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Latin America: Some Environmental Laws Better Than US

But enforcement generally weaker than in the United States.

BY JOACHIM BAMRUD

Despite its image as a laggard compared with the United States, Latin America is more advanced when it comes to certain environmental laws, according to a leading expert.

“In some ways, Latin American environmental laws are more advanced than those in the U.S.,” says **Madeleine B. Kadas**, Chair of the Latin American Practice at Beveridge & Diamond. “For example, Latin American laws are far more progressive than those of the U.S. in areas related to product take-back. Also, many Latin American countries have had climate change commitments since before the Paris negotiations that are now drivers for significant new energy use and efficiency laws.”



LATAM LEADER Madeleine B. Kadas, Chair of the Latin American Practice at Beveridge & Diamond.

However, in other ways the region lags the United States, she points out.

“In other ways, ... Latin American laws are less prescriptive and less substantive than those of the U.S., for example in chemicals regulation and air pollution control,” Kadas says. “These areas will likely see significant regulatory development in the next five to ten years. The most critical difference, perhaps, is in enforcement, which in Latin America is far less systematic than in the U.S. That could change, as several Latin American countries – Brazil, Colombia, and Mexico, for example – have recently added significant new legal mechanisms for addressing environmental harms and noncompliance, both private (class action) and public (agency enforcement) and with hefty criminal provisions. These new mechanisms, if aggressively used, could greatly shift the compliance and liability landscape for multi-national companies.”

While historically, Latin American countries have looked to the U.S. legal regime for many standards, there are significant differences, and the region has begun to embrace European approaches to environmental law as well, she says.

“Unlike those of the U.S., Latin American environmental laws derive from national constitutions,

laying the groundwork for challenging environmental harms as constitutional rights violations, such as amparo; we do not have those claims in the U.S.,” Kadas says.

Beveridge & Diamond, which **Latinvex** ranks among the top 50 international law firms in Latin America, is a leading law firm advising US multinationals in environmental law in the region.

“We work for a number of U.S.-based multinationals with significant interests or operations in Latin America,” Kadas says. “Our work is divided between product compliance and market access, regulatory advocacy, compliance counseling, and strategic enforcement support.”

In September last year it launched a Latin American Environmental Regulatory Tracker – a monthly compendium of environmental and product regulatory developments in numerous countries.

“We invite anyone interested to subscribe to receive the Tracker via email or to view it on our website,” says Kadas, who was named by **Latinvex** among Latin America’s top 100 lawyers.



KEY LAWYERS Tiffany Carlson, Russell N. Fraker and Paul E. Hagen. (Photos: Beveridge & Diamond)

Other key members of the firm’s Latin America team include **Russell N. Fraker** (Associate, Washington, D.C.), **Paul E. Hagen** (Principal, Washington, D.C.), **Aaron Goldberg** (Principal, Washington, D.C.), **Lauren Hopkins** (Principal, San Francisco); **Hana Vizcarra** (Associate, Baltimore) and **Tiffany Carlson** (Paralegal, Austin).

Highlights of recent work in the Latin American region include drafting contracts and supporting transactions to support regional waste management and recycling; counseling on energy efficiency standards, compliance issues for manufacturing facilities, and government enforcement issues for a leading international information technology company; helping companies register and test fertilizer and pesticide products in Mexico, Chile, Brazil, and Puerto Rico; helping a chemical company register and test personal health products in Mexico and Brazil; preparing detailed climate change regulatory surveys for the entire Latin American region, analyzing commitments, regulations, and reporting requirements and conducting in-depth compliance and enforcement counseling for manufacturing facilities of several industrial clients

The firm is seeing demand across all sectors, Kadas says.

“We see activity in every sector,” she says. “The transformation we are seeing in Latin America – and across the globe – is an increasingly holistic approach to environmental, natural resources and sustainability issues. Environmental regulation historically has been end-of-the-pipe and media-specific, for example an air permit for a specific type of industrial facility. While those kinds of standards will remain on the books, we see a larger regulatory view emerging that connects sourcing, manufacturing, recycling and pollution management – moving towards

an ethical, sustainable, and circular economic model. This broader view reaches beyond the traditional focus of environmental law to include a range of human rights issues (such as those related to conflict minerals, the human right to potable water, and modern day slavery), natural resource acquisition (endangered species, indigenous rights), consumer rights to know (such as product labeling and chemical restrictions), and increased responsibility on supply chain actors to manage and recycle product and packaging waste.”

Brazil, Mexico, Colombia and Chile are the firm’s top markets in Latin America and are expected to drive future growth as well, Kadas says.

“However, there are also significant activities in Argentina, Ecuador, Peru, and Venezuela,” she says.

OUTLOOK

Kadas is upbeat on the outlook for Beveridge & Diamond’s Latin America business.

“We see product stewardship, environmental and natural resource issues continuing to gain prominence over the next two years,” she says. “This is particularly true with respect to adoption and implementation of product take-back laws, new product labeling requirements, remediation of contaminated sites, and climate change driven initiatives, such as energy efficiency standards.”

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