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FEATURED Q&A

Are Data Protection Laws Hindering Business in the Region?

Q Online commerce giant Amazon announced in October that it is opening new data centers in Germany to comply with privacy laws that require some data to be housed locally. Also, several governments have pushed for local storage of their citizens' data after former U.S. National Security Agency contractor Edward Snowden disclosed secret collection of data by the agency. Among the reactions to the disclosures was a law that Brazil enacted in June that restricts companies from sharing users' personal information and protects the personal information companies hold, among other provisions. To what extent are differences in countries' data protection laws posing obstacles for multinational companies that operate in Latin America? Will actions that governments take on cross-border data flows become more important to debates over trade agreements and economic competitiveness? How can countries in the region protect the privacy of data while also remaining attractive destinations for foreign investment?

A Harry A. Valetk, of counsel, and Brian Hengesbaugh, partner, at Baker & McKenzie LLP: "Cross-border trade in products and services has grown significantly in recent years bringing with it new jobs and wealth-creation opportunities across global markets. This growth in trade, however, depends in large part on the continued and secure flow of information between nations in a way that fosters competitiveness, stimulates economic investment and meaningfully protects consumers. Countries considering enactment of new data protection laws should build on the proven pillars of data security and accountability and incentivize multinational companies to live up to high security standards by allowing them, in turn, to move data freely across borders. Localization requirements hinder this potential. The current legislative debate on data offers a unique opportunity for multi-

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Chairman, Chief Executive of Mexico's Banorte Step Down

Alejandro Valenzuela (pictured), the CEO of Mexico's Banorte, and the bank's chairman, Guillermo Ortíz, resigned Thursday. Banorte's shares have fallen this year over concerns about the bank's corporate governance. See story on page 2.

File Photo: Banorte.

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NEWS BRIEFS

Construction of Nicaragua Canal to Begin in December: Officials

Construction on a canal to cross Nicaragua and link the Atlantic and Pacific Oceans will begin Dec. 22, Nicaraguan officials have said, BBC News reported. "We are ready to begin," said Zhu Xiaoya from Hong Kong-based **HKND**, the company that will undertake the project. The $50 billion, 172-mile canal is planned to be longer, wider and deeper than the Panama Canal, and officials expect it to be complete by 2020. However, opponents have expressed concerns about its effects on the environment and local communities.

Software Developer BMC Establishes Base in Colombia

U.S.-based software developer **BMC** has established a headquarters for its operation in Latin America in Colombia, EFE reported Thursday. The company chose Colombia due to its location, relevance in business and well-qualified workforce, said company executives. In addition to Colombia, the Houston-based company has operations in Venezuela, Central America and the Caribbean.

Brazil's JBS to Buy Primo Group for $1.3 Billion

São Paulo-based **JBS**, the world's largest meat producer, says it will increase exports to Asia after purchasing Australia and New Zealand's largest ham and bacon producer, **Primo Group**, for $1.3 billion, Bloomberg News reported today. JBS said the deal will allow it to supply China's growing demand for pork and also increase production of higher-cost processed foods. In a separate statement Thursday, JBS announced that it will purchase a Brazilian poultry business for $169 million.

Political News

Protests Over Missing 43 Students Turn Violent in Mexico City

Tens of thousands of demonstrators marched through central Mexico City on Thursday in the largest-yet protest over the case of the 43 students who were abducted in late September in Guerrero state, *The Guardian* reported. A small number of protesters threw Molotov cocktails as they clashed with riot police in the Mexican capital's central Zócalo square. Earlier on Thursday, police officers clashed with protesters who were attempting to blockade the city's airport. "People are realizing that the government is rotten," protester Alicia Mercado, a retired accountant, told the newspaper. The 43 students were rounded up by corrupt local police in the city of Iguala and later killed by a drug gang, Mexico's attorney general has said.

Obama Announces Executive Actions on Immigration

U.S. President Barack Obama on Thursday night announced that he plans to take executive action to protect as many as five million undocumented immigrants from deportation, setting off a confrontation with congressional Republicans who have warned him not to take action alone on the issue. "I know some of the critics of the action call it amnesty. Well, it's not. Amnesty is the immigration system we have today. Millions of people who live here without paying their taxes or playing by the rules, while politicians use the issue to scare people and whip up votes at election time. That's the real amnesty, leaving this broken system the way it is," Obama said in the prime-time televised address from the White House. Some four million people who have children who are U.S. citizens or legal residents would be eligible for a new legal status that would allow them to remain in the United States provided that they register, pass a criminal background check and pay their taxes. Another one million people could be shielded from deportation through other parts of Obama's actions.

