

Q&A: CONSTRUCTION AND PROCUREMENT IN MEXICO

COMAD, S.C.
Law Firm
Established in 1965

MEXICO'S new President, Enrique Peña Nieto, was elected in July 2012 on the back of his commitment to improving the country's economy. Among the new government's proposals, it is overseeing a budget of US\$5,730m to modernize infrastructure, it has also ushered in a new PPP law and there are further expectations of reform in public procurement. COMAD, a boutique construction and procurement firm founded almost 50 years ago, discusses the sweeping changes being made to Mexico's infrastructure landscape.



Roberto Hernández García
at COMAD

COMAD IS AN INDEPENDENT MEXICAN LAW FIRM WITH A STRONG FOCUS ON SPECIFIC PRACTICE AREAS; WHAT AREAS DO YOU SPECIALIZE IN?

COMAD is devoted to three areas of law: the first area of focus is national and international public and private construction law; the second pillar of our practice is national and international public procurement (this means we have a strong practice in administrative law). As an addition, in recent years we have started to be heavily involved in our third core area of practice: corporate compliance and anticorruption matters. In all of the areas of law listed above, we practice counselling, transactional and dispute resolution - notably, we have experience across the full spread of litigation, dispute boards, mediation and arbitration.

HOW DOES YOUR NICHE FOCUS PROVIDE VALUE TO CLIENTS?

Our specialization is like when you go to see a doctor to treat an illness; you look for the best doctor that understands that specific health problem - you do not go to a general doctor. In the same way, COMAD's specialization allows the firm to provide its clients with the best deep knowledge of what is happening throughout the relevant industries. We make it a priority to remain up-to-date on all the legal trends that affect our core areas, we participate in professional and sector association events - and we often speak at these events. For example, new clients are often surprised by the level of vocabulary, knowledge and experience we have in the field of construction and that is because we make it our job to be actively involved with projects, including working with engineers, architects and experts to solve our client's real problems in real time.

In relation to public procurement, we constantly update new rules and regulations and take the time to find out who makes the decisions in government to ensure that clients are aware of new developments and know what outcome to expect.

Finally, clients turn to us because we are known to solve problems by looking for the appropriate legal route rather than the "easy" path (corruption).

WHAT ARE THE LATEST LEGAL DEVELOPMENTS AFFECTING PUBLIC PROCUREMENT AND INFRASTRUCTURE IN MEXICO?

There have been interesting developments in both fields. In public procurement, the new Federal Anticorruption Law on Public Procurement came into effect in July 2012. This statute provides a very interesting framework designed to benefit good faith participants that were dissatisfied with non-transparent public procurement procedures vis-à-vis bad-intentioned competitors. The law establishes powers to sanction and debar private companies for up to 10 years and will ensure that many previous corrupt practices that were prevalent throughout the industry will no longer be accepted. This was a very good legacy from our former President.

In the matter of infrastructure, Mexico finally saw the enactment of a federal Public Private Partnership Law on January 2012 and its regulations were published in the Official Gazette on November 2012. So the good news is that our country has a complete federal statutory regime for this scheme. One of the interesting stories surrounding this law is that private companies worked tirelessly behind the scenes to ensure that it saw the light of day, which meant that the process was successful, even with the change of Presidential powers.

As a final note on new developments, we can say that next year we expect a very significant reform in the current Public Works Law, which has been put forward by all the important participants within the construction

industry. Therefore, looking forward we will soon have a complete framework: a brand new PPP Regime; a new Public Procurement Law; the not so new but useful Pemex regulations in public procurement, and, surrounding all these, an anticorruption law for all public procurement procedures. The scenario looks very bright for the industry.

WHAT DO CLIENTS NEED TO KNOW ABOUT THE EXTENT OF MEXICO'S PUBLIC PROCUREMENT LAWS AND CONSTRUCTION LAWS?

Firstly, it is important that clients know that Mexico is a civil law country and that there are many legal practices that are different from other countries.

Secondly, clients need to understand that there are several laws applicable according to the territory where they are applied: there are 33 legal regimes; a federal regime; 31 states; and the Federal District (Mexico City). So you cannot speak about "Mexican law" as simply one distinct law.

A final thing to highlight is that administrative law, which of course regulates public procurement, and many aspects of public works laws are difficult to understand. The main goal that we have with foreign companies is to explain to them concepts such as "public order" matters or non-waivable statutes. Once they are known and the risks are determined, companies can do good business in Mexico.

DOES COMAD HAVE INTERNATIONAL EXPERIENCE? HOW DOES THIS BENEFIT CLIENTS?

We have worked directly in top projects in Italy, Venezuela, Costa Rica and other countries around the globe. In 2011, we formed an alliance of construction law firms for the Americas called CONSTRULEGAL. The group includes leading specialized construction law firms, and it currently covers the USA, Peru, Brazil and Mexico and hopefully in 2013, Central America. This alliance and our relationships with construction and public procurement firms and clients all around the world, allow us to serve our clients thoroughly; we are able to understand matters in a global way and we are able to work together with international colleagues when it is required. Most importantly, it awards us with a platform to service clients internationally without compromising on our main philosophy: personal attention and specialization. We are also very active in international groups such as the ABA Construction Forum, the IBA International Construction Projects Committee and the ICC Construction Disputes Committee.

HOW EQUIPPED ARE YOU TO ADVISE FOREIGN CLIENTS ON PUBLIC PROCUREMENT AND CONSTRUCTION ISSUES?

COMAD has been in the national and international market for almost 50 uninterrupted years. All COMAD lawyers that work on international matters speak and write fluent legal English, have studied in US universities, and understand the meaning of responsiveness without time limitations.

On the construction side, in 2011 and 2012 alone we acted on projects valued at more than \$3bn including: acting on Line 12 of Mexico City's Metro on behalf of the Construction Consortium; acting on the Túnel Emisor Oriente (TEO) on behalf of the Engineer of the project during its launching; and the legal issues related to the construction of a very important industrial plant in Guadalajara, as well as a mining project in Baja California.

On the public procurement side, we have acted in litigations in award challenges and bid protests in very relevant procedures related to IT, transportation, services, pharmaceuticals, etc., for business with an estimated value of \$50m. We pride ourselves on fielding a compact and well-trained team that combines experience with responsiveness and honesty. Very top companies such as ICA, Turner/Marhnos, Bechtel, Dirac, Savi, Daimler, IBM, Vancouver Pile Driving, Amiad and Lilac Space are witness to our best efforts to provide the best service to national and foreign clients. ■

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