


ABA Section of International Law

2016 Americas Forum

- 
- Legal Ethics
 - International Treaties
 - M&A Transactions
 - Regional Capital Markets
 - Energy and JV Transactions
 - Colombian Peace Process and Transitional Justice
 - ICSID Availability and Effectiveness
 - Foreign Direct Investment
 - Law and Technology
 - Anticorruption and Competition

November 14-16, 2016
Bogotá, Colombia



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MONDAY, NOVEMBER 14, 2016

5:00 PM-6:00 PM

Welcome Reception

TUESDAY, NOVEMBER 15, 2016

8:00 AM – 9:00 AM

REGISTRATION and BREAKFAST

Room: Platinum Ballroom III

9:00 AM – 10:30 AM

OPENING PLENARY

The Current Status of the Colombian Peace Process: Will the Peace Process Finally Bring Closure to a 52 Year Conflict?

Room: Platinum Ballroom I

On August 24 of this year, the Colombian Government and the leaders of the FARC guerrilla movement announced that they had reached agreement on a Peace Accord to end Colombia's 52-year conflict, the oldest internal remaining conflict in the Western Hemisphere. The parties signed the Accord in Cartagena, Colombia, on September 26, 2016. A cease fire and the end of all hostilities was reached in June 2016.

To the government's surprise, the Colombian voters rejected the Peace Accord and it is currently being revised by the government. Once revised, the new ratification process has yet to be established. In the meantime President Juan Manuel Santos has won the 2016 Nobel Peace prize for negotiating the Peace Accord and has announced that he will donate the prize money to victims of the conflict.

This panel will discuss the current status of the Peace Accord, and describe the new provisions and new ratification process. It will also discuss whether the new Peace Accord will end the hostilities and transition FARC members into civil society and whether it will end FARC ties to drug trafficking and provide reparation to victims.

Panel Chair:

Carlos Urrutia, Brigard & Urrutia, Bogotá, Colombia

Moderator:

Carlos Urrutia, Brigard & Urrutia, Bogotá, Colombia

Speakers:

Manuel Jose Cepeda, Universidad de los Andes, Bogotá, Colombia

Sergio Jaramillo, High Commissioner of Peace, Ministry of the Interior, Bogotá, Colombia

María Paulina Riveros, Ministry of the Interior, Bogotá, Colombia

10:30 AM – 11:00 AM

NETWORKING BREAK

Room: Platinum Ballroom III

11:00 AM – 12:30 PM

PLENARY No.2

Surfing the Wave: Maintaining Balance in Legal Ethics

Room: Platinum Ballroom I

Technology and increasing cross-border practice have placed increasing pressure on lawyers seeking not only to understand ethical obligations, but also the applicable rules of professional responsibility. In certain cases, there are significant differences between applicable rules. This panel will explore the impact of technology and social media on ethical compliance, the use of alternatives to traditional legal activity (such as the use of robots and artificial intelligence), and continuing challenges to privilege and conflicts issues. The format will be a round-table discussion with audience involvement throughout.

The speakers will explore best practices and the rules of professional responsibility where the choice of law and applicable rules are not always self-evident. ***This panel will provide 1.5 hours (90 minutes instructional time) of Ethics/Professionalism credits (CLE)***

Panel Chair:

Steven Richman, Clark Hill PLC, Princeton, NJ

Moderator:

Steven Richman, Clark Hill PLC, Princeton, NJ

Speakers:

Robert Brown, Bellarmine University, Louisville, KY

Anne Marie Mürrle, Mürrle Asesores, Bogotá, Colombia

Joseph Raia, Gunster, Miami, FL

12:30 PM – 2:00 PM

NETWORKING LUNCHEON

Keynote Speaker: Bruce McMaster, President, Asociación Nacional de Empresarios de Colombia – ANDI

Room: Levels Bar

2:00 PM – 3:30 PM

CONCURRENT SESSION No. 1

The Cycle of M&A Transactions in Latin America - Doing the Deal, Regulatory Requirements and Post-Completion Risks Such as Expropriation.

Room: Platinum Ballroom I

This panel will discuss the whole investment cycle that foreign investors have to address when investing in Latin America.

The speakers will analyze the challenges that both North American and European foreign investors as well as 'Multilatinas' (Latin American companies that are leaders in their markets) encounter when doing cross-border acquisitions in other Latin American countries.

The panel will also address the regulatory challenges that arise from the intersection of laws in different jurisdictions and the conflict that may arise between the regulatory obligations in the country of origin of the investors and those of the host country.

The challenges arising from a corporate expropriation and the new tools to fight it under the Foreign Sovereign Immunity Act, the Uniform Fraudulent Transfer Act and the Alien Tort Claims Act, will also be discussed.