Economic News

Peru Planning to Cut Taxes to Boost Economy

Peru's government is planning to lower taxes for individuals and companies and also boost spending in an effort to offset slumping investment in the South American country, Bloomberg News reported Thursday. President Ollanta Humala's government plans to lower the country's corporate tax rate to 28 percent from 30 percent and also reduce the lowest income tax rate for workers to 8 percent from 15 percent, Finance Minister Alonso Segura said in an interview on Radio Programas. Both changes would take effect Jan. 1. The measures would cost the government 11.5 billion soles ($3.9 billion) and come as the central bank is forecasting growth of 3.1 percent for this year. That would be Peru's slowest economic growth since 2009. "It's a very, very aggressive proposal and very audacious," said Segura. "We're thinking outside the box to ensure the economy grows close to 6 percent toward the end of 2015." As part of its economic stimulus measures, Peru's government has also authorized pay increases and bonuses for government workers and hiked spending on public works projects.

Segura

File Photo: Peruvian Government.

Company News

Chairman, Chief Executive Officer of Mexico's Banorte Resign

The chairman and chief executive officer of **Banorte**, Mexico's third-largest bank lender, resigned Thursday amid a bitter internal fight for control of the bank, *The Wall Street Journal* reported. Carlos Hank González will replace Guillermo Ortíz, a former Mexican central bank chief, as chairman, Banorte said in a statement. Also, José Marcos Ramírez Miguel, who

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previously headed Banorte's wholesale bank, took over Thursday as CEO, succeeding longtime chief executive Alejandro Valenzuela. Ortíz and Valenzuela have not been getting along well over the past year, people familiar with the situation told *The Wall Street Journal*. Valenzuela is leaving the bank to focus on personal projects, while Ortíz will remain with Banorte as a consultant after stepping down as chairman at the end of the year, the bank said. The newspaper was unable to reach Ortíz or Valenzuela for immediate comment. The changes in leadership will "contribute to the strengthening of corporate governance," said Hank, adding that there will be a "new phase of collaboration between all the institution's governing bodies and management," Bloomberg News reported. Hank's grandfather, Roberto González Barrera, acquired Banorte, then a regional bank, in 1992 during a privatization and grew it into one of the largest financial institutions in Mexico, *The Wall Street Journal* reported. González Barrera died at age 81 in 2012. In a statement issued by Banorte, Valenzuela expressed gratitude to the González family for their support, while Ortíz said his departure will "make way for the generational change with Carlos Hank González at the helm." During Valenzuela's six years as CEO, Banorte saw its loan portfolio more than double. He also took on acquisitions that led the bank to become the largest pension fund manager in Mexico by assets. Ortíz also helped oversee many of the same achievements since he joined the bank in 2010. The González Barrera family is Banorte's largest group of shareholders, holding approximately 11 percent of the bank's shares, Banorte said in October. The bank's shares have fallen some 14 percent over the past six months, the largest decliner on Mexico's main stock index, on concerns about weakening corporate governance, Bloomberg News reported.

Ortíz

File Photo: Banorte.

Featured Q&A

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nationals and the governments of Latin America to work together with stakeholders to cement their relationship and mutual commitment to growth. By and large, the business community—especially in highly regulated fields—favor sensible privacy and data privacy protections. Those measures, however, must be balanced and proposed in the context of industry best practices across each sector, and then developed in conjunction with regulators from each nation. One-size-fits-all legislation does not work. The benefits sure to follow include avoiding the inefficiencies inherent in conflicting laws and promoting commercial partnerships and information sharing that benefit economies. It is not a myth: cross-border information flow makes it possible to reduce costs, enhance security and deliver valuable services from anywhere at virtually any time. Security is enhanced through regionalized data fortresses that scale to a firm's security needs and minimize multiple intrusion points inherent in local, minimally-funded servers in-country. When shared responsibly and securely, information empowers commercial entities to collaborate with affiliates, business partners and even law enforcement to anticipate marketplace demands, assess industry trends and combat fraud. This, in turn, ensures that consumers have access to affordable products more quickly than ever before possible. And, so, rather than imposing localization requirements, governments in this hemisphere should strive to create mutual recognition frameworks that protect privacy and promote the continued growth of the global economy. Now more than ever before is the time to turn these goals into actions."

