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Con fecha 28 de Noviembre de 2018, fue publicada la ley 21.122, del Ministerio del Trabajo y Previsión Social, que modifica el Código del Trabajo en materia de Contrato de Trabajo por Obra o Faena.

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Chile:
Modifications to the Works Contract

Estudio Jurídico Otero
Chile

On November 28, 2018, Law 21.122, of the Ministry of Labor and Social Welfare was published, modifying the Labor Code in terms of the employment contract for a certain work or operation.

Definition

Although the Labor Code already contemplated the existence of a labor Contract for specific work or operation, the aforementioned law incorporated Article 10 bis which defines the Work or Operation Contract for the first time, describing it as

> *"that convention whereby the worker agrees with the respective employer to execute a specific and certain material or intellectual work, from its beginning to its end, whose validity is circumscribed or limited to the duration of said work. The tasks or stages of a work cannot by themselves be the subject of two or more contracts of this kind successively, in which case it will be understood that the contract is one of indefinite duration."*

This definition added to the Code certain aspects of this kind of work contract that had not been considered in the law, but which were considered by the jurisprudence of our courts.

Furthermore, said article establishes that contracts implying the provision of a permanent service which, due to its nature, does not cease or conclude by itself, may not be considered "Work or Operation" Contracts.

Annual Holiday

It also establishes that workers providing continuous services to a same employer due to two or more contracts concluded for a certain work or operation that lasts more than one year, are entitled to the annual holiday of 15 business days which the Labor Code sets as general rule.

Severance payment

The newest aspect of this rule is that introduces a legal severance payment, that did not exist previously, in the case of termination of the contract due to the completion of the work or operation for which it had been agreed on and said work has lasted more than one month. Therefore, to terminate a work or operation contract of more than a month, the employer must pay the worker, at the time of termination,

a severance payment equivalent to 2,5 days of remuneration for each month worked and a fraction greater than 15 days.

The resulting sum must be mentioned in the letter in which the termination of the contract is noticed.

The basis to calculate those 2,5 days of remuneration is the worker's last monthly remuneration, which includes any amount the worker receives at the time of terminating the contract, including contributions and taxes, excluding overtime, family allowance and benefits that are received sporadically.

This law applies to Work or Operations contracts that are concluded as of January 1st, 2019 and the aforementioned severance payment will begin to be effective gradually.

- for contracts concluded between January 1st, 2019 and June 31, 2020, the compensation will be of 1 day of remuneration per each month and fraction of more than 15 days worked,
- for those concluded between July 1st, 2020 and June 31, 2021, it will be 1,5 days of remuneration
- for those concluded between July 1st and December 31, 2021, it will be 2 days of remuneration
- and for those concluded as of January 1st, 2022, the compensation will be 2,5 days of remuneration per each month and fraction of more than 15 days worked.

Spain:
The temptation of the treasury stock policy. Sanctions regime

ILP Abogados

Spain

Everything begins with the need to overcome an asset imbalance. In most cases, these are situations in which you do not know how to act. And then, a temptation arises: the "treasury stock."

Thus, treasury stock transactions arise. These are usually a very useful tool for societies immersed in difficult economic situations. However, it may also result in sanctions for the entity, as well as entail responsability for a company's managers.

Caution should be exercised before carrying out such a transaction as they can have a very negative effect on the economic and financial development of a society.

"Treasury stock"

The term "Treasury stock" was introduced into Spanish legislation through European Directives. Historically, it has been used when a company acquires its own shares, or when it acquires those issued by its parent company. The latter in the case of an existing group of companies.

Traditionally, there has been distrust of this practice due to the serious consequences that can result. Thus, from a dogmatic perspective, it has been affirmed that societies cannot be partners of themselves.

Arguments against "treasury stock"

As we said earlier, there are arguments against the practice of treasury stock. Among others, we highlight the following:

It is a contradictory situation, since the company lacks the capacity to acquire its shares. In addition, there may be eventual undesirable effects. All this also has to take into account the possible negative impact of the treasury stock in the economic and assets situation of the company.

