

## **NOTICE**

**These articles are provided for general information purposes only and do not constitute legal advice. Professional legal advice specific to individual circumstances should be obtained. AIG, Inc. or its subsidiaries or affiliates, either jointly or severally, will not accept any liability arising from the accuracy of the information provided in these articles.**

**"ESCRITORIO CALCAÑO-VETANCOURT**  
*Established in 1927*  
**EDIFICIO SEGUROS VENEZUELA, 7TH FLOOR**  
**AVENIDA FRANCISCO DE MIRANDA**  
**CAMPO ALEGRE**  
**P.O. BOX 12**  
**CARACAS 1010-A, VENEZUELA**

**Telephone: (58 212) 953.04.44 (Master); (58 212) 953.39.33**  
**(Master)(58 212) 953.2170 (FAX)**  
**Cable Address "Oillaw"**  
**Telex: No. 28398 OILLAW VC**

**E-mail: [info@calcano-vetancourt.com](mailto:info@calcano-vetancourt.com)**

*General Practice - Corporate lawyers specializing in Commercial and Civil Laws, Corporations, Insurance, Tourism, Administrative and Labor Laws.*

*FIRM PROFILE: The firm was established in 1927 by Dr. Octavio Calcaño-Vetancourt, a prominent Venezuelan lawyer. After his decease in 1957 the firm was reorganized. The firm offers legal services in all important branches of the law applicable to national and international corporations, particularly in the following areas: Corporate Law; Commercial Law, Administrative Law, Labor Law, Taxation; Oil Law; Foreign Investments; Privatizations; Insurance; Banking; International Financing; Contracts, Acquisitions and Tourism. The client base is Venezuelan, North American and European. Languages: Spanish, English, and French.*

**MEMBERS OF FIRM**

**DR. OCTAVIO CALCAÑO-VETANCOURT (1900-1957)**

**OCTAVIO CALCAÑO-SPINETTI**, born Caracas, Venezuela, August 1, 1933; admitted, 1957, Venezuela; Education: Liceo de Aplicación (B.A., 1952); Faculty of Law, Central University of Venezuela (LL.B., 1957), Member: Federal District Lawyers' Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Civil Law; Contracts; International Financing; Taxes; Insurance and Bank Law.

**OSCAR E. OCHOA G.**, born Caracas, Venezuela, May 3, 1929; admitted, 1958, Venezuela; Education: Laval University, Quebec, Canada (PhD., 1952); University of Madrid, Spain (Ph D 1953); Catholic University Andrés Bello, Caracas (LL.B., 1958); New York University School of Law (Admiralty Law Course, 1969) Author: "Empleados a Comisión y Salario Adicional por Días de Descanso y Feriados". 1980: "La Teoría

del Organo en las Personas Jurídicas en General y su Consagración en las Personas Jurídicas de Derecho Mercantil", 1986; "Asociación de Cuentas en Participación, Sociedad Accidental e Irregular", 1987; "La Intramisibilidad por vía de Herencia de la Acción por daño Moral", 1988, Professor of Civil Law and Philosophy of Law, Catholic University Andres Bello, Central University of Venezuela, since 1960. Member: Federal District Lawyers' Association. LANGUAGES: Spanish, English and French. PRACTICE AREAS: Commercial and Corporate Law; Contracts; Foreign Investments; Civil Law; Admiralty Law; Litigation.

**LUIS F. ALVAREZ DE LUGO A.**, born Caracas, Venezuela, December 23, 1947; admitted, 1970, Venezuela; Education: Colegio La Salle, Caracas (B.A., 1965); Catholic University Andres Bello, Caracas (LL.B., 1970). Author: "El Turismo en el Derecho Venezolano", 1996; Member: Federal District Lawyer's Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Civil Law; Labor and negotiation of Collective Labor Agreements; Contracts; Tourism.

