INTER-AMERICAN DIALOGUE'S
LATIN AMERICA ADVISOR ▶ FINANCIAL SERVICES

FEATURED Q&A

How Will Britain's Bribery Act Affect Businesses in Latin America?

Q **Britain's Bribery Act—what some legal analysts have called "the most drastic and far-reaching anti-bribery measure in the world"—went into effect July 1 aiming to provide a modern legal framework to combat bribery in Britain and internationally. The law stiffens penalties and significantly broadens the scope of its jurisdictions worldwide, including individuals and companies in Latin America. What are the implications of the Bribery Act for business in Latin America and the Caribbean? Will the law prove to be a "workable" solution to corruption in a globalized economy, and what are its shortcomings? How are countries of the region changing their own bribery laws in order to work better with the British legislation?**

A **Regina Kuchle, legal affairs and intellectual property director at AstraZeneca Mexico & Latin America:** "Bribery thrives on lack of integrity and corporate greed, and it is believed that extraterritorial control over the actions of foreign actors can play a significant role in reducing corruption that local laws seem hardly to dent. While the U.K. Bribery Act regulates the conduct British nationals have on American soil, it may also hold local anti-corruption practices to a new international model advocating for stricter prevention. Whether Latin American governments succeed in improving anti-corruption policies, multinational corporations with links to the United Kingdom no longer have the luxury of time. The Act's jurisdictional authority, with discretionary powers to investigate and indict corporations whose actions take place thousands of miles away, turns bribery control into an immediate business concern in Latin America. Of greatest significance is Section 7, which introduces an offense: failure of corporations to prevent bribery on its behalf. Corporations may face competitive disadvantages as they

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Argentina's Banking Sector Unlikely to See More Deals

Argentina's banking sector is not likely to see more major deals, in part due to political uncertainty ahead of the country's October election in which President Cristina Fernández de Kirchner is expected to win a second term. See story on page 2.

File Photo: Argentine Government.

Inside This Issue

FINANCIAL SERVICES BRIEFS

Colombia's Davivienda to Issue as Much as $350 Million in Bonds

Colombia's third-largest bank, **Davivienda**, has authorized an issuance of as much as $350 million in bonds on international capital markets, Reuters reported Aug. 16. The bank also said it would take steps to list shares on international markets, but it did not provide details about the either the bond issuances or the share listing.

Pan-American Life Names New Senior VP for Latin America

Pan-American Life Insurance Group, which provides life and health insurance in the United States and Latin America, said Aug. 16 that it has named Robert DiCianni the company's senior vice president for Latin America. DiCianni succeeds Eugenio Magdalena, who is on permanent medical leave after an accident, the company said. DiCianni, who has held positions with insurers including **Prudential Financial** and **ALICO Mexico**, will be based in Panama. Pan-American Life Insurance has operations in countries including Colombia, Ecuador and Guatemala.

Colombia's Banco Popular Sells $226.5 Mn in Bonds

Colombia-based **Banco Popular** has sold 400 billion pesos ($226.5 million) worth of bonds in the local market, Bloomberg News reported Aug. 17. The lender, which is not related to the San Juan, Puerto Rico-headquartered bank of the same name, sold 48-month securities yielding 3.68 percentage points above inflation, according to a statement by Colombia's stock exchange. The bank also sold 18- and 24-month securities yielding 1.71 percent and 1.81 percent respectively above the IBR interbank rate.