Panel Chair:

Diego Muñoz-Tamayo, Munoz Tamayo & Associates, Bogotá, Colombia

Moderator:

Hermann Knott, Luther, Cologne, Germany

Speakers:

Lina López, Grupo Sura, Bogotá, Colombia, and/or María Mercedes Ibáñez, Compañía de Seguros Bolívar, Bogotá, Colombia

Eduardo Benavides, Berninzon & Benavides, Lima, Peru
Simon Bieber, Wardle Daley Bernstein Bieber, Toronto, Canada
Cathy Connally, Issues Central Inc., Toronto, Canada
Amanda M. McGovern, Rivero Mestre, Miami, FL

Foreign Investment Transactions in Latin America - Document Drafting and Negotiation; Tips and Pitfalls in Ensuring ICSID Availability and Effectiveness

Room: Platinum Ballroom II

The devil is in the detail. Foreign investors can be frustrated by overreliance on ICSID as an institutional dispute resolution mechanism for overseas investments because of poor drafting and misconceptions or assumptions made during negotiations or drafting of the documents.

Using ICSID precedents, panelists will discuss the do's and don'ts in negotiations and drafting of documents. Panelists will discuss precedents and personal experiences which will assist the audience when confronting similar situations. These experiences will include the behavior of officers and the general attitude of Latin American countries and public government entities towards negotiation of ICSID related clauses and ICSID enforcement.

Panel Chair:

Jose Alejandro Torres, Posse Herrera Ruiz, Bogotá, Colombia

Moderator:

Roberto Aguirre, King & Spalding, Houston, TX

Speakers:

Judd Kessler, Porter Wright Morris & Arthur, Washington, DC
Nicolas Palau, Ministry of International Trade Colombia, Bogotá, Colombia
Caroline Richards, Freshfields, Washington, DC
Jose Antonio Rivas, Arnold & Porter, Washington, DC
Mariano Gomez Peralta, Robert Wary PLLC,
Monica Jimenez, ECOPEPETROL, Bogotá, Colombia

3:30 PM – 4:00 PM

NETWORKING BREAK

Room: Platinum Ballroom II

4:00 PM – 5:30 PM

CONCURRENT SESSION No. 2

Regional Capital Markets, a New Horizon for Project Finance

Room: Platinum Ballroom I

Latin American countries continue to face serious challenges to secure financing to build or upgrade their infrastructure. With commodities prices falling and fiscal constraints limiting the ability of governments to directly finance projects, can the regional capital markets serve as a viable option for governments and private sponsors?

This panel will discuss the state of project finance in Latin America as well as the recent developments in the integration of regional capital markets, through the Integrated Latin American Market – MILA-, as well as the opportunities and challenges that regional capital markets such as MILA offer as alternative options to raise equity or debt in the context of project finance.

Panel Chair:

Santiago Gutierrez, Lloreda Camacho & Co., Bogotá, Colombia

Moderator:

Santiago Gutierrez, Lloreda Camacho & Co., Bogotá, Colombia

Speakers:

Gianluca Bacchiocchi, Clifford Chance, New York, NY
Michael Bassett, Linklaters, New York, NY
Diego Peralta, Carey, Santiago de Chile, Chile
Paola Morales, IFC, Washington, DC

Law and Technology: WhatsApp & Uber: Are Governments Being Left Behind?

Room: Platinum Ballroom II

The blocking of WhatsApp in Brazil and the problems faced by Uber in different countries have raised interesting and complex legal, political and social issues.

This panel will discuss the most recent and pressing practical and technological developments including WhatsApp, Uber and others, to further understand whether (1) There is there a need for regulating all new technologies; (2) The governments are coping effectively with the technological developments; and (3) Technology can wait until regulators understand the continuous changes.

The panelists will share recent examples and the audience will be invited to assist in finding solutions.

Panel Chair:

Santiago Concha, C&R Law, Bogotá, Colombia

Moderator:

Santiago Concha, C&R Law, Bogotá, Colombia

Speakers:

Renato Opice Blum, Opice Blum, Bruno, Abrusio e Vainzof Advogados Associados, São Paulo, Brazil
Jorge Mestre, Rivero Mestre LLP, Miami, FL
Enrique Gonzalez, Uber Latin America, Mexico City, Mexico
Irene Velandia, Google Latin America, Bogotá, Colombia

6:00 PM – 8:00 PM

RECEPTION

WEDNESDAY, NOVEMBER 16, 2016

8:00 AM – 9:00 AM

REGISTRATION & BREAKFAST

Room: Platinum Ballroom III

9:00 AM - 10:30 AM

CONCURRENT SESSION No. 3

Foreign Direct Investment in Latin America: Private Equity, Investment Treaties and Interesting Moves

Room: Platinum Ballroom I

This panel will discuss the recent developments and trends in Foreign Direct Investment in Latin America. The speakers will discuss how Private Equity Funds are investing and disinvesting in the different jurisdictions together with a view of how (if at all) investment treaties and the recently elected governments in several countries in Latin America have changed the panorama.

