



Annual Meeting 2011
DENVER OCT 23-26
Where In-house Counsel Connect



Track: International
201 – Doing Business in Latin America -
Challenges and Trends

Monday, October 24, 2011
11:00AM - 12:30PM



Agenda

1) Due Diligence / Investments

By Rodolfo Rivera Regional Counsel, FNF Title International

2) FCPA & Compliance

By Luis F. Ortega Senior Manager, Deloitte Financial
Advisory Services

3) Dealing with...

By Martín Castro Legal Manager, Bridgestone Argentina



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Due Diligence: Know Before You Go

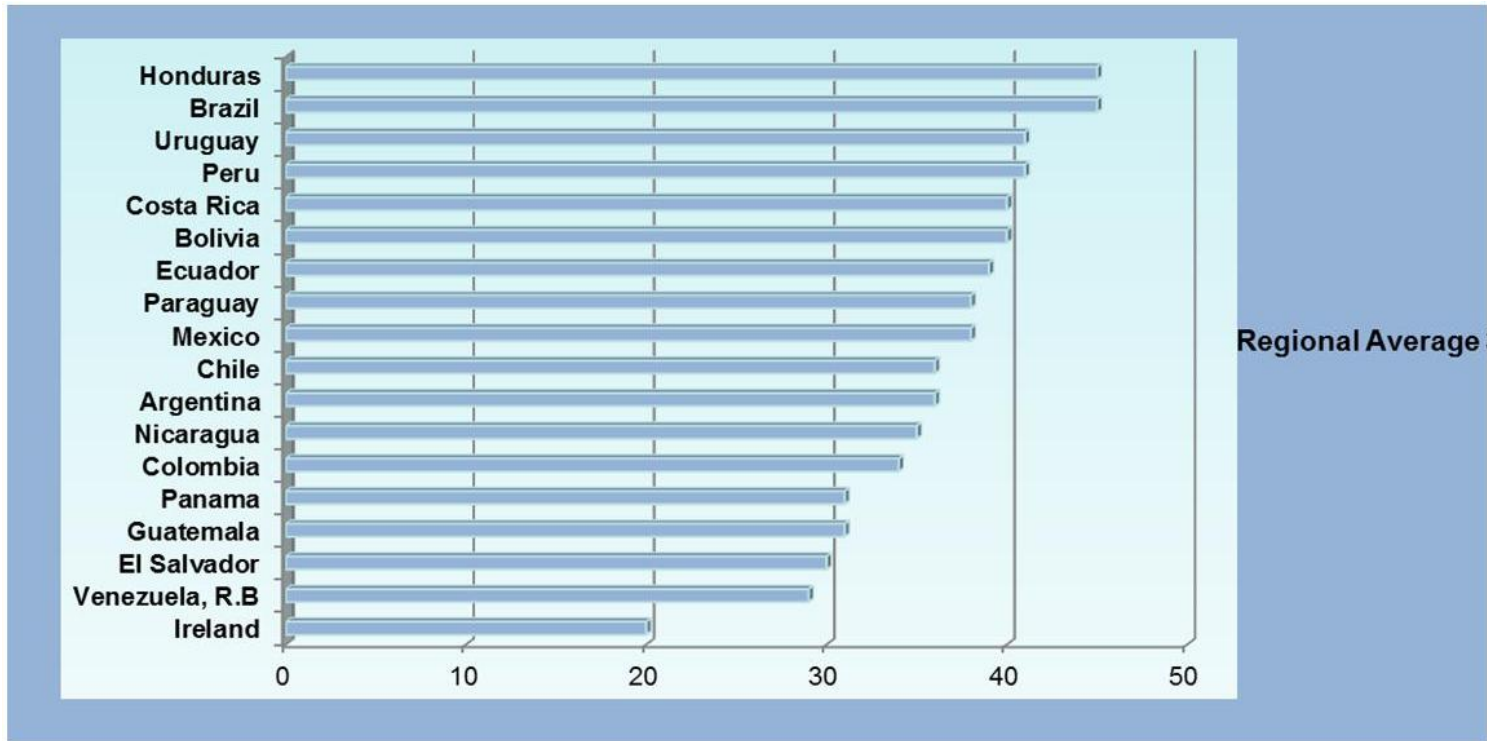


Legal Systems

- Civil Law System vs. Common Law
- Role of Lawyer and Notary can differ significantly from country to country.
- Enforcement of Contracts can take much more time than in the US.



