordance with the *Organic Law of Fair Prices*.

The company is in the legal duty to denounce before the authorities of the State's investigative bodies, all irregularities in which both workers and clients are involved, and which contradict the efforts developed by the National Executive within the framework of the Economic War to guarantee food security of the Venezuelan people. The procedures initiated are the result of having detected irregularities in the purchase of prioritized products by workers: coffee, detergents, rice, oil, precooked flour, among others, using the identity card

numbers and cards from third parties, among other irregularities presented, violating the rules and procedures established in the company, and also carrying out activities that are counterproductive to the reputation of the company, who in front of third parties could run the risk of being identified as an accomplice of activities contrary to the law, such as sales of products above their market value.

The importance of the case lies in the fact of the company's presence in Venezuela for 16 uninterrupted years, the labor immovability preventing the employer to justifiably dismiss the workers, without previously complying with the procedure provided by law to obtain the Authorization of the respective Labor Inspectorate.

Through these procedures, in addition to qualifying the worker's failure to dismiss it justifiably, intended to safeguard the responsibility of the company, who could be designated as an accessory to the irregularities to the detriment of the State, in the event of not reporting or exercising the relevant actions to resolve the situation and denounce the possible responsibilities for the irregularities.

- We have advised several private contractors in pursuing legal actions against the Venezuelan government or State-owned companies in order to claim damages for breach of contract or lack of payment. We have been able to create strategies to take advantage of treaties signed with third countries in order to have access to the jurisdictions of international arbitral tribunals not available for the client when approached to us.

## Lex Mundi Member Contact



A **LexMundi** Member

### **Luis Eduardo Lopez, Senior Partner**

[llopez@lega.law](mailto:llopez@lega.law)

Tel: 58.212.901.2605

### **Carlos Dominguez, Senior Partner**

[cdomiguez@lega.law](mailto:cdomiguez@lega.law)

Tel: 58.212.901.2606

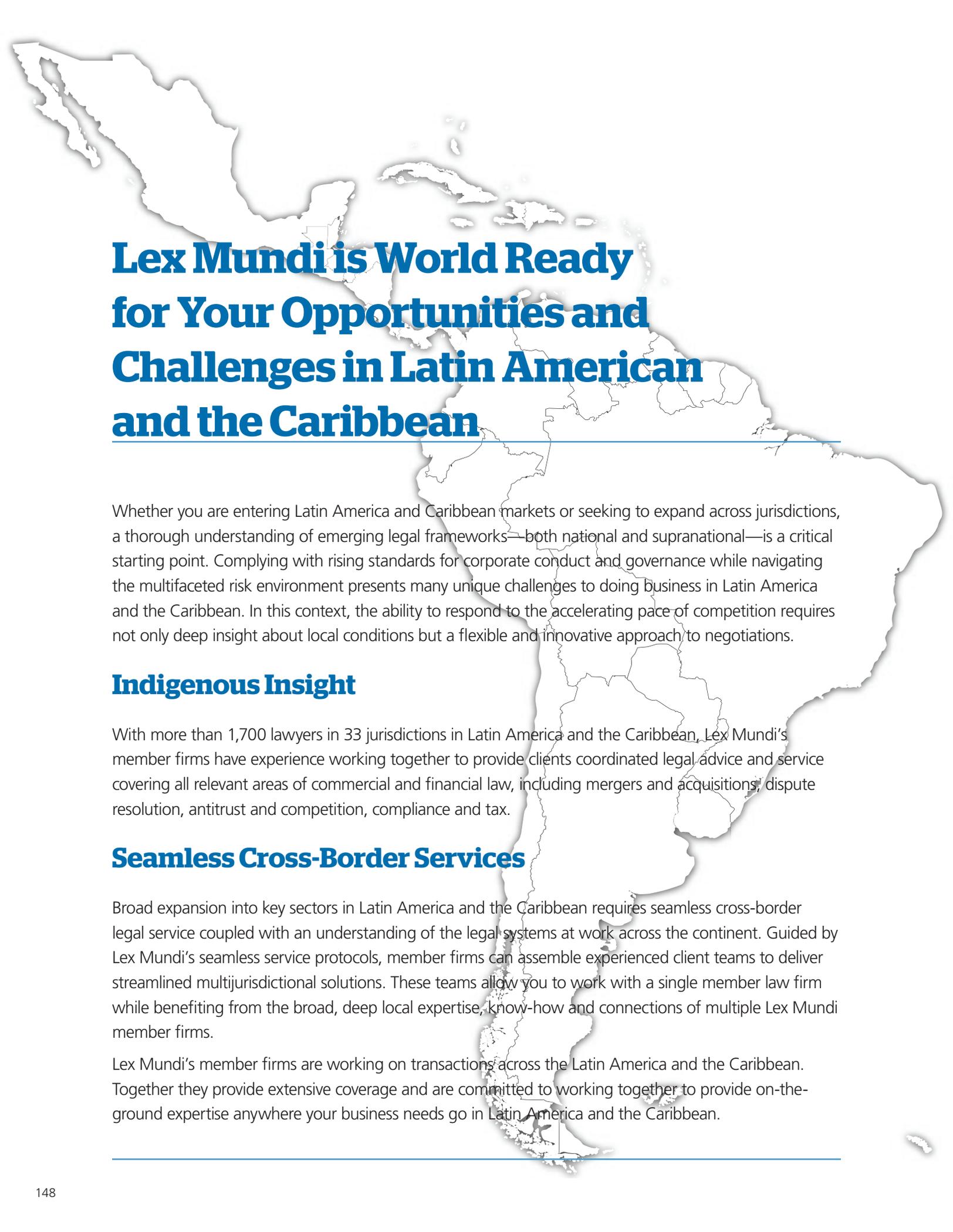
### **José Gregorio Torrealba, Senior Partner**