**ALVARO GONZALEZ-RAVELO**, born Caracas, Venezuela, November 6, 1955; admitted, 1978, Venezuela; Education: Colegio La Salle, Caracas (B.S., 1973); Catholic University Andres Bello, Caracas (LL.B., 1978); University of Dallas (M.B.A., International Management, 1983). Member: Federal District Lawyers' Association; Interamerican Bar Association (Venezuelan Chapter) LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Contracts; Foreign Investments; Income Tax; Administrative Law; Litigation.

**OCTAVIO CALCAÑO AGUILERA**, born Caracas, Venezuela, December 17, 1958; admitted, 1981, Venezuela; Education: Liceo Los Arcos, Caracas, Venezuela (B.A., 1976); Catholic University Andres Bello, Caracas (LL.B., 1981). Member: Federal District Lawyers' Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Contracts; International Financing; Foreign Investments; Privatizations.

**RICARDO CALCAÑO AGUILERA**, born Caracas, Venezuela, September 14, 1963; admitted, 1987, Venezuela; Education: Liceo Los Arcos; Winchendon School, Boston, Massachusetts (B.A., 1981) (PC, 1982); Utica College, Syracuse University, New York, Catholic University Andres Bello, Caracas (LL.B., 1987); Member: Federal District Lawyers' Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Foreign Investments; Telecommunications; Contracts; Taxes.

## ASSOCIATES

**ALEJANDRO TINOCO G.**, born Caracas, Venezuela, August 18, 1928; admitted, 1955, Venezuela; Education: Central University of Venezuela; University of Rome, Italy. Professor of Commercial Law; Central University of Venezuela, 1958. Director, School of Diplomatic Studies, Central University of Venezuela, 1963-1966. Member, Board of Directors of the Bar Association of the Federal District, Caracas, 1963-1964. Counselor of the Venezuelan Embassy in the United Kingdom, 1967-1969. Minister Plenipotentiary of Venezuela to the O.A.S., Washington, 1969-1971. Professor of Inter-American Law, Central University of Venezuela, 1971. Judge of the Administrative Tribunal of the O.A.S. Member: Federal District Lawyers' Association. LANGUAGES: Spanish, English and Italian. PRACTICE AREAS: Commercial and Corporate Law; Contracts.

**JUDITH M. OCHOA SEGUIAS**, born Caracas, Venezuela, November 18, 1965; admitted, 1990, Venezuela; Education: Colegio Los Campitos, Caracas, Venezuela (B.S., 1983); Catholic University Andrés Bello, Caracas (LL.B., 1990). Member: Federal District Lawyers' Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Civil Law, Litigation.

**MONICA ORTIN VILORIA**, born Maracaibo, Venezuela, October 10, 1969; admitted, 1992, Venezuela; Education: Colegio Mater Salvatoris, Maracaibo (B.A., 1987) Catholic University Andres Bello (LL.B., 1992). Member: Federal District Lawyers' Association. LANGUAGES: Spanish. PRACTICE AREAS: Labor Law, Litigation.

**ERNA YOLANDA SELLHONR NETT**, born Ciudad Bolívar, Venezuela, March 8, 1974; admitted, 1998, Venezuela; Education: Colegio Mater Salvatoris (B.A., 1992); Central University of Venezuela (LL:B., 1998). Member: Federal District Lawyers' Association. LANGUAGES: Spanish. PRACTICE AREAS: Commercial and Corporate Law. Civil Law; Litigation.

**MARIA CORINA RODRIGUEZ**, born Caracas, Venezuela, December 12, 1976; admitted, 2001, Venezuela; Education: Colegio Caniguá (B.A., 1994); Catholic University Andrés Bello (LL.B., 2000). Member: Miranda State Lawyers' Association. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial and Corporate Law; Contracts.

**VICTOR DURAN NEGRETE**, born Caracas, Venezuela, March 11, 1970; admitted, 2001, Venezuela; Education: Colegio Gustavo Herrera (B.A. 1987); Central University of Venezuela (LL.B.; 1993). Member: Federal District Lawyers' Association. LANGUAGES: Spanish. Master in Labor Law. PRACTICE AREAS: Labor Law, Litigation.

