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Chile:
Law 21.131 establishes the mandatory payment of invoices within a maximum period of 30 days

On January 16, 2019, Law 21.131 was published, establishing that the obligation to pay the value of the goods or services contained in an invoice must be effectively fulfilled within the maximum term of thirty calendar days from its receipt.

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Chile:
Ley 21.131 establece el pago obligatorio de facturas en plazo máximo de 30 días

Con fecha 16 de enero de 2019 fue publicada la Ley 21.131, que establece que la obligación de pagar el valor del bien o servicio contenido en una factura deberá ser cumplida de manera efectiva dentro del plazo máximo de treinta días corridos contados desde la recepción de la factura.

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Politics and economy must follow by separate strings?

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Pari Passu and Negative Pledge Clauses

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Resolution issued by the Supreme Court of Justice of México, which established as discriminatory the requirement for the execution of HIV/AIDS prior to hiring in any public health system in mexico

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Resolución emitida por la Suprema Corte de Justicia de la Nación, que estableció como discriminatorio el requisito de realización de exámenes de VIH/SIDA, previo a la contratación en cualquier sistema de salud pública en méxico

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Chile:
Law 21.131 establishes the mandatory payment of invoices within a maximum period of 30 days

Estudio Jurídico Otero

Chile

On January 16, 2019, Law 21.131 was published, establishing that the obligation to pay the value of the goods or services contained in an invoice must be effectively fulfilled within the maximum term of thirty calendar days from its receipt. In any case, the same law allows extending this term only if there is an explicit agreement between the parties and in contracts for the supply and provision of services entered with the public entities mentioned in Law 19.886, known as Public Purchases Law.

Let us analyze these exceptions:

Explicit agreement between the parties

This kind of agreement will be valid only when it is in writing, signed by the parties and does not involve any abuse by the debtor.

The agreement must also be registered within a maximum term of 5 business days in a register that will be implemented by the Ministry of Economy, Development and Tourism, who will ensure that all requirements are met, identifying the contracting parties, their lines of business or financial activity, the date of execution and payment term.

Any stipulation or agreement that does not comply with the aforementioned requirements will be considered as non-written and will be governed by the thirty-day payment period established by the general rule.

Stipulations or clauses extending the payment term of the invoices will not be valid when:

A They grant the buyer or beneficiary of the service the power to cancel or modify the contract at its sole discretion, i.e., without requiring the prior and express consent of the seller or service provider, without prejudice to the exceptions considered by the legislation.

B They contain absolute limitations of liability that may deprive the seller or service provider of their right to compensation in the event of breach of contract.

C They establish interests for non-payment lower than those established by the law.

D They establish a payment deadline counted from a date other than that on which the invoice was received.

E In all other cases established by law.

If the payment term is not mentioned in the invoice and its transferable copy, it must be paid within thirty consecutive days following of its receipt. If the payment is not made within the corresponding term the debtor will be in default, accruing interests from the first day of delay until the date of effective payment. In the case of State entities, this interest will be paid out of their respective budgets.

The buyer or beneficiary of the goods or services that is in default must pay, in addition of the interest a fixed commission for recovery of payments equivalent to 1% of the unpaid balance owed.

Contracts of supply and provision of services with public entities

The payments related to the contracts of supply and provision of services that the State Administration enters into for the supply of movable goods and services required for fulfilling their duties (Law 19.886), must generally be made within thirty days following the receipt of the invoice. However, these entities will have the power to set a term of payment of up to sixty calendar days in the bidding rules, whether public or private, and in direct contracting when there are well-founded reasons for it. In these cases, the Procurement and Contracting Information System of the State Administration must be informed.

In these contracts before the payment, the respective entity must previously certify the satisfactory receipt of the acquired goods or services, except in the cases of contracts for an amount below the limit set by Law 19.886 and its regulations, which have been made by electronic means, as established in article 12 A of Law 19.496 (Consumer Rights Protection Law). In these cases, the payment may be made prior to the satisfactory receipt of the product, maintaining the contracting public entity its right of withdrawal, as well as consumer rights and duties.

In the event that the payment is not made within the above deadlines, the administrative responsibilities of the officials that may correspond will be generated. These sanctions will be applied by the competent authority, following an administrative summary. However, the General Comptroller of the Republic may also initiate the summary and establish the corresponding sanctions.

It is also important that this law considers as unfair competition: *"The establishment or application of abusive contractual clauses or conducts to the detriment of suppliers, the systematic breach of contractual duties assumed with them or of the deadlines set forth in Law 19.983 (which granted executive merit to invoices) for the fulfillment of the obligation to pay the unpaid balance contained in the invoice".*

The term of entry into force of the Law is of four months from its publication, i.e., on May 16, without prejudice that various special deadlines are considered for certain cases. In our opinion, the most important date to considers is the entry into force of the general obligation of payment in 30 calendar days from the date of receipt of the invoice, which will come into force on the twenty-fifth month after the law was published in the Official Gazette, i.e., on February 16, 2020. During the first twenty-four months, the maximum payment term will be sixty calendar days.

