

# One Hundred Years of Solitude

An American Lawyer's Guide to  
Doing Business in Latin America

BY RICHARD JOHNSON

*This article recounts memorable scenes from One Hundred Years of Solitude as a general introduction to Latin American law on civil notarios públicos, real estate transactions, and employee benefits, and political history relevant to business dealings in Latin America.*



**G**abriel García Márquez's epic novel *One Hundred Years of Solitude* is an embellished, magical-realism version of some of the most important developments in the history of Latin America.<sup>1</sup> The sweeping scope of the novel is told through the lens of a small Caribbean<sup>2</sup> town, Macondo, as it experiences colonization, civil war, foreign imperialism, and industrialization.

The novel provides much insight into the practice of law in Latin America, perhaps in part because García Márquez studied law for several semesters at a university in Bogotá before dropping out to pursue a career in journalism. His legal background, combined with the Nobel Prize-winning author's deep and unique understanding of universal themes such as greed, corruption, memory loss, inequality, power, and aging,<sup>3</sup> resulted in interesting and universal legal insights. But a more important reason why *One Hundred Years of Solitude* provides so much insight into the practice of law specifically in Latin America is because it provides a complete view of a civilization that closely resembles Latin American societies and the historical, political, economic, and personal forces that shape the law in these societies.<sup>4</sup>

This article recounts a few memorable scenes from the novel as a general introduction to Latin American law on civil *notarios públicos*, real estate transactions, and employee benefits, and political history relevant to business dealings in Latin America. The article also discusses aspects of legal practice based on the author's experience with transactions in Mexico, Guatemala, and Panama, and how those transactions differ from their counterparts in the United States.

### **Notarios Públicos**

When the government-appointed Corregidor<sup>5</sup> first arrived in Macondo, he demanded that all houses be painted blue. In response, José Arcadio Buendía, Macondo's patriarch, grabbed the Corregidor by the collar, lifted him off the ground, and told him, "aquí no hay nada que corregir"<sup>6</sup> ("there is nothing to fix here").<sup>7</sup> The Corregidor's role in this book is admittedly different from that of the *notario público*, but

this analogy isn't much of a stretch; they are similar in the sense that both are products of civil law traditions dating back to Spanish, French, and ultimately Roman regimes, and both exemplify civil law bureaucracy.

When working with *notarios públicos* in Latin American civil law jurisdictions, U.S. lawyers—who are typically accustomed to freedom of contract and little direct government interference in the execution of day-to-day transactions such as forming legal entities and granting powers of attorney—are likely to commiserate with protagonist José Arcadio Buendía and understand his frustration. *Notarios públicos*' services are expensive, and parties are required to involve them in a wide range of transactions. The roles of civil law *notarios públicos* and U.S. notaries public are so drastically different, and the confusion between the two is so common, that several U.S. states, including California,<sup>8</sup> Colorado,<sup>9</sup> Florida,<sup>10</sup> and Texas,<sup>11</sup> have implemented laws prohibiting notaries public from holding themselves out by the Spanish-language title *notarios públicos* and potentially confusing Latin American immigrants. The differences between these are discussed below.

### **Training and Scarcity**

The U.S. states place no limit on the number of authorized notaries public.<sup>12</sup> In most states, an interested applicant can become a notary public by presenting official identification, attending an online training, and passing a short open-book exam.<sup>13</sup> By contrast, a Mexican *notario público* must graduate from law school, practice law for at least three years, and be between 25 and 60 years old.<sup>14</sup> And the number of *notarios públicos* in many Latin American jurisdictions is strictly limited by law. A search of the website of the organization of *notarios públicos* in Mexico City shows only 250 *notarios públicos* in a city with over 10 million inhabitants.<sup>15</sup> In the province of Panama Oeste, Panama, there is only one *notario público* for every 500,000 people, and *notarios públicos* can only be created by an act of the National Assembly.<sup>16</sup> Guatemala falls in the middle of the U.S. and Mexico extremes; in

Guatemala, law students automatically become *notarios públicos* upon graduation.

### **Transactions Requiring Notario Público Approval**

In Mexico, nearly all significant transactions must be approved by a *notario público*, including forming a business entity,<sup>17</sup> drafting a will, increasing a company's minimum capital contribution, executing a real estate purchase contract, and executing the minutes of shareholder meetings. To properly deduct business expenses in Guatemala, companies should evidence the expense with a corresponding notarized contract.<sup>18</sup>

### **Cost of Services**

*Notarios públicos* perform a quasi-public role, but they operate in private practice. Because of their scarcity and the fact that their participation is legally required in many transactions, their services are both difficult to obtain and expensive.<sup>19</sup> Keep in mind that in many jurisdictions, including Panama, an official interpreter must be present to translate the contents of certain documents for any party that does not speak English. These translation services often cost hundreds of dollars per hour, and maximum prices for such services are established by a legislative fee schedule. *Notarios públicos*' services are likely to continue to be expensive in Mexico for the foreseeable future; relevant case law has established that the Mexican Federal Competition Law does not apply to the services and profession of *notarios públicos*.<sup>20</sup>

### **Scope of Services**

In the United States, a notary public's role is typically limited to serving as a neutral witness to the signature of documents, administering oaths and affirmations, certifying copies, and taking sworn statements.<sup>21</sup> In addition to these responsibilities, transactions overseen by *notarios públicos* in many Latin American countries are vested with the public faith, which means that their confirmation that a certain event transpired, that documents were signed and contained the proper legal information, or

that a party was properly represented are all accepted as fact as a matter of law. The only way to challenge such facts is through an allegation of fraud or misrepresentation in the execution of the deed.

Notarios públicos are entrusted with ensuring the legality and proper execution of transactions. Depending on the jurisdiction, they may evaluate and confirm the proper transfer of title and serve as expert advisors, archivists, tax collectors, and assistants to courts. They owe their ethical duty to the transaction, not the parties, and they are charged with certifying each party's legal capacity. Notarios públicos prepare official documents (actas notariales) to formalize each transaction they oversee, and these documents are presumed to be accurate and in compliance with law; only a court ruling can negate this presumption.<sup>22</sup> When working in Latin America, U.S. lawyers should consider taking advantage of the legal presumptions that attach to notarized acts, even if the presence of the notario público is not legally required.

#### Real Estate Transactions

Perhaps in part because of his several semesters of legal studies,<sup>23</sup> García Márquez understood and was able to unforgettably relate the many problems that can arise during the different stages of a real estate investment.

#### Unreliable Property Descriptions

Shortly after founding Macondo, José Arcadio Buendía set out to find a land route to the capital city. Frustrated because he kept running into water, he drew the first map of Macondo while “in a rage . . . exaggerating the difficulties of communication, as if to punish himself for the absolute lack of sense with which he had chosen the place.” Because of this hastily and maliciously drawn map, the incorrect idea of a peninsular Macondo endured for many years and caused the inhabitants of Macondo to misunderstand their surroundings.<sup>24</sup> This story should serve as a first warning for American lawyers of the real property and title-related legal problems they may face while working in Latin American countries, where GPS surveying and mapping systems have not been adopted as quickly as they have in the United States.<sup>25</sup>

#### Unreliable Institutional Memory and Recordkeeping

Lawyers who read this, most of whom studied the frailty and unreliability of human memory in law school evidence class and who may experience it in their everyday practice, can appreciate García Márquez's description of memory loss and its effects on recordkeeping:

“  
Even if property  
rights appear  
to be well  
established, they  
may be difficult to  
enforce because  
of court delays,  
corruption,  
lack of judicial  
independence, or  
the availability of  
repeated appeals.

