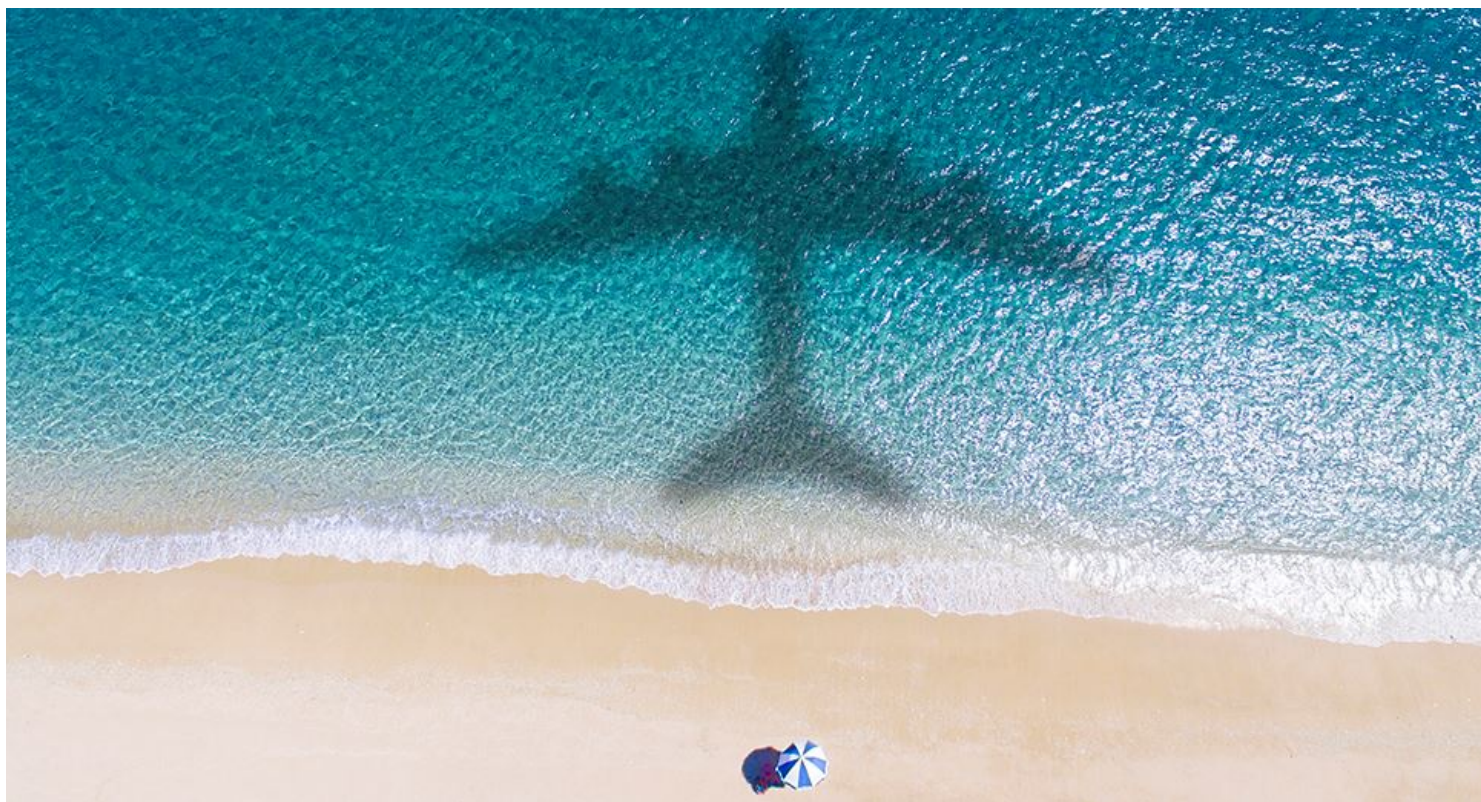




Advisor alert! 7 ways to get in trouble in LatAm

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As advisors prep for their first face-to-face client meetings in almost a year, our legal columnist, Rebecca Leon of Baker McKenzie, has put together a checklist to avoid any cross-border legal mishaps.

