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Newsletter 10

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Law N°21.015: Encourages the inclusion of persons with disabilities to the labor world.

On June 15 of this year, Law Number 21.015 was published in the Official Gazette under the title "Encourages the inclusion of persons with disabilities to the labor world"; a law that rather than encouraging the recruitment and inclusion of disabled people into the world of work, imposes the obligation to do so, both on the public and the private sector.

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Chile:
Ley N° 21.015: Incentiva la inclusión de personas con discapacidad al mundo laboral.

Con fecha 15 de junio del año en curso, fue publicada en el Diario Oficial la Ley N° 21.015 bajo el título "Incentiva la inclusión de personas con discapacidad al mundo laboral"; Ley que más que incentivar la contratación e inclusión de personas discapacitadas al mundo laboral, impone la obligación de hacerlo tanto al sector público como al sector privado.

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PROINVERSIÓN adjudicará proyectos APP por US$ 5,000 millones este año y se convoca a concurso público internacional la concesión del proyecto "Línea de Transmisión 220 kV Tintaya-Azángaro".

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Law N° 21.015: Encourages the inclusion of persons with disabilities to the labor world in Chile

Estudio Jurídico Otero
Chile

On June 15 of this year, LAW NUMBER 21.015 was published in the Official Gazette under the title "ENCOURAGES THE INCLUSION OF PERSONS WITH DISABILITIES TO THE LABOR WORLD"; a law that rather than encouraging the recruitment and inclusion of disabled people into the world of work, imposes the obligation to do so, both on the public and the private sector.

This law stipulates that both the public administration bodies of the State, including all State powers, as well as companies, whether public or private, with an annual crew of 100 or more officials or workers, at least 1% of such annual crew must be disabled persons or assignees of an invalidity pension under any social security scheme. Disabled persons are those that have been qualified and certified as such by the Commissions of Preventive Medicine and Disability under the Ministry of Health or the public or private institutions, recognized for these purposes by said Ministry.

The Law requires for certain State organs that, under equal merit conditions, they must select preferably persons with disabilities.

In the case of the Armed Forces, Forces of Public Order and Security and Gendarmerie of Chile, the obligation mentioned in the previous paragraphs will only be applicable to their civilian personnel.

A regulation issued by the Ministry of Labor and Social Security and signed by the Ministers of Finance and Social Development, will establish the parameters, procedures and other elements necessary to comply with the law. The Regulation must be issued within six months of the publication of the law, i.e., before December 15 of this year.

In the case of the National Congress, Judicial Power, Public Prosecutor, Republic General Controller, Central Bank, Constitutional Court, Armed Forces, Forces of Public Order and Security, Electoral Service, Electoral Justice and other special courts, their own bodies must dictate the necessary rules to comply with the law.

Each employer must register with the Labor Directorate the labor contracts and their modifications entered into with persons with disabilities or assignees of disability pensions within fifteen days of its signature, and said information must remain classified.

Companies that, for justified reasons, cannot fully or partially comply with the legal obligation, must instead:

a) Enter into service contracts with companies that have contracted people with disabilities for an annual amount of not less than the equivalent of twenty-four minimum monthly incomes for each disabled worker they should have hired, or

b) Make money donations to projects or programs of associations, corporations or foundations whose purpose is to directly provide services to people of limited resources or with disabilities; are incorporated in a special register prepared and maintained by the Ministry of Planning and

Cooperation and have been qualified as being of social interest by a council composed of representatives of certain State organs, the President of the Confederation of Production and Commerce, a representative of community organizations and four prominent personalities in matters of care for people of limited resources or with disabilities, chosen by the corporations or foundations incorporated in the aforementioned registry. Donations to educational establishments that have projects for the prevention or rehabilitation of alcohol or drug addiction of students and/or parents will also be valid.

These donations must be subject to the provisions of Law 19.885 on donations, with the following exceptions:

1. They will not give right to the tax credits and benefits considered by law, but they will have the quality of necessary expense to produce income;
2. They should be directed to projects or programs whose social purpose includes training, rehabilitation, promotion and development for the creation of jobs, hiring or labor insertion of persons with disabilities;
3. They cannot be made to institutions in whose board participates the donor, his/her spouse, his/her civilian partner or ascendant or descendant relatives up to the third degree of consanguinity. If the donor is a legal entity, donations may not be made to institutions in whose board participate its partners or directors or shareholders owning 10% or more of the capital stock, or the spouses, civilian partners or ascendant or descendant relatives up to the third degree of consanguinity of said partners, directors or shareholders.
4. The annual amount of the donations may not be less than the equivalent of twenty-four minimum monthly incomes nor more than twelve times the taxable maximum amount, for each worker that should have been hired.
5. The global limit set in Article 10 of the law shall not apply to these donations.

