

Paraguay

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The Threshold Programme

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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 government 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

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

Paraguay's low participation in international financial markets has largely spared it from the effects of the global crisis, and the country's leading lawyers believe the recent regional drought will have a far deeper impact on the largely agrarian economy. As the third-largest soy exporter in the world, Paraguay has benefited from skyrocketing demand for the bean around the world but is challenged by growing competition and internal problems within the industry.

Agriculture export is the Paraguayan economy's life-blood, and deep-rooted issues of land rights, foreign intervention, pollution and sustainability plague the sector and the leftist administration of President Lugo. Financial lawyers see President Lugo's uneven environmental policies as exacerbating Paraguay's lack of foreign investment. A presidential decree restricting the use of pesticides was overruled by Paraguay's congress last July, and Lugo's proposed law limiting forestry and farmland expansion was amended by the legislature to ease restraints on lumber and farming operations.

The reversals come as a relief to the nation's corporate lawyers, who feel the President's policies are misguided and unnerving for investors. "After much arguing he seems to be rational," one attorney says of Lugo, "but he is definitely not business friendly."

The agricultural industry faces perhaps a greater problem in land disputes between

small-scale local farmers, Brazilian farmers operating within Paraguay's borders, and multinational agricultural companies like Cargill, ADM and Louis Dreyfus. Local farmers have increasingly occupied properties claimed by Brazilian operators, emboldened by Lugo's campaign promises to redistribute lands.

The disputes are aggravated by fraudulent deeds and governmental land grants that override previously-held claims, and lawyers speculate there are far more entitled lands than the actual surface area of Paraguay. Still, taxes and prices for Paraguayan land remain incredibly low, and even last year's announced 1000% increase to agrarian land taxes will not affect the market to a great extent.

Lawyers admit the President can claim a victory in last July's negotiation of an agreement with Brazil that triples the amount of royalties the neighbouring country pays Paraguay for the energy it imports from vast hydroelectric operations along the border. Additionally, Paraguay will be allowed to offer excess power directly on the Brazilian market – rather than through the state-owned utility Electrobras – where energy can fetch a better price.

Last March Paraguay's telecoms commission Conatel announced the liberalisation of state monopolies on internet access, VoIP (voice over internet protocol) service and fibre-optics networks, and financial lawyers are predicting a good deal of activity in these sectors for 2010.

Fiorio Cardozo & Alvarado

"Fiorio is really one of the most serious law firms in Paraguay and has an international view," says one client of the firm. "They are the perfect law firm to have as commercial support." Rivals echo these sentiments, adding that Marcelo Alvarado is particularly adept at international matters. "He is among the best in the profession," a peer notes.

A firm that specialises in corporate matters and litigation, Fiorio is envied by peers for lucrative clients in the telecoms and banking community, though the diminished presence of long-time client ABN Amro is considered a loss for the firm. Still, the firm enjoys steady business from some of the largest multinational corporations operating in the country, including AT&T, Prudential and McDonald's.

In 2008 Alvarado and a team of lawyers advised McDonald's in a share purchase agreement made by franchisee Servicios Rápidos del Paraguay, which last year announced the development of six new locations in Paraguay.

In addition to international clients, Fiorio's command of banking law made it

the counsel of choice for local financial institution Financiera Familiar in its transition into a fully-accredited bank in Paraguay. The newly-christened Banco Familiar opened its doors last January and is only the third financial institution in Paraguay to make the leap to become a fully-fledged bank.

Three major international investors are now at work in Paraguay's crucial soybean crop, and Fiorio counts Louis Dreyfus among its most important clients in the agribusiness sector. Additionally, the firm has advised Agro Silo Santa Catalina – one of the Paraguay's largest soybean producers – in its recent acquisitions in the soy industry.

Leading lawyers

Rafael Marcelo Alvarado Perez
Juan Bautista Fiorio Giménez

Estudio Juridico Gross Brown

With a client list that includes the largest banks operating in Paraguay, Gross Brown is an established franchise in the nation's financial sector. The firm has increasingly provided legal services to the nation's association of banking institutions, and boasts clients such as HSBC, Citibank and BBVA. Competitors note the firm's intentions to expand its services to corporate clients outside the financing sector with the recent addition of an IP practice.

Founding partner Jorge Gross Brown is described by his clients as a key figure in Paraguay's financial markets. "He's *the* expert on banking matters" one client says. Toward the end of 2008 Jorge Gross Brown advised ABN Amro on the sale of its Paraguayan branch to Banco Regional, a local bank with ties to Rabobank. Banco Regional made a \$60 million share placement to finance the deal.

The firm enjoys a powerful client in the telecoms industry in Telecel, a local subsidiary of Europe's Millicom, which has been making rapid inroads throughout Latin America's increasingly privatised communications market. In Paraguay, where mobile phones have already surpassed fixed lines by 8 to 1, Telecel recently garnered a \$107 million loan from the European Investment Bank to expand its GSM network. Jorge Gross Brown represented Telecel in negotiating the financing and guarantee structure.

Leading lawyers

Atilio Gomez Grassi
Eduardo Javier Gross Brown
Jorge Gross Brown

Vouga & Olmedo

A noted player in both corporate transactions and financing, Vouga & Olmedo offers a full range of services that attract a wide range of clients, including Paraguay's most important investors. While competitors contend the firm is actually two firms operating under one name, none deny that the firm is well managed and attracts strong clients like Microsoft, Merrill Lynch and HSBC.

Clients praise Rodolfo Vouga's adept role as a trusted advisor. "He's not afraid to tell you if something cannot be done and then proposes things that can be done," one client explains. In 2008 Vouga helped establish Taca Airlines in Paraguay, making the newcomer one of only three airlines operating in the country. The firm incorporated Taca's local entity and obtained the necessary approvals from the Paraguayan aviation administration.

The firm represented local financial institution Banco Regional in several of Paraguay's most important transactions of the past 12 months. In November 2008 Vouga & Olmedo's lawyers handled Regional's \$50 million IPO on Paraguay's stock exchange, a massive transaction by Paraguay's standards and the largest IPO in the nation's history. The offering paved the way for Regional's purchase of ABN Amro's local operations for an estimated \$60 million, on which Gustavo Olmedo's team provided tax, labour and contract advice.

One of Vouga & Olmedo's most important clients is worldwide agriculture manager ADM, one of the three key international players in Paraguay's agribusiness sector. In 2008 Rodolfo Vouga advised the company's order for 90 grain-transporting barges, widely used in the landlocked nation to transport soy and grain along rivers to the coast for export.

Leading lawyers

Gustavo Olmedo
Rodolfo Vouga

Other notable firms

While competitors contend that **Berkemeyer Attorneys & Counselors** owes much of its transactional work to its impressive IP practice, a corporate client list which includes Monsanto, Pfizer and Caterpillar suggests the firm must be doing something right.

While the firm holds no claim to the biggest recent transactions in Paraguay's market, it has positioned itself on the forefront of developments in the agricultural industry by representing Merisant Worldwide subsidiary Whole Earth Sweetener's purchase of a Stevia production operation. The extract of

the Stevia plant is approximately 300 times sweeter than sugar and has a negligible effect on blood glucose levels, making it a viable sweetener alternative for diabetics.