The panel discussion will include the experiences of Chinese companies investing in Latin American countries, which is an increasing trend in Latin America. The panel will also give a comprehensive overview of what is going on in this field and where it is heading.

Panel Chair:

Ernesto Velarde, Velarde Danache Inc., México

Moderator:

Ernesto Velarde, Velarde Danache Inc., México

Speakers:

Tomas Allende, Estudio Beccar Varela, Buenos Aires, Argentina

Alex Hao, JunHe, New York, NY

Alfonso Miranda, Esguerra Barrera Arriaga, Bogota, Colombia

Are International Agreements Obsolete? Trade, Labor Mobility and the Future of Multilateral Negotiations.

Room: Platinum Ballroom II

Major trade agreements such as the WTO appear to be stalled, but regionalism is dominating the international treaty scene, and now the potential effects of Brexit must be factored in. Regional trade agreements have become the preferred way of addressing international policy issues becoming the focus of multiple constituencies at the national and international level. The debate around these agreements goes beyond trade and includes commitments in social and regulatory matters, labor mobility, investment and environmental policies. Moreover, the debate focuses on the leading role of developed countries and the lack of participation of emerging market players in these agreements.

This panel will discuss the impact of international agreements on trade and economic relations between nations, taking into consideration a Brexit landscape.

Panel Chair:

José Francisco Mafla, Brigard & Urrutia Abogados S.A.S, Bogotá, Colombia

Moderator:

José Francisco Mafla, Brigard & Urrutia Abogados S.A.S, Bogotá, Colombia

Speakers:

Carla Amaral de Andrade Junqueira Canero, Mattos Engelberg, Sao Paulo Brazil

Marcy Stras, Cozen O'Connor, Washington, DC

Sergio R. Karas, Karas Immigration Law Professional Corporation, Canada

10:30 AM – 11:00 AM

NETWORKING BREAK

Room: Platinum Ballroom III

Ride the Energy Wave: An Overview of Key Legal Issues in M&A and JV Transactions in the Latin American Energy Sector

Room: Platinum Ballroom I

Energy is trending in Latin America from investments in renewable energy and government bids to the divestiture of energy assets by international conglomerates. In acquiring companies or entering into joint venture agreements in Latin America there are many key legal issues and regulatory pitfalls that must be taken into consideration.

This panel will discuss local regulatory, environmental, customs, security and labor issues as well as prior public consultation of the native populations. The panel will further discuss their experiences and solutions they found to issues they encountered.

Panel Chair

Fabian Pal, Holland & Knight, Miami, FL

Moderator:

John Padilla, IPD Latin America, Fort Lauderdale, FL

Speakers:

Jose V. Zapata, Holland & Knight, Bogotá, Colombia

María Teresa Quiñones Estudio Rodrigo, Elias & Medrano Abogados, Lima, Peru

Lorena Schiariti, Marval, O'Farrel & Mairal, Buenos Aires, Argentina

Juan Francisco MacKenna, Carey, Santiago, Chile

Anticorruption and Competition Enforcement in Latin America: What is Working and What is Not. Latest Trends and Implementation of Efficient Compliance Programs.

Room: Platinum Ballroom II

Anticorruption and antitrust laws, while procedurally and substantively different, intersect, especially in the cartel area. Both proscribe overseas misconduct, and may subject the wrongdoer to criminal penalties. Information discovered in an antitrust investigation may lead to a corruption investigation. Broadly speaking, both laws can be regarded as aiming to prevent conduct that distorts competition. Many countries in Latin America are updating their legal systems and legislation in order to combat corruption and anticompetitive conduct, perceived as a widespread problem that conspires against development. Additionally, legislation and enforcement agencies are putting increasing pressure on companies to implement effective compliance programs in order to deter both types of behavior and diminish corporate liability.

This panel will discuss the approach taken by anti-corruption and antitrust agencies, international organizations and judicial bodies in Colombia, Brazil, Argentina and other countries in the region regarding anti-money laundering legislation, asset recovery, anticompetitive wrongdoing, whistleblower protection and criminal plea bargaining as effective measures to deter corruption, bring the wrongdoers to justice and restore to society part of the proceeds, as well as how the intersection of both areas occur in practice.

Panel Chair:

Daniel Rodriguez Bravo, Rodriguez-Azuero Abogados, Bogotá Colombia

Moderator:

Roberto Bauzá, Rattagan Macchiavello Arocena, Buenos Aires, Argentina

Speakers:

Daniel Rodriguez Bravo, Azuero Contexto Legal Abogados, Bogotá Colombia

Miguel del Pino, Marval O' Farrell Mairal, Buenos Aires, Argentina

María Cecilia Andrade, Odebrecht Transport, São Paulo, Brazil