

Paraguay

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The Threshold Programme

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Asunción

The Paraguayan government, economy, and financial and legal sectors have changed in the last year through the initiation of the country's Threshold Programme, better known as Programa Umbral Paraguay (PUP). Paraguay presented a plan under the Threshold Programme after qualifying for only three out of the six criteria necessary to receive aid through the Millennium Challenge Account (MCA), a technical and financial aid programme created by the US in 2003 to help developing countries reduce poverty and encourage economic development. The new programme was created to help countries on the verge of qualifying for MCA, with the intent of improving corruption control, government effectiveness and the rule of law.

In February 2006, Paraguay qualified through PUP and received \$34.6 million and a time limit of two years to achieve the goals outlined in the self-directed plan. If Paraguay is able to achieve the PUP goals by October 2008, it will qualify for more than \$200 million in aid for the next five years.

Under the direction of the US Agency for International Development, committees have been created to oversee these projects and progress has been made. Paraguay has focused on improving two goals in the government sector: the fight against impunity and corruption, and the formalisation of economic activity. Under each of these two objectives, five corresponding projects have been designed to specifically address the issues. These 10 projects are:

1. Increase the investigation capability of the Public Ministry.
2. Increase the capacity of the judiciary disciplinary system.

3. Strengthen the internal controls system and civil participation in oversight activities at the Controller General's office.

4. Strengthen the oversight of the public.

5. Increase the transparency and effectiveness of public finance legislation.

6. Increase the efficiency and transparency of the tax authority.

7. Strengthen border and customs control.

8. Increase the Ministry of Finance's internal investigation capabilities.

9. Design and implement one-stop shops and call centres to facilitate the legal establishment of companies.

10. Promote investment in *maquilas* (factories with special customs treatment).

Achievements

Numerous achievements, both internal and external, have been made in the last year through the Threshold Programme, such as the ability to instantly obtain identity cards, police records and passports, which used to be painstakingly difficult.

Another interesting development has been made in reducing the time required to form a corporation.

Usually, there are three legal entities through which investors undertake commercial activity in Paraguay: the corporation, the limited liability partnership and the subsidiary, also known as a branch or representation.

Corporations (*sociedades anónimas*) are legal entities liable for their obligations only to the extent of their assets. The participation of shareholders is represented by shares. A corporation is the most open form of an enterprise, providing for flexibility in management and ownership structure within certain guidelines provided for in the Civil Code.

Foreign investors may also do business through a limited liability company (*sociedad de responsabilidad limitada*) with the exception of banks, financial companies, insurance companies, and savings and loans companies. The capital of the company is also divided

into shares and the liability is limited to the assets of the company. The difference between the corporation and limited liability company is that the latter is smaller, more closed and easier to control with regard to management and ownership.

The foreign company may also operate in Paraguay through a subsidiary, also known as a branch, or other type of representation. The requirement for the registration of a branch, needed for its operation, is the submission of certain duly notified and legalised documents, such as documents relating to the certification of the legal existence of the parent company and the formation of a branch, and power of attorney granted by the parent company to a person in charge of the formation of the branch.

Traditionally the required time to establish a company in Paraguay was quite lengthy, requiring a minimum of 74 days to obtain clearance under the Civil Code and other regulations. A prospective company was required to submit its bylaws to the Court of First Instance for approval. To register the company, the judge would request a legal opinion from the Public Ministry and the Treasury's attorneys before ordering the registration. Once this quite tedious process was complete and the judge had responded, the prospective company then submitted documents to the Public Registrar.

A new law

Besides implementing the instant issuance of identity cards, police records and passports in July 2007, a Law no 3228/07 was passed in Congress to help achieve the ninth goal of the threshold programme: reducing the time needed to form a corporation. Interestingly, through this new development, the Civil Code has been altered because new companies no longer need the approval of a judge and instead only need the approval of the Treasury's attorneys in efforts to reduce the time process. And prospective companies can now just visit a one-stop shop or a govern-

ment office that will be able to process all of the material in one entity. Moreover, the cost has been reduced from \$750 to \$100.

