AECOM is a US Fortune 500 global company that delivers solutions for creating and sustaining both built and natural environments. As the No. 1 global design firm in the Engineering News Record 2012 ranking, AECOM has offices in 140 countries that are supported by its more than 45,000 employees. Its 2012 revenues exceeded $8 billion. AECOM provides professional technical and management support services across a broad range of markets, including transportation, facilities, environmental, energy, water and government.

AECOM’s reach in Latin America is significant and expanding. The company currently operates in the region through its 17 local subsidiary and branch offices. AECOM also actively pursues work through consortiums, joint ventures and public-private partnerships with a number of local firms.

Worldwide, AECOM’s legal team operates leanly for its size, relying on 50 legal counsel and a small group of support staff, including contract review lawyers/paralegals and administrative staff. Nancy Laben, AECOM’s general counsel, oversees the legal function globally. Structurally, the legal department is centralized for corporate functions, but geography-based to support business operations.

As part of a recently published Leading Practices Profile about the role of corporate counsel in Latin America, ACC spoke with Philip Kessack, vice president and senior legal counsel for the Americas Business Lines, who explained how the legal department supports AECOM’s operations in Latin America. Kessack’s responsibilities include assisting in the development of internal tools and processes to better support operations in the region.

The role of AECOM’s corporate counsel in supporting Latin American operations

Roughly half of AECOM’s revenue comes from the Americas. AECOM generally hires geography and region-based counsel who are licensed and have local ties to the related geographies. In the Americas, each of the 12 region-based counsel, including the Latin America region counsel and five Canadian counsel, report directly to the Americas geography chief legal counsel, with an administrative “dotted line” to their respective region executives. Seven additional Americas counsel support US government, design/build/P3, environment and other specialty operations.

As would be expected, a primary function of the Latin America region counsel is to provide legal support and business guidance to operations within Latin America. For regional counsel throughout AECOM, this includes helping external project teams identify and understand applicable regulatory requirements, develop approaches that are consistent with those requirements, and provide both legal and business advice to help support pursuits and projects. This also includes developing, maintaining and guiding an effective working relationship with the project teams and providing the necessary ethics and compliance training.

The role of the Latin America region counsel requires an ability to adapt to the distinct legal and business environments of the multiple independent countries, each of which has its own individual legal system, culture and business landscape that must be recognized and addressed. “Critical issues such as the enforceability of limitations of liability, decennial liability, the applicability of legal precedents and other elements of civil law must be factored into the
legal analysis. Each host country has its own legal history and experience that heavily influences its laws,” explains Kessack. “Therefore, a careful legal analysis of the needs and requirements of each individual host country must be considered carefully before pursuing work in those host countries.” Adding complexity to the role, the Latin America region counsel also coordinates closely with the legal counsel of other geographies on projects where AECOM affiliates in those geographies are pursuing projects in Latin America.

Trends in Latin America that impact global businesses

Kessack notes two significant business trends in Latin America with ramifications for corporate counsel. The first is a positive trend: rapidly growing opportunities matched by large projects. In Brazil alone, the 2016 Olympics and the 2014 World Cup — and the related infrastructure development — present enormous opportunities for firms able to provide infrastructure support. But even beyond the Olympics, continued economic growth, competitive markets and political stability throughout many Latin American countries (e.g., Chile, Colombia, Peru, etc.) are ripe for burgeoning development and present enormous opportunities.1
However, there is also a negative trend relating to the risk of increasing corruption in certain Latin American countries, as indicated by the most recent Transparency International Rankings. As compared to North America, Western Europe and Australia/New Zealand, administrative and political corruption — or at least the perception of it — is significantly more prevalent in most Latin American countries, making compliance riskier for business. This, in turn, increases the cost of doing business in Latin America as businesses strive to contain and manage risk. “In some countries,” explains Kessack, “the political risk is so high that companies like AECOM simply will not invest.”

Potential pitfalls when practicing in Latin America

AECOM and its law department understand that there are important considerations at play in the decision to pursue a project in Latin America. For example, being technically competent to perform a project in the United States does not necessarily translate to an ability to perform well in the different legal and business environments of individual Latin American host countries. A project manager may have succeeded in dozens of domestic projects, only to fail when pursuing or performing work abroad.