Procedures for Enforcing Int'l. Contracts





Contract Enforcement Across Regions

Region	Procedures (Number)	Time (days)	Cost (%of Claim)
Latin America	37	711.6	30.1
Caribbean states	42.9	701.7	32.4
East Asia & Pacific (EAP)	37.3	548.9	48.5
European Union (EU)	31.8	548.9	20.7
Southeast Asia	43.5	1052.9	27.2



Enforcement of Foreign Jurisdiction

- Foreign judgments are governed according to the terms and guidelines established in treaties. If no treaty exists with the ruling court's country of origin, local laws are applicable.
 - The judgment must arise from a court with proper subject matter and jurisdiction according to local law.
 - The judgment must not violate local public policy.



Cultural Aspects Of Doing Business

- Do not lump all countries in Latin America into one category.
 - Each country has a different history
 - Don't assume that the method of doing business is uniform
 - American model does not always work



Sources for Cultural Information

- US Embassies
 - Often have commercial officers that can provide insight into the local culture.
- Culture Smart Series
 - One book per country
 - Provides in depth social and business etiquette
- Itim International
 - How values in the workplace are affected by local culture



Effective Use of Translators and Interpreters

- Minimal thought usually given to this aspect of the transaction/venture.
- Use neutral person
- Never use someone from the business unit; act as a translator/interpreter.
- Translator/Interpreter usually not completely fluent in both languages.



Investment in Latin America

- Types of Investments
 - Infrastructure
 - Real Estate
- Most Popular Counties
 - Chile
 - Colombia
 - Brazil
 - Peru



Top Latin American Economies

Country	Real GDP Growth*	Unemployment Rate*	Consumer Price Inflation*	External Debt (YE in USD BN)*
Argentina	8.3	7.2	9.6	135.9
Peru	6.5	6.8	3.3	39.2
Chile	6.2	6.9	4.0	94.5
Colombia	5.0	11.2	3.9	69.8
Mexico	4.2	5.1	4.0	204.2
Brazil	4.0	5.3	6.2	406.3

* Forecast 2011 - % unless otherwise indicated

Source: The Economist (Intelligence Unit – Country report: August 1st, 2011)



Ranking

Ease of Doing Business in Major LATAM Economies

Economy	Rank	Starting a Business	Dealing with Construction Permits	Registering Property	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts
Singapore	1	4	2	15	2	4	1	13
USA	5	9	27	12	5	62	20	8
Mexico	35	67	22	105	44	107	58	81
Peru	36	54	97	24	20	86	53	110
Colombia	39	73	32	55	5	118	99	150
Chile	43	62	68	45	28	46	68	68
Argentina	115	142	168	118	109	143	115	45
Brazil	127	128	112	122	74	152	114	98
Chad	183	182	101	137	154	179	171	164

Source: World Bank



Opportunities

- Growth in LATAM has remained stable in 2011 as a result of a recent commodity price increases
- Growth for the region is expected to remain within 4% or 5%
- LATAM's commodity exports to China have played a significant role in the development of the region – Growth from 0.8% in 1990 to 10% in 2008
- An increasing interest in eradicating corruption – Governments are increasingly willing to replicate US and UK anticorruption regulations and develop cross-border cooperation agreements

Challenges & Risks

- Commodity dependence could cause limited growth in the region (overheated economies), inflation and social unrest
- Conducting business in certain LATAM countries continues to be challenging as a result of outdated or bureaucratic regulations
- Despite efforts to eradicate corruption it remains a significant risk in most of the region
- Money laundering continues to be a threat despite the implementation of recent legislation
- Region is slowly adopting US compliance models



Regional Trends

Enforcement of the FCPA

- **Global FCPA Enforcement Trends**
 - An increased interest in the prosecution of non-US corporations. US government specially interested in violations occurring in countries that appear to have lax enforcement of their own anticorruption laws
 - Continued focus on the oil and gas and pharmaceutical industries
 - 47 prosecutions in 2010 – Similar to 2009
 - USD\$1.8 billion in fines imposed in 2010. Exceeding any prior years
 - Continued interest in the prosecution of individuals – 16 charged in 2010



Regional Trends

Enforcement of Other Anticorruption Laws

- Increased interest of local and international governments in the enforcement of anticorruption legislation and trial of cases

Entity	Country	Prosecutor
Accor Services	Argentina	Argentina
Abengoa, S.A.	Costa Rica	Spain
PWS International	Costa Rica	United Kingdom
Tax Authority Employees	Colombia	Colombia
Skanska	Argentina	Argentina



