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In August 2013, Bolivia completed its second issuance of sovereign bonds, after initially re-entering the market in October 2012 after an absence of almost a century. The second issuance was comprised of US$ 500 million in 10-year sovereign bonds, with an interest rate of 5.95%. As with the first issuance, investor demand exceeded the offering. U.S. investors comprised the majority of foreign investors with 41 percent. European investors followed closely behind with 34%.

The government announced that it plans to use the funds for infrastructure and industrialization projects in the energy and mining sectors, as part of a larger initiative to combat poverty. According to the government, the funds raised by the sovereign bond placement will generate more than two thousand jobs, the majority of which will be related to the construction of at least nine highway projects to be executed by the Bolivian Highway Administration.

The second bond issuance reflects the government’s focus on strengthening the economy, the success of which is also reflected by investor confidence in private bond issuances, which have experienced steady growth over the last five years, particularly in the microfinance sector.

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### Brazil

**Brazil’s Anti-Corruption Law: A New Regulatory Framework**

Brazil’s longstanding norms to address corruption have focused generally on individuals, typically public officials, who take bribes. Brazil’s new Federal Law No. 12.846, signed August 1, 2013 by President Dilma Rousseff (the “Law”), defines the administrative and civil liability of legal persons for the conduct of “acts against the public administration, national or foreign”.

Contemplated by its article 31 to take effect 180 days following its presidential signature, the new Law establishes the liability of any company, whether Brazilian or foreign with a presence in Brazil, that acts against the public administration, whether or not its individual representatives are charged with corrupt practices. The new Law puts the focus on those who pay the bribes, not just the corrupt official who accepts a bribe.

The new Law prohibits bribery of public officials, funding or otherwise supporting corrupt activities set forth in the Law, bid rigging, fraud in connection with public contracts, and impeding investigations conducted by public agents. In contrast to the Foreign Corrupt Practices Act of the United States that prohibits bribery only of foreign governmental officials, Brazil’s new Law prohibits bribery of all officials, domestic and foreign. The new Law fulfills Brazil’s obligation, pursuant to its ratification in 2000 of the OECD Anti-Bribery Convention, to impose corporate liability for bribery of foreign government officials.

The Law imposes a strict liability standard for administrative and civil liability, in the sense that there is no requirement to establish corporate intent to breach the law. Moreover, liability for prohibited corrupt conduct survives any corporate reorganization.

Administrative penalties range from 0.1% to 20% of the company’s gross revenue for the year prior to filing of an administrative case, but are not in any event to be less than the value of unlawful advantage received. Should such a calculation not be possible, fines to be applied range from BRL 6,000 to 60,000,000. Moreover, any penalties are without prejudice to the obligation to rectify fully the damages caused by the corrupt activity. In assessing penalties, the authorities are to consider the accused company’s internal anti-corruption policies and procedures.

Administrative sanctions are without prejudice to measures resulting from judicial proceedings. Judicial proceedings may require the company to forfeit assets, rights and other gains arising from the illegal act, bar the company from receiving subsidies, donations and other benefits, and ultimately may cause the suspension of the company’s activities or the commencement of its dissolution.

Pursuant to the law, almost any public authority
is empowered to investigate possible unlawful acts, although the Controladoria-Geral da União, the Federal Controller-General is designated to investigate matters involving corrupt practices against foreign governmental entities. Statutes of limitation run for five years from knowledge of the misconduct, or in case of continued violation, its cessation.

The Law contemplates a leniency program, pursuant to which a company may negotiate full immunity or reduced penalties if it cooperates with investigations, including to provide evidence against others involved in corruption. A Cadastro Nacional de Empresas Punidas, a national registry of punished enterprises, will list offenders, including penalties imposed, dates of imposition and extent of restrictions.

The intent of the new Law's stricter framework concerning corruption is to afford greater legal certainty for investors doing business with Brazil, thus supporting a brighter economic future for Brazil.