Financial Services News

Argentina's Banking Sector Unlikely to See More Major Deals: Analysts

The Argentine banking sector is not likely to see more major deals after a pair of acquisitions earlier this year, Dow Jones reported Aug. 18, citing analysts. Political concerns ahead of the October presidential election and an uncertain economic outlook are likely to put a damper on deal making. "Credit penetration in Argentina is probably one of the lowest in Latin America. So there is definitely a lot of room for growth. But the concern in the short term is the political situation and economic policy," Tito Labarta, an equity analyst at **Deutsche Bank**, told the news service. Bank loans accounted for 15 percent of Argentina's gross domestic product in 2009, as compared to 72 percent of the GDP in Chile and 44 percent in Brazil, according to Deutsche Bank. However, high levels of inflation and speculation that Argentina's government may allow the peso to more swiftly depreciate could deter buyers, said Labarta. President Cristina Fernández de Kirchner is expected to win re-election Oct. 23 after she received 50 percent of the vote in the country's open presidential primary Aug. 14. Analysts see Fernández's overwhelming primary victory as widespread support for her economic policies, which include price controls, heavy social program spending and generous subsidies. This year, the South American country's economy is expected to have its second consecutive year of growth above 8 percent. However, inflation, which economists say is higher than 20 percent, may weigh on growth amid an economic slowdown in Brazil, a key trading partner of Argentina's. Currently, however, Argentina's economy is growing and banks have benefited. Lending to the private sector increased 47 percent for the year through June and banks could post a return on equity in line with last year's level of 24.4 percent. Argentina has 64 banks, but 10 institutions hold 77 of the country's deposits, according to central bank statistics. Earlier this month, **Industrial & Commercial Bank of China** said it would pay $600 million for 80 percent of **Standard Bank Argentina**. Also, **Banco do Brasil** bought a majority stake in Argentina's **Banco Patagonia**. The country's 2001-2002 economic crisis led foreign banks including France-based **Credit Agricole**, Canada's **Bank of Nova Scotia** and Italy's **Banco Nazionale del Lavoro** to leave Argentina. Future bank consolidation is more likely to resemble Argentina-based **Banco Macro**'s acquisition last year of a small niche bank with two branches, said Labarta. Future deals are likely to be driven by banks' desire to sell because they are having difficulty growing or competing with rivals, Sergio Garibian, a director of financial institutions ratings at **Standard & Poor's**, told Dow Jones in an interview.

> "The concern in the short term is the political situation and economic policy."
>
> *— Tito Labarta*

Mexican Banks Increased Loan Portfolios in Second Quarter

The loan portfolios of Mexico's 41 financial institutions grew 2 percent in the year's second quarter while bad debt levels also increased, the country's banking regulator said Aug. 17, Dow Jones reported. Banks in Mexico extended credit totaling 2.24 trillion pesos ($184 billion) as of the end of June, as compared to 2.19 trillion pesos at the end of the first quarter, according to the data from the regulator, CNVB. The average bad debt rate grew in the second quarter to 2.67 percent from 2.27 percent at the end of March. As compared to June 2010, credit provided to consumers increased 15 percent, with balances on credit cards growing 4.5 percent. Banks home-loan portfolios grew more than 13 percent. Last year, Mexico's economy grew 5.4 percent and economists hoped at the beginning of this year that consumer spending would increase in 2011, further aiding the economy. However, analysts have been lowering their forecasts for economic growth in Mexico, especially after **Standard & Poor's** downgraded the credit rating of the United States, Mexico's main trading partner. Mexico's Finance Ministry, headed by Ernesto Cordero, has projected this year's economic growth at more than 4 percent. The two largest banks operating in Mexico, the **Bancomer** unit of **Banco Bilbao Vizcaya Argentaria** and Citigroup's **Banamex** unit, together hold more than 40 percent of the country's deposits and have a similar share of Mexico's loans. The total assets of the banking sector amounted to 5.82 trillion at the end of June, a 14 percent increase since the beginning of the year, while deposits increased 15 percent to 2.78 trillion pesos. At the end of March, the banking sector had assets of 5.63 trillion and deposits totaling 2.73 trillion pesos. In addition, banks had a 12.79 percent average return on equity for the 12-month period that ended in June, as compared to 12.93 percent a year ago. The banking sector's profit declined slightly this year because of new government restrictions that limited fees charged to retail customers.

Cordero

File Photo: Mexican Government.

Mexico's Fovissste Sells $321 Million in Domestic Bonds

Mexico's Fovissste said Aug. 19 that it has sold 3.9 billion pesos ($321 million) in domestic bonds, Dow Jones reported. The notes, which pay 4.25 percent, mature in 29.5 years, said the government mortgage lender. Mexico's government contributes to Fovissste on behalf of state employees, who can then use that money to help buy homes. Fovissste will use the proceeds of the sale to extend additional credit to homebuyers, the lender said. It is expecting to make 90,000 home loans this year. Fovissste previously said that it would make bond payments using cash flow from a preselected home loan portfolio. The sale of the bonds, which **Fitch Ratings**, **Moody's** and **Standard & Poor's** all gave a AAA local credit rating, is part of a 14-billion peso program that the CNVB banking regulator authorized. So far this year, Fovissste has issued 7.6 billion pesos worth of bonds domestically and 5.5 billion on international markets.