Peru:
Politics and economy must follow by separate strings?

Nancy Laos Cáceres, ex minister of labor

Estudio Laos, Aguilar, Limas & Asociados

Peru

Despite the bad political news that our country has suffered in the last two years due to the uncovering of major cases of corruption and political disputes, which included the fall of former President Pedro Pablo Kuczynski (PPK), Peru is a country with a strong tradition that is consolidating: Politics goes by rope separate from the economy. We do not know if this trend will continue or change. The truth is that it has been working this way for many years and it seems that it will continue.

Regardless of what happens in our politics, the Peruvian economy has responded very well, helped much more for the dynamics of external markets, than to our own internal situation.

We are a country with a strong tradition of exporting raw materials (mining and agricultural exports mainly) and investments in these areas move with a long-term horizon and according to the dynamics of our target markets.

If China and the United States weaken or if the prices of our raw materials fall, the economy slows down and, vice versa, if prices rise, the economy strengthens. All this, regardless of what happens in politics. This is how it has been happening and it seems that this will continue, whether we like it or not.

When our foreign investment friend asks us if all the institutional and political problem of Peru, which transcends our borders, will affect our economy, we respond that the evidence indicates that not much, because fortunately the economy and politics are handled by separate strings.

One clear example happened during the government of Alejandro Toledo (2001-2006) because it ran with frequent political crises that brought down its popularity and kept it, in some cases, below 10% of approval; however, business expectations for the economy remained optimistic. During its period, the economy grew between 5% and 6%.

In the government of Alan García (2006-2011), although in general terms there was more political stability, there were episodes of a strong political crisis ("Petroaudios", "Baguazo", etc.) but they never affected economic expectations and always they continued to rise, mainly due to the strong rise in the price of raw materials in that period, particularly copper.

In President´s Humala government, the economy declined due mainly to external factors (end of the upward cycle of international prices of commodities) but the economy never stopped growing, while politically, suffered a permanent confrontation and dispute on lots of issues.

Currently, Peru is emerging from a very difficult political situation arising from the uncovering of large cases of corruption and political confrontation, which

led to the change of President PPK by Martín Vizcarra. Although we have entered right now to a politically stable territory, it seems that the uncovering of more cases of corruption will continue for a time, but our economy and expectations remain optimistic.

Some economists argue that, in the long term, it is not possible for them to follow the "separate strings". They point out that politics and economy at some point will reflect each other, because if the political institutions do not show maturity and stability, in the long run the economy will be affected because the structural reforms need leadership and strong political institutions; however, that has not happened yet.

In recent months, the international prices of raw materials began to recover, bringing good winds from abroad and the economy returns to recover, regardless of what happens in politics. We do not know if this trend will continue, but that it helps ordinary citizens and businesses to maintain favorable expectations, it is an irrefutable truth.

The advisable thing is not to trust us in good luck and to develop the pending agenda of political and economic reforms so as not to depend so much on external factors.

Spain:
Pari Passu and Negative Pledge Clauses

ILP Abogados

Spain

Pari passu and negative pledge clauses are commonly used in the area of business financing.

Large projects or operations that require important sums for their implementation are usually not financier by a single bank. These operations are frequently financed through the so-called syndicated loans. Several banks or savings banks are grouped together to offer the necessary financing to the Company, thus diversifying the risk they assume for the operation in question.

Syndicated loans usually include a series of typical clauses that try to guarantee the position of the banks.

Among these are the pari passu and negative pledge clauses which grant the banks a privileged position vis-à-vis the borrower.

1 Negative pledge and other negative clauses

The negative pledge clause is a "do not do" or "abstain" clause. It prevents the borrower from granting guarantees to third parties without also offering them to the syndicated banks.

To express it in a simple way:

> "I will not give any real or personal guarantees to any of my creditors without having first given the same guarantee to the bank syndicate".

This avoids the loss of "value" of the borrower's assets and rights.

There are other "do not do" clauses ("negative clauses") that are quite common in this kind of contracts:

- Obligation not to assume new debts after receiving the loan that entails the duty of abstention.

  This obligation is not generally absolute, as in that case, it would be very likely that the business activity would be paralyzed and, consequently, the ability to repay the loan that is intended to be protected.

  The obligation is usually mitigated by:

  Allowing, for example, the indebtedness if it is of a lower level than the one already assumed. In this way, the first debtor ensures the return of the loan in preference to the other creditors.