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**PROTECTIONS FOR INVESTMENTS IN THE US SECURITIES MARKETS - A COMPARED ANALYSIS WITH THE BRAZILIAN REGULATIONS.**

1. **Introduction**

The purpose of this article is to draw a picture of how the securities markets in the USA are regulated, and to make Brazilian investors, and their attorneys, more familiar with the remedies available to protect investments in the US securities markets.

In this introduction, we will compare briefly the tradition and evolution of both securities markets. Further in the article, we will analyze the relevant US regulations and the legal remedies available to aggrieved investors in the US securities markets, and give a brief description of the correlating statutes in Brazil.

Investments in the United States’ financial markets are protected by federal laws that may be enforced by government agencies (principally, the Securities and Exchange Commission, commonly referred to as the “SEC”) and/or by private investors. In addition, all of the individual states have laws protecting investors. In Brazil, before the 1960’s, investors typically focused on real estate, in order to avoid investing in public or private companies. At that time, inflation rates were extremely high and there were rules fixing the maximum interest rate legally acceptable in 12% aa. These factors contributed to limit the evolution of the securities markets in Brazil.

Such situation started to change in April 1964, when the federal government launched a program to make deep changes in the national economic system, including the restructuring of the financial markets. In that occasion, many laws were enacted, among others, Law 4.537/64, which created a money correction factor, Law 4.595/64, which restructured the system of financial intermediaries and created the Central Bank of Brazil, and, mainly, Law 4.728, dated April 14th, 1965, our first law in securities, which regulated this market and established actions for its development. The enactment of these Brazilian statutes resulted in structural changes in the stock market, such as the reformulation of the legislation regarding the stock exchanges, the creation of investment banks and the professionalization of brokerage.

Since the 1990’s, with the opening of the Brazilian economy to foreign markets, the number of foreign investors has increased significantly. In addition, Brazilian companies have started to have access to overseas markets by listing their shares on other stock exchanges, mainly on the New York Stock Exchange, under the format of American Depositary Receipts.

The tradition of securities’ regulation has been significantly different in Brazil and the US. Some very relevant Brazilian acts mirror the US regulations, but some factors, such as the government’s intervention in the market and the notorious slowness in the Brazilian judicial system, make both markets operate differently.
2. **Laws relating to investments**

The US laws relating to investments in securities are well-developed and complex. They are based upon a philosophy of disclosure: that it protects the integrity of the financial markets to require issuers of stock and offerors of stock to disclose fully all material information that reasonable shareholders would need in order to make up their minds about their investments.

The Securities Act effectuates its disclosure policy by requiring that any offer or sale of securities be registered with the SEC. In general, registration forms call for a description of the company's properties and business, a description of the security to be offered for sale, information about the management of the company, and financial statements certified by independent accountants. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have recovery rights against the companies issuing their shares (and other persons or entities involved in the offerings) if they can prove that there was incomplete or inaccurate disclosure of important information.

Unlike the civil law system in Brazil, the United States is a common law jurisdiction. There are statutes and codes, but not all the laws are written, or fully explained, in them. Most US laws are developed through opinions written by courts (“case law”). Even where a statute exists, usually there are many court opinions that clarify what the law means and how it is applied in different situations.

In Brazil, for a long time, the capital markets could not grow in importance due to the lack of protection to the public shareholders and the instability of the financial regulations. In addition, lack of transparency in the management and the absence of adequate corporate mechanisms to supervise the offer of shares contributed to the distrust in this type of investment and impacted the risk perception of investors. In the last decade, we have witnessed some institutional and governmental initiatives aiming at the improvement in the corporate governance practice of Brazilian rules. In this context, it is worth mentioning the enactment of Law 10.303/01 and the creation of the so-called New Market, which classifies the listed companies into different categories depending on the level of corporate governance each of them practices. However, in terms of information disclosure, the securities regulations in Brazil are still far from ideal.

A crucial reason for that is that the financial market in Brazil is relatively recent and not as mature as the US market. In this regard, most of the agents simply lack experience and expertise in the matter.

