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¿Seguro? Opportunities and Risks for (Re)Insurers in Latin America in 2010 and Beyond

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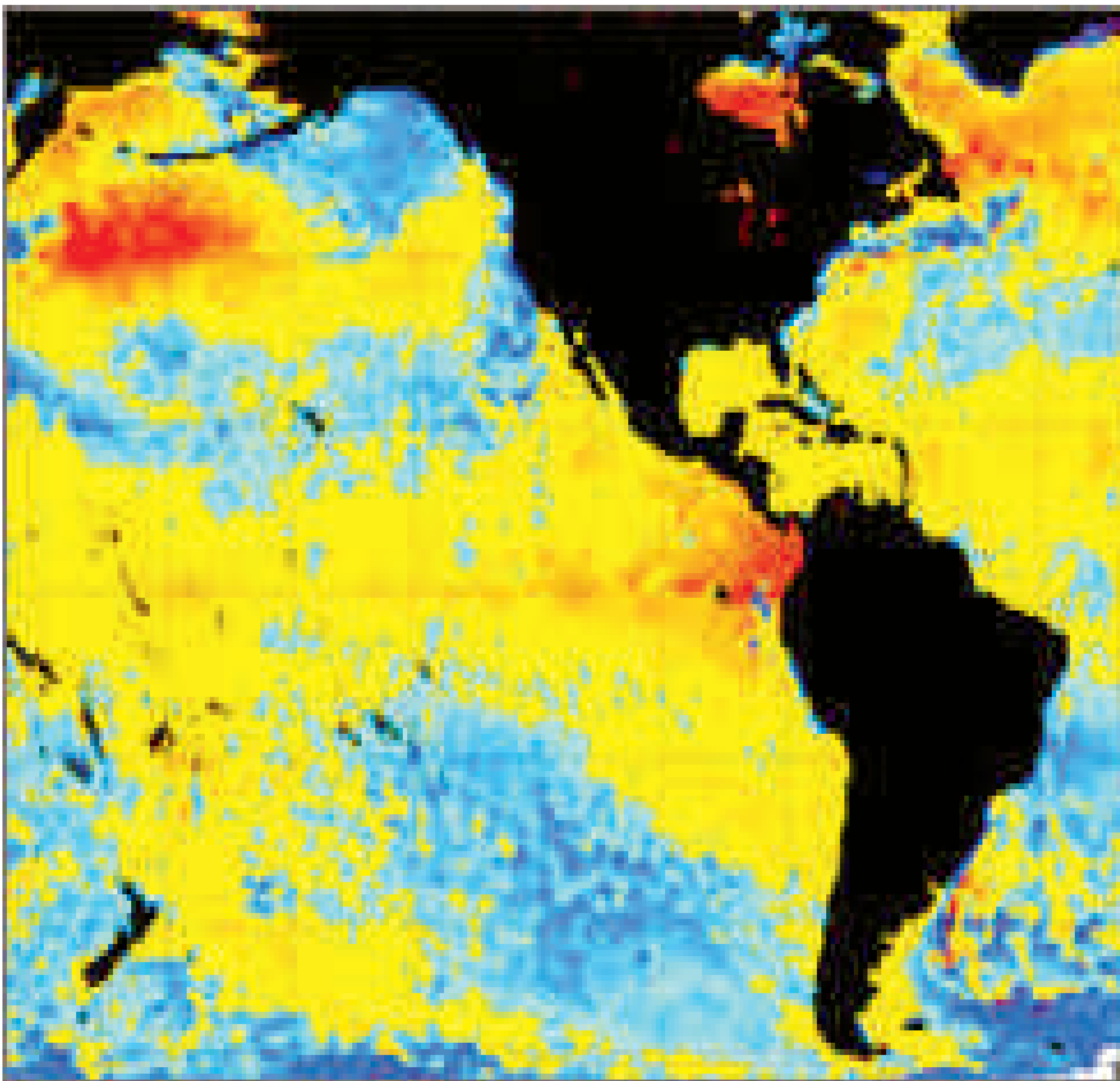

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¿Seguro? Opportunities and Risks for (Re)Insurers in Latin America in 2010 and Beyond

I. Introduction: Latin American Market Performance and Predictions

A. Low Insurance Penetration: Retractable Problem or Golden Opportunity?

In last year's Latin American webinar whitepaper, we discussed the drastically different impacts of two magnitude 6.2 earthquakes that occurred 37 years apart in the neighboring countries of Costa Rica and Nicaragua. While the December 23, 1972 earthquake essentially destroyed the Nicaraguan capital city such that it has still not been rebuilt, the January 8, 2009 earthquake caused only moderate damage in Costa Rica. Also remarkably different was the (re)insurance response, with little to no insurance response at the time in Nicaragua contrasted against the immediate response of the Costa Rican insurance industry (backed by international reinsurers) to mobilize engineering and lost adjustment efforts to allow the funding of rebuilding efforts.

We further noted that the lack of insurance in Nicaragua left the country heavily dependent upon foreign aid for recovery, foreign aid that poured in from some 27 countries and innumerable private organization, but was mishandled and misappropriated such that little of the aid ever reached the neediest Nicaraguan people. The resulting chaos left Nicaragua in political, social and economic turmoil for decades, leading, we noted, to the nation consistently ranking as the second poorest country in the Western Hemisphere, trailed only by Haiti.

Unfortunately, on January 12, 2010, we again saw the tremendous destruction that can be wrought by a natural disaster. As foreign and private aid has poured into Haiti, we have also again seen the limitations inherent in such efforts as a means to fund recovery and rebuilding. As fundraising scams have proliferated in the United States and elsewhere, so have questions arisen about whether aid funds and efforts have been and will be fairly distributed.

As in Nicaragua 38 years ago, compounding the human tragedy and physical destruction in Haiti is the fact that very little of the rebuilding of lives, homes and businesses will be funded by insurance. This is because insurance penetration in Haiti was extremely low leading up to the recent earthquake, with health, life and home insurance the exception rather than the rule. While estimates place losses in the hundreds of millions to single-digit billions of dollars, private insurance in Haiti is believed to total only approximately $20 million (with $10 million of that devoted to auto coverage). The nation will also receive $7.75 million from the Caribbean Catastrophe Risk Insurance Fund. Needless to say, however, $17.75 million will do little to fund the rebuilding of the nation's public infrastructure and private property, much less assist individuals facing the further tragedy of death and injury.

As we cautioned last year, we certainly do not mean to argue that insurance could prevent the misery seen in Haiti. However, there is no question that the type of proper risk management (building to code, etc.) required by an insurance-based economic system can lessen the destruction caused by hurricane, earthquake or other natural disaster. It is likewise beyond question that insurance coverage can serve as a stabilizing force for a country's economic and political recovery, and that differences in the availability and liberalization of insurance and

reinsurance markets are closely tied to the vastly different economic, political and social climates that exist within the countries of Latin America.

For these reasons, and because of the obvious economic incentives for the insurance industry, the issue of low insurance penetration was a major topic of discussion when insurers, reinsurers, intermediaries and regulators came together at the FIDES (Interamerican Federation of Insurance Entities) conference this past Fall. Participants in the conference discussed the existing barriers to higher insurance penetration (including distrust of the insurance industry, lack of an insurance culture, perceived costs and lack of benefits and economic realities) and potential solutions and positive trends (including publicity, the development of a larger middle class in certain jurisdictions, microinsurance and mandatory insurance in certain sectors).

Put simply, we consider low insurance penetration rates in Latin America to represent untapped potential opportunities rather than an intractable reality. As local economies modernize, increasing factors such as educational levels, salaries and the use of credit, insurance will increasingly become a part of the local culture. As to the large lower class existing in many jurisdictions, microinsurance shows tremendous promise as a means of providing protection for hundreds of millions of individuals and small businesses. The question is what companies will be at the forefront of these developments in Latin America, providing innovative solutions and in turn reaping handsome returns from the insurance boom that predictions indicate will continue for years to come?

B. Beyond the Usual Suspects: Growth in Unexpected Places

In the last year, the overall Latin American insurance market has continued to experience robust growth, estimated at 7.4% by Fundacion Mapfre for the first half of 2009 over the first half of 2008. Based upon the first half of 2009, total premiums for the region for the full year 2009 will likely have exceeded US$ 100 billion (72 billion Euros). The Latin American non-life sector grew 13.2% half year over half year to 23.7 billion Euros, paced by growth in the health, fire and workers' compensation lines. Auto insurance premiums grew by only .7% for the same period, while life insurance premiums were down 2.4%.

As to specific jurisdictions, we have continued to see moderate to high growth in several of the larger, more established insurance markets in Latin America (Brazil, Venezuela, Mexico), as well as some stagnation and even contraction (Argentina, Chile). However, we have also witnessed robust growth rates and renewed interest in many of the smaller markets that are not typically the focus of discussions about Latin American insurance. Peru in particular has shown impressive growth rates and economic stability, while even unusual suspects such as Ecuador, Uruguay, Bolivia and the Central American nations have performed remarkably well.