Rule of law

Although the passage of the new bill is a positive development in respect to PUP, it is important to question the efficiency of the new procedures and the law. There is a process in terms of whether or not these achievements will actually promote investments. Investors look for a high level of rule of law in any country. This objective is not easily accomplished and there is no fast solution. While it is essential to have the laws on record, it is just as important for the people to respect and follow them. Nevertheless, the PUP objectives are set to obtain more funding through the MCA to strengthen the rule of law. It is definitely an opportunity that the government, the private sector and the country itself should not miss.

Financial and corporate

Recommended firms

Tier 1

Fiorio Cardozo & Alvarado
Gross Brown
Moreno Ruffinelli & Asociados
Peroni Sosa Tellechea Burt & Narvaja
Vouga & Olmedo

“You can feel that there is a positive climate in Paraguay, especially for direct foreign investment, of which we desperately need more and more,” says a leading Paraguayan lawyer. According to Paraguay’s central bank, the economy grew by 7.6% in the first quarter of 2008, spurred largely by growth in agriculture, and specifically by higher soy and beef exports.

For the first time in 60 years, the world’s longest-ruling political party was voted out of power in April 2008. Before the elections, speculation and uncertainty about the outcome slowed the economy a little. The newly elected President has suggested a stronger alignment with the policies of neighbours like Uruguay, but promises to maintain the stable macroeconomic situation that he inherited from the outgoing Colorado party.

Paraguay’s economy has always been largely dependent on agriculture. Paraguay saw a bumper crop for soybeans last year, due both to favourable climate conditions and to technological advancement in the country. These days, investment in collateral industries, like real estate and logistical support for agricultural exports, are on the rise. Investors from

Brazil, Uruguay, and Argentina are buying up properties with potential for agriculture or cattle farming. Compared to the rest of the region, land in Paraguay is still quite cheap.

At the moment foreign multinationals like Cargill and ABN are the biggest exporters of agricultural products, due to the amount of capital that is required to fund the export process. There is a lot of infrastructure necessary for the planting and harvesting of soybean: storage, transportation, and warehousing all require significant capital. A recent government proposal encourages investors to invest in the industrialisation of products before they leave the country; as of now, Paraguay is mostly exporting raw materials.

Agriculture is not the only sector that is seeing rising investment. Multinational telecoms companies have been investing heavily in the country. There is a lot of competition in this industry, which has resulted in dramatically price reduction, more services, and increased advertising spend. Even low-income citizens in rural areas have mobile phones now.

The change in political power, combined with the increase in investment, has resulted in a pervasive optimism among the Paraguayan people.

Fiorio Cardozo & Alvarado

Fiorio Cardozo & Alvarado is not one of the largest firms in Paraguay, but it is a full-service firm that can cater to foreign financial and corporate entities.

One client sums up his experience with Fiorio: “When we arrived to Paraguay, we chose Fiorio as counsel because of the comments that we received from others. After working with the firm for five years, I would say that was the right choice. They know how to represent international companies, in that they provide reasonable advice regarding local, international and US laws.”

In August 2007, the firm represented ABN Amro, one of its main clients, in the sale of 100% of the shares of Real Paraguaya de Seguros to Mapfre for \$16.5 million. ABN Amro provides the firm with a great deal of its banking and corporate work.

Fiorio also has experience in advising foreign companies that have obtained licences for prospecting and exploration in the gas, petroleum and mining industries. In October 2007, the firm represented Cameco in the purchase of an interest in exploration and mining concessions in Paraguay.

Marcelo Alvarado, who leads Fiorio’s corporate practice, is one of the firm’s biggest assets. A peer says: “Marcelo Alvarado is not only an outstanding lawyer, but is also very

ethical, very well-known, and very renowned as being a very professional person.”

Leading lawyers

Rafael Marcelo Alvarado
José María Cardozo Saguier

Gross Brown

Competitors regard Gross Brown as a general-practice firm with an emphasis on banking work. “The market for banking and finance work isn’t very big in Paraguay, but the lawyers at Gross Brown are good in this area and have a lot of important banks as clients,” says a competitor.

Gross Brown is active in both local and international deals. The firm advised Rabobank on the purchase of a 40% minority stake in Paraguayan Banco Regional, an agriculture-focused lender. The purchase was in line with Rabobank’s strategy to support retail banks in developing countries with relatively small investments.

Gross Brown is also involved in the growing telecoms industry, and is working with a number of mobile-telephone companies in obtaining loans to finance infrastructure projects.