Featured Q&A

Continued from page 1

are now required to establish procedures to prevent corruption, conduct bribery risk assessments and monitor business practices, including those of their independent contractors. Corporations must also be vigilant in extending hospitality, business courtesies, interacting with public officials and facilitating payments—all practices that could become investigated and penalized, unbeknownst to corporate directors. Corporations must take precautions where these practices are legally permissible in other jurisdictions. The Act is a promising instrument that should prove successful in the fight against corruption. Corporations are today considering measures to discontinue practices that ethically and/or legally could be deemed an offense. Ultimately, whereas previous reforms failed to change attitudes often tolerant of corruption, the Act seeks an equally lofty but more reasonable goal: to create an airtight legal system immune to cultural proclivities for skirting corruption laws. Whether it achieves this goal by creating competitive disadvantages for U.K.-based corporations is a different question."

A Luis A. Viada, member of the *Financial Services Advisor* board and executive vice president of MicroRate, Inc.: "The fact that the Act extends well beyond the scope and reach of the already strict rules of the U.S. FCPA raises concerns about its potential impact on businesses anywhere. If we consider just three of the provisions of the Act, the problems of compliance and enforcement will become evident. The Act broadens the scope of liability to include failure to prevent inducements provided by third parties with whom the company might be associated. It extends to any company doing business in the United Kingdom and covers an alleged act of bribery in another country even if it is no way connected to the company's business in the United Kingdom, and regardless if that kind of inducement is legal in that country. It expands the definition of a bribable person to practically any public official at any level. Now take the case of a U.S. company having one line of business in the United Kingdom that is outsourcing certain activities of an entirely different unit to an independent service provider in Guatemala. If individuals in the Guatemalan company decide to offer soccer tickets to a low-level bureaucrat to help speed up a routine approval, technically that act can create a vicarious liability for the executives of the U.S. company. While this seems an extreme application of the Act, companies will still have to expand their compliance procedures to cover this much broader range of possible infractions—at considerable cost of implementation and ongoing administration. On the enforcement side, one has to wonder if the Act will only succeed in dissipating scarce resources across a multitude of otherwise trivial business activities rather than improving the odds of snaring the truly egregious cases of bribery and corrupt practices."

> "If we consider just three of the provisions of the Act, the problems of compliance and enforcement will become evident."
>
> *— Luis A. Viada*

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Peru's Bank Loans Rise to Record $44.1 Billion at End of July

Outstanding bank loans in Peru increased to a record level of 121 billion soles ($44.1 billion) as of the end of July, Bloomberg News reported Aug. 16. Outstanding loans in the country's banks rose 20 percent year-on-year in July, according to banking association Asbanc. Peruvian banks' annual loan growth is likely to increase 17 percent to 22 percent this year as more Peruvians are able to access credit, said Asbanc. The banking association also said the loan delinquency rate dropped 0.27 percent in July as compared to the same month last year to 1.54 percent.

> *Peruvian banks' outstanding loans rose 20 percent year-on-year in July.*

Subscriber Notice

Brian F. Doran Joins the Board of Advisors

Doran

The *Financial Services Advisor* is pleased to announce that Brian F. Doran, the New York/New Jersey region executive and director of governmental affairs for **Banco Popular North America**, has joined the *Financial Services Advisor* board.

At Banco Popular North America, a New York-chartered commercial bank and subsidiary of **Popular Inc.**, Doran is responsible for executive management and oversight of the bank's sales, marketing and operations in the New York metropolitan area. He is also responsible for monitoring and participating in federal and state legal and regulatory matters that impact the financial industry.

Before starting his current position, Doran was director of the Legal & Compliance Division at Banco Popular North America. He is also a member of Banco Popular's senior management team and is secretary of the Banco Popular Foundation.
Before joining Banco Popular in 1999, Doran was a partner in the New York office of law firm **McConnell Valdés** from 1997 to 1999. Before that, he was an attorney with multinational firm **Jones Day** from 1988 to 1997.

Doran also serves on boards including the Metropolitan New York Better Business Bureau and the Sisters of Charity Housing Development Corporation and its affiliates. In addition, Doran serves on the Financial Services Roundtable's Housing Policy Executive Council.

Doran earned a bachelor's degree in journalism from Marquette University and a Juris Doctor degree from St. John's University School of Law. He is a member of the New York Bar.