1. <u>The Major Markets -- Brazil, Mexico, Venezuela, Argentina, Chile</u>

Given their generally greater connection to the global economy, it should come as little surprise that the more-developed Latin American insurance markets had more mixed results than those seen in some of the more isolated countries. While the Venezuelan insurance market boomed based upon previously untapped potential, petroleum risks and a quickly growing consumer middle class, Brazil's and Mexico's markets continued to grow even as they were held back by

overall economic stagnation. In Chile and Argentina, however, the markets could not overcome the downward tow of their local economies, with stagnation and even contraction in both jurisdictions in 2009.

Brazil

Brazil remains by far Latin America's largest insurance market, with nearly 40% of the region's total premiums.

The country experienced slowed growth early in 2009, with even some contraction in certain month to month comparisons. Given early results, Brazil's insurance regulator, the Superintendencia de Seguros Privados (SUSEP), predicted in May that growth would slow to only 4.9% for the year. Results picked up again later in the year however, leaving total gross written premiums for the first 11 months of 2008 up nearly 13%.

- For the month of August 2009, reported that total premiums for the Brazilian insurance market were R$ 6.39 billion (US$ 3.68 billion), up 14.94% month over month when compared to August 2008. Total premiums for the year through August 31, 2009 reached a total of R$ 48.35 billion (R$ 27.85 billion), up 9.6% over the same period in 2008.

- When comparing September 2009 to September 2008, however, total premiums in the Brazilian insurance market were down 4.81% (US$ 1.42 billion), down from US$ 29.58 billion to US$ 28.16 billion. For the same period total premiums were up 13.99% for pension and 5.4% for credit and guaranty, but down for accident and health (-5.3%), life (-6.89%), auto (-9.09%), non-auto liability (-12.42%) and mandatory auto (-54.86%). For the period, the most significant lines of business in Brazil were pension (40.5%), auto (21.86%), non-auto liability (15.11%) and life (13.72%).

- Gross written premiums for November 2009 were up 30.4% over November 2008, totaling US$ 6.85 billion for the month. Total gross written premiums for the first 11 months of 2009 totaled US$ 39 billion, up nearly 13% over the first 11 months of 2008.

Perhaps wary of again under-predicting potential growth, Susep predicted in December 2009 that the Brazilian insurance market will grow an additional 16-20% in 2010.

Venezuela

Premium growth reports consistently placed Venezuela among the fastest growing markets in Latin America in 2009, generally ranging between 20 and 40% annual growth.

- Comparing February 2009 to February 2008, total premiums for the Venezuelan insurance market increased 20.77% from US$ 1.460 billion to US$ 1.763 billion. Ceded premiums increased 76.01% by the same comparison.

- For the first five months of 2009, total premiums for the country totaled more than 11 billion bolivares, a 38% increase over the same period in 2008.

- Total premiums for the Venezuelan market reportedly grew by 44% when comparing December 2009 to 2008. The lines with the greatest growth were pensions (300%), credit and guaranty (64.4%), life (48.7%) and auto (20.6%).

Mexico

Despite continuing economic and social upheaval, total premiums in the market continued to grow, if at z more moderate rate than that seen in previous years.

- Mexico's insurance regulator, la Comision Nacional de Seguros y Fianzas, reported that the total premiums for the market increased 8.8% when comparing the first two quarters of 2009 to the first two quarters of 2008. Liability insurance premiums reportedly grew by 17.8% and life insurance premiums reportedly grew by 3.5%.

- Total premiums grew 3.8% in the third quarter of 2009. The increase was led by growth in the life (10.9% growth) and accident and health (1,1% growth) lines, and tempered by a 4.5% decline in total auto insurance premiums.

Near the end of 2009, the Mexican Association of Insurers predicted that total premiums will have increased by 5-6.5% in 2009 and will increase an additional 7% in 2010.

Argentina

Results in the Argentine insurance market were mixed in 2009, as were predictions for the industry in 2010.

- Argentina's insurance regulator, la Superintendencia de Seguros de la Nacion reported that total premiums for the twelve months ending June 2009 were 6.2% higher than the previous 12 month period. In absolute terms, total premiums for the twelve months ending June 2009 were US$ 7.53 billion. June numbers also reflected 6% growth when compared to the prior June and 4.4% growth over May 2009. The advances were led by the automobile insurance sector, which grew 16.4% year over year.

- Around mid-year, Fitch Ratings issued its annual report on the Argentinean insurance market entitled "El mercado asegurador argentino: Resultados y perspectivas 2009." The report reflected significant turmoil in the market given the fluid political, economic and regulatory situation in Argentina, and noted in particular that "The global economic crisis, together with internal factors, has had a significant impact upon the market over the last year leaving it characterized by 'uncertainty.' Fitch further expressed concern that certain regulatory actions taken by the Argentinean insurance regulator, the Superintendencia de Seguros de la Nacion, as to valuation of insurance companies'

investment portfolios might be distorting the true value of those companies, including their liquidity and solvency. Nonetheless, Fitch noted the following:

- When comparing to the twelve months ending May 2008, the overall insurance market grew 6.1% over the last year.
- Penetration rates remain low, though the industry is becoming increasingly dependent upon the automobile insurance sector to drive growth.
- By comparison, the economic downturn has disproportionately impacted certain lines that had been recently gaining momentum, including agriculture, transport, life and pension insurance.

After four years of improving results as to capitalization and growth, Fitch predicts that the Argentine insurance industry will remain flat but stable in the coming year.

Chile

Results for the Chilean insurance industry were grimmer still in 2009. One of Latin America's most developed insurance markets, reflected in the region's highest insurance penetration rate, Chile most closely followed the types of results seen in many of the world's largest insurance markets.

- Due largely to lower life annuity sales, total premiums in the Chilean insurance market fell 12.3% for the first half of 2009 when compared to the first half of 2008. Total premiums for the first half of 2009 were US$ 2.89 billion. Life insurance premiums decreased by 16.5% (US$ 1.87 billion), with life annuity sales contracting by 37.9% (US$ 631 million). The downturn was not limited to the life sector, however, as the national and global economic downturn resulted in a 3.7% decrease in P&C premiums (US$ 1.02 billion), pulled down in part by a 32.4% decrease in engineering premiums. In a sign of the times, theft premiums rose 19.2%.

- The Association of Chilean Insurers confirmed that total premiums fell 12.3% when comparing the first half of 2009 to the first half of 2008. Total premiums for general insurance fell 3.7% to US$ 1.031 billion for the period, while life premiums fell 16.5% to US$ 1.867 billion. In particular, total premiums for All Risk Construction Coverage fell 49.9% for the period, reflecting the marked slowdown in construction in Chile since the economic downturn.

Nonetheless, near the end of the year, the Chilean Insurance Association released predictions that the country's insurance market will grow by 3.7% in 2010 and 6.7% in 2011. In particular, Jorge Claude, the president of the association, reportedly stated that the group expects life insurance premiums to grow 2.9% in 2010 and 5.8% in 2011. Mr. Claude reportedly stated that the insurance market predictions are based in part upon expectations that the Chilean economy as a whole will experience a recovery in 2010 and 2011.

2. The Lesser Known Opportunities: Peru, Colombia, Central America, Ecuador, Bolivia, Uruguay

In contrast to the mixed results seen in region's largest markets, some of the smaller, less publicized Latin American insurance markets saw impressive growth in 2009. Many of these local insurance industries are less tied to the global economy and wee, therefore, less impacted by the global economic slowdown. These nations also benefited from ample room for growth, given very low penetration rates still existing in many of the countries experiencing the greatest premium development.

Ecuador

Results from Ecuador consistently reflected double-digit premium growth of between 11% and 25%, with the life insurance sector growing particularly quickly:

- Total premiums in the Ecuadorian life insurance market increased 23.6% when comparing March 2009 to March 2008, totaling US$ 41.12 million for the month. More than 74% of those premiums were concentrated among the top ten Ecuadorian life insurers.

- According to a report by the local regulator, the Ecuadorian general insurance market has grown 16.08% when comparing June 2009 to June 2008.

- Total premiums for the twelve months ended July 31, 2009 reached US$ 937 million, a 17% increase over the twelve months ended July 31, 2008 (US$ 800.9 million). Retained premiums for the twelve month period increased by nearly 19%. The largest insurers in Ecuador by total premiums for the twelve months ended July 31, 2009 were Colonial, Equinoc, AIG, ACE, Sucre, Latina, Rio Guayas, Panam, Pichincha and Unidos. No insurer held more than 11% of the market.

- The Ecuadorian insurance market reportedly experienced an 11.0% growth in total premiums and a 7.2% growth in activity when comparing October 2009 to October 2008. Colonial maintained the largest share of the market as of October (14%), followed by Equinoccial (9%), AIG (5%), Latina (5%), Sucre (5%), Condor (4%), Panamericana (4%), Bolivar (3%), Atlas (3%) and Ecuasuiza (3%).

Although there is some concern that Ecuador's insurance industry may be held back by broader economic problems in the country in 2010, double-digit premium growth is expected to continue in the near-term.