[jtorrealba@lega.law](mailto:jtorrealba@lega.law)

Tel: 58.212.901.2608

### **LEGA**

Member firm for Venezuela



# **Lex Mundi is World Ready for Your Opportunities and Challenges in Latin American and the Caribbean**

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Whether you are entering Latin America and Caribbean markets or seeking to expand across jurisdictions, a thorough understanding of emerging legal frameworks—both national and supranational—is a critical starting point. Complying with rising standards for corporate conduct and governance while navigating the multifaceted risk environment presents many unique challenges to doing business in Latin America and the Caribbean. In this context, the ability to respond to the accelerating pace of competition requires not only deep insight about local conditions but a flexible and innovative approach to negotiations.

## **Indigenous Insight**

With more than 1,700 lawyers in 33 jurisdictions in Latin America and the Caribbean, Lex Mundi's member firms have experience working together to provide clients coordinated legal advice and service covering all relevant areas of commercial and financial law, including mergers and acquisitions, dispute resolution, antitrust and competition, compliance and tax.

## **Seamless Cross-Border Services**

Broad expansion into key sectors in Latin America and the Caribbean requires seamless cross-border legal service coupled with an understanding of the legal systems at work across the continent. Guided by Lex Mundi's seamless service protocols, member firms can assemble experienced client teams to deliver streamlined multijurisdictional solutions. These teams allow you to work with a single member law firm while benefiting from the broad, deep local expertise, know-how and connections of multiple Lex Mundi member firms.

Lex Mundi's member firms are working on transactions across the Latin America and the Caribbean. Together they provide extensive coverage and are committed to working together to provide on-the-ground expertise anywhere your business needs go in Latin America and the Caribbean.