3. **Procedure of Lawsuits**

Federal securities cases in the US prosecuted by private investors are often initially brought as class actions. In a class action, known as a collective action in Brazil, one aggrieved party can bring a lawsuit purportedly representing all others parties with the same problem. Through a procedure during the litigation known as “class certification,” the named plaintiff (or plaintiffs) seeks to establish that many others have been similarly defrauded by the defendant company, and that the moving party is able to represent the interests of all other shareholders similarly situated with respect to the claim at issue.

Securities cases in the US, particularly class actions, are generally handled on a contingent fee basis, that is, the plaintiff incurs no attorneys’ fees unless and until there is a resolution of the case to the benefit of the plaintiffs and the fees come from the recovery (or, if applicable, are otherwise paid by defendants or their insurers).

Similarly, unless prohibited by a particular state, costs in a case (typically out of pocket expenses such as photocopying, travel expenses, costs of depositions, etc.) are advanced by the plaintiffs’ attorneys and also generally handled on a contingent basis. Like their fees, plaintiffs’ attorneys are re-paid for costs only if the lawsuit is successful.

4. **Conclusion**

As opposed to the Brazilian legal regulations
on securities, the US laws are extremely complex and detailed, and a deep knowledge and precise legal support from in the sector are essential to the success of an investor’s claim.

US courts are more familiar with this type of sophisticated claim, which motivates the party who suffered the damages to pursue fair compensation. As seen above, proceedings and costs involved in US actions are significantly different from those involved in a similar claim in Brazil. As a result of the well-developed laws relating to the securities investments and the familiarity of the US courts with complex actions, distressed investor should be encouraged to pursue fair compensation in the US for losses related to their investments there.

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Creation of a Securities and Insurance Commission.

On July 2, 2013, the Government submitted a bill proposing the transformation of the Securities and Insurance Superintendence (“SVS”) individual (superintendent) corporate governance structure to a Securities and Insurance Commission aiming to strengthen the supervision over the securities and insurance market, as well as to provide further authorities to this regulatory body (the “Bill”).

Even though the current corporate governance structure of the SVS has successfully performed its role, due to the growing complexity of the securities and insurance market, the Bill recognizes space to improve impartiality safeguards by substituting the sole authority of the superintendent, for a commission able to assume broader supervising authorities. Such commission would be comprised of five members: (a) the Commission’s President, which shall be appointed by the Chilean President, and (b) four members which shall be appointed by the Chilean President and approved by the Senate with the voting majority of 4/7 of its members in office (differing from the existing structure in which the superintendent is exclusively designated by the President). To safeguard the entity’s impartiality, the Bill expressly regulates conflicts of interest and inabilities affecting commission members, and related sanctions.

Among other matters, the Bill: (i) Broadens from two elected representatives for each of the current 60 districts, to a variable number of two to six representatives for each of 30 new districts, and (ii) from two elected senators for each of the current 19 circumscriptions, to a variable number of two to four senators for each of the 14 new circumscriptions, complying with the mentioned total number of representatives and senators.

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Amendments to the Electoral System.

On July 15, 2013, the Government submitted a bill aiming to modify the binominal electoral system (the “Bill”) currently regulated by Constitutional Act No. 18,700.

The Bill aims to provide voters with broader alternatives in electing representatives and senators for the Chilean Congress, enabling a greater range of options in the relevant voting ballots seeking to stimulate citizens to become candidates and foster competition among the latter.

To accomplish the abovementioned purposes, the Bill changes the current electoral system to a quotient system (“d’Hondt system”), whereby the number of elected representatives and senators of each party or parties’ electoral alliance, is determined by a quotient number as opposed to the current binominal system. The Bill proposes to maintain the current number of elected representatives (120) and senators (38), but to reduce electoral districts and circumscriptions by merging some of them: (i)
the entity’s regulative authorities; (ii) Includes an integrated evaluation system to assess the market need and impact of regulations; (iii) Provides further punitive authorities to the Commission, including investigation authorities to an independent unit, headed by a prosecutor; (iv) Broadens information request authorities in administrative proceedings, including the possibility to request confidential banking information; and (v) Provides for judicial review of the SVS administrative resolutions by the Appeals Courts.