Peru

Peru has increasingly been held out as an example of sound macroeconomic policy, and its insurance market reinforced that conclusion, reflecting over 20% growth rates in most month-over month comparisons:

- In the World Economic Forum's "Financial Development Report 2009," Peru was ranked number one in the world for macroeconomic prudence. The report states that the factors in determining countries' rankings on this index were real GDP Growth, deposit interest rate, inflation volatility and inflation level. On the World Economic Forum's overall Financial Development Index (FDI), Peru ranked forty-second, with positive rankings as to the stability of the country's financial and banking systems counterbalanced by poor rankings as to its institutional and business environments. Peru was the top-ranked Latin American country on the FDI at number 29, followed by Chile (31), Brazil (34), Mexico (43) Colombia (46), Argentina (51) and Venezuela (55).

- Comparing February 2009 to February 2008, total premiums for the Peruvian insurance market increased 8.05% from US$ 242.17 million to US$ 261.66 million.

- Peruvian insurance association Apeseg recently released figures indicating that the nation's insurance industry grew by 24.9% when comparing the first five months of 2009 to the same period in 2008. Total premiums for the period were US$ 695 million, led by 33.2% growth in general insurance premiums, including 50.8% auto insurance premium growth.

- The Peruvian insurance market reportedly registered total premiums of US$ 848.87 million in June 2009, up 20.2% from June 2008 (US $ 707.26 million). The fastest growing lines were reportedly auto (44.98%), compulsory auto (25.48%), non-auto liability (20.86%) and life (20.14%).

- Total premiums for the twelve months ended July 31, 2009 crossed the US$ 1 billion mark, reaching US$ 1.014 billion. This represents a nearly 15% increase in total premiums over the twelve month period ended July 31, 2008 (US$ 883.6 million). The lines with the greatest growth in total premiums were auto (38.33%), obligatory auto (21.38%), non-auto casualty (16.38%) and life (14%) and accident and health (13.34%). Meanwhile, total premiums for credit and surety increased only 1.4% for the same period. The largest insurers in Peru by total premiums for the twelve months ended July 31, 2009 are RIMAC, Pacifico, Mapfre, Positiva and Invita.

Given these results, as well as the nation's new microinsurance law designed to make insurance products available to Peru's huge lower class, there is every reason to expect continued high levels of growth in 2010.

Colombia, Uruguay and Bolivia

Colombia, Uruguay and Bolivia also saw very solid premium growth in 2009, with most month-over-month comparisons reflecting double-digit increases.

- Total net premiums for the Uruguayan insurance market reportedly grew 9.6% when comparing September 2009 to September 2008. For the twelve month period ending September 2009, the market reportedly grew by 6.5%.

- Total premiums for the previous twelve months as of the end of September 2009 reached US$ 5.35 billion, up US$ 462.16 million (9.46%) over the twelve month period ending September 2008. The top ten insurers in the market by total premium are Suramericana, Bolivar, Colseg, Mapfre, Liberty, Alfa, Previsora, BBVA and QBE.

- Total premiums in the Bolivian insurance market in January 2009 reportedly increased by 16.6% when compared to January 2008, totaling US$ 21.89 million for the month.

Central America

Reversing a trend seen in previous years, the Central American markets actually outperformed the South American markets in the first half of 2009, growing 19.4% compared to 7.3% when comparing the first half of 2009 to the first half of 2008. The second half of the year saw a greater impact upon the Central American markets of the global economic crisis, particularly as is has affected the United States. As a result, growth numbers for the region slowed and even turned negative in several Central American countries:

- The Superintendencia de Bancos y Otras Instituciones Financieras (SIBOIF) reported that Nicaragua saw total premiums grow 5.1% when comparing the first nine months of 2009 to the first nine months of 2008. This growth was down significantly from 2008, however, when the country saw 8.6% premium growth year over year. Total premiums for the first nine months of 2009 totaled US$ 83.3 million, with INISER (up 7.4%) and America (up 3.2%) sharing more than half of the market's total premium. Mundial's total premiums from the market are down 25.3% for the same period, while Metropolitana's are up 26.0%.

- The Superintendencia del Sistema Financiero (SSF) reported that total premiums in El Salvador fell 0.2% for the first nine months of 2009 compared to the first nine months of 2008, falling to US$ 304.2 million. These results mirrored those from August 2009, and are in stark contrast to the 11.4% year over year growth in total premiums seen in 2008. Indeed, prior to the global economic crisis, El Salvador had seen total premium growth rates of over 20% in January and February of 2008.

- The Superintendencia de Bancos (Superban) reported that total premiums in Guatemala fell 2.2% for the first nine months of 2009 compared to the first nine months of 2008, falling to US$ 339.6 million. This reversed a modest growth trend earlier in the year (4.2% as of March 31 and 2.8% as of June 30) and represents a significant fall-off from 2008, when total premiums in the market grew 6.7% year over year.

As economic conditions begin to recover, so should the premium growth numbers in Central America. Given the low levels of insurance penetration in the region, we believe the lower numbers in the second half of 2009 are better understood as a temporary condition rather than a long-term trend.

Taken as a whole, the growth numbers from these "other" Latin American countries make clear that significant additional opportunities exist for companies willing to look beyond just the largest and best-established of the region's insurance markets.

C. Doubling Down: Companies Increase Latin American Investments

Most predictions are that insurance industry growth in Latin America will continue well into the future as the region's economies recover from the global economic crisis more quickly than many other established and emerging markets. Not surprisingly given recent growth numbers and such positive predictions, interest in the region's insurance markets remained at an all-time high in 2009. Many foreign companies have taken their first steps into the region in the past year, while the companies already active in Latin America have nearly unanimously looked to increase their presence. Even local companies have increasingly begun to look to other Latin American countries for potential expansion opportunities, seeking authorization as foreign reinsurers and even establishing local operations across borders from their home jurisdictions. Below we highlight just a few examples:

- ACE Latin America reported that its total premiums in the region in 1Q09 were up 11% from 1Q08, and that it's recurring net income was up 40% by the same comparison. The company also reported that life insurance premiums from Latin America increased 85% when comparing 3Q '09 to 3Q '08, with double-digit net written premium growth for all lines in both Brazil and Mexico for the same period. Near the end of 2009, ACE, through its local subsidiary ACE Resseguradora, also received authorization as the sixth local reinsurer in the Brazilian reinsurance market, joining XL Re, Mapfre, Munich Re, J. Malucelli Re and IRB-Brasil Re as the only reinsurers in the Brazilian market unfettered by cession limits and/or rights of first refusal. Jorge Luis Cazar, the CEO of ACE Latin America, reportedly stated to BN Americas that the company is considering expansion into additional countries in the region, including in Central America.

- BBVA reported that net profits from its Latin American banking, pension and insurance operations increased by 19.5% 1Q09 over 1Q08. Eduardo Fuentes, CEO of BBVA Pensiones y Seguros, reportedly also stated to BN Americas that BBVA is looking to expand its insurance operations in the region, in particular through a recently renewed and "reinforced" insurance product distribution agreement with Mapfre.

- Brazilian reinsurance company J. Malucelli Re received foreign reinsurer authorization in Paraguay, Ecuador and the Dominican Republic and stated that it expected to receive authorization shortly in Argentina, Mexico and Costa Rica. According to its Technical Director, Luiz Alberto Pestaña, these regulatory authorizations are just the beginning of J. Malucelli Re's plan to become the largest warranty reinsurer in Latin America by 2015. Formed in 2008 with the opening of the Brazilian reinsurance market to private competition, J. Malucelli was originally conceived of as little more than the "captive"

reinsurance arm of the related Brazilian insurance company. When asked about the change in strategy, Pestaña reportedly cited a number of "unexpected developments," including Swiss Re's decision to not compete in the warranty space and the explosion of the Brazilian reinsurance market.

- Max Capital Group Ltd. announced the establishment of its Latin American reinsurance operations in Latin America through representative offices in Rio de Janeiro, Brazil and Bogota, Colombia. The company also announced the hiring of Carlos Caputo and Sonia Galvis, both formerly of XL Re Latin America, as the CEO and Chief Underwriting Officer, respectively, of Max Capital's Latin American operations. Max Capital stated that it will operate in Brazil as an admitted reinsurer through its Lloyd's syndicate. Marston Becker, President and Executive Director of Max Capital, indicated in a company press release that the move is based upon the company's interest in Brazil in particular, but also noted emerging opportunities in Central America, Colombia, Ecuador, Panama, Peru, Chile and Argentina.

- QBE Insurance Group stated that the company expects its gross written premiums from Latin American operations to have grown by 7.14% for the year 2009. The company further reported that each of its Latin American operations, which include both direct insurance and reinsurance and span Mexico, Argentina, Brazil and Colombia, was individually profitable. QBE Americas CEO John Rumpler also commented that the company will be considering Latin American acquisitions in the coming year.

- Mapfre's Latin American operation, Mapfre America, announced that its net profits increased 25.0% and its total premiums 20.3% when comparing the first half of 2009 to the first half of 2008. Mapfre (Spain) and Grupo Mundial (Panama) also agreed to form a joint venture that would constitute Central America's largest insurance company. The resulting venture would bring together Mapfre's subsidiary in El Salvador and Grupo Mundial's operations in Panama, Costa Rica, Nicaragua, Honduras and Guatemala.