This goes hand in hand with other negative effects such as emptying the guarantee function of diluted capital and diminishing its solvency. Likewise, the economic capacity may decrease.

Along with what we've seen above, there is also the risk that treasury stock will be used in a devious manner. That is, it could be used as a tool to modify the correlation of powers in the corporate-internal sphere.

Thus, it would be implemented through its use by administrators in a discriminatory and arbitrary manner. Therefore, it would entail the removal of the unruly minority and the reinforcement of others.

Additionally, another foundation contrary to treasury stock is the inadequate publicity of their own resources contributed by the partners.

Finally, it is alleged that this practice can affect the value of a society in the market, especially in the case of companies with dispersed capital. This follows from the Supreme Court Judgment no. 79/2012 of March 1, 2012.

Treasury stock in the Capital Companies Act

Despite the above arguments, the Capital Companies Law (hereinafter "CCL"), allows treasury stock. Of course, certain conditions must be met and they must be within certain legal limits.

Original acquisition

A company cannot subscribe to its own shares or those issued by its parent company. Therefore, the original acquisition by the limited liability company (hereinafter "LLC") is null and void (Article 136 CCL).

With regard to an operation carried out by a public limited company (hereinafter "PLC"), the situation is different. In this case, the law states that the subscribed shares will be the property of the PLC subscriber. Consequently, the sole obligation to pay rests with the founding partners or promoters. And, in the case of capital increase, on the administrators.

In addition, the following should be considered when dealing with the subscription of shares of the parent company. And in considering this, the obligation to disburse will fall jointly and severally against the directors of the acquiring company and the parent company.

The shares acquired by a PLC must be sold within a maximum period of one year from the first acquisition. Compliance with this obligation is especially relevant.

Therefore, the company must reduce its capital in the two months following the date of the end of the term for the sale. Otherwise, any interested party may apply to the commercial judge in the place of the registered office.

Derivative acquisition made by an LLC

The Law admits the derivative acquisition of the own shares or of the shares issued by the parent company. However, they still have to follow certain conditions

1) When they are part of a heritage acquired on a universal basis, or are acquired gratuitously. Or as a result of a judicial award to satisfy a credit of the company against the owner thereof.
2) When their own shares are acquired in execution of a capital reduction agreement adopted by a general meeting.
3) When their own shares are acquired in the case of forced transfer.
4) When the acquisition has been authorized by a general meeting, and has also been made with a charge to benefits or freely available reserves.

Likewise, there are considerations:

- Shares of a partner that are separated or excluded from the company.
- Shares that are acquired as a result of the application of a restrictive clause of the transmission thereof.
- And shares transmitted mortis causa.

While the shares acquired in treasury stock remain in the possession of the acquiring company, all rights corresponding to them will be suspended.

In addition, it will be mandatory to establish a reserve equivalent to the amount of such shares. And this must be maintained as long as the holding party is not incapacitated.

Finally, it is important to note that their own shares

must be amortized or disposed of within three years. This is not the case with the shares of the parent company. These must be disposed of within one year from the date of acquisition.

Derivative acquisition made by a PLC

The PLC may freely acquire its own shares of its pa-rent company. This is established in the Law, as long as:

1) Their shares are acquired in execution of a capital reduction agreement. This agreement has to be adopted by a general meeting of the company.
2) The shares are part of an equity acquired on a universal basis.
3) Shares that are fully released are acquired for free.
4) Units or fully paid shares are acquired as a result of a judicial award. And have as purpose to satisfy a credit of the society in front of its holder.

Regarding the above, we indicate the following. The shares acquired in accordance with points 2) and 3) must be disposed of within a maximum period of three years. The term to be counted is from the date of acquisition, unless they had previously been amortized by reducing the share capital or when the shares do not exceed twenty percent of the capital stock.