”  
[When memory loss set in for José Arcadio Buendía] he marked everything with its name: table, chair, clock, door, wall, bed, pan. . . . Little by little, studying the infinite possibilities of a loss of memory, he realized that the day might come when things would be recognized by their inscriptions but that no one would remember their use. Then he was more explicit. The sign that he hung

on the neck of the cow was an exemplary proof of the way in which the inhabitants of Macondo were prepared to fight against loss of memory: This is the cow. She must be milked every morning so that she will produce milk and the milk must be boiled in order to be mixed with coffee to make coffee and milk. Thus they went on living in a reality that was slipping away, momentarily captured by words, but which would escape irremediably when they forgot the values of the written letters.<sup>26</sup>

Because electronic recording systems have not been adopted in Latin America as quickly as they have in the United States, the frailties of human memory and the unreliability of recording described by García Márquez are more relevant to real estate transactions in Latin America. Mistakes arise not only during the initial description of property, but also when adjacent boundaries or landmarks describing the property change or move.<sup>27</sup> During the due diligence phase of reviewing a lot, lawyers should review the records going back several transactions, verify names and property descriptions, conduct their own surveys, and check cadastral maps (municipal plots maintained by the local municipality) to make sure that the property descriptions in these maps and records match the descriptions in any sale documents and in the public registry of property. A title search can also confirm whether the person attempting to sell the property is the owner of the property. It is not uncommon for developers in Latin America to advertise land that they do not actually own, but instead have only an official or unofficial right of first refusal to purchase.

#### Corruption

Lack of technology and memory loss aren't the only obstacles to an accurate description and recording of events and property boundaries. In *One Hundred Years of Solitude*, while the patriarch's untiring second son Coronel Aureliano Buendía was off leading the liberal party in a civil war, the Coronel's conniving brother, José Arcadio, stayed behind and usurped much of the best land in Macondo.<sup>28</sup> José Arcadio initially usurped the land by force, but he solidified his claim by arguing that his patriarch father had

gone insane before distributing land during the founding of Macondo.<sup>29</sup> According to José Arcadio, his father's incapacity rendered the transfers void. To cement his claim, José Arcadio Segundo created a public registry of property and placed all of the stolen land in his own name. Upon Colonel Aureliano Buendía's return from the war years later, he was outraged by his brother's unscrupulous behavior, but it was too late to fix the situation. The current landowners, liberal and conservative alike, were already too invested in the new system and too content with their holdings to allow for any revision of the property records.

José Arcadio's exploitation of the public registry of property may sound familiar to lawyers who have followed recent high-profile bribery scandals in Latin America. No jurisdiction is free from corruption,<sup>30</sup> but Latin American countries score consistently low nearly across the board on Transparency International's Corruption Perceptions Index, with Mexico at 29, Guatemala at 28, Panama at 37, and Venezuela coming in near the global bottom at 18 in the 2017 rankings.<sup>31</sup>

### **Challenges to Enforcing Property Rights**

Even if property rights appear to be well established, they may be difficult to enforce because of court delays, corruption, lack of judicial independence, or the availability of repeated appeals.<sup>32</sup> In some circumstances and in some jurisdictions, parties may be able to avoid some of the drawbacks of litigation (delay, lack of subject matter expertise, lack of privacy, corruption, and lengthy appeals processes) by agreeing to arbitration.<sup>33</sup>

Adverse possession rights exist in most Latin American jurisdictions in a form similar to that in the United States. To avoid buying a property encumbered by adverse possession claims, U.S. lawyers should conduct a physical survey of the property, in addition to a title search. U.S. lawyers should also investigate the parties to a transaction and the title holders going back several decades. Communal property rights, such as *ejido* rights in Mexico, may be recorded in local registries of property or in the national agrarian registry, and lawyers should try to review both registries before

their client settles on a property. Finally, U.S. lawyers should record their interest in property as soon as possible; many Latin American jurisdictions are pure recording jurisdictions where unrecorded transfers of property are generally not enforceable against third parties.

### **Unavailability of Title Insurance**

In the United States, purchasing title insurance would provide a solution to some of the issues described above. Unfortunately, title insurance is relatively scarce and expensive in many Latin American jurisdictions, and insurance companies are reluctant to insure properties in Latin America in part because outdated recording systems make title, boundaries, ownership, and enforcement uncertain. Title insurance is also relatively unavailable because of the theory that the participation of *notarios públicos* ensures the proper description of each lot, the proper transfer of title free of all liens and encumbrances, and an accurate recording in the public registry of property and in the local cadastral maps. According to this theory, the assurances provided by the participation of *notarios públicos* in real estate transactions renders title insurance unnecessary. Despite the fact that options for title insurance (and other types of insurance) may be limited, U.S. lawyers should ask local counsel about options for title insurance.<sup>34</sup>

### **Lack of Available Credit**

The unreliability of property records, along with turbulent economies, the lack of credit information systems, and the difficulty of enforcing judgments or securing a truly final judgment in part because the threat of repeated *amparo*<sup>35</sup> appeals may leave lenders reluctant to extend loans for the purchase of property in Latin America. Partly as a result of these barriers to enforcing property rights, outstanding mortgage debt in Latin American countries typically ranges from only 5 to 10% of GDP, as compared to 40 to 100% of GDP in most of Western Europe and the United States.<sup>36</sup> The lack of outstanding mortgage debt and the corresponding higher percentage of properties that are owned outright allows many sellers to take their time in selling properties and listing

their property in U.S. dollars, which they often perceive as more stable than the local currency.

Listing properties in U.S. dollars may be a comfort to sellers, but it detaches the property from the realities of the local market and the purchasing power of potential buyers who are paid wages in the local currency and have access to credit from local banks only in the local currencies (at higher than U.S. interest rates). Local banks will appraise the property in the local currency, based on nearby comparable properties and the ability of local wage earners to afford such a property in the future, and their calculations will likely diverge from a U.S.-dollar listing price as quickly as the local currency and economy diverges from the U.S. dollar and the U.S. economy.

Buyers therefore are often left with no choice but to buy overpriced properties with expensive credit. They understandably may wait until they have enough cash to buy a property outright themselves, thereby delaying years of potential wealth building and dampening the local property market and the local economy.

### **Purchasing Real Estate in Many Latin American Jurisdictions**

This section outlines the real estate purchase process and includes tips to help U.S. practitioners handle some of the risks and challenges discussed above.

### **Due Diligence**

Conduct due diligence on the property and the seller. If applicable, compare various benefits provided by governments or free trade zones.

- Review property records going back several transactions, verify names and property descriptions, and check cadastral maps to ensure these records match the descriptions in any sale documents and in the public registry of property.
- Be alert for changes in landmarks or boundaries used to describe the property, including rivers, open spaces, adjacent buildings, railroads, electrical lines, and creeks.
- Ensure that the property is described consistently in all transactions and in all public entries.