- Willis completed the purchase of the remaining shares in its Argentinean units, Herzfeld Willis SA and Willis SA. Eugenia Paschoal, CEO of Willis Latin America reportedly commented that "We have taken full ownership of Willis Argentina because we see excellent growth prospects in this country and are committed to becoming the leading broker there. We have ambitious plans for Latin America as a whole and a strong foothold in Argentina will help us maintain the double-digit growth momentum we have built up in the region."

- Near the end of the year, Zurich, Royal Sun Alliance and a host of other companies (including even Korea Re) announced intentions to expand their insurance and reinsurance business in Latin America.

Although such expansion plans by various foreign and local companies will of course bring greater competition in the Latin American markets, significant room for growth and innovation remains in the region, where many lines of insurance common in more developed markets remain largely untapped and where insurance penetration rates generally remain below 3% of GDP.

D. Potential Pitfalls: Anti-Corruption, Regulatory Diligence, Compliance Issues

Although these topics will be covered in significantly more detail below, it is important to mention here, in the context of these impressive growth numbers and announcements of companies' expansion plans in the region, that insurance and reinsurance business in Latin America is strictly regulated by the local Latin American governments and by many companies' home nations. Failure to understand and abide by such regulation can lead to sanctions against companies and their personnel that range from suspension or revocation of authorization, significant fines and even jail time for responsible company personnel.

In the last year, we have seen several Latin American countries take steps to remind local and foreign companies of the regulations governing insurance and reinsurance activities in their jurisdictions. These efforts have ranged from an enforcement action in Argentina concerning unauthorized business with a foreign company, to an increase in investigations of "gray market" practice in Costa Rica, to a carefully-worded reminder issued by the Mexican authorities.

We have also seen anti-corruption enforcement remain a point of emphasis for U.S. and European governments, as well as local Latin American regulatory bodies. For example, many of the most significant investigations, suits and settlements under the United States' Foreign Corrupt Practices Act continue to arise out of companies' activities in Latin America.

It is therefore imperative that the regulatory "niceties" not be lost in the rush to take advantage of the opportunities discussed above. Indeed, failure to comply with initial regulatory requirements and to maintain appropriate procedures to ensure compliance with home, local and international schemes could result in a potentially profitable opportunity quickly becoming a significant liability.

II. Major Insurance and Reinsurance Developments in 2009

A. Brazil and Costa Rica: Growing Pains in Newly "Opened" Markets

In last year's webinar whitepaper, we discussed in detail the regulatory framework governing the openings of the Brazilian reinsurance market (April 2008) and the Costa Rican insurance and reinsurance market (August 2008) to private and foreign competition. At the time, we stressed that both "openings" had their limitations, as to which there was some hope of liberalization in 2009. Therefore, we will here check-in briefly on the two markets to assess their current circumstances.

1. Brazil

a. Background: A Managed Opening

Last year, we discussed in detail the operation of "cession limits" and "right of first refusal" such that the "opening" of the Brazilian reinsurance market clearly had its limits. Even after the "opening," certain clear benefits remained in favor of the government-owned former monopoly holder and other insurance and reinsurance companies willing to establish locally. In 2009 and

early 2010, several regulatory changes occurred to affect both of these requirements, some planned, others instituted in reaction to emerging market conditions:

- Brazilian law previously imposed a 10% limit on total annual premiums that a local insurer could cede to an occasional foreign reinsurer. In April 2009, however, SUSEP relaxed that limitation significantly, but only as to two lines of business. By Resolution No. 203/09, published in the Diario Oficial on April 29, 2009, SUSEP raised the cession limit to occasional foreign reinsurers to 25% for surety and petroleum risk business. Resolution No. 203/09, which became effective as of its publication date, did not indicate the reason for the special treatment of the surety and petroleum risk lines or indicate whether or not any similar relaxation of the cession limit can be expected in any other lines. Despite the lack of official comment, the resolution is likely the result of pressure from the local market due to insufficient reinsurance capacity for petroleum risk and surety lines from local and admitted insurers. The move brought some comment from local observers that cession limits should be relaxed as to other lines of insurance as well. No such further relaxation of cession limits occurred through the end of 2009, but raises interesting issues about the relationship between lobbying efforts by local companies and the interests of foreign reinsurers.

- As of Sunday January 17, 2010, foreign reinsurers are now permitted access to a larger portion of the Brazilian reinsurance market as local reinsurers' right of first refusal was reduced from 60% of risks in the market to only 40%. The change was automatically triggered by the passage of three years since the enactment of Supplemental Law 126, which first opened the Brazilian reinsurance market to foreign competition. Among the issues to watch in regard to this fundamental change in the market (more than half of risk was previously subject to the right of first refusal as opposed to less than half as of January 17), is the effect upon the profitability and competitiveness of IRB Re-Brasil and the other local reinsurers.

- In the Fall of 2009, SUSEP also released Circular No. 392 confirming the requirements for purchase of foreign insurance and which lines of insurance may be purchased in foreign currency. SUSEP confirmed that foreign insurance may not be purchased by a Brazilian company unless it has previously received ten (10) declinations from Brazilian insurance companies. In the case of lines of business in which fewer than ten Brazilian insurers offer cover, the Brazilian company must obtain declinations from each of the Brazilian insurers offering such cover. SUSEP also reiterated that the proposal rejected by the local insurers must mirror the proposal presented to the foreign insurer. Circular No. 392 also confirms that certain lines of insurance may be purchased with foreign currency, including the following: export credit; aviation; satellite; international transport; marine hull (with some limitation); petroleum risks; certain engineering risks concerning public projects; and certain types of civil responsibility, including Directors and Officers liability insurance, "green card" (obligatory insurance of owners and drivers of vehicles), international transport liability, product liability and recall insurance concerning foreign products and hangar cover.

In an unrelated, but interesting move, one expressly designed to stimulate competition and reduce prices for personal lines insurance, the Brazilian government removed the previously

existing prohibition against life insurers selling home and personal casualty insurance. The regulatory change is the first step in the implementation of the "Minha Casa, Minha Vida" (My House, My Life) program created by Article 79 of Law No. 11.977. Further implementing regulations are expected to be published in the Diario Oficial de Uniao in the coming days. This initiative is further evidence of SUSEP's willingness to make fundamental regulatory changes where supported by local players as representing a benefit for local consumers and companies.

Taken together, these regulatory pronouncements indicate that any further liberalization of the Brazilian insurance and reinsurance market is likely to come slowly and in response largely to local market realities rather than foreign pressure. SUSEP appears committed to its position regarding 10 declinations before accessing direct foreign cover, which essentially acts as a barrier to any real level of excess and surplus-lines type insurance in Brazil. Furthermore, no further liberalizations are mandated by the existing reinsurance regulatory framework and SUSEP has made no indication that it intends to undertake any further relaxing of cession limits or the right of first refusal. Therefore, absent a need dictated by the local insurance and reinsurance market, any further regulatory changes in favor of foreign insurers and reinsurers seem unlikely in the near term.

b. The Role of IRB-Brasil Re

Another question surrounding the opening of the Brazilian reinsurance market was what impact it would have upon the IRB-Brasil Re, which formerly held a monopoly over the industry. Early in 2010, the president of IRB-Brasil Re, Eduardo Nakao, reportedly commented that the reinsurance market opening had had less impact than expected, with the IRB maintaining 90% of its business since the opening in April 2008. Nakao reportedly further stated that the IRB maintained a significant market advantage based upon its history and experience in the market and that the company intended to compete with recent foreign entrants to the market by improving customer service and developing new and tailored solutions. The confident declaration was a bit misleading at the time given that, although the market was technically opened in April 2008, the IRB continued to benefit from a marked advantage through the end of December 2008 in that it was permitted to retrocede to any foreign reinsurer, while other participants could only retrocede to reinsurers authorized by the Brazilian regulator.

Nonetheless, the IRB did actively fight to maintain its dominant market share in 2009, releasing a variety of new products and seeking to compete with its new foreign competitors on price and service. In the first half of the year, the IRB released three new products providing personal health and provide coverage for daily expenses during hospital stays, discounts for good health and an early-pay-out in the event of serious illness, respectively. The company also announced plans to release new products in the areas of credit, D&O, energy and mortgage lending, as well as to expand its agricultural reinsurance offerings. In conjunction with its announcements, the IRB continued to indicate that it intended to continue to fight aggressively to protect its market share against the new crop of foreign competitors. Asked about the released health products, Mr. Nakao reportedly stated that "IRB understands that it's natural to lose relative market share, given the entrance of new competitors, but [it] can't ignore the growth in [the personal lines] segment, which comes as a result of better income distribution and pent-up demand for some products."

Indeed, the IRB was largely successful in 2009 in maintaining its market share, seeing its position decline only to 90% of the local market in 2008, 80% in the first five (5) months of 2009 and 78.5% after the first 8 months. These efforts, however, appear to have come at a significant negative impact to the IRB's bottom line:

- In the first half of 2009, the IRB's earnings totaled only US$ 25.6, down 55.7% from the first half of 2008. This decline occurred despite the IRB's earned premiums increasing 6.24% for the same period. The decline was largely attributable to the company's increased loss ratio, which reached 89.1% for the period, nearly 20 points higher than its loss ratio for the first half of 2008. The IRB attributed the increased loss ratio to several large claims related to factory fires and industrial engineering.