For the calculation of this percentage, they must be added to those shares already owned by the acquiring company. Those, if any, of its subsidiaries, should also be considered. That is, those held by both the parent company and its subsidiaries.

Conditions of acquisition by the PLC

The PLC can also acquire its own shares when the following conditions apply:

1) That the acquisition has been authorized by agreement of a general meeting. If they are shares of the parent company, the authorization must come from several areas. Consequently, both the general meeting of the acquiring subsidiary and the parent company must authorize it. How? Well, through an agreement that contains the mentions required by law. That is, the modalities of the acquisition, the maximum number of shares to be acquired and the minimum and maximum counter value. In addition, if the acquisition is onerous, the duration of the authorization may not exceed five years.
2) That the nominal value of the shares acquired does not exceed 20 percent of the share capital. Or 10 percent when the shares are admitted to trading. For the calculation, it will be necessary to add those already owned by the acquiring company and its subsidiaries.
3) That the acquisition does not produce the effect that the net worth is less than the amount of the share capital plus the reserves that are legally or statutorily unavailable.
4) That the acquired shares are fully paid for, otherwise the acquisition will be null and void.

The rights, political and economic, incorporated in the shares acquired in treasury stock are suspended. In addition, it will be mandatory to establish a reserve equivalent to the same amount. And it must be maintained as long as the holding parties are not incapacitated.

As for the sale term, they must be sold within a maximum period of one year from the first acquisition.

Sanctions regime

Finally, we explain the sanctioning regime. The infringement of the provisions of the LSC regarding treasury stock may entail the responsibility of the company's directors. Thus, they could be subjected to fines for an amount up to the nominal value of the shares assumed. Or of the shares subscribed or acquired, or those not sold or amortized.

The breach of duty to transfer or amortize shall be considered as an independent infraction.

Consequently, the administrators of the offending company will be considered responsible for the infraction and, where appropriate, of the dominant society, as they will be considered to be administrators as well as managers, or people with the power of representation.

Germany:
The European Court of Justice rules that the UK is able and entitled to unilaterally cancel Brexit

ILP Global Mertens Thiele
Germany

Amid the chaos and turmoil caused byTheresa May´s supension of the House of Parliament vote of her "Brexit-Deal" agreed on with the EU due to the awareness, that under no circumstances the british parliament would wave through the agreement, the European Court of Justice (ECJ) ruled that the UK could stop the article 50 process without seeking EU approval.

The court in Luxembourg delighted remain campaigners by issuing an emergency ruling that,

under EU law, the UK was able to unilaterally halt the article 50 process – fuelling renewed calls for a second referendum.

The case was taken to Luxembourg by a the cross-party group of Scottish parliamentarians, who now are expected to argue it means the prime minister is lawfully able to cancel the article 50 process without needing new legislation. Scottish judges are to hold an emergency hearing in response to the ECJ ruling next week. However, there is no doubt that the ruling meant the UK could stay in the EU and keep all its existing benefits, including its rebate, its opt-outs and the pound. MP´s now at least know that stopping Brexit altogether is an option open to them before the end of the article 50 period.

While the UK hence could abandon Brexit before 29 March, the date on which its withdrawal from the EU under article 50 takes effect, staging a second referendum would require the EU's agreement to extend article 50 beyond its normal two-year time limit.

The ECJ judgment, which came only two weeks after it held an emergency hearing on the issue, had itself been expedited to coincide with the crucial vote on May's Brexit deal in the Commons. That vote has now been postponed until next year, as May fights to save the deal and her government after more than 100 Tory MPs, including numerous loyalist, pro-remain backbenchers, threatened to vote the deal down.The UK government had fought strenuously to prevent the case reaching the European Court of Justice, ultimately however in vain.