**KATIUSKA HENRÍQUEZ BARRETO**, born Caracas, Venezuela, October 1, 1969; admitted, 2000, Venezuela; Education: Colegio La Concepción (B.A. 1987); Catholic University Andrés Bello (LL.B., 1992); Member: Federal District Lawyers' Association. LANGUAGES: Spanish and English. Master in Labor Law. PRACTICE AREAS: Labor Law, Litigation

### **REPRESENTATIVE CLIENTS**

Administradora Hotal, C.A. (Hotel Avila); American International Group (AIG); C.A. de Seguros American International; Clariant Venezuela, S.A.; Herrera de La Sota & Asociados, C.A.; Hilton Internacional de Venezuela, C.A.; Honeywell, C.A.; Liberty Mutual Insurance Co.; Motion Pictures Association; Post Buckley Schuh & Jernigan Inc.; Quaker Chemical Corporation; Reaseguradora Delta, C.A.; Rena Ware Distributors, C.A.; Seguros Caracas de Liberty Mutual, C.A.; Seguros Venezuela, C.A.; Sistema Económico Latinoamericano (SELA); Swiss Re Venezuela S.A.; Topflight de Venezuela, C.A. (TOVENCA); Western Geophysical de Venezuela, C.A.; West Penetone Venezuela, C.A.; Wynn's International Inc."

**ESCRITORIO CALCANO VENTANCOURT  
LAWYERS**

**DIRECTORS' AND OFFICERS' LIABILITY  
IN VENEZUELA**

**Escritorio Calcano Vetancourt  
Lawyers  
Edf Seguros Venezuela, piso 7  
Avenida Francisco de Miranda, Chacao  
Caracas  
VENEZUELA**

**Contact: Dr Oscar Ochoa**

Telephone:00 58 212 953 04 00 / 953 39 33  
Telecopier : 00 58 212 953 21 70  
Email:oeo@calcano-vetancourt.com

## **DIRECTORS, OFFICERS AND MANAGERS PERSONAL LIABILITIES.**

### **The Legal Position in Venezuela**

#### **1- STRUCTURE OF VENEZUELAN CORPORATE ENTITIES.**

In Venezuela, a country governed by the Civil Law, inspired in French Law, the juridical entities are classified in two large groups: a) partnerships and b) capital corporations. Individuals or corporate entities may integrate the first ones. These associate to incorporate a corporation by contribution of goods or their own skills and abilities, that is to say their own activities to achieve a common benefit. The second one is incorporated by individuals or juridical entities that contribute goods in kind or cash to form a capital and the partners or members subscribe shares or participations quotas, whether they be limited liability partnerships or corporations. The incorporation charter of both these business entities must be registered before the Commercial Registry of the judicial circuit in which its domicile or home office is established.

The capital of the business companies is distributed in registered shares, since shares issued to the bearer are not allowed. No limitation exists with regards to maximum or minimum number of shares, however the capital must be paid at least by twenty per cent (20%) at the time of incorporation of the company.

The management of the company may demand, when the economic needs so require, the payment in full or in part of the unpaid percentage of the subscribed capital, from the holders of such shares. The law does not prescribe the face value of the shares; such amount or face value must be established in the incorporation charter of the company. The assignment or transfer of shares must be done by insertion of such transaction in the Stockholders or Shareholders Book of the company. In the case of a limited liability partnership, the capital is divided in quotas, it can not be less than twenty thousand bolivars (Bs. 20.000,00) or greater than two million bolivars (Bs. 2.000.000,00), having to pay the full amount of the subscribed capital when incorporated. The law provides that the face value of such quotas cannot be less than one thousand bolivars (Bs. 1.000,00), each. The assignment or transfer of quotas must be done by

notarized instrument, registered or inserted in the Members Book and registered before the Commercial Registry.

The management of either company may be individual or collective. In case such management is in the hands of one individual, this can be referred to as "President", "Administrator" or "General Administrator" "Manager" or "General Manager". Such individual, as sole legal representative is not an attorney, but an executive entity of the company with full powers of administration and disposition of the property, who also represents the company in trial; having to render reports of management to the meeting of stockholders or before the general meeting of members every year, as the case may be, at the time stated in the corresponding incorporation charter. A "Judicial Representative", other than the sole administrator may be instituted to represent the company exclusively in trials or before the courts.