  Or, for example, allowing the indebtedness provided the borrower meets certain financial ratios.

- Prohibition to the debtor to dispose of his assets.

  Again, the prohibition is usually nuanced in such a way that the debtor cannot transfer goods above a certain amount or those assets that are the essential object of his business activity.

2 Pari passu clause

The pari passu clause ("with equal footing") prevents the borrower from offering to third parties better conditions than those applicable to the syndicated loan. It tries to prevent granting to third parties greater gua-

rantees or rights to collect their credits to the detriment of the former.

> "I commit myself not to constitute guarantees or to grant to third-party creditors greater privileges or a preferential character to their credits with respect to the syndicated loan".

3 Other frequent clauses

In addition to the aforementioned clauses, the participating banks usually impose other obligations. By way of mere example:

- Maintaining certain financial ratios, and periodically providing accounting documentation.
- Accepting debt compensation with other products the borrower has in the same entities.
- Allocating the borrowed funds to a certain and specific purpose without being able to allocate them to other needs.
- Accepting the resolution in case certain circumstances prove the impossibility of facing the payments.

But not all of them are obligations for the borrower (although almost all are). Given the syndicated nature of financing, the banks also impose certain guarantees and certain standards of behavior.

By way of example, banks are obliged not to receive payments proportionally higher than those received from others under the same contract. In this manner, all syndicated banks ensure that there are no individual negotiations between the borrower and some of them.

Mexico:
Resolution issued by the Supreme Court of Justice of Mexico, which established as discriminatory the requirement for the execution of HIV/AIDS prior to hiring in any public health system in Mexico

Bitar Abogados

Mexico

On February 6, 2019, the Federal Supreme Court, published a statement to inform the general public, that by means of the ruling issued in the amparo trial number **43/2018**, the Second Chamber of the Federal Supreme Court, concluded that it was obviously discriminatory that the **INSTITUTO MEXICANO DEL SEGURO SOCIAL (MEXICAN INSTITUTE OF SOCIAL SECURITY)** established as a requirement for the hiring of its medical personnel, the application of HIV/AIDS tests, in public health systems, to all employees of health.

The previous resolution, from our point of view, turns out to be avant-garde and innovative, given that it was pronounced with the purpose of protecting the human rights of people who could be carriers or suffer from the HIV / AIDS disease and who have the right to aspire to a work within society, a resolution which is undoubtedly a great event to achieve an inclusive society and completely eradicate any type of discrimination against any human being, either because of their health condition, sexual orientation, race, religion, socio-economic condition, political ideology.

The above resolution was based on three basic arguments:

First:

Demanding the HIV / AIDS test as a requisite for accessing medical work and / or any other type of work, violates the right to equality, since it would deny employment to people because of their health condition, which is prohibited by Article 1 of the Mexican Constitution.

Second:

It is not necessary to carry out HIV / AIDS tests on applicants to obtain a job in the Health Sector, since they are not yet part of the medical staff in charge of protecting the health of other people, so they do not it justifies the invasion of the privacy of the applicants, since at that moment there is no risk for workers and patients in the Health Sector.

Third:

The protection of the right to health in any way would be met with the possibility of carrying out the HIV/AIDS test for people who are already working in health institutions and who work in specialties, medical areas or activities in which, in fact, there is a reasonable and objective risk of infection to staff or patients (specifying that the examination should be applied in a general way to all the personnel of the respective area or specialty and not individualized to the applicants to obtain a job within the Health Sector).

This is a great advance to place Mexico within the countries that are concerned about having an inclusive society, which guides it as a country aimed at modernity and leaving behind any discrimination.

However, the Second Chamber of the Federal Su-

preme Court, within the reference resolution, considered that it is allowed that Health Institutions carry out HIV / AIDS tests on medical personnel, as long as they are carried out after the hiring of the health professional and compliance with the obligations established in the Official Mexican Standard called "**NOM-010-SSA2-1993**", taking care to avoid possible infection between staff and patients.

As a result of what I stated before, the HIV/AIDS exams practiced by the Health Institutions to their medical workers must meet the following requirements:

1. They can never be done prior to hiring;
2. They must not give rise to the dismissal of the worker;
3. The HIV/AIDS test should only be practiced in specialties, medical areas or activities in which, in fact, there is a reasonable and objective risk of infection to staff or patients, according to the nature of the respective medical work and in a manner general, not individualized;
4. The results of the HIV/AIDS test should not be published and as a general rule may only be known to the persons and workers who, strictly, are responsible or co-responsible for the application of the necessary measures for the protection of the health of the medical staff and patients.

The resolution in question is undoubtedly a breakthrough in the issue of non-discrimination and inclusion that must exist in each of the societies that make up all the countries of the world, thus protecting the human rights as life, freedom, security and equality before the law.