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AMENDMENT TO THE URBANISM AND CONSTRUCTION ACT.

In August 2013, a bill amending the Urbanism and Construction Act, the Municipalities Constitutional Act, and the Real Estate Co-ownership Act passed to its final discussion stage in Congress (the “Bill”).

The Bill’s main purposes are: (i) To improve the already high standards of construction quality in Chile with a special emphasis on earthquake resistance; (ii) To specify each participating party’s registration requirements, duties and liabilities, thus increasing the supervision of said party’s interventions in constructions; (iii) To establish the obligatory use of Works Technical Inspectors (Inspectores Técnicos de Obra or “ITO”) independent from the constructor in certain constructions (e.g. public buildings) as an external control mechanism to guarantee the fulfillment of building regulation; and (iv) To simplify certain permits proceedings before the relevant Municipal Construction’s Department.

To achieve said objectives, among other issues, the Bill includes: (i) The creation of the National Registry of Works Technical Inspectors; (ii) The granting of legal status to the National Registry of Structural Calculation Project Reviewers; (iii) A detailed description of the duties and liabilities of the participants of a construction (e.g. construction company, architect, structural engineer, etc.) and the obligation to include the identification of said professionals in the first purchase deed of a property; and (iv) A relocation of 50% of the municipal rights to be paid to the Municipal Construction’s Department if such authority fails to comply with the legal timeframe granted to issue a decision regarding a construction permit, or in case of unjustified denial thereof (the other 50% to be paid to a division of the Housing Ministry).

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TERMINATION OF THE YASUNÍ ITT INITIATIVE

In 2007, the President of Ecuador announced at the General Assembly of the United Nations, the country’s commitment to maintain indefinitely unexploited reserves of 846 million barrels of oil in the ITT (Ishpingo-Tambooco-Chaparriti), equivalent to 20% of the country’s reserves, located in the Yasuní National Park (in the Ecuadorian Amazon region).[1]

The goal was to obtain a contribution from the international community of 3.6 billion U.S. dollars (which would have been half of the revenue estimated from the development of these fields).

The money was to go into a fund administered by the United Nations Development Program. The initiative intended to avoid the emission of 407 million tons of CO2. On August 15, 2013, however, President Correa announced the termination of this Initiative stating 5 reasons for this:

The Yasuní-ITT trusts had only gathered 13.3 million U.S. dollars, that is 0.37% of the expected compensation. There were also 116 million U.S. dollars commitments that were not directly linked to the initiative.[2]
Countries responsible for climate change could not or did not want to understand the initiative.

Bad luck because the initiative coincided with “the greatest global economic crisis of the last 80 years”.

“The world is a great hypocrisy” - the countries that pollute the most are also the richest and strongest, and are not willing to pay for environmental assets as those generated by the Amazon rainforest, since they are freely accessible.

The decision to terminate the Yasuni-ITT trusts has as aim to provide greater public service coverage to 50% of the Ecuadorian population who is still lacking it.

Article 4 of the Decree that terminates the trust funds orders the ministers of Coordination of Economic Policy; Environment; Justice, Human Rights and Faiths; and Non-Renewable Natural Resources, to inform the President about the environmental, technical, financial, and constitutional feasibility of the development of the oil fields located in the Yasuní National Park, in order to request the National Assembly authorization for oil development in the Park.[3]

Article 407 of the Constitution prohibits extraction of non-renewable natural resources in protected areas and zones declared as intangible, except if authorized by the National Assembly based on a substantiated request made by the President, after the National Assembly has declared it in the national interest.[4] Article 407 further provides that the National Assembly can call for a referendum on these matters.

It is important to bear in mind that Ecuador’s Constitution provides for the rights of nature on its article 71.