In the case that the company is managed by a group of individuals or collective body, always in uneven numbers, this body may be identified as "Board of Directors", "Managing Board", the incorporation charter shall state the powers of such collective body. It has been common practice that the important decisions for the company be adopted by such collective body, being able to establish a quorum other than absolute majority, as well as different requirements regarding attendance and voting. One individual member of the company is given the legal representation of the company, being able to designate a "Judicial Representative", different from the members of such collective body, to represent the company in trial or before any courts. The incorporation charter may create an office that may be referred to as "Manager" or "Administrator" giving the power for the ordinary and daily management of the company with powers to designate and remove personnel or staff and to fix their remuneration.

## **2- WHO ARE DIRECTORS, OFFICERS AND MANAGERS?**

The law does not indicate that the management or administration of the companies should be handled by one or several individuals. Depending upon the determination and provisions of the incorporation charter, the management shall fall on one individual or on a collective body. The law does not establish if the management of a company should be on the hands of certain kind of professionals.

The Law for the Practice of Accounting provides that Economists or Public Accountants shall take the office of "Comptroller". The "Comptroller" is the individual designated by the annual stockholders meeting of the companies "to report to the following annual stockholders meeting about the situation of the company, and the balance and accounts that the management of the company presents"; furthermore the Commerce Code provides that the Comptrollers "have an unlimited right of inspection and surveillance on all operations and transactions of the company. They can examine the books, correspondence and in general all documentation of the company."

### **3- LEGAL BASIS OF DIRECTORS, OFFICERS AND MANAGERS LIABILITY IN VENEZUELA.**

#### **a) Statutory, civil or contractual legal framework**

The Commerce Code of Venezuela, in reference to companies, provides in article 266 the following: "The administrators are jointly and severally liable before the stockholders and third parties for:

1° the accuracy of the payments made in the cash by the stockholders;

2° The existence of actual dividends;

3° The execution of the decisions of the stockholders meetings;

4° and in general, for the exact and true compliance of all duties as prescribed by law and the bylaws."

Article 268 further provides: "The liability of the administrators for actions and omissions, does not include those in which having been relieved of fault, their non conformity to such action or omission was recorded, giving immediate notice of such to the comptroller".

Article 324 of the Commerce Code with regards to Limited Liability Partnerships, provides: "The Administrators are liable, jointly and severally, before the company as well as before third parties, for the violation of the provisions of law and of the corporate agreement or charter of incorporation, as well as for any other violation incurred during his term in office. However, the liability of administrators for acts and omissions does not include those in which having been relieved from guilt they have recorded in the corresponding minutes their non-conformity, and have given immediate notification thereof to the comptroller, if any.

The company or the partners or stockholders may bring liability action to the interest of the latter, individually, as long as they may represent, at least one tenth of the corporate capital. The members or stockholders that bring such action can not be subject or be opposed any motion based upon waivers or settlement agreements between the company and its administrators, allegedly liable."

**b) Duties and requirements of Directors, Officers and Managers**

In view of the legal position of the Directors, Officers and Managers, first derived from their designation by the stockholders meeting to such office of Director or if appointed by the latter to hold the office of any Officers or Managers, and that these individuals are the ones in contact with third parties, with whom the company enters into contracts and agreements, their duties may be classified in two groups:

- duties of a contractual or conventional nature corresponding to certain obligations, specifically, or
- duties of tort or non-contractual nature, which are the obligations not to cause harm to another derived from negligence.

The above, in summary, refers to the fact that Directors, Officers and Managers have contractual or conventional obligations to the company; and extra-contractual or unlawful act before third parties. This means, in accordance to Venezuelan statutory law on Obligations that the Directors, Officers and Managers answer to the company for any harm caused to it for any non-compliance of contractual obligations before the company, not being liable for damages before it, of material nature, that is patrimonial obligations, foreseen and foreseeable, not having to prove guilt or tort since contractual liability presumes guilt or tort. Derived from the contractual nature of the liability of Directors, Officers and Managers are not liable for personal damages. However, before third parties, since such liability is of an extra-contractual or tort nature, such Directors, Officers and Managers are liable for violations caused from unlimited mere guilt or tort, having to prove guilt, being liable including for personal damages caused during the execution of the duties of such office.