Remain campaigners have hailed the European legal opinion that the UK can unilaterally abandon Brexit, saying it greatly boosts their efforts to stop the process of exiting the EU. This however at best remains to be seen. As a matter of fact, the british government does not seem to be even thinking about abandoning Brexit at this point in time. Even so, the ECJ´s ruling makes it clear to all involved parties, that at least potentially there is a rather straight and easy way out of this mess. Although this ultimately might not yet be an issue in Westminster today, given the chaotic and tumbling developments surronding Brexit, it may well become one down the road to a possibly "wild" Brexit, which means the UK leaving the Union on 29 March 2019 without a deal, an approach that most probably economically backfire inmediately. This final deadline is closing in quckly. To that background, impossible seems to be nothing.

Escrow Agreements

Estudio Gallegos Valerezo & Neira

Ecuador

An Escrow Agreement is used when two or more parties require an asset to be held by an independent and trusted third party, later to be released if certain contractual conditions set out in an Escrow Agreement are satisfied.

The number of escrow enquiries in commercial transactions have increased considerably which forced service providers to create Escrow alternatives, both private or through Fiduciary Companies, by using the so called “Encargos Fiduciarios” as helpful Tools for a variety of transactions, including the holding of funds in respect of the sale of businesses and matrimonial settlements surrounding both property and child maintenance.

Escrow Agreements are proving to be a highly attractive option for individuals, families and businesses looking to protect wealth and a variety of other assets as they are transferred between various parties. Whilst Escrow Arrangements have most commonly involved the holding of cash, the arrangement can be used to hold physical assets which could, for example, include property, computer software, source codes, art, deed of titles, investments and share certificates.

The use of Escrow Agreements is not only suited to holding assets in the short or medium term, but also covering a number of years. For example, safe keeping of properties of under aged individuals until they reach 18, 21, or 25 years. In line with the above, typically interest and need for Escrow Arrangements for individuals come when people are at a transitional period of their lives.

The ways that Escrow Agreements can be used is becoming increasingly varied for both individuals and businesses. The Escrow structure ensures that the money is protected for both parties during the relevant period but also demonstrates the company’s commitment and ability to fund the payment. For companies who employ staff who are subject to restrictive covenants, an Escrow Arrangement can offer security of the funds equally for both parties.

All in all, Escrow Agreements are proving to be a highly attractive option for parties looking to ensure that transactions take place efficiently and with minimal risk – whether these are highly complex, international transactions for large corporations or something more straightforward and closer to home for individuals or families.

Part of the services we offer regarding Escrow Agreements, include:

- (I) Drafting of the Escrow Agreements and Encargos Fiduciarios;
- (II) Reporting of escrow activity;
- (III) Processing and facilitating of payment requests and communication.

Mexico:
Updating to the concept of trademark and the protection of new distinctive signs

Bitar Abogados

Mexico

By: Lic. Adilen Coronel Aguirre

On May 18 of the current year, a decree of reform of the Law of Industrial Property (Ley de la Propiedad Industrial "**LPI**") was published on the Federal Official Gazette in which the article 88 was reformed in order to update the definition of trademark, remaining as a sign perceptible by the senses and capable of being represented, which distinguish products and services from others of the same kind or class in the market. Due to this reform, it's noted thAT the trademark is not only a visible sign (definition before de Reform), but it's a sign capable of being perceived through any of the five senses.

Likewise, the 89 article of the **LPI** was reformed, in which are added new signs that will be considered as trademarks and, therefore, will be protected as of August 10, 2018, by the mexican Institute of Industrial Property (Instituto Mexicano de la Propiedad Industrial "**IMPI**"). The distinctive signs subject to protection are:

- Trademarks,
- holographic signs,
- sounds,
- smells,
- comercial image,
- collective marks,
- certification marks,
- notices and trade names,
- geographical indications and
- protected designation of origin.

In that regard, it is highlighted that in Mexico it's the first time that it's established the protection of sounds, odors, holographic signs and certification marks as trademarks, being that these distinctive signs are not represented in a tradicional way. As the reader can infer, the registration of this non-tradicional brands will represent a challenge for the **IMPI**.