- For the first 8 months of 2009, the IRB reported that its profits were down 58.5% when compared to the same period in 2008. A major contributor to the trend was the tremendous growth in claims seen by the IRB. Over the first eight months of 2009, IRB's claims totaled R$ 910 million, up 31.4% over the first eight months of 2008. By comparison, IRB's earned premiums grew only 1.9% over the same period. Of the other local reinsurers in the Brazilian market, Munich Re Brazil led the way with 9.3% of the local market, followed by J. Malucelli Re (5.7%), XL Re Brazil (3.7%) and Mapfre Re Brazil (2.7%).

In early 2010, reports emerged that the Brazilian federal government has decided to reduce its control of the IRB in a move that some have been referring to somewhat misleadingly as "privatization" of the entity. The government would reportedly maintain significant control of the entity through a "golden share" arrangement, but would reduce its equity position in the entity below the majority ownership that it currently maintains. Furthermore, under the reported plan, the federal government's majority interest in IRB Re Brasil would be transferred to the Banco do Brasil, which is also federally-owned. It is not at all clear that the private interest in the entity, currently at 41% split among a number of private insurance companies, would change at all, though there is some discussion in media reports of "greater private participation" in the entity in IRB Re Brasil in the future.

Despite these ongoing discussions about Banco do Brasil taking a position in IRB, the negative earnings/profit results heightened perceptions that the IRB may not be able to profitably compete in the long run with foreign competitors in the absence of a significant overhaul of its underwriting practices. The central question is whether shifting of control to Banco do Brasil will lead to such changes aimed toward maintaining profitability rather than simply market share.

c. Merger Mania

Another trend in the Brazilian market that continued in 2009 was high numbers of mergers and cooperative agreements. These transactions took principally three forms, each interesting for their own reasons: (1) mergers of local companies; (2) acquisition of full or partial interests in local companies by foreign interests; and (3) cooperative agreements between foreign companies and local companies.

In the first category, local insurers combined to increase their reach and diversity to compete in the market and local banks acquired local insurance interests in order to participate in the booming insurance industry. In addition to the Banco do Brasil/IRB deal discussed above, another example is the Porto Seguro/Itau Unibanco deal:

- One of Brazil's largest insurers, Porto Seguro S.A. ("Porto Seguro"), and one of the country's leading private banks, Itau Unibanco Holding S.A. ("Itau Unibanco"), agreed to merge their residential and auto-insurance operations. The merged entity, which will retain the Porto Seguro name, will be controlled by a new holding company to be called Porto Seguro Itau Unibanco Participacoes (PSIUPAR). It will become Brazil's largest auto and residential insurer, with more than three million auto policies and more than one million residential policies, and the third largest Brazilian insurer overall, behind Itau Unibanco's life-insurance unit and the insurance units of private bank Bradesco. The merger occurred despite the fact that Porto Seguro had just ended similar merger negotiations with Bradesco in a dispute over who would control the venture. Under terms of the merger agreement, the current controlling shareholders of Porto Seguro will hold a 57% stake in PSIUPAR. Itau Unibanco will hold the remaining 43%. PSIUPAR will retain a 70% stake in Porto Seguro, with the remaining 30% to be made available to the market. Announcement of the deal promptly drove up the share price of rival insurer Sul America on speculation that it would be involved in the next major Brazilian insurance merger, possibly with Bradesco.

In the second type of transaction, foreign companies acquired full or partial interests in local insurance companies so as to enter the market without having to build their Brazilian operations from scratch. Two examples are Sompo's acquisition of a 50% interest in Maritima and Santander's

- In May 2009, Sompo Insurance Japan Inc., through its subsidiary Yasuda Seguros S.A., purchased 50% of Maritima Seguros S.A., Brazil's tenth-largest insurer by premium, for US$ 178.5 million. The transaction represents Sompo's largest-ever investment in an overseas insurance company. The company's press release recognized that among the primary benefits of the acquisition for Sompo was Maritima's "well-established brand in Brazil and a robust sales network of brokers and banks."

- In March 2009, Spain's Santander bank purchased the remaining 50% of Real Tokio Marine Vida e Previdencia for US$ 284 million. Santander already owed the other 50% of the company through its Brazilian subsidiary ABN Amro Brasil Dois Participacoes. Santander also announced that it intends to invest some US$ 1.25 billion in its banking and insurance operations in Brazil in 2009 and 2010.

In the third type of deal, foreign companies entered into agreements with local companies that will permit the foreign companies to leverage local companies experience and name recognition in the local market, while permitting local partners to benefit from the international experience and larger stables of products offered by the foreign companies. These transactions also some times permitted the foreign companies to overcome certain Brazilian regulatory hurdles and

limitations, no small factor in a system that maintains an impressive level of bureaucracy. The following are two examples:

- Local Brazilian reinsurer JMalucelli Re and foreign admitted reinsurer Hannover Life Re announced early in 2009 that they had entered into a cooperation agreement to offer life and health reinsurance in the Brazilian market. The move had reciprocal benefits for the two companies: (1) Hannover Life Re can now, through the relationship, overcome certain of the market share limitations imposed by Brazilian regulations in the form of cession limits for foreign reinsurers and a "right of first refusal" in favor of local reinsurers; and (2) JMalucelli Re, which previously operated only in the area of guarantee reinsurance, will receive substantial know-how and technical support from Hannover Life Re in developing its life and health reinsurance business.

- In December 2009, MAPFRE and Banco do Brasil announced plans to enter a strategic alliance to cooperate in the two entities' personal, general and auto insurance businesses in Brazil.

As a whole, these transactions reflect the tremendous interest in the opportunities evident in the Brazilian insurance and reinsurance market, and reflect a trend we expect to see continue into 2010 and beyond.

d. Looking Forward

As noted above, Susep predicted near the end of 2009 that the Brazilian insurance market will grow by an additional 16-20% in 2010. As discussed below, Brazil is expected to implement microinsurance legislation in 2010 that would make insurance products available to more than 20 million new customers. A number of other broader economic events during 2009 indicate that healthy growth can be expected in the near and long term:

- After some stagnation in 2009, the overall Brazilian economy is expected to see a recovery in 2010. Any concern that the broader economy might hold back the growth of the nation's insurance market should therefore abate.

- During 2009, the Brazilian government announced a series of large infrastructure development projects representing some of the most ambitious public improvement initiatives in the country's history. These projects will entail unprecedented levels of construction work in the coming years.

- In October, Brazil was named as the host of the 2016 Summer Olympics, coming almost two years to the date from the announcement that the nation had been chosen as the host of the 2014 FIFA World Cup. Hosting these events will likewise require tremendous public and private investment in infrastructure and tourism.

Given these factors, and Brazil's already dominant position in the Latin American insurance market, there is little doubt that the country will remain a principal focus and entry point to the region for many foreign companies for years to come.

2. Costa Rica

a. Background: CAFTA Ends Monopoly

As discussed last year, in August 2008, Costa Rican President Dr. Oscar Arias Sanchez signed into law Costa Rica's new Ley Reguladora del Mercado de Seguros, thereby ending the Instituto Nacional de Seguros' (INS) more than eighty-year-old monopoly over the country's insurance industry. The new law and subsequently-issued regulations permit domestic and foreign companies (with local branches) to operate insurance and reinsurance business in Costa Rica, subject to minimum capital (US$ 3 million for personal lines insurers and US$ 10 million for reinsurers) and other financial and technical requirements.

Despite the new laws and regulations, concern has persisted that foreign companies would continue certain grey market practices rather than comply with the new regulatory scheme. Halfway through 2009, Eduardo Recinos, Insurance Director for Fitch Centroamerica, reportedly commented that the true volume of insurance sales in Costa Rica is obscured by illegal sale of foreign insurance, and that he does not expect either the opening of the Costa Rican insurance market to private competition or the creation of an insurance regulator to eradicate the problem. Mr. Recinos further reportedly commented that the lack of competition in the market due to the long-standing government monopoly, together with the relative wealth and sophistication of the country's population, has created a grey market in foreign insurance that may be difficult to eliminate. Nonetheless, the market has moved forward toward a more competitive atmosphere, while the developing regulatory authorities have warned of increased vigilance concerning grey market practices now clearly prohibited by Costa Rican law.

At the end of 2009, Costa Rica's financial services supervisor, the Consejo Nacional de Supervision del Sistema Financiero (Conassif) unanimously selected Javier Cascante as the head of country's new insurance superintendency, the Superintendencia General de Seguros (Sugese). Mr. Cascante previously served as the superintendent of the nation's pensions superintendency (Supen), which has been responsible for overseeing the development of the nation's insurance market pending the creation of the insurance superintendency. Mr. Cascante will take his place at the head of Sugese on January 1, 2010. He can be expected to drive forward the implementation of the remaining necessary regulations governing the market, as well as step up enforcement activities against non-conforming insurance and reinsurance companies.

b. New Faces

2009 brought several new faces to the Costa Rican market, as well as one familiar face. Seguros del Magisterio, S.A. quickly became the first company authorized to compete with the INS, receiving authorization to all sectors of the Costa Rican population. Prior to the liberalizing legislation, the company was authorized to sell only life insurance and only to teachers and their relatives under an exception to the government monopoly. Seguros del Magisterio may eventually sell a variety of insurance products, but is expected to initially offer only medical and life insurance policies. Seguros del Magisterio officials interviewed in La Nacion predict that the introduction of competition will make insurance accessible to people who have until now remained uninsured.