**c) Is there an equivalent in Venezuela to the US Business Judgment Rule?**

"The spirit, purpose and objective of this rule apply in Venezuela, however considering our Civil law system in matters of civil liability. Directors are not liable unless their fault or guilt can be proven. Civil liability of Directors is not objective, thus fault in their action cannot be presumed, but is a matter of proof. The fact or need of acting diligently in a previous investigation, before taking any decisions, as long as this investigation is an ample and detailed one, it only means that the Directors has acted cautiously, thus relieving the Director of civil liability by exemption of fault or guilt; that is to say not having incurred in fault or negligence. Directors have a right to trust information provided by officers, and if such information turns out to be wrong or false, the Directors shall be liable for *culpa in eligendo*, that is to say, for having selected, appointed or hired an officer who does not have the qualities to exercise such office, thus not providing true, sufficient, accurate and exhaustive information as required. Directors shall incur in such same fault, guilt or negligence if such false or untrue information was provided by an outside or independent professional, since it is required to fully know the person who provides such information, in order to trust his/her judgment. The same criteria, but with less intensity, may be applied in case the information were provided by another member of the Board, since the trust in other members of the board cannot be absolute or limitless. In cases of gross negligence, Director's liability before the company or corporation is clear, since they have not complied with their contractual obligations undertaken when appointed as Directors and accepted such office. Gross negligence, equal to *dolus (culpa lata equiparatur dolo*, as the Latin aphorism implies) shall make the Director jointly and severally liable along with the company before any third parties, who have been victims or suffered damages derived from such gross negligence".

**d) Duties of Directors, Officers and Managers towards the Corporate.**

In general, according to the Venezuelan Civil Code, the diligence required from the Directors, Officers and Managers in the execution of their obligations before the company "shall always be that of a *pater*

*familiae*". This means that such Directors, Officers or Managers must be liable before the company for damages caused from the violation or non-compliance of their duties or obligations derived from negligence.

**e) Duties of Directors, Officers and Managers towards majority or minority shareholders.**

Since the Directors, Officers and Managers do not have a direct legal or juridical connection to the stockholders of the companies, whether majority or minority, such Directors, Officers and Managers do not answer for any civil liability before the stockholders. However, Venezuelan Doctrine has maintained that Article 266 of the Commerce Code may serve even third parties, including stockholders, majority or minority, since this provides for cases the damage has been caused from tort. An example is given as follows: causing harm to a third party from the distribution of false dividends, the latter for such reason has given credit to the company or bought its shares. This is an unlawful act and derives a liability from the author if such has acted with fraud or negligence.

**f) Duties of Directors, Officers and Managers in case of bankruptcy.**

According to provisions of the Venezuelan Commerce Code the managers of a corporation or a limited liability partnership, who consider that the company is bankrupt, must request the Judge in Commercial Matters in and for the jurisdiction of the domicile of the company the request for a declaration of bankruptcy. The administrators shall also be bound to appear before such Court and the Receiver as appointed by the Court, as per request.

With such request for declaration of bankruptcy the administrator shall annex:

1° General balance or a statement of the circumstances that refrain from its presentation;

2° a summary of the causes of such bankruptcy, signed by the administrators.

The declaration of bankruptcy causes the suspension of the management by the administrator of the company, and such administration or management shall be given to all stockholders, represented by the Receiver.

**g) Statute of the enforcement of Directors, Officers and Managers liability with respect to tax, labor and environment regulations.**

The Organic Tax Code provides that "The following are jointly and severally liable for the taxes derived from the goods and property they manage, receive or dispose: 2. The directors, managers, administrators or representatives of any juridical entities and other collective bodies with juridical personality duly acknowledged."