In his address to the nation, the President estimated that less than 1% of the Yasuní-ITT Park will be affected.[5] Later, on his Twitter account the President corrected that the affection would only be one per thousandth of the Park.

Mexico

MEXICAN FEDERAL LAW OF ENVIRONMENTAL RESPONSIBILITY (LFRA)

Introduction

LFRA constitutes compliance with the International Principles of the Rio Declaration on Environmental Development and with the Mexican Constitution regarding the right to a healthy environment and establishment of domestic legislation related to the liability produced from environmental damage.

Legal Effect


What does it regulate?

LFRA creates a legal framework to regulate environmental liability derived from the damage caused to the environment. This includes (i) restoration and compensation of said damage through federal judicial proceedings; (ii) alternate dispute settlement proceedings; (iii) administrative procedures; and (iv) those related to the perpetration of crimes against the environment and Environmental Management.


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The actions and procedures required to assert the environmental liability referred in LFRA may be exercised and substantiated regardless of applicable administrative-law liabilities and procedures or civil and criminal actions.

Obligations arising from the damage to the environment, to whom it applies?

All individual or company whose acts or omissions shall cause a damage to the environment directly or indirectly shall be liable for the damage and shall be required to repair it; if no repair is possible, they shall be required to provide the environmental compensation according to the terms set forth herein. In addition, the individual or company shall carry out such acts as may be required to avoid an increased damage to the environment. Besides, whenever the damage shall be caused by deceitful acts or omissions the responsible person shall be required to pay an economic sanction.

Corporate Entity Liability

A Corporate Entity shall be liable for the damage to the environment caused by their representatives, administrators, managers, directors, employees or those persons who may exercise the functional ownership of their operations: (i) due to negligence or as derived from their functions, in representation or under their protection, or to the benefit of the corporate entity, or (ii) in case they shall have ordered or given their consent to the execution of harmful acts.

Who can sue for Environmental Liability?

The suit can be filed by:

- Inhabitants of the community surrounding the area whose environment was damaged;
- The Mexican Non-Profitable Corporate Entity in representation of an inhabitant;
- The Federation through the Environmental Protection Agency (PROFEPA) and/or State Authorities, Federal District, jointly with PROFEPA.

Statute of Limitation

The suit can be filed within twelve (12) years from the date on which the damage and its effects were caused.

Economic Sanctions

Said sanctions are established based in the Federal District daily minimum wage. Said amount shall be assessed based in the damage caused.

If an Individual
Minimum: $ 19,428 pesos (US$ 1,619.00)
Maximum: $ 3,238,000 pesos (US$ 259,833.00)

If a Corporate Entity
Minimum: $ 64,760 pesos (US$ 5,396.00)
Maximum: $ 38,856,000 pesos (US$ 3,238,000.00)

Reduction of Economic Sanctions will proceed if several conditions are met.

Environmental Liability Fund (“FORA”)

LFRA creates a FORA so the founds should be use to pay the repair of the damages caused to the environment in the cases selected by the Federal Public Administration for emergency or priority reasons as well as to pay the studies and research that SEMARNAT or PROFEPA required during the judicial process.

Alternative Mechanisms for Dispute Settlement

LFRA also contains a chapter on alternative mechanisms for dispute settlement, such as mediation, conciliation and all those that permit presence to prevent conflicts or, when applicable, solve them without the need for the intervention of the jurisdictional entities except to guaranty the legality and efficiency of the agreement reached by the participants and its compliance.

Criminal Liability in Environmental Matters

LFRA shall apply to criminal conflicts and the procedures derived from the perpetration of crimes against the environment and the environmental management in terms of the provisions of the Federal Criminal Code and the Federal Code of Criminal Procedures.
That person who may be aware of the perpetration of a crime against the environment shall denounce it directly to the Public Prosecutor.

Environmental Courts

LFRA creates Environmental Judicial Courts (Juzgados de Distrito) to start operating as of July 7, 2015. The Courts have jurisdiction and will solve environmental liability related matters.

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