Later in the year, American Life Insurance Company (Alico) and Grupo Mundial received conditional authorization to operate in Costa Rica. Neither company has yet received authorization to actually sell insurance in the country as of the writing of this paper, each still needing to satisfy certain technological and marketing control requirements. Upon receiving full authorization, both companies will be permitted to sell personal lines of insurance in the country, including life, health and accident insurance. At least four other foreign insurance companies have indicated an interest in entering the nation's insurance market, reportedly including Atlantic Southern Insurance of Puerto Rico and ASSA Compania de Seguros of Panama.

In another move likely to eventually impact the Costa Rican market, Mapfre (Spain) and Grupo Mundial (Panama) agreed to form a joint venture that would constitute Central America's largest insurance company. The resulting venture would bring together Mapfre's subsidiary in El Salvador and Grupo Mundial's operations in Panama, Costa Rica, Nicaragua, Honduras and Guatemala. The combined entity would reportedly currently collect US$ 223 million in annual total premium. Although Grupo Mundial itself would have represented a formidable competitor for the INS, Mapfre has a regional Latin American platform that rivals any insurance company and will pose an even greater threat to the INS' dominant market position.

Finally, near the end of the year, Brazilian reinsurance company J. Malucelli Re indicated that it expected to shortly receive foreign reinsurer authorization in Costa Rica. Although it is somewhat unclear given the nature of the Costa Rican regulations exactly what was meant by this announcement, it is clear that J. Malucelli intends to offer additional competition in Costa Rica's reinsurance market.

c. The Future of the INS

Much like the IRB in Brazil, it will be interesting to see how the INS can compete in a post-monopoly Costa Rican insurance and reinsurance market. The INS clearly benefits from tremendous history and name recognition in the country, but it remains to be seen whether the company can compete with other private insurers on price, product diversity and service. Much like the IRB, however, the INS has taken steps to attempt to compete on these bases rather than simply resting on its familiarity to the market.

In October 2008, as it prepared to compete in the country's newly de-monopolized insurance market, the INS announced the creation of four new insurance entities: INS Internacional, INS Servicios, INS Vida and INS Comercializadora. The move was part of an effort by the INS to restructure, retain customers and grow its business in the face of new competition. INS Servicios is to serve an auxiliary function, enabling INS to restructure areas such as auto/motor insurance. Efficiency savings achieved through INS Servicios will be fed back to customers through reduced policy premiums, according to local press reports. INS Vida will focus on the life insurance sector, which had been largely neglected during INS' time as the monopoly provider. INS Comercializadora will be the sales arm of INS, offering its range of products to the market. INS has also stated that it may enter the catastrophe risk market, offering insurance on state-owned assets at first.

The creation of INS Internacional reflected the INS' understanding that the new laws permitted it to operate in foreign markets. INS Internacional was to manage such overseas operations. The

INS identified the Caribbean and other Central American markets as its first targets and set aside US$ 100 million for potential foreign operations. It even later announced its intent to enter each of the Central American markets in 2009. However, a series of conflicting regulatory decisions raised questions about whether the INS was in fact authorized to carry on operations in foreign markets, disrupting the INS' acquisition of a Nicaraguan insurer and putting any further foreign discussions in limbo. In November 2009, the Superintendencia de Pensiones (Supen), the interim regulator of the Costa Rican insurance market, issued an opinion stating that the Instituto Nacional de Seguros (INS) and its component entities are not permitted to engage in insurance or reinsurance business outside of the country, whether by acquisition, establishment or joint venture. Given the uncertainty, the Executive President of the INS, Guillermo Constenla, subsequently stated that the company would not actively pursue any foreign investment. Prior to the current debate, some commentators had maintained that international expansion to achieve diversity and volume would be key to the INS' ability to compete with private (especially foreign) competitors.

In December 2008, the INS announced the launching of 17 new insurance products. The new products, to be marketed and sold through public and private banks, include various personal lines policies, such as a family protection policy and a cancer coverage policy. The family protection policy offers coverage for food, housing, education and transport for surviving family members, while the cancer policy provides coverage for diagnostics, funeral expenses and hospitalization. Constenla reportedly commented that the new products were chosen because the INS expected new competitors entering the market to offer such products. HSBC Bank, which has 38 branches and 200,000 accounts nationwide began selling the policies in early 2009.

In April 2009, as permitted by the new regulatory scheme, the INS moved to diversify its investments in an effort to seek better returns and thereby improve its competitiveness. To that end, the INS announced two agreements with the Costa Rican electrical utility, the Instituto Nacional de Electricidad (INE), to invest in two bond offerings by the INE. The INE bonds are intended to fund the expansion of and improvements to the national electrical system. Mr. Constenla reportedly commented as follows regarding the new agreements: "The investment that we are now making in the ICE is part of the diversification that we are undertaking in our investment portfolio. More than that, it represents a contribution to the Costa Rican population, given that we are investing some of our capital in the public works infrastructure in an area as sensible as production of electricity that benefits the country."

Taken together, these initiatives make clear that the INS intends to vigorously defend its market share by diversifying and improving its product offering, overhauling its investments strategies and restructuring its operations to more effectively compete with private and foreign companies. It remains to be seen, however, whether the INS will be hamstrung by its shortcomings in the following areas: (1) international reach -- should the regulatory prohibition on foreign activities remain in place, the INS will be at a disadvantage to multinational insurers in that it will be uniquely exposed to natural disasters and economic problems in Costa Rica; (2) service -- one of the recurring complaints about the INS, particularly in the auto sector, has been poor service, an issue not clearly addressed by any of the initiatives discussed above; and (3) pricing -- another prevalent complaint about the INS in past years has been the perception that it has, protected by the monopoly, artificially inflated premiums in various lines of business, a practice which the INS will clearly be unable to successfully continue in the face of private competition.

B. Venezuela: Government Encroachment in a Booming Market

Venezuela remained an enticing and daunting jurisdiction in 2009, as the government continued to intervene in the financial services and other major industries and the insurance industry faced the prospect of a new comprehensive insurance law. Counterbalancing these concerns was the country's high premium growth rates, buoyed by untapped demand, petroleum-related industry and an economy with little dependence upon the struggling U.S. and European markets. As a whole, Venezuela remained a study in extreme balancing of potential risk and reward.

1. New Insurance Law

During 2009, increasingly dire predictions came out of Venezuela concerning the contents and potential impact of a proposed comprehensive new insurance law containing more than 300 new articles governing the authorization of insurers and reinsurers, approval of products and regulation of market conduct. The stated goal of the legislation was consistently promoted by the government as the elimination of past abuses in the market and the mandating of fair treatment of the general population. Not surprisingly, the proposed solutions involved further limitations upon private, and particularly foreign, insurers and reinsurers. The comment period on the bill passed during 2009, and many expected the bill to pass the legislature before the end of the year. Nonetheless, as of the writing of this whitepaper, the law has still not been enacted.

As to foreign insurers and reinsurers, the law contains a prohibition against doing business with such entities as to Venezuelan risks in the absence of authorization of the foreign entities or approval by the Venezuelan authorities on a surplus lines basis. Of far greater concern, however, the proposed legislation provides for policy-by-policy review by the nation's insurance regulator to ensure that premiums charged are "fair." Given the government's greater involvement in the insurance industry, discussed in further detail below, the potential for mischief is nearly endless.

In addition, in December 2009, the government announced that insurers would be required during fiscal 2010 to pay a "special contribution" tax of .30% of their total net premiums for 2009.

2. Nationalization of Banks/Insurers/Insured Assets

Nationalization of insured assets remained a concern in Venezuela in 2009, particularly in petroleum sector. In June, London's marine insurance market announced that it had withdrawn maritime war-risk coverage for Venezuela (including Lake Maracaibo), as well as the nation's "Exclusive Economic Zone," which stretches up to 20 nautical miles off the country's shores. The move came after the Venezuelan government expropriated more than 300 service vessels and more than 70 gas processing units belonging to foreign companies, including Tidewater, Inc. and Exterran Holdings, Inc. The move represented the first time in some twenty years that a South American nation has been excluded from maritime war-risk coverage. It should be noted that the move did not block London underwriters from charging additional premium to reinstate coverage as to the affected area.

Government intervention in the financial services sector also became of growing concern in Venezuela in 2009. In May, the Venezuelan government nationalized Banco de Venezuela, the local subsidiary of Grupo Santander and the third-largest bank in the country. In December

2009, the Venezuelan government proceeded to nationalize two small banks, Confederado and Bolivar Bank, and liquidated two related firms, Banpro and Canarias, purportedly due to violations of the country's banking laws. The government has also placed a number of other banks under investigation, including Central Banco Universal, Baninvest and Banco Real. In addition to the banks nationalized this year, the Venezuelan government already controlled Banfoandes, Banco del Tesoro, Banco Industrial and Banco Agricola, which themselves represent approximately 25% of the country's deposits.