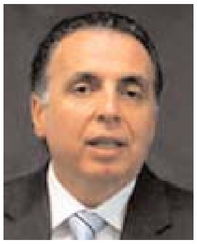
Economic News

Brazil Beginning to Suffer Contagion From Global Crisis: Rousseff

Brazil is beginning to feel the effects of contagion from the economic problems hitting Europe and the United States, but the South American country's government will do everything possible to avoid a recession, President Dilma Rousseff said Aug. 19, Reuters reported. "The main objective of my government is ... to guarantee that, at this time, we are able to contain the perverse effects of a crisis that we did not create, and that could hit Brazil," Rousseff told a Brazilian radio station. "It's obvious that the crisis has an effect." Brazil's economy, the largest in Latin America, has cooled since at least June. In addition to external factors from Europe and the United States, domestic economic woes such as high interest rates, climbing inflation, slower consumer spending and weakness in manufacturing activity also have weighed on Brazil. Last Thursday, **Morgan Stanley** reduced its 2011 growth outlook for Brazil to 3.7 percent from 4 percent. For next year, it cut its estimate to 3.5 percent from 4.6 percent. Brazil's government may lower its forecast for gross domestic product to about 4 percent from 4.5 percent, *Valor Econômico* reported Friday. A government spokesman declined to confirm the report to Reuters. Rousseff said Friday that the best way to keep recession at bay way to encourage job growth. Brazil avoided the worst of the global economic crisis in 2008 and 2009 in part through stimulus measures including more government-subsidized credit and spending. However, the measures also led to high inflation. "In 2009, we took all the measures. Brazil entered into the crisis, so much so that we had a decline in GDP, but ... we came out of it in 2010," said Rousseff. "What we're trying to do this year is not even go into a crisis, stop it at the door. Is it difficult? It's difficult. We're not immune, we're not an island." However, the government now has fewer methods at its disposal to fend off a recession due to inflation at levels above 7 percent on an annual basis and pressure on fiscal accounts.

Mexico's FDI May Reach $20 Billion This Year: Economy Minister

Mexico's level of foreign direct investment could reach $20 billion this year as the country's low wages draw producers, Bloomberg News reported Aug. 22, citing Economy Minister Bruno Ferrari. "Companies are looking for the best place to invest," Ferrari told the news service in an interview Friday. "It's obvious that Mexico has been that place for North America." Mexico's costs for manufacturing are lower than those in the United states by 25 percent. Also, Mexico has producing many engineers and is also signing free-trade agreements with countries including Colombia, said Ferrari. Earlier this year, Finance Minister Ernesto Cordero estimated the country would attract $18 billion in foreign direct investment. In the past year, automakers including **Volkswagen**, **Nissan**, **Mazda** and **General Motors** have each announced investments in Brazil of more than $400 million. Also, Japan's **Honda** said Aug. 12 that it will build a factory for $800 million in the Mexican city of Celaya. "We're expecting to have more of those announcements before the year's end," said Ferrari, who did not identify auto manufacturers who may make similar announcements.



Ferrari

File Photo: Mexican Government.

Political News

Chávez 'Doing Very Well' After Second Round of Chemotherapy

Venezuelan President Hugo Chávez said Aug. 16 that he is feeling healthier after a having a second round of chemotherapy to treat his cancer and added he has never felt better, the Associated Press reported. "I could stand here for five hours," Chávez said during a 20-minute television appearance. Although the Venezuelan leader used to speak for hours on end, he has said his doctors have ordered him to limit the length of his speeches. Chávez on Saturday returned to Venezuela from Cuba, where he has been undergoing chemotherapy. He said that his doctors will soon decide whether he needs another round of chemotherapy and will also decide whether he needs radiation treatment. "I'm doing very well. In fact, I've never been better," Chávez told reporters in Caracas after meeting with Unasur Secretary-General María Emma Mejía. "It's not serious." Chávez added that his cancer has not spread. Chávez, who underwent surgery in Cuba in June to remove a tumor that he described as being the size of a baseball, said the growth was removed from his pelvic region, but has not said what type of cancer it is. Chávez, who appeared with his head completely shaven, said he has been taking good care of his health since the cancer was diagnosed. "Everybody knows chemotherapy has a tough impact and for that reason I must be very careful everyday regarding an infection, a germ, a virus," he said. Chávez also lauded Unasur for its work on reducing South American countries' dependence on powerful countries. "We are innovating," said Chávez. "We are tired of copying foreign models." He praised the Bank of the South, a development bank that was launched in 2009 and receives support from seven South American countries. Mejía has been visiting the region's presidents to discuss efforts aimed at political and economic integration.

> "I'm doing very well. In fact, I've never been better."
>
> — *Hugo Chávez*

Former General Leads Ahead of Guatemala Presidential Vote

Former general Otto Pérez Molina is leading the field of candidates ahead of Guatemala's September presidential election, but he does not appear to have enough support to avoid a second round, according to a poll released Aug. 22. The survey, conducted by polling firm Prodatos and published Monday by Guatemalan daily newspaper *Prensa Libre* shows Pérez with 39.6 percent support, two percentage points higher than a poll a month ago. In order to avoid a runoff, a candidate must win at least 50 percent of the votes in the first round on Sept. 11. In the poll, businessman Manuel Baldizón had 18.5 percent support.

