

# José Antonio Payet, lawyer

José Antonio Payet is the founder of one of the most prestigious law firms in Peru and has been involved in some of the country's landmark corporate finance transactions. At the same time, his firm has also embarked on a range of projects to support the underprivileged. In this interview, Dr Payet tells us about his experience as a negotiator after 72 hostages were seized by terrorists in 1997, and shares his insights into the 21st-century legal profession.

1. It is surprising to see your name come up as an adviser in the Peruvian government's negotiations with the terrorist group MRTA during the holding of 72 hostages in the Japanese ambassador's residence in 1997. What was that experience like?

It was extraordinary. I was working on the legal reform of the education sector, and the hostages were seized just after we'd finished. The President had asked Domingo Palermo, the Minister of Education, to handle the matter, and he contacted me because he needed a legal adviser. At that time my wife was pregnant –I have triplets– and I told him that first I needed to get permission from my wife and my partners in the firm, which they gave. He asked me to keep everything on standby.

2. It was one of the most important events in recent Peruvian history, and at that time you were barely 36 years old.

Yes, I was just 36. I accompanied Palermo in the negotiations with the MRTA, and we met in a house opposite the residence. The team was headed by Monsignor Juan Luis Cipriani, with the presence of the Canadian ambassador and the Japanese ambassador in Mexico, and Néstor Cerpa and Rolly Rojas on behalf of the MRTA, who turned up with their bandannas covering their faces and in uniform. The negotiations went on for hours.

3. Everything ended with a spectacular rescue operation, but during those conversations, what impression did you get of the terrorists?

My impression was they were in a situation that had got out of hand. They were way out of their depth. The whole thing was an incredible experience for me.

The legal profession is not always associated with charitable deeds. However your firm appears to contradict that stereotype, as it's involved in a large number of social initiatives.

One distinguishing feature of our firm is our willingness to contribute. If you're a relatively successful professional –with a good income, with resources– in a country like Peru where there's such gaping inequality, you can't remain indifferent. One of our most enriching experiences was in the town of San Matías, near Chincha (south of Lima), after the 2007 earthquake. One of the partners decided to start a collection, and as we had a very close relationship with a Spanish firm associated to the Uría Foundation, they made a contribution. We raised enough capital to rebuild that town. We worked with the Universidad Católica to design the houses; we involved the locals in the construction project, and the whole town was rebuilt. Today they have well-made houses and services, and we have an excellent relationship.

4. Your firm has taken part in several of the biggest mergers and acquisitions in Peru. From your point of view, what is the importance of good corporate governance?

The corporation is a cornerstone of the economy and society. From the time we become adults until we die, we have a very close links with corporations: they give us services, education, healthcare, they administer our money; it's as important as the family. And corporate governance defines how

these corporations behave. Good corporate governance is a corporation's code of conduct. It is transparent; rigorous in observing the rights of its shareholders; complies with regulations; treats its workers well; respects the environment. But this doesn't only apply to large corporations. It's crucial that these practices should have a "trickle-down" effect and be adopted from the very top right down to the bottom.

5. In these last two decades, legal practice has changed considerably. How do you see the profession being practiced in Latin America in the coming years?

The legal profession mirrors what's going on in the country. In this profession you're a kind of hinge between the private customer and the legal system. Since we opened the firm in 1996 until the present day, there have been advances in this area. However, some of the areas in the public sector have made progress, while others just haven't. There has been no evolution in the power of the judiciary. In the future the private sector will continue to move ahead, and the job of lawyers will become more technical, more specialized. And I hope that in the role of lawyers dealing with the State, legal argument will prevail over the evil arts.

6. What advice would you give lawyers who are about to finish their degree this year?

This profession has two important aspects. Firstly, your principles; because as a lawyer you can make a lot of money doing really terrible things. When you're a lawyer, you have knowledge, intelligence; you're operating with legal instruments that you could use for your personal benefit. You can use them well or badly. And that's not determined by your abilities, but by your principles, by your ethics. The second aspect is technical: you have to be familiar with the law, study it closely. You can't improvise, because that way you can do a lot of damage.

7. And what message would you give people who work for the BBVA Microfinance Foundation Group, which seeks a better future for disadvantaged people through Responsible Productive Finance?

Microfinance is one of the most powerful instruments for a country's development. If we imagine the cell is the family and the corporation, with microfinance you can act directly on the vein. It is like the lifeblood that enables the organism to work. As a financial institution you have direct contact with SMEs when you provide them with loans. But you are not a charitable institution; you're a business concern that reinvests its profits and has to be careful about recovering its loans. This is important because it imposes market discipline on this fledgling sector. Your role is fundamental for its development.

8. At the end of the day, or outside your everyday work, what do you do to relax?

My main hobby is my family. I really value the time I spend with them. My second hobby is traveling, seeing different things, the mountains. A little while ago I was in Puerto Maldonado. I love Cusco, but I also love Asia. My children are 17 years old – two girls and a boy. I don't think any of them are considering becoming lawyers. When my son José Antonio was seven he said: "Daddy you work a lot. I don't want to be a lawyer. I'd rather be a client". But it's a very rewarding profession.

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## Improving Corporate Governance

The origin of the Bill that reforms the current Corporate Enterprises Act can be found in the 2013 National Reform Plan. The Council of Ministers set up a Committee of Experts tasked with assessing

the governance of Spanish corporations and proposing measures for improving effectiveness and accountability in their management. This Bill is the result of its recommendations.

The Bill contains one sole article that regulates the amendments relating to the Corporate Enterprises Act in three key areas:

I. Powers of the General Meeting and shareholder rights, giving special prominence to the rights of minority groups by reducing the capital requirements to entitle them to such rights from the current 5% to 3%.

II. Company directors. Focusing primarily on the duties of loyalty and diligence of its directors, protecting discretionary business judgment in the area of strategy and in business decisions. The scope of penalties in the event of non-compliance with the duty of loyalty is extended beyond retribution for damages caused, so that it now includes the clawback of unfair gains.

Moreover, an obligation has been established for companies to set up, at least, an Audit Committee, and an Appointments & Remuneration Committee.

III. Remuneration of board members. In order to redeem past excesses, directors' remuneration must be fair and in keeping with the economic situation of their companies, and with the duties conferred on them. The remuneration must seek to promote the profitability and sustainability of the company in the long term.

The aim is thus to bring about a major overhaul which will change the traditional operation of the companies' principal governance bodies, moving away from the model based on recommending standards of good governance and towards incorporating them into Spanish statutory law.

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## Financial and Insurance Information

In May 2014 the Congress of the Republic of Peru approved a legal measure facilitating access to financial, pension and insurance information for legal probate.

As a result of this now statutory provision, legal heirs can obtain the information on life insurance policies, private-sector pension funds and deposits or other financial products, which appears on the certified copies of death certificates.

Thus, certified copies or filing information of death certificates issued by the offices of the National Identity and Civil Status Registry (Reniec) include summary and reference information to apprise heirs of the existence of due procedures and a legal framework under which they may exercise their rights.

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# Guidelines for a Latin-American Code of Corporate Governance

In order to reinforce corporate governance throughout Latin America, CAF has implemented a program designed to promote best practices in corporate governance for the entire region. As part of this program, it has presented these Guidelines for a Latin-American Code of Corporate Governance. The intention is to submit these guidelines, an updated version of an earlier document published in 2004, to the consideration of companies, capital-market operators and public-policy makers in the region. The document is comprehensive in scope and applicable to a broad spectrum of corporations.