- In addition to a title search, conduct an extended physical inspection of the property.
- Review the market for title insurance options.
- Confirm that utility bills and taxes have been paid by the seller. Utility companies may refuse to change accounts to the new owner of the property or resume water, gas, or electricity services until past due amounts have been settled.
- Note that improvements to the land (including buildings, plumbing, electrical connections, and water treatment systems) are subject to value added tax (VAT) in most Latin American jurisdictions. If the business establishes a presence either through a local entity or a branch, it should be able to recover this VAT over time. But depending on the jurisdiction, it may be hard to recover this VAT amount if the business does not have an ongoing presence and plans to conduct a quick transaction.
- Be wary of offers to agree on a stated transaction price that is significantly lower than the legitimate market value of the property. Such tactics are commonly employed to save money on VATs, notarial fees, and transfer tax fees, which are often calculated as a percentage of the purchase price. But accepting money under the table to avoid transaction fees can subject you to the scrutiny of tax authorities and potential fraud charges, and the tax authorities are becoming wiser to such tactics. Reporting requirements for large money transfers are becoming increasingly stringent for anti-money laundering and other reasons, so transactions designed solely to lower transaction costs are increasingly likely to be detected and questioned. Additionally, notarios públicos in many jurisdictions will require an independent bank appraisal of the property, and unreasonably low valuations are unlikely to be accepted.
- Note that many Latin American jurisdictions prohibit foreigners from owning land in certain areas. For example, in Mexico, foreigners are prohibited from

owning land within 100 kilometers of an international land border or 50 kilometers of the a maritime border, but well-established trust (*fideicomiso*) mechanisms are available as a safe way to effectively obtain most of the rights and benefits of ownership.

### Resolutions

Execute the required resolutions approving the purchase of the land and the borrowing of funds necessary to complete the purchase of land. Grant powers of attorney to the representative who will sign the final purchase and sale agreement and any loan agreements.

- In most Latin American jurisdictions, simply being an officer or director of a company does not necessarily confer sufficient authority to bind a company. To legally bind the company, the signor should be granted explicit authority through a resolution or a notarized document. Such powers of attorney are generally specific to certain matters such as acts of administration, labor matters, opening and closing bank accounts, and signing negotiable instruments.<sup>37</sup>
- When a party is an individual, demand the presence and signature of the individual. Relying on a signature of an authorized representative presents the risk that the power of attorney is no longer valid and will require the extra steps of verifying that the principal is still alive and the power of attorney is still effective.
- Consider granting power of attorney to a Spanish-speaking representative to avoid the need for costly and time-consuming translations and interpretations.

### Promissory Purchase and Sale Agreement

Negotiate and sign the promissory purchase and sale agreement (PPSA) with the seller.

- The PPSA is a private document negotiated between the buyer and the seller that sets forth all terms and conditions of the sale, including all conditions precedent to the final and official public closing of the sale of the property. As a private document, it can be in any language of the parties'

choosing and does not need to be signed in the presence of a notario público or entered into a public registry of property.

- Agree to transfer only a small percentage (5 to 10%) of the purchase price to the seller at the signing of the PPSA. If the buyer transfers too large a percentage of the total purchase price, it will give away its best leverage to ensure that the seller appears at the final PPSA in front of the notario público to effect the final transfer of property and its registration in the local registry of property.
- Although the PPSA can technically be written in any language, it relates to real property and will therefore most likely need to be governed by local law. Any dispute related to the PPSA will need to be settled by local courts, and documents submitted to courts in most Latin American countries must be provided in Spanish,<sup>38</sup> so parties should execute the document in Spanish, or consider a dual-column English and Spanish agreement that specifies that the Spanish column controls.
- Compare the pros and cons of arbitration versus traditional court proceedings in your jurisdiction. Factors to consider include the speed and expense of the proceedings and the expertise and susceptibility to corruption of judges and arbitrators.
- Compare the PPSA to the final purchase and sale agreement.

### Payment

Arrange for the buyer to secure payment through one or more of the following:

- Certified funds check. These are common and relatively easy to secure, but may be forged, so another option should be considered for large transactions.
- Cashier's check. These are more secure than a certified funds check.
- Electronic funds transfer. This is possibly the best and safest option. The funds will transfer while the parties wait in the notario público's office. Once the payment enters the seller's account, the



parties can sign the final purchase and sale agreement.

- Irrevocable Letter of Credit (ILOC). A bank in the buyer's country (presumably in the best position to evaluate the buyer's creditworthiness and assume the risk of nonpayment) issues an ILOC and undertakes to honor a specific demand for payment made by the seller if the buyer does not pay. ILOCs are irrevocable (and expensive) because the letter of credit cannot be modified unless all parties agree to the modifications.

#### **Bonds, Insurance, and Loan Disbursement**

Secure bonds and insurance to protect against risk during construction, and start to coordinate with the bank to make sure that all documents and policies, including the final purchase and sale agreement, required bonds, and insurance policies, are to the bank's satisfaction.

#### **Final Agreement**

Sign, with the assistance and in the presence of a notario público, the public deed containing the final purchase and sale agreement. Depending on the size of the deal and other factors, the public deed containing the final purchase and sale agreement may also include either the minutes of the meeting in which the seller's bank releases the mortgage on the property, along with the buyer's credit agreement with the bank, or a note that the land is being transferred with the seller's mortgage on the property.

The final purchase and sale agreement is a public document. As a public agreement, it must be executed in the official local language and must be signed in the presence of a notario público. Consider granting power of attorney to someone who speaks Spanish, or all of the documents listed above may need to be read aloud by a government-certified interpreter in the presence of the parties and a notario público. The need for an interpreter will add several hours and hundreds or thousands of dollars to the transaction cost.

#### **Public Registry of Property**

Enter the deed into the public registry of property.

“  
The final purchase  
and sale agreement  
is a public  
document. As a  
public agreement,  
it must be executed  
in the official local  
language and  
must be signed in  
the presence of a  
notario público.  
”

#### **Cadastral Office**

Submit the change in ownership to the cadastral office and follow up to make sure that the change is properly reflected in the office's maps and records.

#### **Loan Disbursal**

To convince the bank to release the necessary money to fund the construction and the purchase of capital equipment, present to the seller's bank and the bank's assessor and advisors evidence of construction progress, including purchase orders, receipts, and approval of construction plans and blueprints from municipal engineering departments.

This step may be especially important in jurisdictions that have experienced recent bribery or money laundering scandals, and where there is extra pressure on banks to ensure the appropriate destination of their funds.

#### **Employee Benefits**

Toward the end of *One Hundred Years of Solitude*, an American banana company brought trains,

corporate farming, and industrialization to Macondo. The locals thought these Americans were “imbued with resources that in another era were reserved for Divine Providence.”<sup>39</sup> Unfortunately for the banana company, these awe-inspiring achievements weren't enough to overcome the reputation that the banana company earned by failing to provide adequate housing, medical services, and bathrooms, and by paying its workers in scrip, which was good only to buy Virginia ham in the company commissary.