"Justified reasons will only be those derived from the nature of the functions carried out by the company or the lack of people interested in the job offers that have been made."

In any case, during the first two years of the law, companies may choose these alternative measures without a well-founded reason.

Companies that apply any of these alternative measures must, within the month of January of each year, send an electronic communication to the Labor Directorate, with copy to the Undersecretariat of Social Evaluation of the Ministry of Social Development, to the National

Disability Service and to the Internal Revenue Service. In it the company must indicate the reason invoked and the measure taken. This communication will have a validity of twelve months.

For the above purposes, the law in question modified certain prior laws and incorporated to the Labor Code paragraphs 157 two and 157 three under a new chapter entitled “On Labor Inclusion of Persons with Disabilities”.

This law and the amendments introduced by it to the Labor Code will enter into force on the first day of the month subsequent to the publication in the Official Gazette of the Regulation that must be issued by the Ministry of Labor and Social Security mentioned above, However, companies with 100 and up to 199 workers, will only be subject to this obligation as of the end of the first year of entry into force of the law.

Within six months of its entry into force, employers must register on the website of the Labor Directorate the current employment contracts of persons with disabilities or that are assignees of disability pensions under any social security scheme.

Requirements to be listed in the MAB

ILP Abogados

Spain

Spanish companies have a very serious size problem. In the world ranking they are considerably below the OECD average and only ahead of Portugal and Italy. The countries ranked highest (Russia, Switzerland, Luxemburg, New Zealand) multiply by six the ratios of Spain.

On the other hand, costs associated with "employee number 50" are high: regulatory costs, audits, unions … From 50 employees upwards, Spanish companies are less competitive due to associated costs.

One of the remedies conceived to solve this problem is the MAB (Mercado Alternativo Bursátil – Alternative Stock Market).

The Mercado Alternativo Bursátil (MAB) may be considered as the "Stock Market" of Small and Medium Enterprises (SMEs). A stock market for small capitalization companies which serves to obtain financing. But not any company can go out and play in this market. We must keep in mind at all times the requirements to be listed in the MAB.

What requirements and conditions must be met to be listed in the MAB?

First of all, to be listed in the MAB it is necessary to comply with certain conditions and requirements. Newsletter 14/2016, On requirements and procedures applicable to the incorporation and exclusion in the Mercado Alternativo Bursátil of shares issued by expanding companies and by public limited companies listed as investment in the real estate market, approved by the Board of Directors of Spanish Stock Markets, Negotiation Systems S.A. (Consejo de Administración de Bolsas y Mercados Españoles, Sistemas de Negociación S.A.), states the requirements to be listed in the MAB, which are the following:

1. The issuing entity must be a small capitalization company. It must be a corporation and its share capital must be fully disbursed and represented in book entries and with free transferability.
2. The issuing entity must guarantee transparency in its accounts and have them audited, at least two years prior to the beginning of its listing.
3. The activity of the issuing entity must be the commercialization of products or services.
4. The issuing entity must submit an issue offer in excess of two million euros in shares.
5. The issuing entity must appoint a Registered Advisor from among those included in the special register established for such purpose by the Mercado, in accordance with the provisions of the Mercado Regulation and the corresponding Newsletter.
6. The issuing entity must establish a liquidity contract. For that purpose, it must have an agreement with a financial intermediary who will be authorized to carry out purchase and sale transactions with shares of the company when he deems it necessary to expedite the offsetting. This operation is very limited to prevent

it from affecting the free formation of prices in the market.

What are the benefits or drawbacks of listing in the MAB?

Mainly we find several advantages for companies that go public in the MAB.

1. The possibility of raising capital by putting its shares into circulation.
2. The guarantee of transparency since they must be audited and present their accounts as do listed companies.
3. It offers greater liquidity to investors, so it is more attractive to invest in MAB companies rather than private investment where entry and exit procedures are generally more complicated.

On the other hand, the greatest drawback of the MAB is the cost for accessing it, on account of

1. The placement fees
2. The cost of the Registered Advisor
3. All the formal entry requirements

Conclusion

Above all, we have to make it clear that access to finance, increased visibility, continuous valuation based on supply and demand, and the liquidity of the company's shares are the main advantages offered by the MAB to expanding companies. All of this is useful because they can manage their own projects with greater efficiency and accelerate the processes necessary for it.

