

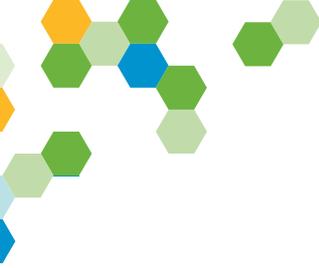


SPECIAL REPORT

Catalonia's independence debate. From the constitutional pact to the unilateral path

Madrid, October 2017

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AUTHORS

1. INTRODUCTION

Carles Puigdemont, the president of the Regional Government of Catalonia, announced on Wednesday in the Catalan Parliament that he assumed the mandate offered by the referendum held on October 1. Although the consultation was declared unconstitutional, the turnout was high and there was a clear majority in favor of independence. However, he then proposed the suspension of the independence effects temporarily, in order to dialogue with the government.

Most analysts have said the situation is unprecedented, and that it could be a strategy to gain time in the face of the complete international rejection of Catalan independence. This makes it unviable at present. Reactions have ranged from dissatisfaction among wide-ranging separatist groups, who were unambiguous about calling this suspension a “betrayal”, to the concern of the Spanish Government about the situation of uncertainty and instability in Catalonia.

As a result, the Government of Spain demanded the Catalan Government to confirm whether the statement was a declaration of independence or not. Depending on the response, the Government of Spain could apply Article 155 of the Spanish Constitution. This will allow the Spanish Government to assume at least the powers to call elections in Catalonia and to force early elections that could break the deadlock, as well as breaking the separatist coalition that now governs Catalonia.

This report analyzes the development of this institutional crisis that began in 2012 with the victory in the regional elections of *Convergència i Unió* (CiU), which for the first time announced its commitment to set up a new Catalan State, breaking with the long tradition of Catalan nationalism. The Catalan nationalists had governed Catalonia for 25 years. They were a key partner of all the Spanish Governments and part of the Constitutional Pact of 1978 and the Pact for the Statute of Autonomy of 2005.

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2. BACKGROUND

In 2003, after decades of nationalist leadership in Catalonia, the progressive parties came to power for the first time in the Catalan Government (*Generalitat*) in what was called the first *Govern d’Entesa*, or Tripartite Government. This pact between the Partit dels Socialistes de Catalunya (PSC), Esquerra Republicana de Catalunya (ERC) and Iniciativa per Catalunya Verds (ICV), allowed the Socialist Pasqual Maragall to take over as president of the Regional Government of Catalonia. One of the main goals of the Government was to reform the Statute of Autonomy of Catalonia. It was a proposal

that had not been raised until then by the nationalist governments of *Convergència i Unió* (CiU).

The process of reforming the Statute did not have the support of the *Partido Popular* (People’s Party). This is a key element for understanding future events. The Tripartite Government had included in its legislative agreement the exclusion of the People’s Party (PP) from any agreement for governance in Catalonia or Spain as a whole. The national leadership of the PP interpreted this initiative as a “line of containment” and urged its members of the Catalan Parliament not to participate in the process of the reform of the Statute.

Despite this, the CiU, the PSC, ICV and ERC all pushed forward the process of a reform that ended with the drafting of a new Statute of Autonomy. The Regional Parliament of Catalonia (Parliament) approved this Statute in 2005 with the support of all the political parties except the PP.

Following approval in the Regional Parliament, the Lower House of the Spanish Parliament partially modified the content of the Statute to adapt it to the constitutional



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framework through a pact between the PSOE and the CiU. The PP began a campaign to collect signatures across Spain asking for the Statute to be endorsed by all the Spaniards, after its exclusion from the process in both Catalonia and Madrid.

Finally, in 2006, in accordance with the provisions of the Constitution, the Catalan Statute was submitted to a referendum in Catalonia. At this point, both the PP and ERC, which had withdrawn its support from the Statute due to the changes introduced in the Spanish Lower House of Parliament, asked to vote against it. The Statute was supported by 73.24 percent of votes in favor and a turnout of over two and a half million Catalans.