The banana company quickly took the Corregidor's place as the despised foreign invader. When the workers had had enough and tried to enforce their rights in court, the banana company worsened its reputation by employing unscrupulous legal tactics:

When the workers drew up a list of unanimous petitions, a long time passed before they were able to notify the banana company officially. As soon as Mr. Brown [the superintendent of the banana company] found out about the petitions, he hitched his luxurious glassed-in coach to the train and disappeared from Macondo along with the more prominent representatives of his company. Nonetheless some workers found one of them the following Saturday in a brothel and they made him sign a copy of the sheet with the demands while he was naked with the women who had helped to entrap him. The mournful lawyers showed in court that that man had nothing to do with the company and in order that no one doubt their arguments they had him jailed as an impostor. Later on, Mr. Brown was surprised traveling incognito, in a third-class coach and they made him sign another copy of the demands. On the following day he appeared before the judges with his hair dyed black and speaking flawless Spanish. The lawyers showed that the man was not Mr. Jack Brown, the superintendent of the banana company, born in Prattville Alabama, but a harmless vendor of medicinal plants, born in Macondo and baptized there with the name of Dagoberto Fonseca.<sup>40</sup>

After failing to convince the local judges of the merits of their case, the banana company's

workers sued the company in the Supreme Court. In response, the banana company's "legal illusionists" quickly dispensed with the worker's claims by arguing, as do many companies in today's new sharing economy, that "the demands lacked all validity for the simple reason that the banana company did not have, never had, and never would have any workers in its service because they were all hired on a temporary and occasional basis."<sup>41</sup> The Supreme Court agreed with the banana company, and the Court "set down in solemn decrees that the workers did not exist." This decision led the workers to strike, which lasted until the national military entered Macondo and shot down protestors in a machine gun massacre. The banana company then stacked the bodies onto train cars and carried them out to sea like rejected bananas.<sup>42</sup>

This fictional tragedy in *One Hundred Years of Solitude* was most directly based on the real-life protest of the workers of the United Fruit Company in Colombia in the early 20th century. While the details of the protest are debated, most experts agree that the United Fruit Company petitioned the U.S. Government to intervene in what was at the time one of the largest organized protests in Colombia's history. The Colombian military, wanting to preempt U.S. military involvement in this domestic matter, sent in an armed regiment to stop the protest. Estimates of the number of those killed in what became known as the Banana Massacre range from as few as 40 to as many as 3,000. The real-life Banana Massacre and its fictitious counterpart have many similarities with other notable labor events that have led Latin American jurisdictions to enact laws that provide important benefits and protections to employees.<sup>43</sup>

#### **Minimum Wage and Other Statutory Protections**

The working conditions that gave rise to labor protests in Mexico in the early 20th century provide a particularly clear example of the foreign mistreatment of local workers that led to significant changes in employment law. Fearing the damage that a growing strike could cause to their earnings and operations, the American Cananea Consolidated Copper

Company convinced the American consul, the governor of Sonora, Mexico, and 275 Arizona Rangers to physically end the strike, killing 30 protesters in the process.<sup>44</sup>

In 1907, textile workers in the Puebla and Tlaxcala region, fed up with working conditions and because they were paid in scrip that could be used only to buy over-priced items at the company store, went on strike to protect regulations implemented by the company owners.<sup>45</sup> When nearby workers at the Rio Blanco cotton mill attempted to aid their neighboring workers, the company owners retaliated by locking the Rio Blanco workers out of work to prevent more aid money from flowing to the protesting workers.<sup>46</sup> The Rio Blanco strike shut down the railroad company's operations, and the workers started to burn down company stores until federal troops from Mexico City arrived and killed at least 50 to 70 workers and imprisoned more than two hundred workers.<sup>47</sup> Certain versions of this story hold that the dead workers were loaded onto the trains and dropped into the sea, just like the protesting workers in *One Hundred Years of Solitude*.<sup>48</sup> Despite poor records and limited press coverage of these events, the Cananea and Rio Blanco strikes eventually entered into the public consciousness and became symbols of worker oppression.<sup>49</sup> These symbols helped fuel widespread social unrest across Mexico and contributed to the Mexican Revolution and the adoption of a new Mexican Constitution in 1917. Articles 3, 4, 27, and 123 of the Mexican Constitution of 1917 solidified many important protections for Mexican workers.<sup>50</sup> Wages in Latin America may be lower than wages for comparable jobs in the United States or Western Europe, but all Latin American countries have established a minimum wage that forms the basis for many other payments and benefits.

#### **Profit Sharing**

Unlike in the United States, employees in many Latin American countries are entitled to profit sharing. In Mexico,<sup>51</sup> most employees are entitled to a pro-rata portion of the before-tax profits of their direct employer. To avoid situations where profit-sharing requirements would result in low-skilled, junior employees receiving astro-

nomical salaries, many companies implement a reasonable transfer pricing mechanism to ensure their employees are receiving a competitive, but not unsustainable, salary. In some jurisdictions, the employer must prove that any transfer pricing between service companies is reasonable or may establish a certain minimum margin for such services. Employees in Panama and Guatemala are not entitled to profit sharing, but Guatemalan law requires the payment of a mid-year and end-of-year Christmas bonus, each of which are equivalent to one month's salary.<sup>52</sup>

#### **Mandatory Employment Agreements (No At-Will Employment)**

In most Latin American countries, entering into employment agreements with all workers is recommended and is standard practice. In the absence of an employment agreement setting forth the terms of employment, employers bear the burden of proving that they have met the applicable statutory requirements. In the event of a dispute, the statutory default employment conditions or the conditions argued by the employee may be taken as fact.

Some countries, including Panama and Peru, provide employers a trial period during which they can terminate employees without cause or severance payments. After the trial period, the U.S. concept of at-will employment is almost nonexistent, and in many countries the employer's at-will rights are severely limited, even during the statutory trial period. In almost all Latin American countries, if employers cannot prove justified cause for termination, employees will generally be entitled to severance pay that will be calculated according to their seniority and salary.

#### **Restrictions on Foreign Employees and Unions**

Some Latin American jurisdictions limit the number or percentage of foreign employees that a local company can employ. In Panama, for example, no more than 10% of a company's local workforce can consist of foreign nationals. U.S. lawyers should make sure their clients keep a close eye on the local-to-foreign ratio of their workforce to avoid any fines or delay to their operation or construction. A sudden increased

presence of foreign employees may draw the attention of labor unions and labor authorities. Note that many jurisdictions impose different quotas and requirements for managers versus more junior employees.

The role of labor unions varies widely across Latin American countries, but the role of unions is generally more prevalent in Latin America than it is in the United States. It is important to select a union that is reasonable and will allow a business and its employees to succeed. Many unions have reputations as reasonable business partners that both defend workers' interests and cooperatively engage with businesses for shared success. Before breaking ground, many companies in Mexico and other Latin American countries will select a union to make sure their employees are not being abused by an unreasonable union or a union with ties to illicit activity.

#### **Vacations, Maternity Leave, and Holidays**

Employers should account for legally required and customary vacation days, especially as deadlines approach during the construction or start-up of a facility. Most Latin American countries are predominately Catholic, and almost all workers are entitled to take off the major Christian holidays. Unlike in the United States, presidential election voting days are usually national holidays, and most people do not work on these days. It is good practice to anticipate delays and adjust timelines accordingly.<sup>53</sup>

Latin American countries generally provide more vacation days and more days of maternity leave than the United States. For example, employed mothers are entitled to the following periods of paid maternity leave by jurisdiction: 0 weeks in the United States, 12 weeks in Mexico, 17.3 weeks in Costa Rica, 21.8 weeks on average in the European Union, and 18 weeks on average in Organisation for Economic Co-operation and Development (OECD) countries.<sup>54</sup>

#### **Mandatory Funds and Benefits**

As in the United States, most Latin American countries require employers to make payments to social security funds on behalf of their employees. In Mexico, a portion of the worker's salary must be deposited each pay period into a fund

called INFONAVIT, which was implemented to provide low and middle income workers access to housing funds. Mexican employers must also contribute to the FONACOT fund, which provides loans to employees for the purchase of services and movable goods, such as cars.