In conclusion, companies that want to join the MAB must be public limited companies that meet certain requirements, which can be summarized in four. The first one is maintaining adequate levels of transparency, through different procedures. The second requirement is to assume the commitment to provide duly audited semi-annual and annual information. The third one is the appointment of a Registered Advisor and finally, the shareholding spread, i.e., that the shares owned by shareholders with percentages below 5% of the share capital, represent an estimated value of two million euros.

PROINVERSION will award APP projects for US$ 5,000 million this year and will call for public international contest the concession of the project "Line of Transmission 220 kV Tintaya-Azángaro"

Estudio Laos, Aguilar, Limas & Asociados

Peru

PROINVERSION said that on May 19, 2017, it would award projects through Public Private Partnerships (APP) for 5,000 million dollars this year and the level of public tenders will increase to 10,000 million annually from 2018.

"In the area of APP, which involves large investment projects, we expect to move from a flow of awards from $ 2 billion to $ 5 billion, and the following year to sustain a flow that can be for the $ 10 billion," said PROINVERSION's Executive Director, Álvaro Quijandría. He explained that this is the volume of investment that is required to close the infrastructure gap gradually.

"But beyond the volume, which is always important and crucial to maintaining high growth rates, PPPs have an impact on expectations," He said.

He added that the new legislation had made a clear demarcation of the functions of each entity that participates in the APP processes.

Likewise, PROINVERSION indicated that the current administration had made a tremendous effort with new regulation to eliminate bureaucratic obstacles and streamline the processes of granting large investment projects.

In fact, the recent amendment of the Public-Private Partnerships Act (PPA) establishes precisely the order in which the agents are involved in the design of APP, giving them specific deadlines and roles. Indeed, according to the new legislation, it is very clear that the Ministry of Economy and Finance (MEF) is the regulatory body, since it establishes the policies for the APP system, while PROINVERSION is the specialized technical entity that implements the APP processes.

In the next two years, four offices will be created, which will operate in a network of six macro-regional offices, with which it will have a more direct and close position with the regional governments in the preparation of their projects.

Finally, PROINVERSION Committee on Energy and Hydrocarbons Projects Pro Conectividad has convoked for an international public tender for the concession of the "220 kV Tintaya-Azángaro Transmission Line" project. The project would reinforce high voltage transport in southern Peru, includes the construction of the Tintaya - Azángaro Transmission Line, and the extensions of the 220 kV Tintaya Substation and the 220 kV Azángaro Substation.

The term of the concession will be 30 years plus the construction time, which would be 36 months counted from the closing date (signature of the contract). According to the schedule, the delivery and publication of the Final Version of the Contract will be carried out in the third quarter of 2017, the presentation of tenders and awarding of bids will be conducted within 30 calendar days starting from the publication of the Final Version of the Contract.

To qualify, the interested party or related companies must have, individually or jointly, a Minimum Net Worth of US $ 30’000,000 and total assets minimum of US $ 90,000,000 in the last financial year concluded.

In the technical part, the interested party must have an operator, who can demonstrate that it operates directly or has directly operated electric power transmission systems, in the last two (2) years. Those systems must meet the following conditions: Length not less than 250 km., voltages equal to or greater than 220 kV, processing capacity not less than 250 MVA in substations, and voltages equal to or greater than 220 kV. For the accreditation of these technical requirements, it must be shown certificates or technical declarations of third parties.

Executory judgment shorthand in court and its review in execution, to avoid the possible violation of a human rights.

By: Manuel Alejandro Ortega Castro

Bitar Abogados

Mexico

From a material or substantial point of view, the "Law" is an obligatory social rule since a Competent Authority issued it and will oblige the Judiciary to fulfill the same.

For its part, the res judicata is the authority and force that the Law confers to the enforceable sentence. Meaning "authority" as the legal necessity that the judgment ruled is considered irrevocable within the trial which derived, as well as in any other and by "force" is the coercive authority that emanates from the res judicata and therefore must be met as ordain.

From the abovementioned, it is necessary that the judgment that has resulted in an enforceable sentence retains the quality of immutability and inalterability, regarding the facts judged, since the existence of the obligation on the proven facts in trial could no longer be judged in a second trial, since otherwise, the person who obtained a favorable judgment would be in a state of defenselessness, and lead to legal insecurity, with absolute lack of certainty and confidence in the institutions.