**h) Directors, Officers and Managers criminal liability**

In the Amendment to the Organic Tax Code of 2001, article 90 provides that "The juridical entities are liable for tax violations. Such violations are sanctioned with terms in prison, and their directors, managers, administrators, representatives and receivers that have participated in person in the execution of such violation, are liable". One further provision states that "The pecuniary sanctions or fines can not be converted into prison terms, but shall be effective through civil action."

**4- STATUTE OF LIMITATION.**

In Venezuela, in principle, civil matters are subject to a statute of limitations for personal o civil action of ten years. Thus, the term of statute of limitations of

- a) Shareholders action;
- b) Contractual disputes;
- c) Discrimination suits and
- d) Wrongful Termination (non-labor action) is of ten years.
- e) Fraud: The term of the statute of limitation for any criminal action derived from Fraud", understanding as such to be a crime, shall depend on the type of fraud or dolus, as per the Venezuelan Penal Code; such term may range from one to five years. The criminal action for sexual harassment, as a crime, depending on who the assaulter and victims are, is subject to a statute of limitations of seven to ten years.
- f) Tax", the tax obligation and its derivatives are subject to a statute of limitations as follows: four years for the right of audit, verification and determination of the tax

obligation and its derivatives; the action to impose tax sanctions and penalties, other than prison; and the right to recover and compensate taxes and the reimbursement of overpaid taxes. The statute of limitations of six years applies to: the right to audit. Audit and determination of a tax obligation when the taxable amount or fact has not been declared or the obligation to be registered in tax control records as so prescribed by the Tax Administration has not been complied with. The action to impose prison sanctions, also are subject to an statute of limitations of six years, from January 1st following the date in which the act was committed.

## **5- WHO CAN SUE?**

### ***a) Corporation:***

Judicial or court action if brought by the company, shall depend on the resolution of the Board of Directors, if applicable, and if such power is granted thereto. If the company is administered or managed by one individual, whether a President, General Administrator or General Manager, such individual shall have the power and duty to take or make such decision.

### ***b)The stockholders***

They do not have such power. However, if these stockholders hold a sufficient number of shares they could call for a general extraordinary stockholders meeting to decide if such judicial action may be brought or not. The decision of the meeting shall prevail above the will of the stockholder even if it is contrary to bringing judicial action.

### ***c) Creditors and Third Parties.-***

In this question creditors is to be understood as third parties that may have been victim to patrimonial damages caused by an un lawful act of the company or its Directors, Officers and Managers.

We do not know of the frequency in which these actions are brought in Venezuela. Our impression is that this happens not often. Perhaps this is due to the fact that the plaintiff, the victim of the unlawful act, must prove guilt of the company or that of the Directors, Officers and Managers.

***d) Insolvency Administrators / Trustee in Bankruptcy***

Fraudulent bankruptcies are not frequent, since the Directors, Officers and Managers are careful not to incur in such circumstances causing fraudulent bankruptcy as provided by the Venezuelan Commerce Code, that is:

"1° when the publication of the corporate contract or charter of incorporation has been fraudulently omitted, in the manner as prescribed by law;

2° when false statements had been made regarding the subscribed and paid capital;

3° when dividends have been paid from non-existent surplus, and which payment had caused a reduction of capital;

4° when amounts had been taken fraudulently, greater than those prescribed by the corporate contract or charter of incorporation; and

5° those who fraudulently, or as a consequence of fraudulent transactions have caused the bankruptcy of the company."

In Venezuelan Law, personal insolvency of the administrators has no implication on the declaration of insolvency of companies or of limited liability partnerships. The insolvency of those appointed as bankruptcy receivers does not have any influence on the declaration of bankruptcy of such companies.

***e) Regulatory authorities:***

- Venezuela: Commercial or Business Court: actions against Directors, Officers and Managers cannot be brought by the Insurance Superintendency, the administrative office controlling insurance companies.

- Venezuela: Administrative Labor Office and Labor Court; frequency and severity of such suits.