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# Lex Mundi Member Firm Contacts for Latin America and the Caribbean

## Argentina

Sebastián Iribarne, Partner  
[smi@marval.com](mailto:smi@marval.com)  
Tel: 54.11.4310.0100 ext. 1812

Roberto Silva, Partner  
[res@marval.com](mailto:res@marval.com)  
Tel: 54.11.4310.0100

Marval, O'Farrell & Mairal  
Member Firm for Argentina

## Aruba

Focco Lunsingh Scheurleer, Managing  
Partner  
[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 160

Michiel Gorsira, Head of Litigation  
and Commercial  
[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 110

Frank Kunneman, Head of Corporate  
and Banking  
[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 254

VanEps Kunneman VanDoorne  
Member Firm for Curacao with offices in  
Aruba

## The Bahamas

Justine A. Smith, Partner  
[JASmith@mckinney.com.bs](mailto:JASmith@mckinney.com.bs)

McKinney, Bancroft & Hughes  
Member Firm for The Bahamas  
Tel: 1.242.322.24195

## Barbados

Gillian Clarke, Partner –  
Head of Corporate Department  
[gillian.clarke@clarkes.com.bb](mailto:gillian.clarke@clarkes.com.bb)

Debbie Fraser, Partner –  
Head of Commercial Department  
[debbie.fraser@clarkes.com.bb](mailto:debbie.fraser@clarkes.com.bb)

Clarke Gittens Farmer  
Member Firm for Barbados  
Tel: 1.246.436.6287

## Bolivia

Patricio Rojas, Partner  
[patricio@rojas-lawfirm.com](mailto:patricio@rojas-lawfirm.com)

Jose Manuel Canelas, Associate  
[jose@rojas-lawfirm.com](mailto:jose@rojas-lawfirm.com)

C.R. & F. Rojas – Abogados  
Member Firm for Bolivia  
Tel: 591.3.337.7474

## Bonaire, St. Eustatius and Saba Islands – Caribbean Netherlands

Focco Lunsingh Scheurleer, Managing  
Partner  
[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 160

Michiel Gorsira, Head of Litigation  
and Commercial  
[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 110

Frank Kunneman, Head of Corporate  
and Banking  
[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 254

VanEps Kunneman VanDoorne  
Member Firm for Curacao with offices in  
Bonaire, St. Eustatius and Saba Islands

## Brazil

Paulo Coelho da Rocha, Managing  
Partner  
[procha@demarest.com.br](mailto:procha@demarest.com.br)  
Tel: 55.11.3356.1822

João Luis Ribeiro de Almeida, Partner  
Head of Rio de Janeiro Office  
[jalmeida@demarest.com.br](mailto:jalmeida@demarest.com.br)  
Tel: 55.21.3723.9804

Demarest Advogados  
Member Firm for Brazil

## British Virgin Islands

Vanessa King, Managing Partner, Head  
of Corporate, Commercial, and Banking  
Practices  
[vking@onealwebster.com](mailto:vking@onealwebster.com)  
Tel: 1.284.393.5800

Kerry Anderson, Head of Investment  
Funds and Regulatory Practice; Head of  
New York City Office  
[kanderson@onealwebster.com](mailto:kanderson@onealwebster.com)  
Tel: 1.914.200.3596

Paul Dennis, Head of Litigation, Shipping,  
and Admiralty Practices  
[pdennis@onealwebster.com](mailto:pdennis@onealwebster.com)  
Tel: 1.284.393.5800

O'Neal Webster  
Member Firm for the British Virgin Islands

## Chile

José María Eyzaguirre, Partner  
[jmeyzaguirre@claro.cl](mailto:jmeyzaguirre@claro.cl)  
Tel: 56.2.2367.3034

Rodrigo Ochagavía, Partner  
[rochagavia@claro.cl](mailto:rochagavia@claro.cl)  
Tel: 56.2.2367.3047

Felipe Larrían, Partner  
[flarrain@claro.cl](mailto:flarrain@claro.cl)  
Tel: 56.2.2367.3026

Claro & Cia., Abogados  
Member Firm for Chile

## Colombia

Carlos Umaña Trujillo, Partner  
[cumana@bu.com.co](mailto:cumana@bu.com.co)  
Tel: 57.1.3462011 ext. 8223

Sergio Michelsen, Partner  
[smichelsen@bu.com.co](mailto:smichelsen@bu.com.co)  
Tel: 57.1.3462011 ext. 8224

Manuel Fernando Quinche, Partner  
[mquinche@bu.com.co](mailto:mquinche@bu.com.co)  
Tel: 57.1.3462011 ext. 8212