Regional Trends

Other Legislation Affecting the Region

- UK Bribery Act (July, 2011)
 - More comprehensive than any other anticorruption law currently enacted
 - Applies to corporations with operations in the UK engaging in corrupt activity in foreign countries
 - Includes provisions against commercial bribery
 - Provides no exception for facilitation payments or bona fide promotional expense



Regional Trends

Other Legislation Affecting the Region

- **Passing of Colombia's 1474 Law for the Prevention of Corruption (July, 2011)**
 - Restricts the granting of government contracts to entities who exceed specific financing limits of political campaigns
 - Restricts public officials from providing personal services in matters related to their public official function for a two year after leaving office
 - Includes provisions similar to the FCPA



Regional Trends

Other Legislation Affecting the Region

- **Enactment of the Mexican Federal Anti-Corruption Law (April 2011)**
 - Applies to individuals or corporations
 - Prohibits the granting of anything of value to influence or deter the actions a public Mexican official in connection with government contracts



Regional Trends

Other Legislation Affecting the Region

- **Dodd Frank Act**
 - Extraterritorial SEC jurisdiction for enforcement actions against foreign private issuers
 - Liabilities imposed on third parties (i.e., layers, accountants) for “aiding and abetting” securities violations
 - Section 922 – Contemplates the payment of substantial cash rewards to whistleblowers who provide the SEC with information aiding the successful cases prosecuting securities violations
 - Section 1504 – Requires issuers in the resource extraction business or commercial development of oil, natural gas or minerals to disclose certain payments to foreign governments



What Others are Doing

Implementation of Effective Compliance Programs

- **Develop and implement a localized compliance program that includes the following:**
 - Understanding the business risks and legal environment in the region where you are operating
 - Understanding who your business partners are – Conduct due diligence
 - Facilitate training on policies and ethics matters to employees at international locations in their local language with real-world examples that are applicable to their business model and region



What Others are Doing

Implementation of Effective Compliance Programs

(cont.)

- Be prepared to address a potential increase in whistleblower claims and develop an investigation response program
- Awareness of any specific legislation regarding data privacy and potential e-discovery restrictions
- Program should be flexible enough to be easily adapted to new markets or changing conditions
- Program should be properly supported by local personnel ready to answer and address any questions or issues and performs regular monitoring activities



Dealing with the Government

- Import licensing
 - Not subject to any kind of licensing
 - Automatically licensed
 - Non automatically licensed – OMC 60 days (?)
 - ✓ Trade Off (i.e. Argentina):
 - Balance of trade between imports and exports
 - Supervision of the value of the imports
- Price increases – Governments monitors



Dealing with all governments

- Tax and duty regulations are complex across all countries at any level
 - Federal: Benefits to foreign investors (i.e. Mexico, Chile) / Corporate Income Tax
 - Provincial: Tax on commercial activity (place of business)
 - County: Tax on advertising



Dealing with Competitors

- Antitrust legislation
 - Competition and antitrust regulation
 - Abuse of dominant position
 - Any restraint to free competition or free initiative
 - Increasing enforcement/Huge penalties
 - Leniency Programs
 - Merger Control
 - In some countries, the antitrust authority is still dependent on the government



Dealing with Competitors

- Antidumping legislation

The antidumping legislation is in force (Mexico, Brazil, Argentina) but... the actual enforcement and the antidumping measures always depend on the government relationships with the importing country and the interests of the government



Dealing with Sales representatives and Distributors

- Legal concept of a sales agent is rather abroad across all countries
- Challenges
 - Sales Agent as a natural person (labor issue)
 - Exclusivity
 - Indefinite term contracts
 - ✓ Indemnification (i.e. Brazil 1/12 of total compensation during the term of representation)
 - ✓ Termination without cause (up to 6 months, depending on the country)



Dealing with Sales representatives and Distributors

- Challenges (cont.)
 - Depending on the distribution/agent relationship, you can be jointly and several liable with the actual employer
- What to do?
 - Establish well detailed contracts with definite term
 - Indemnity clause
 - If possible, agree a previous indemnification clause in case of termination without cause



Dealing with Labor Relationships

- Labor relations are complex and highly developed in several countries
 - It is expected that Mexico reviews its labor legislation (applied since the early 1900) which is labor protective but, due to the near national elections, the reform of the law will be postponed.



Dealing with Labor Relationships

- Latin American labor legislation is labor protective – It regulates all aspects of a labor relationship and it is complemented by labor and social security laws, and collective union agreements



Dealing with Labor Relationships

- All claims involving labor matters are decided in labor courts
 - In Argentina there is an increase of civil suits alleging occupational disease, due to a Supreme Court pronouncement declaring non constitutional the cap established by labor disease law.



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Thank You

Questions?