The PP filed an appeal before the Constitutional Court following the referendum and began a procedure that sometime later would become the first Court judgment of this body about a constitutional range law approved by a regional parliament, by the Lower House of Parliament and subsequently submitted to a referendum. The Tripartite Government dissolved the regional Parliament and called early regional elections. Through these elections, the pact between the progressive parties and socialist Jose

Montilla was reelected, and he became the new president of the Catalan Government.

The new government focused its period in office on public policies, although the debate on regional identity continued to take a leading role in Spanish public life, in anticipation of the ruling of the Constitutional Court. Meanwhile, a strong debate arose about the content of the Statute with objections by judges and the inability to reach agreements on renewal.

In this context, the Constitutional Court issued its ruling and invalidated 14 articles of the Catalan Statute of Autonomy. Days later, there was a mass demonstration in Barcelona with the slogan “*Som una nació. Nosaltres decidim*” (We are a nation: We decide), led by President Montilla. The ruling and subsequent demonstration would mark the debate on Catalan and Spanish politics over the coming years. The political parties and the Catalan citizens considered the Constitutional Court’s decision as an insult, not only because the institution vetoed articles with sensitive topics, but also because the institution had invalidated laws accepted by a majority of Catalonia’s citizens.

In November the same year, CiU won the elections and a new political phase began, headed by a new president, Artur Mas.

“The Catalan Government called itself “business friendly”, agreed on their budget with the PP and championed the first budget-cutting measures.”

3. FROM THE FISCAL PACT TO THE RIGHT TO DECIDE

During the economic and financial crisis, Artur Mas came to office in the Regional Government of Catalonia in 2010. That is why, despite the ongoing regional debate, the initial years of the government were marked by crisis management. The Catalan Government called itself “business friendly”, agreed on their budget with the PP and championed the first budget-cutting measures. Months later, in 2011, the Catalan Government had to deal with the events of March 15 (15M), the social movement that in May 2011 occupied squares in Spain under the banner of “they don’t represent us.”

In June 2011, after the *Mossos d’Esquadra* (the regional police force) broke up the 15M demonstrators in Plaza de Catalunya square, they organized a new protest that surrounded the Parliament of Catalonia. The images of Artur Mas arriving to the Parliament by helicopter reached the media around the world. Most analysts believe that the Regional Government of Catalonia decided to change its political agenda because of pressure from the social conflict triggered by the cuts and economic crisis. The Spanish State began to be held accountable for the social

cuts and lack of funding for the Catalan Government, and introduced into the debate the demand for a “fiscal pact” by which it could use the social unrest in favor of the Catalan Government.

This strategy of defending a new pact for Catalonia, led in November 2011 to CiU becoming the main political party in Catalonia for the first time in a general election. In these elections, the People’s Party won an absolute majority and took over the government of Spain. The new Prime Minister, Mariano Rajoy, also faced some difficult months in managing the economic crisis.

In 2012, during the debate on the bailout of the Spanish financial system, the Regional Government of Catalonia and the Catalan Parliament agreed to begin talks with the Spanish Government to achieve a new fiscal pact. The aim was for the traditional Catalan celebration of September 11 (*La Diada*) to become a “cry in favor of the fiscal pact”. However, the organizations calling the event considered that the time had come to demand a “Catalunya, nou Estat d’Europa” (Catalonia, a new European State). It managed to mobilize between 600,000 and 1.5 million people, the biggest demonstration in favor of independence in the history of Catalonia.

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Against this backdrop, Artur Mas and Mariano Rajoy met on September 20 in the Palace of La Moncloa. In response to the request for a fiscal pact by Artur Mas, the government of Mariano Rajoy closed ranks, pointing to the difficult economic situation the country was in. A few days later, President Artur Mas called early elections, considering that given Mariano Rajoy's refusal and the demands made in the demonstrations, the government's term in office was over.