Some employers in Latin America are notorious for failing to provide legally required benefits. The frustration felt by workers when employers do not provide legally required benefits is exemplified in *One Hundred Years of Solitude* when Colonel Aureliano Buendía declined his military pension after returning from the war "in order to get rid of the torture of waiting for it until the day [he] died."<sup>55</sup> To gain the confidence of employees and maintain good relations with government authorities, U.S. lawyers should strive to ensure that their clients provide legally required benefits.

#### **The Lasting Effects of History**

Some understanding of local history and the host country's historical and current relations with the United States and with foreign businesses is useful to the practice of law anywhere, but it is especially helpful in Latin American civil law jurisdictions where high corruption and a lack of resources, among other factors, have arguably left governmental agencies and prosecutors with greater discretion in their implementation and enforcement of laws.<sup>56</sup>

#### **Colombia and the Banana Massacre**

Revisionist history, which first appears in *One Hundred Years of Solitude* through José Arcadio's revision of property records, and institutional memory loss, which first appears as a symptom of the insomnia plague, are important themes in the study of Latin American politics. These themes reemerge in *One Hundred Years of Solitude* in the wake of the banana massacre; the American banana company does such a good job of destroying the evidence of the massacre and spreading company propaganda that later generations of schoolchildren in Macondo are taught that no strike occurred, and that the banana company never had operations in Macondo. This inability to accurately remember events may seem incredible but for the estimates that those killed in the real-life Banana Massacre

range from as few as 40 to as many as 3,000. García Márquez himself admitted surprise when he learned, during an event commemorating the Banana Massacre, that 3,000 (the inflated death toll in his novel's massacre) seemed to have become the official figure for the real-life massacre.<sup>57</sup>

The events surrounding the strikes mentioned above are debated, but there is no denying that anti-imperialist interpretations of these events have shaped the political, cultural, and legal landscape of the countries in which U.S. companies will do business. Regardless of whether the real-life death toll was 40 or 3,000, the Banana Massacre polarized liberal and conservative political factions in Colombia, intensified political unrest, and contributed significantly to the struggle among groups such as the Fuerzas Armadas Revolucionarias de Colombia and right-wing paramilitary groups, whose nearly continuous fighting has terrorized the region for decades.<sup>58</sup>

Like many real-life Latin Americans, José Arcadio Segundo resented the foreigner's entry into his region. He was buried with the following quote on his epitaph, "Look at the mess we've gotten ourselves into just because we invited a gringo to eat some bananas."<sup>59</sup>

#### **The Creation of Panama**

In 1986, U.S. President Ronald Reagan nearly backed out of President Jimmy Carter's deal to hand over control of the Panama Canal to the Panamanians, because, as he claimed in his presidential campaign speeches, "We built it! We paid for it! It's ours and we're gonna keep it."<sup>60</sup> Despite President Reagan's campaign promises, the pressure was too much from Panamanians and an international community that felt that U.S. control of the Panama Canal and surrounding zone until the year 2000 was an act of colonial imperialism. The United States ultimately ceded the ownership and operation of the canal to Panama, but many Panamanians still resent the United States' nearly 100-year military and commercial occupation and control of the Panama Canal.

Colombian resentment toward the U.S. involvement in and control of the Panama Canal may exceed that of the Panamanians. When



the United States took over the ownership and construction of the Panama Canal project from the French in 1903, after an unsuccessful attempt by French engineer Ferdinand de Lesseps,<sup>61</sup> Panama was still part of Colombian territory. When Colombia refused to ratify a treaty for the United States to lease the Canal land from Colombia, President Theodore Roosevelt dedicated troops and resources to support the insurgent Panamanian independence movement.<sup>62</sup> With the support of President Roosevelt and the American Navy, the Panamanian revolution had the firepower it needed to secede from Colombia.

### ***Mexico, Labor Unrest, and Oil Appropriation***

In Mexico, as previously mentioned, the public perception that foreign companies were mistreating local workers contributed significantly to the adoption of important labor protections in the Mexican Constitution of 1917. Included among these protections is Article 27, clause 4 of the Mexican Constitution, which states that all subsoil mineral resources in Mexico, including oil, belong to the State.

Even after the implementation of this article, foreign oil companies continued to operate in Mexico until they could no longer afford to meet the demands of the labor unions. The workers were asking for health insurance, the elimination of the oil companies' right to hire and fire workers, and their right to control all but a few positions in the company.<sup>63</sup> The Mexican Federal Labor Board sided with the workers and demanded that the oil companies meet the union demands by March 14, 1938. When many of the foreign oil companies refused to comply with these demands and started pulling assets and operations out of the country, President Lázaro Cárdenas used Article 27, Clause 4 as the legal foundation to expropriate all oil resources and assets in Mexico in 1938.<sup>64</sup>

Mexico was one of the first countries in the world to expropriate its national oil resources, and Mexico's expropriation marked a shift in power from the American and British oil companies to the nations in which they operated across the world. Today, 100 years after the adoption of Article 27, the national Mexican oil

company (PEMEX) is re-opening up its energy resources for private development and entering into the next phase of extracting, refining, and marketing the country's vast onshore and offshore reserves.<sup>65</sup>

### ***Guatemala, United Fruit, the CIA and Che***

Around the time of the Banana Massacre in Colombia, the United Fruit Company was buying up large tracts of land in Guatemala, and its railroads remained the only means of transportation to United Fruit's many areas of rural operation. According to certain accounts, the United Fruit Company's political power was so great, both in the United States and in Guatemala, that when a democratically elected candidate won the Guatemalan presidency in the early 1950s, the United Fruit Company teamed up with the CIA (who arrived in Guatemala on United Fruit Company ships) to oust the liberal president and replace him with a more agreeable candidate in the 1954 election.<sup>66</sup> Ernesto "Che" Guevara happened to be in Guatemala in 1954 when the Guatemalan president was ousted, and he marks his time in Guatemala as a turning point in his thinking.<sup>67</sup> As he wrote in a letter to his aunt, "[In Guatemala] I had the opportunity to pass by the land holdings of the United Fruit Company, convincing myself once again of just how terrible these capitalist octopi are. I have cried and sworn before a print of the old and mourned comrade Stalin that I will not rest until I see these capitalist octopi annihilated. I achieved and perfected what I need to be a true revolutionary."<sup>68</sup> Following his stay in Guatemala, communist ideologies quickly gathered momentum before sweeping across Latin America.<sup>69</sup>

### **Lessons and Strategy**

The purpose of recounting the stories above is not to be critical of foreign companies operating in Latin America, or Latin American governments or their representatives, or to accept as fact one version of a complicated and heavily debated history of economic and technological inequality, corruption, and rapid change over another. Instead, the goal is to provide context to understanding the region into which your client may invest.