As part of its nationalization of these banks, the Venezuelan government took control over the entities' related insurance operations, including Seguros Premier. In addition, the government nationalized private insurer Seguros La Previsora (the country's fourth-largest insurer) in December of 2009, asserting that the company was two months behind on its obligations to certain insured public institutions. Finally, in the last days of 2009, the Venezuelan regulator authorized the creation of a state-owned insurance and reinsurance company named Bolivariana de Seguros y Reaseguros. The government has stated that the new company's initial role will be to cover risks related to the nation's international agreements. Combined with the impending new insurance law and the recent government seizures, however, there is little reason to believe that the government will not soon became a major player in the Venezuela's private insurance market.

3. Double-Digit Growth

The only reason that Venezuela remains attractive despite these issues is because premium growth in the country remained extremely strong in 2009. For the year, growth rates remained between 20% and 40% depending upon the periods compared, with premium growth nearing and even topping 50% in a number of different product lines. Premium growth reports consistently placed Venezuela among the fastest growing markets in Latin America in 2009, generally ranging between 20 and 40% annual growth. These bottom-line numbers continued to result in foreign companies navigating the existing and developing hurdles to success in Venezuela, with new companies entering the market in 2009 and many others continuing their business in the country.

C. Microinsurance

Approximately one-fourth of Latin America's 569 million residents live on less than $2 per day, and many Latin Americans do not have any type of insurance. Recent trends involving microinsurance, however, may begin to ameliorate the previously intractable problem of low insurance penetration in the near future.

Microinsurance, somewhat analogous to but less well understood than microfinance, refers to insurance products characterized by very low premium and/or low coverage limits. Other than the size of the policy, microinsurance operates in very similar manners to standard insurance sold throughout the world. During the last few years, several international insurers have begun to sell microinsurance products, very often through a philanthropic arm of the corporate entity. They are not, however, the only providers of microinsurance, as there are many non-governmental organizations, community-based organizations and informal microfinance groups that sell

microinsurance products. Microinsurers are writing several types of insurance, including funeral product insurance, agriculture insurance, health insurance and life insurance.

There are some notable differences between microinsurance and standard insurance. Microinsurance policies are generally written in simple language and have few, if any, exclusions. Microinsurers generally attempt to simplify the claims handling process so that there are rarely disputes or complex investigations before claims are paid. Premiums are often paid in sporadic installments because of the potentially volatile cash-flow of the insureds. Microinsurance products are often sold in locations where they are guaranteed to garner the attention of the market. For example, some supermarkets in South Africa sell funeral insurance and insureds can pay the first premium as they pay for their meat and produce.

A number of international insurers, including Chartis, Zurich, Allianz and Swiss Re, sell microinsurance products in various parts of the world. According to various reports, these insurers have created microinsurance products to give the companies a broader platform in the various markets and in order to be the primary provider of insurance to the individual microinsureds as they move into the middle class and begin to purchase more traditional insurance products. It is too early to tell, however, whether this strategy is proving successful and whether microinsurance itself can become a profitable business line.

1. Legislative Initiatives

Peru's insurance regulator, the Superintendencia de Banca, Seguros y AFP ("SBS"), announced midway through 2009 that it had completed its drafting of new proposed regulations regarding microinsurance, which was later passed after a comment period. Armando Caceres, the Adjunct Superintendent of Insurance, reportedly stated that "the intention of [the project] is to generate a more flexible regulatory structure that permits the spreading of group risks, for example, by the general public without cost restrictions." Among other things, the new regulations remove maximum costs restrictions for microinsurance and permit additional modes of distribution for microinsurance products.

Brazil continued to move toward passage of comprehensive microinsurance legislation, although its progress was typically halting. In the Fall, SUSEP indicated that the timeline for microinsurance legislation had been further extended. The bill, which had been previously delayed from June 30 to September 30, was postponed for at least another 5 to 6 months. Then, in the last days of 2009, Susep's superintendent, Armando Vergilio dos Santos, stated that he expected the country's proposed microinsurance law to be approved before April 2010. Although dos Santos indicated that the act ultimately passed may be the version currently before the Congress or a revised law to be proposed by the executive branch, he stated that "the important thing is that microinsurance will be treated as a government priority."

Microinsurance regulation was a popular topic in a number of other Latin American jurisdictions in 2009, including Chile and Mexico.

2. Potential

Studies indicate that the potential number of customers for microinsurance products in Latin America is in the hundreds of millions. A private think tank, the Center for Financial Regulation and Inclusion, released a study in 2009 finding that the Brazilian insurance industry alone could see between 23 and 33 million new customers in the coming years as a result of microinsurance. Another study indicated that Mexico alone has some 60 million potential microinsurance customers. Given the existing need, and the commitment of local regulators and international companies to the development of the sector, the sale of microinsurance products is expected to grow in other Latin American nations as well during the next few years.

However, microinsurance currently exists largely as a charitable and/or marketing tool. For that reality to ever change and for microinsurance to truly become a profitable line of business for insurers, a few changes must take place, including the following: (1) as the reach of microinsurance products expands, the overall premium and risk volume will grow exponentially; (2) this will likely lead to a developing sophistication of the microinsurance industry, partly because more global insurers will be issuing microinsurance products; (3) these global insurers will need to begin treating microinsurance as more akin to other types of insurance that they are writing, finding ways to develop more sophisticated underwriting, actuarial analysis, claims and other functions despite the small sizes of individual policies; (4) as more international insurers issue microinsurance, they will need to begin pooling the microinsurance risks and ceding them to reinsurers just as they cede other risks, something largely absent in the current microinsurance market.

If these changes come to pass, the microinsurance market will eventually operate more like the standard insurance market and "microinsurance" will simply become another branch of insurance companies' "insurance" operations. If these changes do not occur, microinsurance will remain a largely charitable endeavor, greatly reducing the possibility that it will ever expand to an extent sufficient to fund significant recovery from a disaster such as the earthquake in Haiti.

D. Crackdown on "Grey Market" Practices

To take advantage of these opportunities, however, companies must observe local regulatory requirements. Indeed, 2009 saw several local regulators step up efforts to contravene "grey market practices," that is activities prohibited by local law but previously engaged in by many foreign companies. These efforts by the Argentine, Costa Rican and Mexican authorities underscore that foreign companies presented with an opportunity to broke or underwrite a risk located in Latin America need to first understand and ensure compliance with local regulatory requirements before participating in any such insurance activity.

1. Argentina

In June 2009, the Argentinean authorities fined an individual insured 8 times premium and an insurance intermediary 15 times premium for illegally transacting life insurance business with a non-authorized foreign life insurer. Argentinean law provides that property and persons located in Argentina must be insured through an insurance policy issued in Argentina by an insurance company authorized to carry on insurance business in the country. In the event that these

requirements are not met, the authorities may impose a fine up to 25 times premium upon each of the insured and the insurance intermediary and a fine up to $100,000 against the insurance company (directors and officers and other responsible persons may be held jointly liable for these fines). The illegal insurance policy will also be considered null and void and unenforceable under Argentinean law (directors and officers and other responsible persons may also be held jointly liable for any damages due to the nullity).

2. Costa Rica

In November of 2008, La Nacion of Costa Rica reported that the new Superintendencia General de Seguros (Sugese) was investigating 15 persons concerning allegations of illegal sales of foreign insurance policies. Complaints were filed with Sugese against the 15 persons by the INS). Tomas Soley, the superintendent at the time, reportedly indicated that the allegations would be investigated in due course, but did not provide a timetable for any resolution. Potential fines for illegal sales of foreign insurance (the definition of which includes marketing of foreign policies by phone, email or facsimile) can exceed $200,000 under the new insurance laws.

An INS representative reportedly stated that the INS became aware of the illegal activity based upon reports from consumers and further stated that the INS intended to file complaints against additional persons. The INS representative also reportedly commented that, although the INS has always been aware of illegal insurance sales activity, difficulties in making complaints and minor penalties provided no incentive to report such activities under the prior laws.

In June 2009, the interim regulator of the Costa Rican (re)insurance market, the Superintendencia de Pensiones, also issued a technical note providing further guidance as to several regulatory issues of significant importance to foreign (re)insurance companies:

- The Ley Reguladora del Mercado de Seguros applies to any person involved in the development or realization of any insurance activities, whether in the nature of insurance, reinsurance, intermediary or auxiliary services. The Law applies to such activity whether it occurs within the Costa Rican territory or from abroad directed toward Costa Rica and whether such activities are conducted directly or through intermediaries.

- The public offering of insurance services, which is prohibited in the absence of proper authorization or an applicable exemption, includes any activity that procures the sale of an insurance policy or provides specific or concrete information concerning a particular insurance policy.

- Any provider of cross-border insurance services that includes a risk within Costa Rica must register with the Superintendency. This requirement does not apply to providers of cross-border reinsurance or retrocession, reinsurance intermediary services or auxiliary reinsurance service--such entities may contract with authorized Costa Rican insurers when contacted directly by such authorized companies.

- No company may commercialize or otherwise market cross-border insurance services in Costa Rica unless the policies in question have been registered with the Superintendency.

Registration of policies is only permitted by the Superintendency if such policies have been registered in the company's home jurisdiction.

- The only cross-border direct insurance services currently permitted by law in Costa Rica are those established by the CAFTA-DR treaty. As concerns direct insurance, said treaty applies only to space, maritime transport and commercial aviation insurance and only to member countries.

