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5 Legal Trends in Latin America for 2018

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On April 24, 2018, panelists from Colombia, Brazil, Mexico and Venezuela discussed expected legal, economic and political trends in Latin America for 2018. The event was hosted by the International Section of the Georgia Bar at Georgia State's College of Law and was moderated by Amanda Witt, a partner in the Atlanta office of Kilpatrick Townsend & Stockton LLP and member of the firm's Latin American Focus. The panelists included Hernando Galindo, Executive Regional Trade Representative for ProColombia, Andrea Novak, Attorney, International Regulatory and Policy at Delta Air Lines, Inc., Adriana Ibarra, Legal Counsel at Barco Americas, and Javier A. Gonzalez, International Business Law Consultant at Gadrix & Associates.

The following are five take-aways from the session:

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Colombia is a significant trading partner for the United States and the State of Georgia specifically. Between 2007 to 2017, Colombia's Gross Domestic Product (GDP) annual growth rate was 3.6% while the growth rate in the United States during the same period was only 1.4%. The Colombian market is attractive for a variety of reasons including having a growing middle class and significant reduction in poverty rates since 2002. Colombia is the 28th most populated country in the world and the third most populated country in Latin America.

According to Ms. Novak, it is important to be humble and appreciate the cultural differences when doing business in Latin America. Although lawyers may perceive Brazil's and other Latin American countries' labor and employment laws to be overly favorable to employees, the laws are protective for a reason. The labor laws in Brazil, for example, represent a consolidation of labor laws that originated from about seventy years ago and were written to be protective to address extreme abuses in the past. Unfortunately, that resulted in a system that is too narrow and very difficult to navigate. A labor reform was enacted in Brazil in July of 2017 in an attempt to bring a more flexibility approach to the employee/employer relationship. The outcome of the reform is still unveiling, reason why, it is necessary to continue to monitor how courts are interpreting the new rules and if these new rules will, in fact, benefit the parties involved or maintain the *status quo*.

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Mexico's intellectual property laws have been changed in a number of ways in the past few years according to Ms. Ibarra. In Mexico, the concept of "reservation of rights" is a unique concept that many U.S.-trained lawyers miss when seeking to register intellectual property rights in Mexico. Many such attorneys assume that a trademark is the only right to register when seeking to obtain exclusive rights of use in Mexico and should instead request trademark rights and a reservation of rights, which will prevail over trademark rights in certain cases. Those instances include names of serial publications, names of shows broadcast on television, radio or the internet, original characteristics (physical and psychological) of characters, artistic names and original advertisement mechanisms. Unlike the U.S., Mexico recognizes prior use abroad and not only in Mexico. Furthermore, a trademark registration could be deemed invalid if the date of use is incorrect, so it is critical to verify the accuracy of such date.

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Mr. Gonzalez noted that Latin America will likely experience dramatic changes in 2018 as two thirds of the population will see a potential change in leadership with Brazil, Colombia, Mexico and Venezuela all holding elections in 2018. Given the tax reform legislation in the U.S. in 2018, Mr. Gonzalez noted that we could see a decrease in merger and acquisition activity in Latin America as U.S.-based companies seek to repatriate dividends and earnings into the United States.

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With respect to negotiating contracts in Latin America, Mr. Gonzalez noted that it is critical to account for currency volatility. Attorneys should also include a provision that sets forth which language controls if the agreement is written in multiple languages. Documentation is critical in Latin America as well, so you should expect having to verify the titles and authority of all document signatories and should be prepared to have an official translation of your agreement if it was only negotiated in English.

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