### ***Cultural and Social Interactions***

Despite a complicated history, this author's experience is that Latin American professionals generally have positive opinions of the United States and appreciate the many good people, businesses, and cultural exports it has brought to their home countries. However, considering some perceptions that certain U.S. companies have bullied their way through local jurisdictions, U.S. lawyers should not be surprised if some of their Latin American counterparts eventually feel that some sort of compensation or retaliation for past actions is due.

It is prudent to make a special effort to be gracious, enthusiastic, fair, and respectful of the local culture, laws, and customs, and try to speak the local language, just as most Latin American lawyers do while working in the United States. It is also wise to trust in the expertise and cultural finesse of local legal and other talent, instead of trying to force an American approach in a foreign jurisdiction. Such efforts will help to dispel any potential bias that Latin American counterparties may hold against you or your client and distinguish you and your client from any American companies that have acted as bullies or bad actors in the local jurisdiction.

### ***Government Incentives and Tax Treatment***

U.S. lawyers should investigate how foreign companies are being treated by local tax authorities. This investigation should include research into whether local governments are keeping their promises, including across different administrations. U.S. Embassies, especially Embassy representatives from the U.S. Department of Commerce, are informed, well connected, and welcoming, and can provide useful resources and advice in each country.

### ***Contractual Protections***

Apart from the somewhat long and formalistic introductions present in Latin American contracts,<sup>70</sup> many elements of contracts in Latin America will look familiar to U.S. lawyers. But the different circumstances surrounding a contract to be performed in and governed by the law of a Latin American jurisdiction may call for different approaches to certain contractual clauses. For example, because tort and contract damage

awards are usually smaller in Latin American jurisdictions than they are in the United States, many Latin American contracts do not explicitly limit damages or exclude consequential or indirect damages. American lawyers should discuss limits on liability with local counsel and with their clients, but may need to accept less explicit limitations on liability in Latin America than they are used to in the United States. Another result of less frequent litigation and lower damage awards in Latin American countries is a less developed and more expensive market for commercial insurance. U.S. lawyers may find that they have to give up too much to get their counterparties to agree to maintain what are considered standard insurance coverage amounts in the United States.

U.S. lawyers may be able to use contractual clauses to protect their clients from appropriation. For example, mining and energy companies, both frequent targets of appropriation, often include clauses in their contracts with customers prohibiting assignment of the contract to a state-owned or controlled entity. Such clauses often specify that the contract will terminate in the event that control of either party is transferred to a foreign government.<sup>71</sup> While these provisions may not withstand the attacks of a foreign government that is determined to nationalize an industry, they may provide an initial defense and subsequent legal standing to challenge such actions, and they might make the client a less attractive target for appropriation. Such clauses may also please the client's customers, who may not want to enter into relationships with foreign governments.

#### **General Business Practices**

Robust and faithful recordkeeping, reporting, and tax filing is one of the best ways to protect clients and ensure they receive appropriate compensation in the event the local government appropriates the client's business or assets. If a client files tax returns without hiding income and accurately reports the fair value of assets, it should be legally entitled to the fair value of the company or its assets in the event of appropriation. Unfortunately, many companies end up being undercompensated because they have hidden income or under-evaluated

assets or income on their tax returns, and the government can rely on the company's own representations in calculating the value of the compensation.

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#### **Stay Close to Your Client**

U.S. lawyers, especially in-house counsel, are likely to be closely aligned with their longtime clients and thus better able to translate legal issues in ways that their client will understand. Another reason to stay closely involved in a client's operations in Latin America is because

the practice of law is not as closely regulated in some Latin American jurisdictions as it is in the United States. U.S. lawyers must recognize that lawyers in certain Latin American jurisdictions are not legally held to the ethical standards of accountability, competency, or conflict of interest avoidance that U.S. lawyers must meet. For example, in Mexico, bar associations are mostly social organizations, and no laws specifically address professional standards for lawyers.<sup>72</sup>

Even with less strict rules regulating the profession and a lower effective legal standard of professionalism, enforcement is lax. Fewer than 1,500 lawyers were prosecuted for federal or state offenses related to professional practice in Mexico between 1997 and 2012, and in Mexico, compensatory damages and punitive damages are rarely awarded in cases of professional malpractice.<sup>73</sup> When selecting local counsel in Latin America, U.S. lawyers should consider providing to the lawyers that they interview a summary of the American Bar Association's Model Rules of Professional Conduct<sup>74</sup> and ask them to agree to abide by these model rules. Particular emphasis should be placed on Rules 1.1 (Competence, especially regarding specialization); 1.7 and 1.8 (Conflict of Interest: Current Clients), 1.9 (Duties to Former Clients); 1.11 (Special Conflicts of Interest for Former and Current Government Officers and Employees); and 1.18 (Duties to Prospective Client).

Despite the many cultural, political, and legal differences inherent in practicing law in a foreign civil law jurisdiction, many areas of the law are similar to U.S. law, and a U.S. lawyer's education and experience can help with monitoring client operations in Latin America. For example, like the U.S. Constitution, the constitutions of many Latin American countries are based on enlightenment ideals, and Latin American constitutions and other laws are often based directly on U.S. laws.<sup>75</sup> Also, the Mexican Federal Anti-Competition law, enacted in 1992 after drastic privatization of the economy, borrows from U.S. antitrust laws, and the Panamanian Corporations Law is based on the Delaware General Corporation Law. In areas of Latin American law that are significantly different from



U.S. law, an American lawyer's legal training and experience can provide a useful framework to help clients navigate legal problems and interact with government agencies.

Finally, American lawyers should stay close to their client's foreign investments and operations, stay up-to-date on current trends, and conduct regular anticorruption, competition, and other trainings with employees, suppliers, and agents. As mentioned already, corruption levels and the perception of corruption are higher in Latin America than in the United States and Western Europe. A carefully designed, robust, and frequently presented compliance program is critical to maintaining compliance and reducing risk in Latin America. Presenting anticorruption trainings in-person allows corporate lawyers to read the body language of their colleagues and confirm that their colleagues understand that even small bribes are prohibited and can lead to crippling penalties, despite the fact that low-level

bribery<sup>76</sup> may be common practice in the local country. In-person training sessions will allow the lawyer to impart the company culture and policies, answer any follow-up questions that arise, and emphasize the severe penalties that can result from violation of these laws and the need to maintain high ethical standards in all business dealings, especially when government officials are involved. These anticorruption trainings also provide an excellent opportunity to stay close to the business and maintain good relationships with local lawyers, employees, and other colleagues.

### Conclusion

To best serve their clients, American lawyers should learn as much as they can about the unique aspects of the culture, history, and politics of Latin America, and how these forces have shaped the law and business in Latin American jurisdictions. Reading *One Hundred*

*Years of Solitude* can help provide such an understanding. <sup>CL</sup>

*The views and opinions expressed in this article are those of the author and do not reflect the opinions of his employer or anyone else.*



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### NOTES

1. See Vargas Llosa, "Cien Años de Soledad. Realidad Total, Novela Total" (Real Academia Española), [www.rae.es/sites/default/files/Mario\\_Vargas\\_Llosa\\_Cien\\_anos\\_de\\_soledad\\_Realidad\\_total\\_novela\\_total.pdf](http://www.rae.es/sites/default/files/Mario_Vargas_Llosa_Cien_anos_de_soledad_Realidad_total_novela_total.pdf).