These are not frequent, however not scarce; when Directors, Officers and Managers bring judicial action against the companies as employers, the amounts under claim are fairly high;

***g) Employees:***

Action is not brought against Directors, Officers and Managers, but against the companies that acted as employer. Sexual Harassment Claims are personal action of a criminal nature brought against a Director, Officer or Manager who has committed such a crime. We do not know if such action has been brought or enacted.

**6- WHAT IS THE ENFORCEABILITY OF A FOREIGN JUDGMENT ON VENEZUELAN DIRECTORS, OFFICERS AND MANAGERS UNDER VENEZUELA LAW?**

Foreign judicial decisions may be executed in Venezuela, subject to the effectiveness granted by the Supreme Tribunal of Justice, the competent court to grant "*exequatur*". Our civil proceedings code provides: "Only those decisions rendered in countries in which effectiveness is granted to decisions rendered by Venezuelan Courts, without review of substance, may be declared as effective in the Republic. Such circumstance must be proven with the corresponding proving and supporting document."

The aforementioned Civil Proceedings Code provides six requisites for a foreign decision or judgment to be effective in Venezuela. Some of these requisites are: that Venezuelan jurisdiction was upheld correspondingly; that the decision is of "*res judicata*" nature; and that it does not contain statements or provisions contrary to the public interest, or the public interest of the Republic.

**7- CAN DIRECTORS, OFFICERS AND MANAGERS BE LIABLE FOR PUNITIVE DAMAGES UNDER VENEZUELAN LAW, AND ARE PUNITIVE DAMAGES INSURABLE UNDER VENEZUELAN LAW?**

Since companies cannot be subject to any criminal or penal sanction, since it is impossible to enforce any corporal penalty thereon, it has been upheld by the jurisprudence that if a company commits a crime, the individual subject to penalization is the legal representative, or he who by acting on its behalf was the perpetrator of the crime. If the representative of the company has committed a crime by exceeding his powers, or disobeying express instructions given, he is personally responsible for his own criminal conduct.

Criminal damages as such cannot be insured, however it is possible to insure the civil liability and damages derived from a crime. Furthermore, costs from a criminal defense can be insured.

**8- CAN THE COMPANY INDEMNIFY ITS DIRECTORS, OFFICERS AND MANAGERS UNDER VENEZUELAN LAW AND UNDER WHICH CONDITIONS?**

By analogy of article 1700 of the Civil Code in reference to mandate or proxy, which provides that "the principal must also indemnify the proxy or attorney for the loss he may have suffered during the execution of the mandate, if no guilt can be allocated thereto", if the Director, Officer or Manager endures any personal damage from the execution of the mandate imposed on him, he shall have the right to sue the company for damages.

**9- IS THE DIRECTORS, OFFICERS AND MANAGERS LIABILITY INSURANCE LEGAL?**

By principle this insurance policy is legal in Venezuela, since it is not expressly forbidden by law. However, to enter into such an agreement the insurance policy is required to have prior approval by the Insurance Superintendency, who is the Administrative Authority with the power to give clearance to such civil liability insurance.

The Director, Officer or Manager, whose civil liability is subject to insurance, may pay the premium, as well as it may do so the company it self.

The Directors & Officers policy (D&O) must be issued by an insurance company duly authorized in conduct business in Venezuela. It is of no importance if the insurance company is a subsidiary or not of an insurance company that holds Directors and Officers (D&O) civil liability insurance in the country of its incorporation.

The premiums paid by the insured for the Directors and Officers (D&O) civil liability insurance will not be subject in Venezuela to any particular or special tax. The premiums received by the insurance companies shall be part of its gross income, having to file its annual income tax return for the payment of income tax.

*Dr Oscar E Ochoa is Bachelor of Arts, Laval University, Quebec, Canada, PhD in Philosophy University of Madrid, Spain (1953), Lawyer (1958), Professor of Civil Law (Individual Law, Real Property Law, and Law of contracts successively) since 1959 at the Andrés Bello Catholic University in Caracas, Venezuela. Partner of the Law Office Escritorio Calcaño Vetancourt, lawyers of C.A. de Seguros American International and Seguros Venezuela, C.A. insurance companies subsidiaries of American International Group in Venezuela.*