4. HISTORY SPEEDS UP: A CONSULTATION BEFORE 2014

The elections of November 2012 did not produce the desired effect for CiU, whose bid was not successful. It lost 12 seats. But it was in these elections that the terms of the political debate would be modified substantially. The concept of “*dret a decidir*” (right to decide) was assumed not only by CiU, ERC and ICV, but also by the PSC, which declared itself in favor of a legal referendum on the independence of Catalonia. At the same time, these elections saw the emergence of a parliamentary representation for an anti-capitalist and pro-independence party, the Candidatura d'Unitat Popular (CUP).

Artur Mas became the new Regional President of Catalonia, with ERC's support, his inauguration sealed by the promise of organizing a consultation on the independence of Catalonia before the end of 2014. From that moment on, historical events speeded up.

Meanwhile, relations between the PSC and PSOE passed through a critical phase. The Catalan Socialists broke the discipline of the vote in January 2013 in Congress in a motion favorable to the right to decide. That same month, five Catalan Socialist members supported a Declaration of Sovereignty in the Catalan Parliament, and some historical activists of the PSC left the party to join the separatist project. This crisis was channeled, at least partially, in the summer of 2013 through the Declaration of Granada, where the PSOE and PSC agreed to support a federal State and the Catalan Socialists relinquished their demand for a referendum on the independence of Catalonia.

In April 2014, a delegation of the Catalan Parliament Members headed a debate in the Lower House of Parliament in which, at the request of the Catalan Parliament, they requested the transfer of the powers to call referendums.

“The Catalan Parliament approved a Law on Consultations and Participation by which it called a consultation for November 9, 2014.”

The Government of Spain did not agree to negotiate on this matter, arguing that it could not take any steps that provided legal grounds for a possible consultation on the separation of one part of the national territory.

In reaction to this, and following a number of prior procedures, the Catalan Parliament approved a Law on Consultations and Participation by which it called a consultation for November 9, 2014. There was a double question: “Do you want Catalonia to be a State” and “If so, do you want it to be independent?” The consultation was supported by the Catalan Government, with the collaboration of separatist organizations, and it was organized using volunteers. The State institutions did not prevent it from being held, as it considered it did not have any legal effects. According to the Catalan Government the turnout was 2.3 million people, and 80.6 percent were in favor of independence. Although measures were not taken to prevent the consultation from being held, its main promoters, including Artur Mas himself, were temporarily disqualified from office by the courts and subject to substantial financial penalties.

5. THE STRONG COMMITMENT FOR INDEPENDENCE

Following the consultation of November 9, Artur Mas called early elections for September 27, 2015, with a coalition candidate, Junts pel Sí (JxS), formed by *Convergència* (now without the party *Unió*, which had left the *CiU* coalition), *ERC* and smaller political parties, as well as some independents.

Both JxS and CUP considered that the September 27 elections had a “plebiscite” nature. In other words, given the impossibility of agreeing a referendum with the Spanish State’s institutions, and given the lack of international recognition of the November 9 consultation, the elections were to be understood as a substitute of the referendum. Both parties called independence in their election manifestos for the first time with complete clarity, including an explicit roadmap on how to achieve it.

In these elections the JxS and the CUP won an absolute in the Parliament (72 out of 135), but represented only 48 percent of the votes. They won the elections, but they did not obtained over half the votes under the terms of

“The ongoing tension between the CUP and the new government forced Carles Puigdemont to submit to a vote of confidence, and in exchange for CUP's support for the Generalitat's budget proposal, he announced the calling of a referendum on Catalonia's independence for 2017.”

the plebiscite that had been proposed. As a result of this, the then spokesperson of CUP; Antonio Baños, declared that the plebiscite had not been won. After weeks of deadlock, JxS and CUP agreed at the last moment on the investiture of the then unknown former mayor of Gerona, Carles Puigdemont, a separatist from his youth, as new President of the *Generalitat* (Regional Government of Catalonia). At his investiture, he assumed the commitment to hold constituent elections for the new Catalan Republic within a period of 18 months. The CUP vetoed Artur Mas inauguration based on his performance on the economic crisis.