Notwithstanding the above, the human right is inherent to the human dignity, because it accompanies the person until his death and even his body, that explains why after death deserves protection, since the human right is absolute and remains inherent to the legal personality of the person, in its material and immaterial heritage such as life, freedom, etc., reason why, if said human right was not object of study in the main trial, it could be in execution of the judgment and with that, obtain a executory judgment that could be in violation of a human right, and be executed in such a way that it does not fail to observe the respect and protection thereto referred in the Constitution of the Country corresponding and in the international agreements of the Country is party, in accordance with Article 1° of the Mexican Political Constitution, without transgress the legal provisions of legal certainty and the rule of law.

The abovementioned was determined by a recently Court precedent, by the Federal Courts of Mexican Republic, which I share as follows:

Season: Tenth Period

Record: 2013551

Instance: College Judge Circuit Court.

Type of Thesis: Court Precedent

Source: Federal Judicial Weekly (Semanario Judicial de la Federación)

Book 38, January 2017, Volume IV

Subject: Constitutional, Civil

Thesis: I.3o.C. J/17 (10a.)

Page: 2415

USURY. IN THE STEP OF SETTLEMENT OF JUDGMENT, AN EQUITATIVE SOLUTION THAT HARMONIZES THE PRINCIPLE OF MATTER FI NALLY ADJUDGED AND THE RIGHT OF PROHI BITION OF THAT.

The human right is inherent to human dignity, so it accompanies the person until his death and even his body, after death deserves protection (not to the disposal of organs without the free and express

will of the person); Are rights that remain, are enjoyed and make use of by its owner in an absolute and unavailable, under penalty of nullification and its provision by contract will be sanctioned with relative nullity in the case of usury, and in other cases with absolute nullity or nonexistence if one agrees on life or freedom, name, etcetera. For its part, matter finally adjudged (res judicata) is a fundamental procedural institution of the Mexican legal system that specifies a right of legal certainty that is in turn one of the objects that justifies the existence of the State.

In addition to justice, this right allows the jurisdiction solution through the sentence pronounced in a trial that complies with the essential procedural requirements, bind the parties in a dispute, on principles of impartiality, completeness and effectiveness. In that sense, it is necessary that the executory judgment retains the quality of immutability and inalterability in terms of the facts judged, because the existence of the obligation on the facts proven in trial could no longer be tried in a second trial, because pretending the contrary, will make that the person who obtained a favorable sentence would be left in a state of defenselessness, and would provoke legal insecurity, with absolute lack of certainty and confidence in the institutions. However, in the stage of execution and liquidation of the judgment that has the category of matter finally adjudged (res judicata) formal and material, it can be noticed that the injury to a human right occurs and that, once identified, motivates an express determination on the limits of the prevalence of that institution of matter finally adjudged (res judicata) by the obligation of the protection authority to promote, respect, protect and guarantee the human rights recognized in the Mexico´s federal constitution and in the international agreements to which Mexico is a party, in accordance with article 1. Constitutional. It is at the stage of execution where it can be noticed that there has been a pronouncement with the quality of matter finally adjudged (res judicata) that has had as subject a human right, and even that has been affected by the judicial determination, without having been questioned at the time. That is, it was not part of the litigation of the trial, but in the case of amparo and, where appropriate, in the review body, the judicial act that executes and enforces the conviction is challenged. It is that it wasn´t part of the cause of action study in trial, but by amparo action or in case the motion for review, will appealed the jurisdictional act being execute and realizes the sentence. Is in that instance in which it can be raised by the affected party or ex officio, that the execution or liquidation of the sentence affects a human right. In this case, the amparo judge with a formal perspective could mechanically apply the procedural institution of the matter finally adjudged (res judicata) and disdain or overlook that there is an affectation of the human right. But it is not properly a matter of interpreting and applying a procedural norm that regulates the figure of the matter finally adjudged (res judicata) as it is the article 426 of the Code of Civil Procedures for the Federal District, in a sense according to the Consti-