2. Macondo is based on Márquez's Colombian hometown, but Colombia is not mentioned in the novel.

3. See Jones, "Literature and medicine; García Márquez' Love in the Time of Cholera," *The Lancet* vol. 350 (1997), [www.thelancet.com/pdfs/journals/lancet/PIIS0140673697092490.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140673697092490.pdf); Toledo-Pereyra, "Medicine, Gabriel García Márquez, and 'Love in the time of cholera,'" 21 *J. of Investigative Surgery* iss. 1 at 5-8 (2008), [www.ncbi.nlm.nih.gov/pubmed/18197528](http://www.ncbi.nlm.nih.gov/pubmed/18197528).

4. See Vargas Llosa, *supra* note 1.

5. The English version translates "Corregidor" as "judge." Although Corregidores in Spanish colonies acted as judges, they were also in charge of other administrative functions performed by mayors, governors, and local judges.

6. "Corregir" means to fix, which explains the pun in "there's nothing to fix here."

7. García Márquez, *One Hundred Years of Solitude* at 56 (Rabassa trans., Harper Perennial Modern Classics 1st ed. 2006) (1967).

8. Cal. Gov't Code §§ 8219.5(c) and 8223(a).

9. CRS § 24-21-525(3).

10. Fla. Stat. Ann. § 117.05(10).

11. Tex. Gov't Code § 406.017(4).

12. According to NationalNotary.org, there are more than 4.4 million notaries commissioned throughout the United States, which is

approximately 1.7% of the total U.S. adult population. See Thun, "The Official 2017 NNA Census: Notaries are on the rise," Notary Bulletin (Oct. 11, 2017), [www.nationalnotary.org/notary-bulletin/blog/2017/10/2017-nna-census-notaries](http://www.nationalnotary.org/notary-bulletin/blog/2017/10/2017-nna-census-notaries), and the United States Census Bureau, [www.census.gov/quickfacts/fact/table/US/PST045217](http://www.census.gov/quickfacts/fact/table/US/PST045217). Some states have even recently passed legislation allowing for the online notarization of documents. See Thun, "6 States Considering Webcam Notarization Bills," Notary Bulletin (Mar. 2, 2017), [www.nationalnotary.org/notary-bulletin/blog/2017/03/6-states-webcam-notarization-bills](http://www.nationalnotary.org/notary-bulletin/blog/2017/03/6-states-webcam-notarization-bills).

13. See, e.g., Colorado Secretary of State Notary Public Examination, [www.sos.state.co.us/pubs/notary/notaryTesting.html](http://www.sos.state.co.us/pubs/notary/notaryTesting.html).

14. Pikoff and Crimmins, "Lost in Translation: Texas Notary Public v. Mexico Notario Público," [www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml](http://www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml). Notarios públicos in the Federal District of Mexico are selected through a rigorous and highly competitive examination process and are generally considered to provide a higher quality service than the notarios públicos in the adjacent Estado de Mexico, where notario público licenses are granted by the governor.

15. *Id.*

16. Rubio, Modernización del Sistema Notarial Panameño; Una Meta Por Cumplir (Aug. 1, 2017), [www.mingob.gob.pa/modernizacion-del-sistema-notarial-panameno](http://www.mingob.gob.pa/modernizacion-del-sistema-notarial-panameno).

17. Ley No. 32 de 26 de febrero de 1927 "Sobre Sociedades Anónimas," Artículos 4, 11, [www.oas.org/juridico/spanish/mesicic3\\_pan\\_ley32.pdf](http://www.oas.org/juridico/spanish/mesicic3_pan_ley32.pdf).

18. Ley de Actualización Tributaria de Guatemala, Art. 22(4)(d) (Sept. 12, 2014) (Guat.), [ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20Leyes/2012/pdfs/decretos/D10-2012.pdf](http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20Leyes/2012/pdfs/decretos/D10-2012.pdf).

19. However, such fees are often determined according to a legally required fee schedule enacted through legislative processes.

20. Orci, PowerPoint Presentation for Anahuac University Law School, Objeto de la LFCE y Concepto de Agente Economico, Modulo 1.

21. In some states more heavily influenced by civil law traditions, such as Louisiana, notaries public may provide marriage licenses, witness the opening of a safe deposit box, and draft wills.

22. Los Notariados de Tipo Latino, Colegio de Notarios de la Ciudad de México, [www.colegiodenotarios.org.mx/?a=1828](http://www.colegiodenotarios.org.mx/?a=1828).

23. See El País, "'Gabo' perdió estadística y demografía en la Universidad Nacional" (Apr. 25, 2014), [www.elpais.com.co/colombia/gabo-perdio-estadistica-y-demografia-en-la-universidad-nacional.html](http://www.elpais.com.co/colombia/gabo-perdio-estadistica-y-demografia-en-la-universidad-nacional.html).

24. García Márquez, *supra* note 7 at 12.

25. Especially in more rural areas of Latin America, including Mexico, property descriptions often consist of nothing more than a mailing address or informal descriptions of a nearby landmark.

26. García Márquez, *supra* note 7 at 47.

27. Partly due to the lack of electronic recordkeeping, recording errors are common enough in the highly populated Estado de

Mexico (adjacent to the Federal District and containing part of Mexico City) that the U.S. Treasury's Overseas Private Investment Company (OPIC) recently guaranteed a U.S. \$250 million loan to allow the state to upgrade its public registry in 2014. See OPIC, MBIA Insurance Corp.: Raising Money for Municipal Upgrades in Mexico, [www.opic.gov/opic-action/featured-projects/latin-america-caribbean/mbia-insurance-corp-raising-money-municipal-upgrades-mexico](http://www.opic.gov/opic-action/featured-projects/latin-america-caribbean/mbia-insurance-corp-raising-money-municipal-upgrades-mexico).

28. García Márquez, *supra* note 7 at 114, 156, 164, and 167.

29. *Id.*

30. Transparency International, Corruption Perceptions Index 2017, [www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017](http://www.transparency.org/news/feature/corruption_perceptions_index_2017). The United States scored only a 75, compared to scores in the mid-to-high 80s for New Zealand (89), and Canada (82), and most Northern European countries.

31. *Id.*

32. In Mexico, a losing party can challenge a judge's ruling through an *amparo* appeal, which is similar in ways to a U.S. claim of due process violation or other violation of constitutional rights.

33. The reliability and speed of courts varies widely across Latin American jurisdictions, and arbitration may not make sense in countries like Chile, where courts are reliable and speedy. As in the United States, some real property disputes must be settled by local courts.

34. In Mexico, there are currently at least two providers licensed by the Mexican government to provide title insurance.

35. See *supra* note 32.

36. See Warnock, "Housing Finance in Latin America," IIBM-IMF Conference on Housing Markets, Financial Stability and Growth (Dec. 11, 2014), [www.imf.org/external/np/seminars/eng/2014/housing/pdf/FWarnock.pdf](http://www.imf.org/external/np/seminars/eng/2014/housing/pdf/FWarnock.pdf).

37. See Barragan and Mooz, Jr., *An Introduction to Doing Business in Mexico* 29-30 (Transnational Pub. Inc. 1995).

38. See Código Federal de Procedimientos Civiles [CFPC] [Federal Civil Procedure Code], as amended, Art. 132, 271, 553, 572, Diario Oficial de la Federación [DOF], 24 de febrero de 1943 (Mex.).

39. García Márquez, *supra* note 7 at 227.

40. *Id.* at 300-302.

