



Kobre & Kim's International Private Client Team

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Adriana Riviere-Badell
Miami
adriana.riviere-badell@kobrekim.com



Ana Frischtak
São Paulo
ana.frischtak@kobrekim.com



Daniel S. Lee
Seoul
daniel.lee@kobrekim.com



Jason J. Kang
Shanghai / Hong Kong
jason.kang@kobrekim.com



Michael Keilty
New York
michael.keilty@kobrekim.com



Nicholas Surmacz
London
nicholas.surmacz@kobrekim.co.uk

Global Investors: Managing Risks Arising in Latin America from Political Turmoil

Recent political unrest in Latin America poses increased risks for global investors with deep financial ties to the region. Attempted coups and disputed elections have increased investor concerns over potential disruption to companies' onshore operations. To protect their businesses, reputations and potentially personal liberties, parties are well advised to take pre-emptive measures if such disturbance appears likely.

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Rapid changes in political regimes affecting relationships with local governments or adverse actions taken against key local business partners may cause business challenges. In particular, extractive industries such as lithium mining and oil and gas face significant exposure to these geopolitical events.

While the decision to operate in volatile markets is always challenging, at-risk businesses and individuals can take proactive steps to protect their investments and their bottom lines, including:

1. **Assess Asset Vulnerabilities Against Future Attacks.** Companies and individuals at risk of attack by government authorities or politically motivated third parties can consider a detailed examination of their asset structures – including those in offshore jurisdictions such as the British Virgin Islands and the Cayman Islands – and explore lawful preventative and defensive measures that can be taken should such domestic attacks be launched. Some of these include deploying voluntary liquidation of offshore or foreign entities that hold share interest in the local companies being targeted or restructuring relevant parent companies to

limit liability exposure.

2. **Focus on Local Decision Makers.** Understanding key local decision-makers' motivations is a crucial component of staying on top of any potential political or economic attack. Offensive investigations targeted against potentially compromised or corrupt local decision-makers may uncover specific evidence demonstrating the illegitimacy of possible claims. If the threat comes from corrupt actors, consider approaching a third-party government to initiate a criminal investigation or the applicability of economic sanctions.

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3. **Consider Alternate Pathways.** As seen in a recent successful cross-border dispute involving a sovereign nation, leveraging the role of large international financial institutions (e.g. World Bank, International Monetary Fund) can be an effective pressure point paired with ongoing litigation efforts, especially if the local government receives funds from any of these organizations. Companies at risk may also consider initiating investment treaty claims against countries that have ratified bilateral investment treaties (BITs) for their failure to protect local business and proactively creating strategic opportunities to seek a more favorable settlement (e.g., leveraging findings of corruption to undermine merits of a claim or later challenge the enforcement of a claim). While most Latin American countries have ratified at least one BIT, it is important to note that Brazil, the largest economy in the region, has not. Therefore, potential claimants should consider alternative strategies for any claims tied to Brazil in advance.
4. **Collect Evidence Proactively for Global Use.** When facing politically motivated allegations, it is important to quickly – and pre-emptively, if possible – gather evidence to prove lawful conduct. Ideally, evidence should be collected and prepared in a manner acceptable to the U.S. and other international authorities in order to effectively halt politically motivated investigations and preserve a company’s brand (both in-market and globally). If government officials are involved, trigger reporting mechanisms to increase the pressure against the individuals perpetrating the threats.

Continuing political unrest across Latin America is a serious risk to multinational companies, their executives, investors and other key individuals should they become the targets of politically motivated enforcement actions. To protect their businesses, reputations and potentially personal liberties, parties are well advised to take pre-emptive measures if such attacks appear likely.

About Kobre & Kim

Kobre & Kim is a global law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Our team:

- Positions uniquely to help clients in Latin America through our U.S.- and UK-qualified disputes teams in São Paulo and Miami that routinely act in cross-border government investigations involving Latin American and foreign authorities.
- Wields deep government investigations experience with former U.S. prosecutors based in Miami, Washington, New York, Seoul and London.
- Deploys onshore and offshore lawyers – including an integrated group of U.S. litigators and offshore lawyers qualified in key jurisdictions, such as BVI, the Cayman Islands, Dubai and Hong Kong – helping clients identify vulnerable assets and mitigate reputational harm caused by investigations.