POLITICAL & ECONOMIC BRIEFS

Mexico's Calderón Signs Law to End 'Pocket Veto'

Mexican President Felipe Calderón signed a constitutional change into law on Aug. 16 that ends the "pocket veto," a practice of killing a bill by ignoring it, the Associated Press reported. Under the new system, the president must either approve a bill or return it to Congress within 30 days. If the president does not act within 30 days, the legislation will automatically be enacted.

Standard & Poor's May Raise Bolivia's Credit Rating

Standard & Poor's on Aug. 22 revised Bolivia's foreign-currency rating from stable to positive and added that it may upgrade the nation's credit rating if planned new investments are successful, Reuters reported. All three major ratings agencies rate Bolivia as a B-plus, or four steps below investment grade. In making its decision, S&P cited a number of large infrastructure and investment projects that have been recently announced and are expected to raise the country's growth outlook.

Haiti Reconstruction Panel Announces New Project

The Haiti reconstruction panel on Aug. 17 announced a new project that will revitalize 16 neighborhoods, seeking to move the 5,239 families living in the most vulnerable camps back to the neighborhoods where they had lived before the January 2010 earthquake, the Associated Press reported. Much of the $78 million plan will be funded by the Haiti Reconstruction Fund, set up by donor nations, and the United Nations. The International Organization for Migration estimates about 630,000 people in Haiti are still homeless.

Featured Q&A

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A Jeffrey Lehtman, partner at Richards Kibbe & Orbe LLP in Washington: "The U.K. Bribery Act is likely to change the face of anti-corruption enforcement. While the legislation includes stiffer penalties for violations and expands the scope of individuals and entities covered by the Act, the real impact of the law is that it signals a new era of enhanced enforcement by authorities in the United Kingdom. Financial institutions that operate in Latin America and the Caribbean must realize that their actions and the actions of their employees and agents will be subject to intense scrutiny by local authorities, by aggressive regulators in the United Kingdom seeking to bring new cases under the Act and by U.S. authorities who continue to enforce the FCPA with great vigor. Now is the time for companies to implement or enhance their anti-corruption compliance programs that include procedures tailored to their businesses and risk profile, training for employees and a process by which their compliance program can be audited. Compliance programs are particularly critical because under the Act a company is guilty of failing to prevent bribery by a person associated with the company unless it can show that it had 'adequate procedures' in place to prevent bribes from being paid. It is too early to judge the extent to which the Act will be effective at reducing corruption, but if recent experience with the FCPA is any indication, Latin America and the Caribbean will be a focal point for enforcement efforts by regulators in the United Kingdom."

> "It signals a new era of enhanced enforcement by authorities in the United Kingdom."
>
> *— Jeffrey Lehtman*

A Keith Korenchuk, partner, and Sam Witten, counsel, at Arnold & Porter LLP in Washington: "The recent effectiveness of the U.K. Bribery Act, combined with the increase in U.S. enforcement of the Foreign Corrupt Practices Act (FCPA), which prohibits bribery of foreign officials by persons subject to U.S. jurisdiction, heightens the need for effective anti-corruption compliance programs by companies doing business in Latin America and the Caribbean. The Bribery Act prohibits bribery of non-U.K. officials by persons subject to U.K. jurisdiction. It applies to persons ordinarily resident in the United Kingdom and companies carrying on a business there. It thus gives U.K. courts new jurisdiction for bribes of Latin American, Caribbean and even U.S. officials by entities subject to U.K. jurisdiction. Notably, the Bribery Act, unlikely the FCPA, also covers commercial bribery. Vigorous enforcement of anti-corruption laws in the region is inconsistent, even though most countries are parties to the Inter-American Convention Against Corruption. Some, like Brazil, are actively seeking to strengthen their corruption laws. The concurrent requirements of the FCPA and the Bribery Act should lead companies subject to their jurisdiction to review and, where necessary, strengthen their anti-corruption programs. Just as importantly, companies in Latin America and the Caribbean that wish to do business with multi-national companies subject to the FCPA and the Bribery Act will likely be required to demonstrate the efforts they have made to implement compliance programs even though they would not be subject to those laws. In this way, these new laws are likely to have far reaching effects all across the region."

The Advisor *welcomes reactions to the Q&A above. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org with comments.*

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