The first challenge would be to make the user understand what it's an olfactory, auditory, holographic mark, so that said user knows how to represent the sign constituting the Brand in their applications for registration of the trademark. The IMPI express that, for the registration of the trademark, the user must:

I) in the case of the hologram, represent the image in a single view and describe it together with an explanation of the holographic effect;

II) in the case of the sound mark, it must be described by words the sound of the mark, as well as the intruments that are used, its notes and any other characteristic of the sound, being that it may be materially supported with files in formats .avi, .mp3, .mp4, etc.;

III) in the case of the olfatory trademarks, the odors must be descrided by words that transmitted the exact and necessary information to identify that the

odor represent a specific Brand.

It can be inferred from the above, that all application for registration must have descriptions of the marks, and if you are not careful and clear enough, the **IMPI** would be able to deny the registration, arguing confusion with other brands or that are not sufficiently descriptive and distinctive.

Although the description made in the application for registration by the user may be clear enough, the **IMPI** will have the challenge to do background cheks that allow them to identify the distintive character of these brands, which will not be easy and will involve a great responsability fot the evaluator, since it will depend entirely in their criteria if a sound, smell or hologram is distinctive enough to be considered as a Brand.

Peru:
New Corporate Regime: Simplified Closely-Held Company (SCHC)

Estudio Laos, Aguilar, Limas & Asociados

Peru

In 2018, Peru ranks 58th in the World Ranking and 2nd in South America for ease of Doing Business, performed by the World Bank, falling four positions compared to the previous year; This indicator is directly linked to the time it takes our country to start a business. According to the report, on average, it takes 27 days in total to open a business in Peru; in the OECD countries only takes nine days.

One of the factors related to this delay is associated with the signing of the company's foundation agreement. For this reason, to reduce these times, the SIMPLIFIED CLOSELY-HELD COMPANY (SCHC) has been created in our country. The purpose of this new corporate regime is to promote an alternative for the formalization of economic activity and boost the production and business development of micro, small and medium enterprises (MSMEs).

Under Legislative Decree No. 1409, published on September 12 of this year, the SCHC is constituted by the private agreement of 02 to 20 natural persons, not requiring more formality and being able to be established online. The partners will be financially responsible according to the amount of their contributions, except for cases of labor fraud committed against third parties; without prejudice to current legislation on tax obligations. In that sense, the same principle of capital companies is maintained in which the liability of shareholders only covers up to the amount of their contribution. In other words, the personal assets of the shareholders are not affected.

Based on this new corporate form, our country follows the line of regulation of other South American countries such as Argentina, Colombia, Chile, and Mexico, which also have similar rules. This new corporate regime is a new tool for MSMEs, regarding the development of commercial projects, because when trying to formalize a business, there were specific bureaucratic barriers, notary costs, and a strict corporate regime. In that sense, it is considered that the SIMPLIFIED CLOSELY-HELD COMPANY (SCHC) will be an alternative to a partnership regime to formalize a business in an agile, modern and simple way.

Concerning the SCHC governing bodies, the General Meeting is still the maximum body, being able to have a board of directors but, necessarily, a general manager, if the first one does not exist. The regulations allow the transformation or adaptation to another corporate model; this may operate by applying the provisions of corporate law and those other provisions that will be contained in the regulation of Legislative Decree No. 1409.

For its legal existence, the SCHC requires its registration in the Public Registry. The regulation has proposed a fast and novel procedure, based on the following:

- The private document that contains the constitution certificate is generated through the Digital In-

termediation System of the Public Registries Office (SID - SUNARP), through the digital signature of the founding shareholders.

- The electronic document digitally signed by the founding shareholders allows the qualification and registration in Public Registries.
- Immediately, the RUC number is issued once the SCHC is registered, this company can carry out economic activity.

With this type of society, by reducing the costs of setting up companies and making their operation more agile, the state will contribute to reducing the levels of informality existing in our country, at the same time it will boost new investments.