41. *Id.* at 301-302.

42. *Id.* at 307.

43. These are some of the benefits provided by law, but U.S. lawyers should consult an experienced employment lawyer before their clients invest in Latin America. Top-rated labor and employment firms can be found on Martindale Hubble, Chambers and Partners, and the Legal 500, [www.legal500.com](http://www.legal500.com).

44. See Rohrer, "Cananea Journal; For Sale: Symbol of Nationalism; Inquire Within," *The New York Times* (June 17, 1998), [www.nytimes.com/1998/06/17/world/cananea-journal-for-sale-symbol-of-nationalism-inquire-within.html](http://www.nytimes.com/1998/06/17/world/cananea-journal-for-sale-symbol-of-nationalism-inquire-within.html).

45. Gomez-Galvarriato, Reality and Myth of

the Porfirian tiendas de raya: The Company Stores of the Orizaba Valley Textile Mills (David Rockefeller Center for Latin American Studies 2006).

46. *Id.*

47. See Keremitsis, *La Industria Textil Mexicana en el Siglo XIX* at 202-03 (Mexico City: Sepsetentas 61, 1973). See also Gomez-Galvarriato, *supra* note 45.

48. See Vanderwood, *Disorder and Progress: Bandits, Police, and Mexican Development* at 147 (Scholarly Resources Inc. 1992).

49. See Bethell, *The Cambridge History of Latin America, Volume 4, 1870 to 1930* at 66 (Cambridge University Press 1986).

50. Zamora et al., *Mexican Law* at 414 (Oxford University Press 2005).

51. See Schiaffino and Martinez, "Mexico: It's Time For Profit Sharing!" ACC Docket (Jul. 21, 2015), [www.accdocket.com/articles/lab-mexico-profit-sharing.cfm](http://www.accdocket.com/articles/lab-mexico-profit-sharing.cfm). See also Ley Federal Del Trabajo [LFT] [Federal Labor Law], Art. 24, 25, Diario Oficial de la Federación [DOF], 06 de diciembre de 2015 (Mex.), [www.diputados.gob.mx/LeyesBiblio/pdf/125\\_220618.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/125_220618.pdf); Ley Federal del Trabajo [LFT] at Art. 9, 49, 50, 183, 784.

52. See Mayora et al., "Doing Business in Guatemala," Practical Law (Nov. 1, 2016), [https://uk.practicallaw.thomsonreuters.com/9-554-4025?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-554-4025?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1).

53. While on a recent trip to Panama to attend a board meeting, the author scheduled a visit to see the construction of a client's new manufacturing plant and was disappointed to find that no work was being performed that day and almost all public offices were closed. The President of Panama had signed an order at around 11 p.m. the night before declaring the day an impromptu one-time national holiday to celebrate Panama's qualification for the 2018 World Cup in Russia.

54. OECD Family Database, OECD—Social Policy Division—Directorate of Employment, Labour and Social Affairs at 3, [www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](http://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf).

55. García Márquez, *supra* note 7 at 199, 242.

56. Gargarella, *The Legal Foundations of Inequality: Constitutionalism in the Americas, 1776-1860* at 5 (Cambridge University Press 2010).

57. García Márquez, *Vivir Para Contarla* 73-74 (Alfred A. Knopf 2002).

58. See Banana Massacre, 6 December 1928, History Channel Online, [www.historychannel.com.au/this-day-in-history/banana-massacre](http://www.historychannel.com.au/this-day-in-history/banana-massacre). Partly to counter what he considered imperialist U.S. intervention in Latin America, García Márquez himself at times provided support to the Sandinistas of Nicaragua and the Castro regime in Cuba. For a discussion of these matters, see Kandell, "Gabriel García Márquez, Conjuror of Literary Magic, Dies at 87," *The New York Times* (Apr. 17, 2014), [www.nytimes.com/2014/04/18/books/gabriel-garcia-marquez-literary-pioneer-dies-at-87.html](http://www.nytimes.com/2014/04/18/books/gabriel-garcia-marquez-literary-pioneer-dies-at-87.html).

59. García Márquez, *supra* note 7 at 228.

60. Clymer, "A Movement, a Plan, a Canal," *The New York Times* (Mar. 15, 2008), [www.nytimes.com/2008/03/15/opinion/15clymer.html](http://www.nytimes.com/2008/03/15/opinion/15clymer.html).

61. Lesseps was also the administrator responsible for the construction of the Suez Canal.

62. Many Colombians believe that the independence movement was fabricated by the United States.

63. Maurer, "The Empire Struck Back: Sanctions and Compensation in the Mexican Oil Appropriation of 1938," 599-600 (Harvard Business School BGIE Unit Working Paper No. 10-108, 2010), [www.hbs.edu/businesshistory/Documents/maurer-article-mexican-oil.pdf](http://www.hbs.edu/businesshistory/Documents/maurer-article-mexican-oil.pdf).

64. Cochran, "The Wealth of a Nation: Mexico's Efforts to Attract Foreign Investment in the Energy Sector," *The Int'l Lawyer*, vol. 50 at 617 (2017). See also Yergin, *The Prize: The Epic Quest for Oil, Money, & Power* at 232, 272-77 (Simon & Schuster London 2012).

65. Lajous, Mexican Energy Reform (Columbia University Center on Global Energy Policy June 2014), [www.goldmansachs.com/our-thinking/pages/north-american-energy-summit/reports/cgep-mexican-energy-reform.pdf](http://www.goldmansachs.com/our-thinking/pages/north-american-energy-summit/reports/cgep-mexican-energy-reform.pdf).

66. Schlesinger, "Ghosts of Guatemala's Past," *The New York Times* (June 3, 2011), [www.nytimes.com/2011/06/04/opinion/04schlesinger.html](http://www.nytimes.com/2011/06/04/opinion/04schlesinger.html).

67. See Kurtz-Phelan, "Big Fruit," *The New York Times* (Mar. 2, 2008), [www.nytimes.com/2008/03/02/books/review/Kurtz-Phelan-t.html](http://www.nytimes.com/2008/03/02/books/review/Kurtz-Phelan-t.html).

68. Perez, "Apuntes de Ernesto Guevara (1953-1954) y la influencia en su trayectoria posterior," X Jornadas de Sociología, Facultad de Ciencias Sociales, Universidad de Buenos Aires at 5 (2013).

69. See Kurtz-Phelan, *supra* note 67.

70. These include dates of entity formation, a reference to the corporate purpose or a statement that the agreement is not prohibited by the corporate purpose of the company, and information about legal representatives and their authority to bind the company.

71. Benitez, *Reference Manual on Doing Business in Latin America*. Edited by Donald R. Shea, Frank W. Swacker, Robert J. Radway, and Stanley T. Stairs., 12 *U. Miami Inter-Am. L. Rev.* 479 (1980).

72. Medellín, "Urquiga. The Regulation of Legal Education in Mexico: An Ongoing Battle," *The Int'l Lawyer*, vol. 50, no. 3 at 430-32 (2017).

73. *Id.* at 34.

74. American Bar Association, Model Rules of Professional Conduct, [www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

75. Gargarella, *supra* note 56 at 208.

76. Note the exception of facilitation payments (not bribes), which are allowed under the FCPA in some limited circumstances. Note that facilitation payments are never allowed under the U.K. Bribery Act.