Richard Hill, president of the Association for Proper Internet Governance (APIG): "Differences in national laws and regulations obviously increase the cost of doing business for multinational companies, but that's just life. For example, electrical power plugs are not the same around the world, nor are car safety standards. Multinational companies adapt to that and incorporate the related costs in their pricing structure. Logically, companies should strive to facilitate harmonization of national laws so as to reduce the obstacles, and indeed they do, using both standardization bodies and intergovernmental organizations to achieve that goal. However, the differences in the approaches to data privacy in the United States versus other countries are very large, so it is not likely that there can be meaningful harmonization in this area in the near future. Consequently, companies will have to adapt to national data protection laws just as they adapt to national tax laws. For sure, economic issues will be raised during debates on restrictions to cross-border data flows, and it is legitimate to raise such issues. But, as well all know, not all decisions are based on purely economic considerations. For example, most safety standards increase the cost of a product, but they are accepted because they save lives. Data privacy is a human right, so it cannot be restricted merely because of economic considerations. Thus, each nation will have to make its own tradeoffs between data privacy and its economic implications. Again, this is similar to taxation: do taxes have an economic impact? Yes. Does that mean that we don't tax? No. In my opinion, the European approach to data privacy is good. It has not had a negative impact on investment. So I would recommend that the countries in the region adopt a similar approach, perhaps even by negotiating a common regime with the European Union."

> "Data privacy is a human right, so it cannot be restricted merely because of economic considerations."
>
> ***— Richard Hill***

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Featured Q&A

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A Robert Jett, global compliance counsel at RGA Reinsurance in Chesterfield, Mo.: "Data protection laws that are unique to local jurisdictions present multinational companies with the dual challenge of maintaining system efficiencies and uniformity in ways that will support current and long-term business needs. Multinationals are utilizing and expect to leverage existing head office data systems and processes, many of which have been in place for long periods of time. This approach remains consistent with the 'think local but act global' approach. Many multinationals, however, are also actively updating and redesigning existing systems and processes in addition to creating new ones to meet current and future needs as well as provide flexibility for local data requirements (as needed) and solutions that will enable cross-border data flows that will keep the company competitive and globally compliant. Data has become a commodity, and is therefore subject to both political and trade influences. The enactment of data protection laws that inhibit or restrict cross-border data flows under the guise of protecting local citizens, while expedient for an individual country's economic or infrastructure growth opportunities, is not sustainable as a long-term strategy and could lead to claims of protectionism and alleged violations of existing trade agreements. Companies might be reluctant to invest in countries where there are additional compliance costs and risks due to the need to create unique data-handling processes and controls for an individual jurisdiction. Numerous data privacy frameworks currently exist internationally (such as in Australia, as well as an E.U. directive and the U.S. HIPAA) which provide adequate protections related to both data privacy and protection locally but also allow for structured, controlled use of cross-border data flows. Such frameworks encourage foreign investment and will also permit knowledge transfers with local IT industry and infrastructure as the requirements to support the frameworks continue to increase as the global digital economy continues its growth."

A Sean Heather, vice president of the Center for Global Regulatory Cooperation at the U.S. Chamber of Commerce: "The seamless flow of data across borders benefits all sectors of an economy. Businesses need data to flow across borders to provide goods and services to customers around the world. Despite myriad benefits of transferring data, governments are increasingly looking to impose laws restricting cross-border data flows. Restrictions in response to concerns over foreign government surveillance incorrectly conflate government access with commercial access and use of data. Other restrictions are caused by misguided one-size fits all approaches to privacy or protectionism designed to support domestic industry. Ultimately, however, instead of creating jobs or increasing privacy, such rules increase costs to local businesses and block access to customers abroad as they simultaneously prevent local consumers from buying the best products and services. Restrictions on cross-border data flows only serve to isolate an economy from the rest of the world. Let's look at two examples. Chile recently proposed a data privacy regulation that is a direct copy of Spain's data protection law. One of the biggest problems with the Spanish law is that it forces the same rules on all companies regardless of the type of data or how it is used. Privacy is essential; however, it doesn't make sense and may not even be technically feasible to apply the same rules to data in a social media context as to when a company needs to move financial information across borders. Brazil has sought to develop its domestic ICT industry. In doing so, it recently proposed a direct tax on the use of foreign data centers. The added tax raises costs, deprives consumers of choice, and does nothing to enhance privacy or security; it is protectionist. In the coming months, it is important to monitor potential changes in data protection regimes to ensure those policies are tailored to address privacy concerns while facilitating cross-border data flows and to push back against misguided and protectionist policies that risk dividing our interconnected economies."

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