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LORD MAYOR'S VISIT TO LATIN AMERICA HIGHLIGHTS OPPORTUNITIES IN THE REGION

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As London basked in a July heat wave, the Lord Mayor of London, Roger Gifford, accompanied by a leading business delegation, embarked on a 12 day visit to Latin America. The contrast between the weather in London and the weather in the countries that played host to the Lord Mayor's visit - Chile, Peru, Colombia, Panama and Mexico - may not have been as marked as he was expecting. However, the differences between the economic climates in Europe and these Latin American countries must have very much in evidence.

In Peru, for example, growth this year is expected to exceed 6%. In Colombia, regarded in recent years as Latin America's "tiger" economy, growth of almost 5% is expected. In Mexico, the story is similar, with growth of almost 4% expected. While Chile, with its long track record of economic stability and free trade policies, is expected to grow by around 5%, with US\$22,000 GDP/capita by 2018 a possibility.

Against the backdrop of growth rates such as these and the relative lack of business opportunities in Europe and much of the rest of the world, it is perhaps not surprising that so much interest is being shown by many international insurers and reinsurers in writing business in Latin America. This interest is justified for a number of other reasons, as well. Throughout much of the region, large-scale programmes of infrastructure development are underway. In Mexico, for example, under President Enrique Peña Nieto's National Infrastructure Plan, spending of US\$400

billion is expected during the next five years. In Brazil, infrastructure spending is being given a boost ahead of the World Cup in 2014 and the Olympics in 2016. In Panama, the expansion of the canal is taking place. There is also significant infrastructure spending taking place in Colombia and Ecuador. This development is creating large risks, for which local insurance capacity is often insufficient, creating opportunities for foreign reinsurers.

Another significant enticement for foreign insurers and reinsurers is low insurance penetration - i.e. spending as a proportion of GDP on insurance products (in 2012, across Latin America as a whole, approximately 2.8%). Surprisingly, this is particularly marked in Mexico, where, despite being Latin America's second largest economy, behind Brazil, penetration is under 2%. A burgeoning middle class in many of these countries is also helping to boost demand for insurance products. Both these trends contrast with the position in Europe, where the market for insurance products is largely saturated and incomes have been shrinking.

Also, there has been a proliferation of free trade agreements and other liberalisation measures. For example, in July - albeit with some exceptions - it became possible for Colombian citizens and businesses to insure directly with foreign insurers. In Brazil, foreign reinsurers are able to participate directly in its reinsurance market (although significant restrictions on the ability of local insurers to cede risks to foreign reinsurers remain). The



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privatization of state owned reinsurer IRB Brazil Resseguros, scheduled to take place later this year, is likely to signal a further step in this direction.

There are, of course, exceptions to these trends. In Argentina, laws were introduced in 2011 closing the market to foreign reinsurers almost entirely. More recently, a requirement has been introduced for insurers and reinsurers in Argentina to invest between 10% and 20% of their portfolios in government approved projects. Venezuela too continues to lag behind many of its neighbours in terms of development and growth, despite its oil wealth.

It should also be remembered that the legal framework for insurance and reinsurance in most of Latin America is very pro-insured, and in this respect resembles most of Continental Europe more than the UK. For example, throughout most of Latin America, as in most of Continental Europe, an insured's duty of disclosure is limited to providing information expressly requested by the insurer in the proposal form. There is, on the whole, no additional duty to volunteer further material information. Also, in both continents, there are often restrictions on the ability of an insurer to deny cover on the basis of breaches of contractual provisions that are not causative of the loss (e.g. breaches of warranties unrelated to why the loss occurred).

The position in this regard has been reinforced recently by the passing of new insurance laws in several Latin American jurisdictions. In Peru, for example, a new Insurance Contract Law (Law No. 29946) came into force in May of this year, replacing laws largely dating back to the turn of the last century. Measures introduced include making it easier for an insured to prove its loss and limiting the remedies available to insurers for innocent non-disclosure. There are new, general, restrictions on the enforceability of "abusive" clauses that benefit the insurer to the detriment of the insured.

There are also express prohibitions on a range of specific types of provisions – for example: provisions reducing the period within which an insured may sue its insurer to less than the period for this that applies at law; provisions reversing the burden of proof to the prejudice of the insured; and provisions depriving the insured of its right to cover for innocent insubstantial breaches of laws and regulations. Also, foreign governing law clauses and arbitration clauses are likely to become unenforceable (although for large risks arbitration will still be permitted). In addition, the new law introduces rules for interpreting insurance contracts to ensure that ambiguity is resolved in favour of the insured.

In Chile, a new insurance law has also been passed recently (Law No. 20,667), which will come into effect in December 2013, replacing laws largely dating back to the latter half of the 19th century. It will also reduce the remedies available for non-disclosure, so that avoidance is only available in extreme cases. Notification of a loss will be sufficient to interrupt the limitation period for an insured to sue its insurer and restrictions will apply to the ability of an insurer to impose a limitation period of less than four years or, for liability policies, less than the limitation period for a claim by the injured third party. There will be limits on the enforceability of arbitration clauses in relation to small losses. Also, in cases of losses arising from more than one cause, it will now be sufficient for policy coverage to be triggered if only one of the causes is covered.

Other trends beginning to emerge, which may warrant monitoring, include increasing regulation of loss adjusters, including measures making their reports binding on insurers (e.g. Peru and Mexico). Also, local regulators, who often see it as their role to protect the interests of consumers, and therefore insureds, are being given more power to intervene in insurance disputes (e.g. in Colombia and Peru).

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However, with the right legal and other advice, these latter developments are all manageable and do not undermine, to any significant degree, the overall, very positive, picture in Latin America. This certainly seems to have been the impression formed by Roger Gifford, who felt moved to write (in the 22 July edition of City A.M.), following his visit, that the spirit of Victorian entrepreneurship in Latin America, that his great grandfather had come across, when helping to develop railways there some 160 years ago, was alive and well.

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