The ongoing tension between the CUP and the new government forced Carles Puigdemont to submit to a vote of confidence, and in exchange for CUP's support for the Generalitat's budget proposal, he announced the calling of a referendum on Catalonia's independence for 2017. This referendum had not been included neither on the JxS roadmap, nor on the inauguration agreement. They finally called the referendum for October 1, 2017; and the question was “Do you want Catalonia to be an independent State in the form of a republic?”

Meanwhile, the *Convergència Democràtica de Catalunya* (CDC) was dissolved. There were many reasons to create the new political party, *Partit Europeu Demòcrata Català* (PDECAT), during the summer of 2016. The main ones were the new generation leaders of the party firm support for independence, as well as the need to separate themselves from the corruption cases affecting the party and its founder, the former President Jordi Pujol.

6. THE UNILATERAL PATH

To make the referendum possible, and aware that the only competent body to call was the Government of Spain, the Parliament of Catalonia approved on September 6 and 7, 2017, what were known as the Referendum Law and the Legal Transition Law. The parliamentary debate took place without following the regulations of the Regional Parliament itself, and did not heed the warnings of unconstitutionality by the Constitutional Court. It did not comply with the provisions marked by the Statute of Catalonia, such as the need to have a prior report from the Council of Statutory Guarantees to pass laws. The supporters of the Catalan Government then decided on a

“The evening of the referendum, the president of the Catalan Government announced that he would pass on the result of the consultation to the Regional Parliament of Catalonia to activate the Legal Transition Law.”

unilateral course. The Regional Parliament was divided into two: the separatist forces (with the support of part of the Podem party) supporting a new legality, and the rest of the parties opposing the unilateral course.

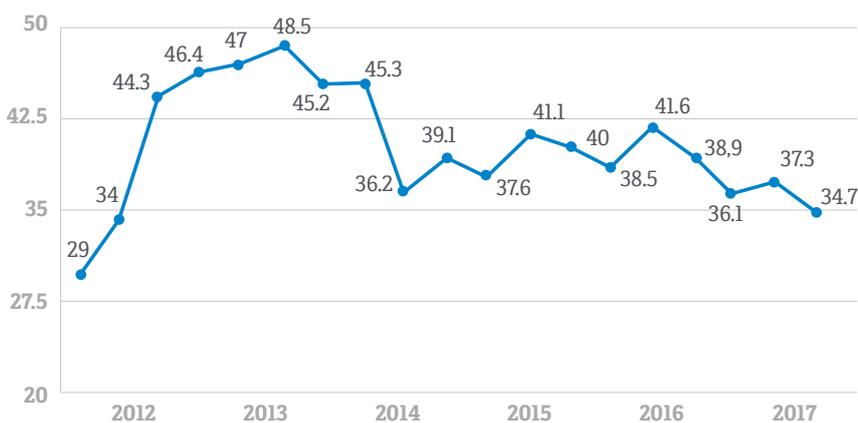
In the following weeks, the State institutions activated legal mechanisms to prevent the referendum from being held. High-ranking officials were arrested, ballots papers were seized, there were online police actions, and control of the Generalitat's accounts. Nevertheless, on October 1, the Regional Government of Catalonia surprised everyone by producing the logistical

instruments for holding a consultation. Despite the police actions for which the Spanish Government ended up apologizing days later, it was possible to participate at most of the polling stations that had been organized.

Although there was a lack of legal guarantees, the consultation had a turnout of 2.2 million people according to the Regional Government of Catalonia, with 90.2 percent of the votes in favor of independence. These figures are impossible to verify due to the lack of any independent electoral authority.

The evening of the referendum, the president of the Catalan Government announced that he would pass on the result of the consultation to the Regional Parliament of Catalonia to activate the Legal Transition Law. This law, suspended by the Constitutional Court, states that if the support for independence is a majority, the independence of Catalonia would be proclaimed within 48 hours, and a six-month constituent process would be triggered with the subsequent approval of the Constitution of the Catalan republic.