- Surplus lines insurance may only be purchased after local vetting and therefore may not be publicized in Costa Rica and may only be offered through brokers.

- The 4% premium surcharge on all insurance policies for the benefit of the Costa Rican Firemen's Fund applies to all policies, including cross-border and surplus lines policies.

3. Mexico

In September 2009, Eduardo Iturriaga, Director General of Mexico's insurance regulator, the Comision Nacional de Seguros y Fianzas, reminded the market that purchasing foreign insurance from within Mexico is both a violation of the insurance law and a criminal offense that can carry penalties of a fine between 200 and 2,000 days of salary and a prison sentence of between 3 and 10 years. The insurance law more specifically states that a person may not enter into an insurance contract with a foreign insurer while located within Mexico. Despite the prohibition and the potential penalties, both the CNSF and Mexico's insurance association assert that the practice continues in the market.

E. Anti-Corruption Compliance

1. Federal Corrupt Practices Act

On July 31, 2009, the SEC filed a civil enforcement action against Nature's Sunshine Products, NSP's CEO Douglas Faggioli, and NSP's former CFO, Craig D. Huff, arising out of alleged bribes that NSP made to Brazilian customs officials in violation of the Foreign Corrupt Practices Act. The SEC brought only one cause of action against Messrs. Faggioli and Huff: for a violation of Sections 13(b)(2)(A) and (B) of the Securities Exchange Act of 1934 for failing to keep accurate books and records. In connection with a settlement of this enforcement action, NSP paid a penalty of $600,000, and Faggioli and Huff each paid $25,000 penalties. A number of industry commentators have noted that the SEC's decision to bring this action against Messrs. Faggioli and Huff, who are not alleged to have been aware of the alleged bribes, imposed a de facto strict liability standard on these corporate executives.

The NSP case represents only one example of the risk posed to insurance companies doing business in Latin America, both as a direct compliance risk and as a potentially covered loss for insureds. Indeed, Latin America has consistently been a hot spot for FCPA compliance issues, with six of the top twelve problem jurisdiction coming from the region in 2008 (Ecuador, Argentina, Venezuela, Bolivia, Brazil and Mexico).

The United States Foreign Corrupt Practices Act was enacted in 1977 as a response to findings that certain companies were making illegal payments to foreign government officials, politicians and political parties to obtain business advantages. The law came to greater prominence between 2001 and 2006, however, as the average number of new Department of Justice prosecutions quadrupled compared to the previous five year period.

The law is designed to prevent companies and individuals with any connection to the United States from obtaining or retaining a competitive advantage by giving gifts or bribes to officials of countries other than the U.S. The Act applies to foreign employees and agents of any company that is a U.S. "issuer" (any corporation that has issued securities that have been registered in the U.S. or who is required to file periodic reports with the SEC) and of any domestic concern (a citizen, national or resident of the United States or any corporation, partnership, association, joint-stock company, business trust, unincorporated organization or sole proprietorship which has its principal place of business in the United States, or which is organized under the laws of the United States or a territory, possession or commonwealth of the United States). This jurisdiction can, under certain circumstances, be extended to foreign subsidiaries of U.S. companies as well as any foreign company or individual with an employee or agent in the United States.

More specifically, the FCPA prohibits: (1) corruptly paying, promising to pay or authorizing to pay; (2) anything of value; (3) to any foreign official; (4) in order to assist in obtaining or retaining business in a foreign country. Of particular note:

- "Anything of value" includes traditional bribes, gifts, travel expenses and entertainment. There is no de minimus exception to the prohibition.

- "Obtaining or retaining business" includes directing business to a particular person or company, securing any other improper advantage, any other business nexus (*e.g.*, lower taxes or tariffs) and obtaining licensing or authorization.

- "Foreign official" can include political candidates, parties, family members, insurance regulators and staff and officers, directors and employees of state-owned businesses.

In addition to its anti-bribery provisions, the FCPA also imposes record-keeping, accounting and internal controls requirements.

The FCPA includes both civil and criminal penalties, which can be levied against both corporations and individuals. Individual penalties for a criminal violation include fines up to $250,000 and imprisonment for up to five years or both, while civil penalties are up to $10,000 per violation (in addition, individual's fines may not be paid by the individual's company). Corporate penalties include fines up to $2,000,000 per criminal violation, $10,000 per civil violation, suspension and disbarment from the securities industry, ineligibility for expert licenses, etc. It should be noted that these penalties are all per violation, meaning that a series of even minor violations could quickly bring individual and corporate penalties of well over $10,000,000.

A proper compliance program to deal with a company's FCPA risk must therefore include, among other things, training for all local employees, due diligence concerning and close management of local agents, reporting systems, disciplinary processes, systems for internal controls and accurate books and records and independent audits. For obvious reasons, the existence or non-existence of such compliance measures are likewise relevant to underwriting decisions regarding potential insureds doing business in Latin America.

2. European Anti-Corruption Laws, International Treaties and Local Laws

In addition to the FCPA, many companies are subject to anti-corruption requirements imposed by European law, international treaties and local Latin American laws. Many multinational insurance companies' home nations and many Latin American countries have passed their own anti-corruption laws in recent years, as well as joining international conventions and treaties prohibiting bribery:

- Over 100 countries now have laws similar to the U.S. FCPA.
- 35 countries have become signatories to the OECD Convention (1997).
- 29 countries , including the U.S., Canada, Argentina, Brazil and Mexico, have signed onto the OAS Inter-American Convention Against Corruption (1996).
- 29 countries have ratified the Council of Europe Convention (1999).
- More than 145 countries have ratified the U.N. Convention Against Corruption (2005).

Mexico serves as a good example of the network of laws imposed just under local Latin American law, as Mexico has ratified a number of anti-corruption treaties as well as passing its own anti-corruption legislation. Bribery is both a civil and penal violation under Mexican law, and Mexican authorities have indicated that anti-corruption enforcement is a priority. Indeed, in 2008, the Secretariat of the Public Function issued a National Program for Accountability, Transparency and the Fight Against Corruption, indicating that the Mexican government intends to enact new legislation, increase cooperation among enforcement agencies and create a more transparent enforcement system regarding anti-corruption.

3. Data Privacy Issues

While we will not deal with the issue in detail here, it should be noted that the accounting, record-keeping and reporting requirements under the various anti-corruption schemes can pose issues under data privacy laws enacted in many jurisdictions, particularly for insurance companies.

III. Conclusion: The Significance of Perspective

In managing regulatory, compliance, transactional and claims issues in Latin America, perspective is of central importance. Effective advice requires both an understanding of local history, trends and issues and an appreciation for regional and global realities and ramifications

in the insurance and reinsurance industry. A multinational (re)insurer cannot properly manage its Latin American activities if its advisors are either overly focused on individual jurisdictions or lacking in an appreciation for the individual variations between jurisdictions.

Edwards Angell Palmer & Dodge's Latin American practice benefits from the global vision of nearly 100 dedicated insurance and reinsurance attorneys spread around the world, as well as team members that grew up in and have lived in various Latin American countries. In the last year, EAPD's Latin American insurance and reinsurance team has handled numerous regional projects as well as local projects concerning each and every jurisdiction in the region, including Mexico, Brazil, Argentina, Bolivia, Chile, Colombia, Peru, Puerto Rico, Honduras, Costa Rica, Ecuador, Uruguay, Nicaragua, Paraguay, Panama, El Salvador, Guatemala, the Dominican Republic and Venezuela.

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Jack has over twenty-five years experience in the insurance and reinsurance industry, including service as U.S. regulatory counsel and tax advisor for numerous overseas insurers in Bermuda, England, Finland, France, Germany and Switzerland. He is a member of various advisory committees to the National Association of Insurance Commissioners and state insurance departments and has testified at hearings on National Association of Insurance Commissioners Model Acts and proposed state insurance regulations. Jack also represents U.S., UK and EU insurers, reinsurers and (re)insurance intermediaries in connection with authorization and compliance regulations throughout Latin America. He has been awarded an "AV" Rating in the Martindale-Hubbell Law Directory. The "AV" is the highest rating honored by Martindale-Hubbell and identifies a lawyer with very high to preeminent legal ability. The rating is a reflection of Jack's expertise, experience, integrity and overall professional excellence.

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Machua is an attorney in the Insurance and Reinsurance Department, where he advises liability insurers, reinsurers and (re)insurance intermediaries concerning complex claims and coverage and foreign and domestic regulatory matters. He represents U.S., EU and U.K. companies concerning regulatory and claims issues throughout Latin America, including Brazil, Mexico, Argentina, Chile, Honduras, Costa Rica, Colombia, Venezuela, Peru, Argentina and Puerto Rico. His recent work includes experience with the new Brazilian reinsurance laws, the new Costa Rican insurance laws, the proposed new insurance laws in Chile and the Puerto Rican International Insurance Center. Machua grew up in Nicaragua and Costa Rica and is fluent in English and Spanish. He is a frequent author on Latin American regulatory issues and coordinates the firm's coverage of Latin American developments on its (re)insurance blog, InsureReinsure.com. Machua is a graduate of Tufts University and Harvard Law School.