tution, in respect to the Legal certainty established in articles 14, 17 and 22 and that an interpretation that favors the person in a broader way (pro-principle pro personae linked to an interpretation consistent with the Federal Constitution) prevails. In reality, this is a case in which the right of a person enjoying in his person's total assets a right recognized in a formal and material judgment as a matter finally adjudged (res judicata), protected under the procedural law, against the right of the other party who has in his assets the prohibition to obtain an excessive economic benefit at the expense of his patrimony and is so obviously excessive that he can be described as usurious, which gives the affected person the possibility that such economic damage will be reduced to a rational and equitable obligation. If that issue of usury had been raised in a timely manner during the trial, would have been a matter for decision by the court and would be expressly defined by what could no longer be tried for the second time. However, if it did not do so and it raises it until the stage of liquidation of the sentence, the problem is to define the prevalence of the thing judged absolutely, against the right to exclude usury in civil and commercial relations originated by loans of money. The formal procedural solution would be to establish that it is improper to question the execution because it is a matter that is firm and not timely raised as part of the main litigation and that, therefore, can no longer be question, because the incidents cannot exceed, diminish or somehow alter the matter finally adjudged (res judicata). On the other hand, such a solution is not so clear if one takes into account the nature that characterizes a human right, which is inherent to the quality of person and his dignity as such, and which is indispensable for his full freedom and development of his faculties and capabilities; from this perspective it is an absolute right that cannot be disposed of by the will of the person or by judicial decision, that is, a true human right is absolute and remains inherent to the legal personality of the person, in his material patrimony and immaterial as life, freedom, the name, etcetera. Therefore, if it is a human right that is absolute and not extinguished, while the execution is not consummated and consented, it is necessary to establish an equitable solution that harmonizes both rights, reason why the resolution will determine total respectability to the matter finally adjudged (res judicata) respect the facts have been judged until such time in which the sentence or agreement acquired the status of matter finally adjudged (res judicata); and that the human right correlative of the prohibition of usury is protected, respected and guaranteed with respect to the usury generated after that moment and that it intends to be liquidated in execution of sentence. Thus, unofficially, the usurious interest generated after it become final and conclusive could be reduced, but the matter finally adjudged (res judicata) could not be altered with respect to the matter of the litigation that was resolved and on interests that were prior to the moment when it became final and conclusive, it was declared or it have already been paid.The proposed solution to the raised dilemma

takes into account that the matter finally adjudged (res judicata) and the prohibition to go back to a trial for the same fact, is based on articles 14, 17 and 22 constitutional, while the prohibition of usury is in articles 2395 of the Federal Civil Code and 21, numeral 3, of the American Convention on Human Rights.

German Companies and Corporations are set to become more transparent

ILP Global Mertens Thiele
Germany

German companies and corporations are bound to give full particulars before the 01.10.2017 to the newly created, so-called „Transparency Register“ regarding any natural person, that due to factual or economical circumstances has a commanding influence on the company (so-called beneficial owner). The aim of this legislative initiative is to be able to identify those natural persons and beneficial owners even behind comprehensive corporative structures.

The regulations concerning the Transparency Register are part of the new Prevention of Money Laundering Act or Geldwäschegesetztes (GwG), which entered into force on the 26.06.2017 in implementation of the fourth EU Directive regarding money laundering.

Bound to indication are the beneficial owners of private law legal entities and inscribed private companies, as well as trusts and non-incorporated foundations with a self-interested mission of foundation. On the ground of the specific wording of the new Prevention of Money Laundering Act or Geldwäschegesetztes (GwG), it is to be assumed that the Act is to be applied to companies established under german law, which furthermore have their seat in Germany and hence are inscribed in german registers. Corporations or companies established under foreign law but having an administrative center in Germany seem not to be included, since the corresponding regulations - other than further comparable stipulations - do not comprise them expressly.

Those corporations and companies compelled under the new act are not only obliged to provide the requested information to the Transperancy Register at the beginning, but as well to regularily overhaul and store the corresponding data. As a matter of fact it is the owner of the shares, in case of trusts and foundations the administrator, director or trustor, who is obliged to provide and keep updated the aforementioned data.

Other than is the case with the regulations dealing with transparency of stock corporations or other corporations tied to the capital markets, violations of the applicable rules of the new Prevention of Money Laundering Act or Geldwäschegesetztes (GwG) will not be punished by the loss of certain rights, but by monetary fines. Violations are considered administrative offenses, leading to fines of up to EUR 100.000,00 in case of minor infringements and up to EUR 1.000.000,00 in case of severe, repeated or systematic infringements. Besides, transgressions can be punished by a fine raising up to twice the amount representing the economical profit achieved on the ground of the violation.

The Transparency Register is not a public register, to which anybody has access. It is basically meant to serve public authorites, government agencies and other entities compelled under the new Prevention of Money Laundering Act or Geldwäschegesetztes (GwG), provided that they can furnish proof of a legitimate interest related to meeting their obligations. Since the definition of the beneficial owner there is basically a rather vague and wide one, open to several different forms of interpretation, ways of participation are conceivable, that do not necessarily generate the corresponding duty of notification.