Figure 1. I want Catalonia to be an independent state



Source: CEO

“Of note in recent days was the organization of the first major demonstration by people against independence in Barcelona, in which between 350,000 and 1 million people took part.”

7. THE BUSINESS WORLD AND THE CIVIL SOCIETY RESPONSE

In the days following the referendum, uncertainty and fear regarding the proclamation of a unilateral declaration of independence (DUI for its name in Spanish: Declaración Unilateral de Independencia) and its possible economic consequences generated a mass move of companies with their registered offices in Catalonia to other autonomous regions. To make this process easier, the Government of Spain approved a decree to enable the change of companies' registered office without the need for approval by the general shareholders meeting.

In this context, six of the seven Catalan companies listed on the IBEX 35 index have already notified the National Securities Market Commission (CNMV) that they would be transferring their registered offices. A great number of small and medium-sized companies from different sectors have also decided to do the same. In practice, moving a registered office has a minimal impact in tax terms for Catalonia, as the main taxes paid by companies are paid to the Spanish State. However, the message of the business world

to the Catalan Government and to the unilateral path of independence has been clear.

At the same time, some rating agencies such as Moody's have warned about the negative impact on the rating of both Catalonia and Spain, while organizations such as the Bank of Spain and the International Monetary Fund have said that tension in Catalonia endangers the growth prospects of the Spanish economy as a whole.

Finally, of note in recent days was the organization of the first major demonstration by people against independence in Barcelona, in which between 350,000 and 1 million people took part. In recent years only separatism has displayed a major capacity to mobilize supporters. The demonstration demonstrated the plurality and diversity of opinions in Catalan society.

8. WHAT NOW?

Carles Puigdemont, the president of the Regional Government of Catalonia, announced on Wednesday in the Catalan Parliament that he assumed the mandate offered by the referendum held on October 1. Although the consultation was declared unconstitutional, the turnout was high and there was a clear majority in favor of

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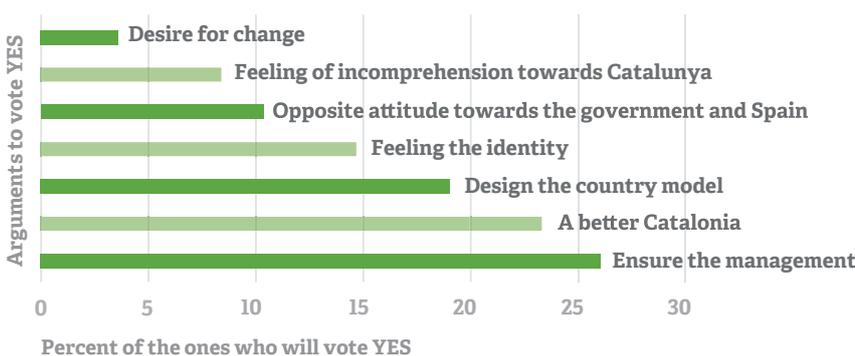
independence. However, he then proposed the suspension of the independence effects temporarily, in order to dialogue with the government.

Most analysts have said the situation is unprecedented, and that it could be a strategy to gain time in the face of the complete international rejection of Catalan independence. This makes it unviable at present. Reactions have ranged from dissatisfaction among wide-ranging separatist groups, who were unambiguous about calling this suspension a “betrayal”, to the concern of the Spanish Government about the situation of uncertainty and instability in Catalonia.

As a result, the Government of Spain demanded the Catalan Government to confirm whether the statement was a declaration of independence or not. Depending on the response, the Government of Spain could apply Article 155 of the Spanish Constitution. This will allow the Spanish Government to assume at least the powers to call elections in Catalonia and to force early elections that could break the deadlock, as well as breaking the separatist coalition that now governs Catalonia.

