

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 formalization 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 legalized 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

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

Paraguay has a small financial market which has produced limited investment opportunities in recent years, as it recovers from the effects of three decades of dictatorial rule. The short-lived recovery in the nineties was overturned by the economic crises in neighbouring Argentina in 2001 and 2002, which had a strongly negative effect in Paraguay. Direct foreign investment over the past decade has been sporadic at best, and there is a clear stagnation of investment options for the private sector.

Even potentially positive events have a tendency to have unintended consequences in Paraguay. The upcoming elections, for instance, have ironically put a damper on the economy – investors are waiting to put money into the markets until they find out which candidates will win in the spring of 2008. To further exacerbate matters, rather than investing in acquisitions and securities, some believe private-sector companies are putting a disproportionate amount of their money into the political parties in an effort to influence the outcome.

The country does enjoy low inflation, so purchasing power is constant. Taxes and interest rates are lower than in neighbouring countries; on the other hand, the unpredictability of the political situation has caused some

investors to look elsewhere for more stable markets.

Agriculture is an important industry for Paraguay, particularly soybean production. The output is small compared to Argentina or Brazil, but relative to the size of Paraguay, the domestic output is a positive sign. An ancillary benefit of soybean production is the acquisition of real estate for agricultural purposes. Small transactions of about \$5 million to buy land to grow soybeans have been sprouting across the country. As one market observer said: "Everything is related to soybeans."

The country's financial legal firms do not have much to contend with each other for, and competition is limited. Deals pop up sporadically, and some firms are looking to their international clients for increased work. In anticipation of that potentiality, some firms are also looking to hire internationally trained lawyers. Still, considering both the political and economic climate, it may be some time before Paraguay becomes a meaningfully active market.

Fiorio Cardozo & Alvarado

Marcelo Alvarado leads the corporate law practice at Fiorio Cardozo & Alvarado, which is exploiting opportunities from abroad. One rival said: "They are growing, and have ABN Amro as their client, which gives them a lot of banking and corporate work. They are a firm I would really recommend, with a good reputation."

The firm has been involved in negotiation and acquisition of property for its client LDC Paraguay, to develop port facilities on the Paraguay River. The size of the investment has not been disclosed, but will result in the development of 30 hectares (74 acres) of riverfront property.

The firm also advised client Nucleo in a \$20 million debt restructuring. The telecoms company was able to retire existing debt as a result of the facility, granted by a syndicate including Citibank, BBVA and Lloyds TSB Bank.

Clients of the firm also include Maersk Argentina, French automaker Renault, paper multinational Kimberly Clark, Nestlé, and GlaxoSmithKline.

Leading lawyers

Rafael Marcelo Alvarado
José María Cardozo Saguier

Gross Brown

The 63-year-old law firm of Gross Brown has been one of the country's leading firms since its founding. The "outstanding" Jorge Gross

Brown leads three other partners – Atilio Gomez Grassi is also mentioned among leading lawyers – and nine associates in a firm that receives the highest regard for its work in the banking industry. One partner at a competing firm said: "When Jorge Gross says something about banking, it is true or it becomes true."

Local experts also note that the children of some of the senior partners are now working at the firm, which is thought to be a sign that the firm is well prepared to move forward into the future.

Certainly, the client list reflects the firm's top reputation. Energy companies like Texaco, Royal Dutch Shell and the Paraguayan operations of Brazilian energy firm Petrobras are included; so is the Brazilian embassy.

Confirming its reputation within the banking industry, the national banking association is a client. It is hardly surprising to find that international banks such as Citibank, Lloyds Bank, Dutch bank ING and Germany's Bayerische Hypo- und Vereinsbank also turn to Gross Brown for legal advice.

Leading lawyers

Raúl Alberto Andrada Nogues
Atilio Gomez Grassi
Eduardo Gross Brown
Jorge Gross Brown

Moreno Ruffinelli & Asociados

The 27-lawyer team at Moreno Ruffinelli & Asociados has developed quite a presence in the relatively small Paraguayan legal community. The team is headed by founder José Antonio Moreno Ruffinelli, a former legal adviser to the Paraguayan Central Bank and the Ministry of Foreign Affairs. Managing partner José Antonio Moreno Rodríguez is praised for his expertise in capital markets and foreign investment issues.

The firm represented long-time client Cargill in a joint venture with Puerto Zeballos which was announced in June 2007. The proposal is to develop and build Paraguay's largest grain port facilities. The \$25 million investment – which may total as much as \$180 million if all proposed facilities are developed – was called "the largest foreign investment in a long time" by the US ambassador to Paraguay.

In a capital markets transaction, Moreno Ruffinelli advised the International Finance Corporation in a \$30 million secured loan made to UABL.

Other clients of the firm include the International Monetary Fund, Shell, Siemens, Credit Suisse and the World Bank, who have all benefited from the firm's services in the past.

Leading lawyers

Carlos D Ruffinelli
 José Antonio Moreno Ruffinelli
 María del Rocío Penayo Zarza

Peroni Sosa Tellechea Burt & Narvaja

“Peroni Sosa is probably the first firm to start with international clients in the good times when there were lots of investments. They created a culture of working with international clients, and still have the tradition of working with them,” said a leading lawyer at a rival firm when discussing Peroni Sosa Tellechea Burt & Narvaja.

The firm indeed has a history with international clients, touting its role in helping multinational banks establish operations in Paraguay. It also presents itself as the legal representative for those financial institutions that do not have operations in the country but are working with Paraguayan entities.

For instance, Peroni Sosa advised Lloyds Bank earlier in 2007 when the bank was acquired by British bank HSBC. The \$15 million deal effectively ended 85 years of Lloyds’ operations in Paraguay.

It also helps that Peroni Sosa has good contacts with other international law firms. The firm’s relationship with Marval O’Farrell of Argentina is believed by some competitors to bring in business. One competitor said: “They are still a good firm with excellent connections.”

Senior partner Guillermo Peroni has been cited by several colleagues at other firms for his work. He is getting on in age, and while some have questioned how much longer he will practise, he is still found in transactions. One rival said: “He is without doubt still very active and very competitive, despite rumours to the contrary.”

Leading lawyers

Guillermo Peroni
 Enrique Sosa

Vouga & Olmedo

Vouga & Olmedo is one of the largest in Paraguay, and one of the most experienced in dealing with international clients. One lawyer said: “They started as a very little boutique firm during the good times and continued to grow. Both Vouga and Olmedo are good lawyers, and they have a good team of lawyers.”

Rodolfo Vouga led that good team in advising client HSBC in the acquisition of Lloyds Bank. The \$15 million sale closed in May 2007. Interestingly, one of the lawyers working on the deal was subsequently hired

by HSBC to take over the bank’s local compliance division.

Vouga & Olmedo also represented its client ADM Paraguay in the food company’s acquisition of two maritime companies, Candies de Navegación and America Fluvial. The aggregate total for this March 2007 deal was \$18 million.

Clients at Vouga & Olmedo include Microsoft, Petrobras, BASE, Schering-Plough, Delta Air Lines, HSBC, Colgate-Palmolive, and ADM.

Leading lawyers

Gustavo Olmedo
 Rodolfo Vouga