The firm’s client list reflects its prominence in finance and banking: it provides local representation to some of the largest international banks in the world, including Banco Bilbao, HSBC, Citibank, Lloyd’s Bank and ING. Representative corporate clients include energy companies Petrobras Paraguay, Royal Dutch Shell and Texaco.

Leading lawyers

Raúl Alberto Andrada Noguees
Atilio Gomez Grassi
Eduardo Javier Gross Brown
Jorge Rafael Gross Brown

Moreno Ruffinelli & Asociados

Rivals mention that Moreno Ruffinelli & Asociados is not very active in international work, but the firm does have strong connections with the state and the public sector. For example, the firm’s founder, José Antonio Moreno Ruffinelli, is the former Minister of Foreign Affairs of Paraguay and the former legal advisor to the Paraguayan Central Bank.

Among the firm’s other partners, managing partner José Antonio Moreno Rodríguez is a member of the board of directors at the Centre of Arbitration and Mediation of the Paraguayan Chamber of Commerce.

Moreno Ruffinelli & Asociados has worked on the creation of a financial trust for a client that has recently won a toll road concession. The proceeds from these toll roads

will be securitised, and then placed into the trust mechanism, which was created and structured with the firm's legal assistance.

The firm represents large, multinational corporations and leading local and regional companies. The firm's international clients include Wachovia Bank, Credit Suisse, Samsung, Renault, Coors and Oracle.

The firm has also been particularly active in the capital markets, and has recently hired specialists to enhance this portion of its business.

Leading lawyers

Carlos Ruffinelli
José Antonio Moreno Ruffinelli
María del Rocío Penayo Zarza

Peroni Sosa Tellechea Burt & Narvaja

"Peroni Sosa Tellechea Burt & Narvaja enjoys a very good reputation abroad, as a firm devoted mainly to foreign investment and corporate law," says a rival. The practice is not as active in banking and finance as other leading firms in the country, and tends to be more heavily involved in M&A and other corporate transactions.

The firm is one of the largest in the country, and since its inception in 1968, Peroni has advised numerous high-profile international companies in their efforts to do business in Paraguay. Conversely, the firm also regularly represents local Paraguayan companies in their international commercial transactions.

The firm is also known for its involvement in agribusiness, one of the most profitable sectors in the Paraguayan economy. Peroni Sosa has advised several clients on the establishment of industrial and agribusiness joint ventures with foreign investors.

The firm is also a part of the Lex Mundi network, an association of law firms which has directed a lot of corporate clients to Peroni Sosa as they look to enter the Paraguayan market.

Market commentators disagree about the level of sustained activity by Guillermo Peroni, who is one of the most respected lawyers in Paraguay. Some believe he is near retirement, while others in the market dismiss the notion entirely - says one competitor: "Guillermo Peroni is still working the same amount as he did in the old days."

Leading lawyers

Guillermo Peroni
Enrique Sosa

Vouga & Olmedo

"The lawyers at Vouga & Olmedo are very knowledgeable about the law in general and about Paraguayan law specifically," says a client. The firm has worked on many significant joint ventures, mergers and acquisitions for its international corporate clients. Since its formation in 1975, banking, telecoms and oil-and-gas clients have remained vital to the firm's success. The firm is also one of the largest in Paraguay, which enables it to offer a wide range of services to its international clients.

The firm represented Argentine Horamar group in the formation of a \$35 million joint venture with Greek shipping company Navios to form a South American export logistics business. The multi-jurisdictional deal combines the existing port operations of Navios with the barge and upriver port businesses operated by Horamar. In order to form the joint venture, Horamar had to transfer the equity shares of Merco-Fluvial, HidroGas and six other shipping companies in Paraguay. The number of such strategic deals is only likely to increase, especially in areas like transport and storage of export products.

Vouga & Olmedo has advised international financial institutions regarding numerous important transactions in Paraguay. For example, the firm represented local bank Banco Regional in December 2007 when it sold 40% of its equity to Rabobank for \$21 million.

Corporate and industrial clients of the firm include Microsoft, Petrobras, Colgate-Palmolive, Procter & Gamble and ADM.

Leading lawyers

Gustavo Olmedo
Rodolfo Vouga