The Ciudadanos and the PSOE parties would support the application of this measure. The PSOE party has also announced this week that they have reached an agreement with the government to undertake a constitutional reform. Most analysts consider that once institutional normality returns in Catalonia, the solution to the challenge lies in negotiate a Constitution’s reform that renews the constitutional pact for the coming decades and generations.

Figure 2. Reasons for supporting independence



The Centre d'Estudis d'Opinió (CEO), an opinion research center that answers to the Catalan Government, has asked supporters of independence for its reasons. What is striking is that only 14.7 percent say they support independence due to a feeling of identity or the idea of Catalonia as an independent nation. Most separatists support independence because they consider it is the best instrument to guarantee good management (26.2 percent) or because Catalonia would be better (23.4 percent).

9. WHO IS WHO IN CATALAN POLITICS?



Direct-democracy and anti-capitalist political organization, independent and supporting the unilateral path.



Catalunya Sí Que es Pot (CSQEP)

Left-wing parties coalition created for the 2015 elections by Iniciativa per Catalunya Verds (ICV), Esquerra Unida i Alternativa (EUiA), Podemos and Equo.



Ciutadans (C's)

A liberal party that supports the unity of Spain. It was created in 2006 with the aim of combating Catalan nationalism.



Convergència i Unió (CiU)

A federation of two Catalan nationalist parties created in 1978. It was made up of Convergència Democràtica de Catalunya (CDC), liberal center-right nationalists, and Unió Democràtica de Catalunya (UDC), with a Christian Democrat ideology. It was the main political force in Catalonia until in 2015 *Unió* broke with Convergència. *Unió* then ran at the elections by itself and did not win any seats.



Esquerra Republicana de Catalunya (ERC)

Founded in 1931, it is a separatist social-democratic party.



Iniciativa per Catalunya – Esquerra Unida i Alternativa (ICV-EUiA)

An electoral coalition of left-wingers and ecologists. It was founded in 2003 by Iniciativa

per Catalunya Verds (CV), Esquerra Unida i Alternativa (EUiA), Entesa pel Progrès Municipal (EPM) and esl Verds-Esquerra Ecologista.



Junts pel Sí (JxS)

A coalition party favorable to independence created for the 2015 elections by Convergència, Esquerra Republicana de Catalunya and other smaller independent parties. It is currently in power with the support of CUP.



Partit Demòcrata Europeu Català (PDeCAT)

Created in the summer of 2016, this independent and liberal party is the successor of Convergència Democràtica de Catalunya (CDC).



Partit Popular de Catalunya (PPC)

A delegation of the People's Party in Catalonia, founded in 1989. Neo-conservative in ideology, it supports the unity of Spain.



Partit dels Socialistes de Catalunya (PSC)

This social-democratic party was founded in 1978, and supports a federal solution. It is federated with the PSOE in the rest of Spain.

Authors



Joan Navarro is Partner and Vice-President of the Public Affairs Area at LLORENTE & CUENCA. Graduate in Sociology by the UNED and the General Management Program (Programa de Dirección General, PDG) by the IESE-University of Navarra. Expert in political communication and public affairs, from 2004 to 2007 Director of the Cabinet of the Minister of Public Administration, and in 2010 recognized as one of the 100 most influential people by the magazine *El País Semanal*. He is founder of the forum +Democracia, entity that promotes institutional changes for the improvement of democratic functioning. He is a member of the Spanish chapter of the Strategic and Competitive Intelligence Professional (SCIP) and contributor to the newspaper *El País*.

jnavarro@llorenteycuenca.com



Nacho Corredor is a Senior Consultant of the Public Affairs Area at LLORENTE & CUENCA. He studied Political Science at Pompeu Fabra University. He is also a reputation consultant and competitive intelligence analyst. He is a political analyst in the media, such as Cuatro, la Cadena SER and *El Periódico de Catalunya*. He is also a postgraduate professor in the field of communication and public affairs at the Universidad Internacional Menéndez Pelayo (UIMP), the Autonomous University of Barcelona (UAB) and Ramon Llull University (URL). He has founded various organizations such as deba-t.org and bridgingbcn dedicated to fostering relations between universities, politics and civil society. He is also a member of the Political Communication Association (ACOP) and the Societat d'Estudis Econòmics (SEE).