After months in Zoom purgatory, travel bags are being dusted off as Covid-19 vaccination programs finally allow financial advisors to start planning trips to meet with clients.

While there are obvious safety measures to follow when convening with a client during a pandemic, advisors would also be wise to brush up on the rules they should follow to protect themselves and their businesses while traveling to Latin America for business.

In some of the region's countries, local laws become applicable when the advisor steps into the territory and far-reaching consequences can follow the advisor home. So before you jump on

that plane, I recommend you go through this checklist to ensure you don't fall foul of local regulations.

Permits beyond visas

In some countries, a work permit is required to meet with clients and approvals may be required to present your firm at a conference.

Immigration officials in the Bahamas have stopped foreign business travelers from entering the country for client meetings, and in Panama, officials detained a vendor who was entering the country to maintain a booth at a conference. In both cases, the traveler had not obtained a permit before the trip.

Unlike some visas, these permits often cannot be obtained at the airport and, after filing an application, may take a few days to be approved. While many travelers are not questioned or detained, it's usually a simple and relatively inexpensive process to travel with the proper authorizations and avoid the 'what if' anxiety.

Cyber risk

Some firms remove access to firm databases and systems when financial advisors travel internationally.

There are many good reasons for this beyond mitigating cybersecurity risks. Some countries in the region have electronic transaction acts and international data transfer regulations that impose restrictions on activities conducted by electronic means. Accepting or entering trade orders into an electronic system may violate local laws. Collecting personal data about clients and storing it in electronic devices may trigger the application of local data protection laws and consumer regulations that impose additional requirements.

Most financial advisors can't and shouldn't power off completely, so knowing how such devices should be used is critical. Remember, electronic records are stored and can provide evidence of activities being conducted when abroad.

Nothing accepted, nothing lost

Financial advisors typically know not to accept cash, checks, or share certificates in client meetings outside the US.

However, they also need to consider that accepting a subscription agreement, investment order, or contract may not only violate local licensing laws and securities offering rules but may confer jurisdiction on foreign courts and regulators over the advisor, the transaction, and the firm. Such actions may also create tax liabilities and duties. Don't 'accept' when you're in-country so you don't 'lose' down the line.

Making conversation

I'm meeting with a client, what can I discuss with them?

As with all questions, the answer depends on what country you are in. In some countries, an occasional meeting with a client to discuss account performance, strategies, and even specific prospective investments may not violate any local laws or trigger local requirements if certain limitations are observed.

In other countries, anything more than dinner and a high-level discussion of the markets should be avoided, whether foreign securities or local securities will be discussed. The category of client can also impact what's considered risky conduct.

Country-by-country guidelines and training of financial advisors not only help advisors and firms remain in compliance but can provide an important defense in an investigation or litigation.

Client fishing

Not a client yet? Even one-on-one meetings with prospective clients can increase risks of tripping over local requirements.

It can be difficult to argue that there was no marketing or that the firm was not 'doing business' when the purpose of the meeting was to attract the prospective client to the firm. Detailed policies and close monitoring are a must. If you leave a business card behind, you have left a trail, and, in some cases, you may have left your legal defenses behind with it.

The cumulative effect

Firms should weigh the amount of travel by employees against the activities that will be conducted in-country.

In some cases, doing less and visiting more may sufficiently mitigate risks, while in others, isolated trips may permit more substantive conversations and pitches. Of course, the requirements and guidance vary by country.

Central bank backing

US firms frequently receive requests for proposals (RFP) from central banks and other foreign governmental entities.

Surely these institutions wouldn't send the RFP and ask for an in-person presentation if the firm requires authorization or would be in violation of local rules for taking the meeting? Don't be so sure.

US firms will need to apply to work with these foreign institutions and the local commission is often open to discussing waiving some provisions. In some countries, it is possible to obtain a 'registration lite' for these purposes, but this requires discussion with local regulators and does not eliminate the need for travel permits and compliance with other local laws.

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