Brigard Urrutia  
Member Firm for Colombia

## Costa Rica

Carlos Manuel Valverde Retana, Partner  
[cvalverde@fayca.com](mailto:cvalverde@fayca.com)  
Tel: 506.2105.3600 ext. 739

Sergio Solera Lacayo, Managing Partner  
[ssolera@fayca.com](mailto:ssolera@fayca.com)  
Tel: 506.2105.3603/8844

Facio & Cañas  
Member Firm for Costa Rica

## Curacao

Focco Lunsingh Scheurleer, Managing  
Partner  
[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 160

Michiel Gorsira, Head of Litigation  
and Commercial  
[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 110

Frank Kunneman, Head of Corporate  
and Banking  
[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 254

VanEps Kunneman VanDoorne  
Member Firm for Curacao

# Lex Mundi Member Firm Contacts for Latin America and the Caribbean

## Dominican Republic

Ricardo Pellerano, Managing Partner  
[r.pellerano@phlaw.com](mailto:r.pellerano@phlaw.com)  
Tel: 1.809.541.5200

Pellerano & Herrera  
Member Firm for Dominican Republic

## Ecuador

Sebastián Pérez-Arteta,  
Managing Partner  
[sperez@pbplaw.com](mailto:sperez@pbplaw.com)  
Tel: 593.2.382.7640

Diego Pérez-Ordóñez, Executive Partner  
[dperez@pbplaw.com](mailto:dperez@pbplaw.com)  
Tel: 593.2.382.7640 ext. 7867

Ximena Bautista-Uribe, Marketing and  
Business Development Director  
[xbautista@pbplaw.com](mailto:xbautista@pbplaw.com)  
Tel: 593.2.382.7640

Pérez Bustamante & Ponce  
Member Firm for Ecuador

## El Salvador

José Roberto Romero, Managing Partner  
[jose@romeropineda.com](mailto:jose@romeropineda.com)

Roxana Romero, Partner  
[roxana@romeropineda.com](mailto:roxana@romeropineda.com)

Francisco Martínez, Corporate  
Department Manager  
[fmartinez@romeropineda.com](mailto:fmartinez@romeropineda.com)

Romero Pineda & Asociados  
Member Firm for El Salvador  
Tel: 503.2505.5555

## Guatemala

Eduardo Mayora Alvarado, Managing  
Partner  
[emayora@mayora-mayora.com](mailto:emayora@mayora-mayora.com)

Rafael Briz, Senior Partner  
[rbriz@mayora-mayora.com](mailto:rbriz@mayora-mayora.com)

Kristin Volpicella, CEO  
[kvolpicella@mayora-mayora.com](mailto:kvolpicella@mayora-mayora.com)

Mayora & Mayora, S.C.  
Member Firm for Guatemala  
Tel: 502.2223.6868

## Honduras

Mauricio Villeda Jr., Managing Partner  
[mao.villeda@gufalaw.com](mailto:mao.villeda@gufalaw.com)

Mauricio Villeda Bermúdez, Senior  
Partner  
[Mauricio.villeda@gufalaw.com](mailto:Mauricio.villeda@gufalaw.com)

Eduardo Pedemonte Lara, Partner  
[Eduardo.pedemonte@gufalaw.com](mailto:Eduardo.pedemonte@gufalaw.com)

GUFA LAW  
Member Firm for Honduras  
Tel: 504.2238.3412

## Mexico

Daniel Del Rio, Senior Partner  
[delrio@basham.com.mx](mailto:delrio@basham.com.mx)  
Tel: 52.55.5261.0496

Gerardo Nieto, Partner  
[nieto@basham.com.mx](mailto:nieto@basham.com.mx)  
Tel: 52.55.5261.0496

Carlos Velazquez de León, Partner  
[carlosv@basham.com.mx](mailto:carlosv@basham.com.mx)  
Tel: 52.81.8299.2109

Basham, Ringe y Correa, S.C.  
Member Firm for Mexico

## Nicaragua

Gloria Maria de Alvarado, Managing  
Partner  
[gmalvara@alvaradoyasociadoslegal.com](mailto:gmalvara@alvaradoyasociadoslegal.com)