icorredor@llorenteycuenca.com

LLORENTE & CUENCA

CORPORATE MANAGEMENT

José Antonio Llorente
Founding Partner and Chairman
jalloriente@llorenteycuenca.com

Enrique González
Partner and CFO
egonzalez@llorenteycuenca.com

Adolfo Corujo
Partner and Chief Talent and
Innovation Officer
acorujo@llorenteycuenca.com

Carmen Gómez Menor
Corporate Director
cgomez@llorenteycuenca.com

MANAGEMENT - AMERICAS

Alejandro Romero
Partner and CEO Americas
aromero@llorenteycuenca.com

Luisa García
Partner and COO Latin America
lgarcia@llorenteycuenca.com

Erich de la Fuente
Partner and CEO United States
edela Fuente@llorenteycuenca.com

José Luis Di Girolamo
Partner and CFO Latin America
jldgirolamo@llorenteycuenca.com

TALENT MANAGEMENT

Daniel Moreno
Chief Talent
dmoreno@llorenteycuenca.com

Marjorie Barrientos
Talent Manager for Andes' Region
mbarrientos@llorenteycuenca.com

Karina Sanches
Talent Manager for
the Southern Cone
ksanches@llorenteycuenca.com

SPAIN AND PORTUGAL

Arturo Pinedo
Partner and Managing Director
apinedo@llorenteycuenca.com

Goyo Panadero
Partner and Managing Director
gpanadero@llorenteycuenca.com

Barcelona

María Cura
Partner and Managing Director
mcura@llorenteycuenca.com

Muntaner, 240-242, 1º-1ª
08021 Barcelona
Tel. +34 93 217 22 17

Madrid

Joan Navarro
Partner and Vice-president
of Public Affairs
jnavarro@llorenteycuenca.com

Amalio Moratalla
Partner and Senior Director
amoratalla@llorenteycuenca.com

Jordi Sevilla
Vice-president of Economic Context
jsevilla@llorenteycuenca.com

Latam Desk
Claudio Vallejo
Senior Director
cvallejo@llorenteycuenca.com

Lagasca, 88 - planta 3
28001 Madrid
Tel. +34 91 563 77 22

Impossible Tellers

Ana Folgueira
Managing Director
ana@impossibletellers.com

Impossible Tellers
Diego de León, 22, 3º izq
28006 Madrid
Tel. +34 91 438 42 95

Cink

Sergio Cortés
Partner, Founder and Chairman
scortes@cink.es

Muntaner, 240, 1º-1ª
08021 Barcelona
Tel. +34 93 348 84 28

Lisbon

Tiago Vidal
Managing Director
tvidal@llorenteycuenca.com

Avenida da Liberdade nº225, 5º Esq.
1250-142 Lisbon
Tel. + 351 21 923 97 00

UNITED STATES

Miami

Erich de la Fuente
Partner and CFO
edela Fuente@llorenteycuenca.com

600 Brickell Ave.
Suite 2020
Miami, FL 33131
Tel. +1 786 590 1000

New York City

Latam Desk
Salomón Kalach
Director
skalach@llorenteycuenca.com

Abernathy MacGregor
277 Park Avenue, 39th Floor
New York, NY 10172
Tel. +1 212 371 5999 (ext. 374)

Washington, DC

Ana Gamonal
Director
agamonal@llorenteycuenca.com

10705 Rosehaven Street
Fairfax, VA 22030
Washington, DC
Tel. +1 703 505 4211

MEXICO, CENTRAL AMERICA AND CARIBBEAN

Mexico City

Juan Arteaga
Managing Director
jarteaga@llorenteycuenca.com

Rogelio Blanco
Managing Director
rblanco@llorenteycuenca.com

Bernardo Quintana
Non-Executive Chairman
bquintanak@llorenteycuenca.com

Av. Paseo de la Reforma 412, Piso 14,
Col. Juárez, Del. Cuauhtémoc
CP 06600, Mexico City
Tel. +52 55 5257 1084