Successful pursuit teams possess certain characteristics, Kessack emphasizes. These include:

- a process for understanding the unique aspects of the host country;
- close interaction with key corporate support functions early in the process;
- a commitment to developing good, solid working relationships with local counsel;
- an ability to foster good working relationships with both corporate and legal entity management and their client counterparts; and
- a commitment to implementing an efficient system for review that ensures identification and compliance with applicable legal and business requirements.

Transnational considerations

Understanding the importance of these characteristics, AECOM has developed important tools that Kessack emphasizes are integral to operating successfully across national boundaries within Latin America. Two of these are the Enterprise Support Teams and Country-Specific Abstracts.

Enterprise Support Teams

Enterprise Support Teams (EST) consist of key representatives from each of the major corporate functions (i.e., compliance, tax, security, global mobility) that are needed to support transnational pursuits in Latin America. After receiving a brief from the pursuit team on objectives and open questions, EST members begin to identify potential issues related to their functional expertise and resources available to help the pursuit team address them.

The specialized expertise of EST members, and their ability to identify potential obstacles and work with the pursuit teams, goes a long way in facilitating the success of the project. “Working in a transnational environment adds significant complexity to any deal,” explains Kessack. “It requires specialized expertise capable of anticipating and addressing the many issues inherent in transnational pursuits, which normally include adapting normal internal processes to address the specific needs of the individual host country.” This ability to focus on key concerns is essential for success. “The pursuit team, with the support of the EST, is then in a much better position to identify potential obstacles, identify critical risk exposures, recognize key cost issues and better align its schedule to properly address those issues in a more organized and effective manner,” explains Kessack.

Country-Specific Abstracts

In addition to understanding risks identified by the ESTs, pursuit teams must also be aware of other considerations. Each host country in Latin America has its own distinct business and legal environment based on its individual
Each host country in Latin America has its own distinct business and legal environment based on its individual history, culture and experience. To succeed, the pursuit/project teams must have an appreciation of those unique characteristics and be able to work within that environment. A basic knowledge of the culture, legal requirements and business environment is critical.

AECOM has addressed this need by creating individual host country Abstracts. Each Abstract addresses discrete areas, including contact information for the existing local AECOM legal entities, taxes, visa/work permit requirements, labor issues, political risk, registration requirements, currency values, cultural issues and security concerns. And while these Abstracts are time consuming to prepare and require dedicated resources to properly maintain, they are a crucial investment for enabling the pursuit and project teams to appreciate and understand the distinct considerations of working in a given Latin American host country.

This combined team of experienced support experts and resources tailored for transnational services is essential, explains Kessack:

“If you are going to make a long-term investment into Latin America, you need to develop a consistent and logical step-by-step process to identify the applicable requirements early in the review process, and to provide a streamlined process for identifying and obtaining resources needed to address those requirements. The process also needs to flag those issues that are likely to significantly impact the cost of the project.”

Leading practices
ACC asked Kessack to identify leading pursuit practices for companies seeking business opportunities in Latin America. Among top practices, Kessack believes that advance planning, agility, and persistence by both business leaders and corporate counsel are crucial for success in Latin America. “The key 'take away' is to recognize that Latin America is not a monolith, but rather a group of independent countries, each of which require an investment of time, money and effort to understand the business and legal landscape so that the legal counsel can render effective legal and business advice necessary for success.”

AECOM’s willingness to invest resources into understanding the business and legal landscape in each host country, before and during project pursuits, is a best practice for this company. Another is the legal team’s commitment to developing and maintaining a good working relationship with the business teams — an important practice that assures corporate counsel are welcomed as business partners to pursuit planning, and not avoided as perceived obstacles to the process. LAB

The foregoing is an excerpt from ACC’s Leading Practice Profile, The Role of the General Counsel and Corporate Counsel in Latin America: Leading Practices in Law Department Management. To read AECOM’s entire profile, and others, please visit www.acc.com/legalresources/resource.cfm?show=1320466.

NOTES
2 With the exception of Chile and Uruguay, all countries in Central and South America rank in the bottom 40 percent of the index that measures the perception of administrative and political corruption. See, Transparency International’s Corruption Perceptions Index 2012, http://cpi.transparency.org/cpi2011/results/.