Luz Marina Espinoza, Partner  
[luzme@alvaradoyasociadoslegal.com](mailto:luzme@alvaradoyasociadoslegal.com)

Jose Antonio Alvarado, Founding Partner  
[jaalvarado@alvaradoysociadoslegal.com](mailto:jaalvarado@alvaradoysociadoslegal.com)

Alvarado y Asociados  
Member Firm for Nicaragua  
Tel: 505.2278.7708 / 505.2277.2417

## Panama

Ricardo M. Arango, Partner  
[rarango@arifa.com](mailto:rarango@arifa.com)

Estif Aparicio, Partner  
[eaparicio@arifa.com](mailto:eaparicio@arifa.com)

Arias, Fábrega & Fábrega  
Member Firm for Panama  
Tel: 507.205.7000

## Paraguay

Guillermo Peroni, Senior Partner  
[Guillermo.peroni@pstbn.com.py](mailto:Guillermo.peroni@pstbn.com.py)

Esteban Burt Artaza, Senior Partner  
[Esteban.burt@pstbn.com.py](mailto:Esteban.burt@pstbn.com.py)

Peroni Sosa Tellechea Burt & Narvaja  
Member Firm for Paraguay  
Tel: 595.21.319.9000

## Peru

José Antonio Olaechea, Managing  
Partner  
[joseantonioolaechea@esola.com.pe](mailto:joseantonioolaechea@esola.com.pe)

Carlo Viacava, Senior Partner  
[carloviacava@esola.com.pe](mailto:carloviacava@esola.com.pe)

Estudio Olaechea  
Member Firm for Peru  
Tel: 51.1.264.4040

## St. Maarten

Focco Lunsingh Scheurleer, Managing  
Partner  
[lunsingh@ekvandoorne.com](mailto:lunsingh@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 160

Michiel Gorsira, Head of Litigation  
and Commercial  
[gorsira@ekvandoorne.com](mailto:gorsira@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 110

Frank Kunneman, Head of Corporate  
and Banking  
[kunneman@ekvandoorne.com](mailto:kunneman@ekvandoorne.com)  
Tel: 599.9.461.3400 ext. 254

VanEps Kunneman VanDoorne  
Member Firm for Curacao with offices in  
St. Maarten

## Uruguay

Alvaro Tarabal, Partner  
[atarabal@guyer.com.uy](mailto:atarabal@guyer.com.uy)  
Tel: 598.2902.1515 ext.178

Nicolás Herrera, Partner  
[nherrera@guyer.com.uy](mailto:nherrera@guyer.com.uy)  
Tel: 598.2902.1515 ext.120

Guyer & Regules  
Member Firm for Uruguay

## USA, Puerto Rico

Arturo J. García Solá, Managing Director  
[ajg@mcvpr.com](mailto:ajg@mcvpr.com)  
Tel: 1.787.250.5632

Rubén Méndez Benabe, Chair,  
Corporate Practice Group  
[rbmx@mcvpr.com](mailto:rbmx@mcvpr.com)  
Tel: 1.787.250.2621

Patricia George-Iguina, Vice Chair,  
Real Estate & Finance Practice Group  
[pgi@mcvpr.com](mailto:pgi@mcvpr.com)  
Tel: 1.787.250.5809

McConnell Valdés LLC  
Member Firm for USA, Puerto Rico

## Venezuela

Luis Eduardo Lopez, Senior Partner  
[llopez@lega.law](mailto:llopez@lega.law)  
Tel: 58.212.901.2605

Carlos Dominguez, Senior Partner  
[cdomiguez@lega.law](mailto:cdomiguez@lega.law)  
Tel: 58.212.901.2606

José Gregorio Torrealba, Senior Partner  
[jtorealba@lega.law](mailto:jtorealba@lega.law)  
Tel: 58.212.901.2608

LEGA  
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1.713.626.9393  
[www.lexmundi.com](http://www.lexmundi.com)

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