Havana

Pau Solanilla
Managing Director
psolanilla@llorenteycuenca.com

Sortis Business Tower, piso 9
Calle 57, Obarrio - Panamá
Tel. +507 206 5200

Panama City

Javier Rosado
Partner and Managing Director
jrosado@llorenteycuenca.com

Sortis Business Tower, piso 9
Calle 57, Obarrio - Panamá
Tel. +507 206 5200

Santo Domingo

Iban Campo
Managing Director
icampo@llorenteycuenca.com

Av. Abraham Lincoln 1069
Torre Ejecutiva Sonora, planta 7
Tel. +1 809 6161975

ANDES' REGION

Bogota

María Esteve
Partner and Managing Director
mesteve@llorenteycuenca.com

Av. Calle 82 # 9-65 Piso 4
Bogotá D.C. – Colombia
Tel. +57 1 7438000

Lima

Luis Miguel Peña
Partner and Senior Director
lmpena@llorenteycuenca.com

Humberto Zogbi
Chairman
hzogbi@llorenteycuenca.com

Av. Andrés Reyes 420, piso 7
San Isidro
Tel. +51 1 2229491

Quito

Alejandra Rivas
Managing Director
arivas@llorenteycuenca.com

Avda. 12 de Octubre N24-528 y
Cordero – Edificio World Trade
Center – Torre B - piso 11
Tel. +593 2 2565820

Santiago de Chile

Francisco Aylwin
Chairman
faylwin@llorenteycuenca.com

Néstor Leal
Director
nleal@llorenteycuenca.com

Magdalena 140, Oficina 1801.
Las Condes.
Tel. +56 22 207 32 00

SOUTH AMERICA

Buenos Aires

Mariano Vila
Managing Director
mvila@llorenteycuenca.com

Daniel Valli
Non-Executive Chairman for Southern
Cone
dvalli@llorenteycuenca.com

Av. Corrientes 222, piso 8. C1043AAP
Tel. +54 11 5556 0700

Rio de Janeiro

Cleber Martins
clebermartins@llorenteycuenca.com

Ladeira da Glória, 26
Estúdio 244 e 246 - Glória
Rio de Janeiro - RJ
Tel. +55 21 3797 6400

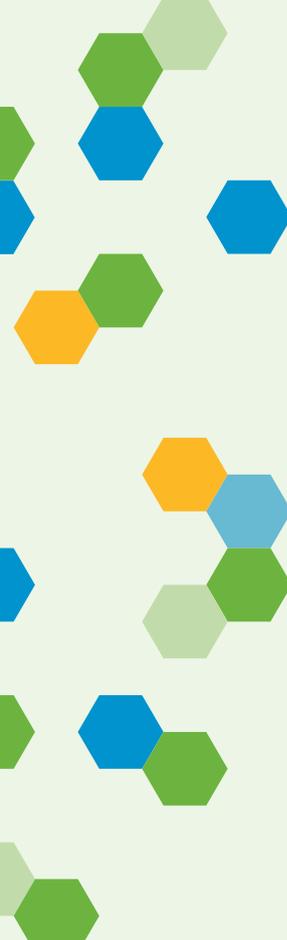
Sao Paulo

Marco Antonio Sabino
Partner and Brazil Chairman
masabino@llorenteycuenca.com

Cleber Martins
Managing Director
clebermartins@llorenteycuenca.com

Juan Carlos Gozzer
Regional Innovation Officer
jcozzer@llorenteycuenca.com

Rua Oscar Freire, 379, Cj 111,
Cerqueira César SP - 01426-001
Tel. +55 11 3060 3390



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