

The Rule of Law and Business

Developing a Global Business Rule of Law Dashboard

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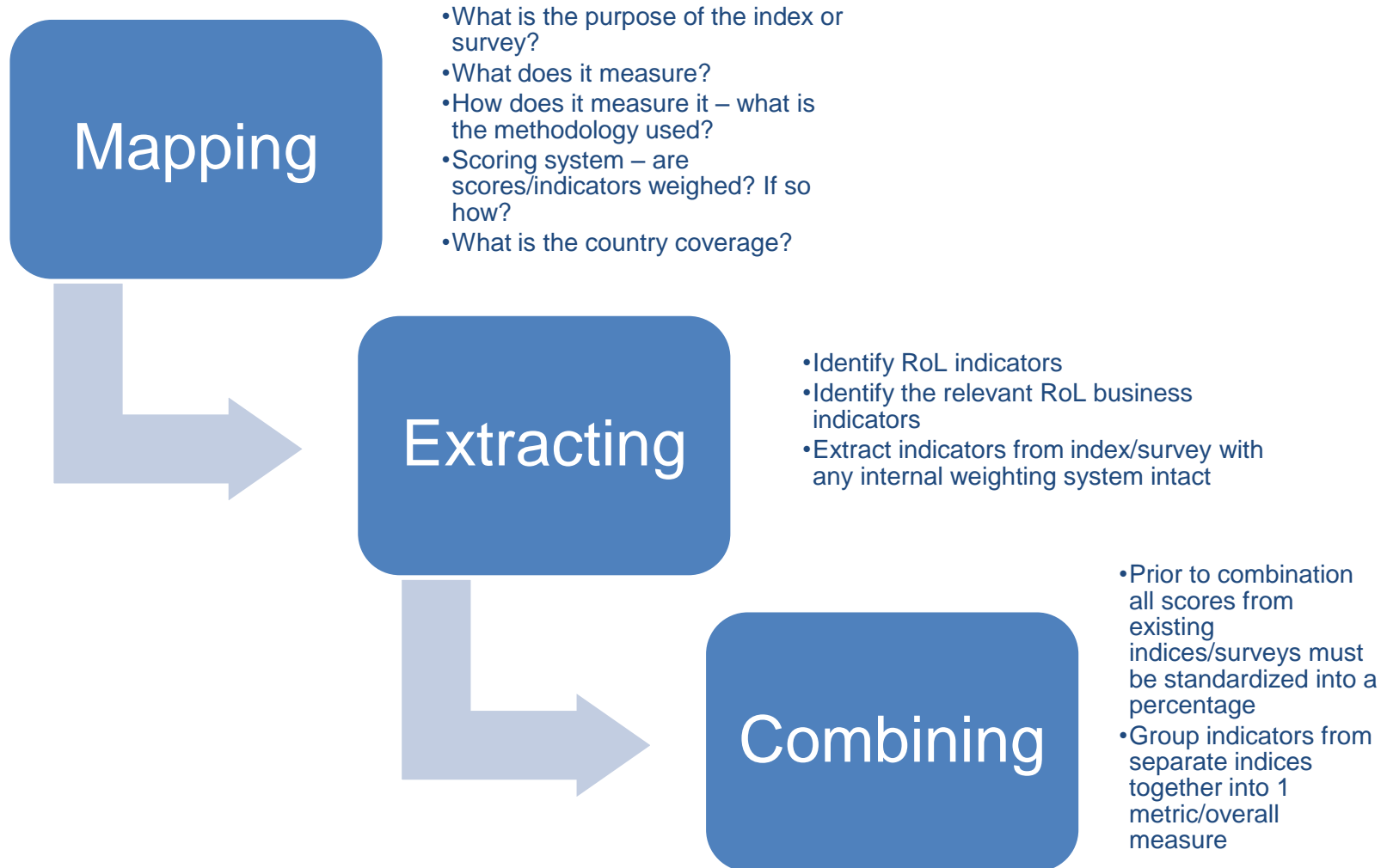
Why measure the Rule of Law?

- *“Strengthening the rule of law is for every country and is in everyone’s interest. It is as essential within countries as it is among the family of nations.”*
- Ban Ki Moon, Sep. 2012
- Growing importance of Rule of Law (RoL) to business community – Coalition for the Rule of Law in Global Markets (Coalition) at the U.S. Chamber of Commerce launched in 2010
- Measuring RoL provides stakeholders and policymakers a greater and deeper understanding of RoL environment – evidence-based decision-making
- But policy and legal measurements are complex and not an exact science
- Indices and surveys are two tools used to measure RoL environment – each has advantages and disadvantages
- A number of RoL measures in existence: World Justice Project: *Rule of Law Index*, World Economic Forum: *The Global Competitiveness Report*, Heritage Foundation: *Index of Economic Freedom* etc.

Global Business Rule of Law Dashboard – Introduction

- Pugatch Consilium asked by U.S. Chamber to help in the mapping of existing RoL indices and surveys that are of particular relevance to **BUSINESS**
- Development of a Global Business Rule of Law Dashboard (or the Dashboard), incorporating existing relevant RoL and business indicators in indices and surveys into a single meta analysis
- The Dashboard mapped a total of 12 indices and surveys
- Indicators from 6 indices/surveys extracted and included in the final product

Mapping, Extracting and Combining Indicators: a 3 Step Process



Measuring the RoL for Business

- RoL definitions vary in scope and focus e.g. “thick” versus “thin” conceptions – no internationally accepted RoL definition as pertains to business
- U.S. Chamber has put forth 5 factors defining the RoL – mapping and extraction of indicators has been based on these definitions

1. **Transparency.** Laws and regulations applied to business must be readily accessible and easily understood.

2. **Predictability.** Laws and regulations must be applied in a logical and consistent manner regardless of time, place, or parties concerned.

3. **Stability.** The state’s rationale for the regulation of business—for example, promotion of negotiation and implementation of trade agreements and other vehicles that strengthen rule of law, sanctity of contracts, and compliance with international law—must be consistent and coherent over time, establishing an institutional consistency across administrations, and free from arbitrary or retrospective amendment.

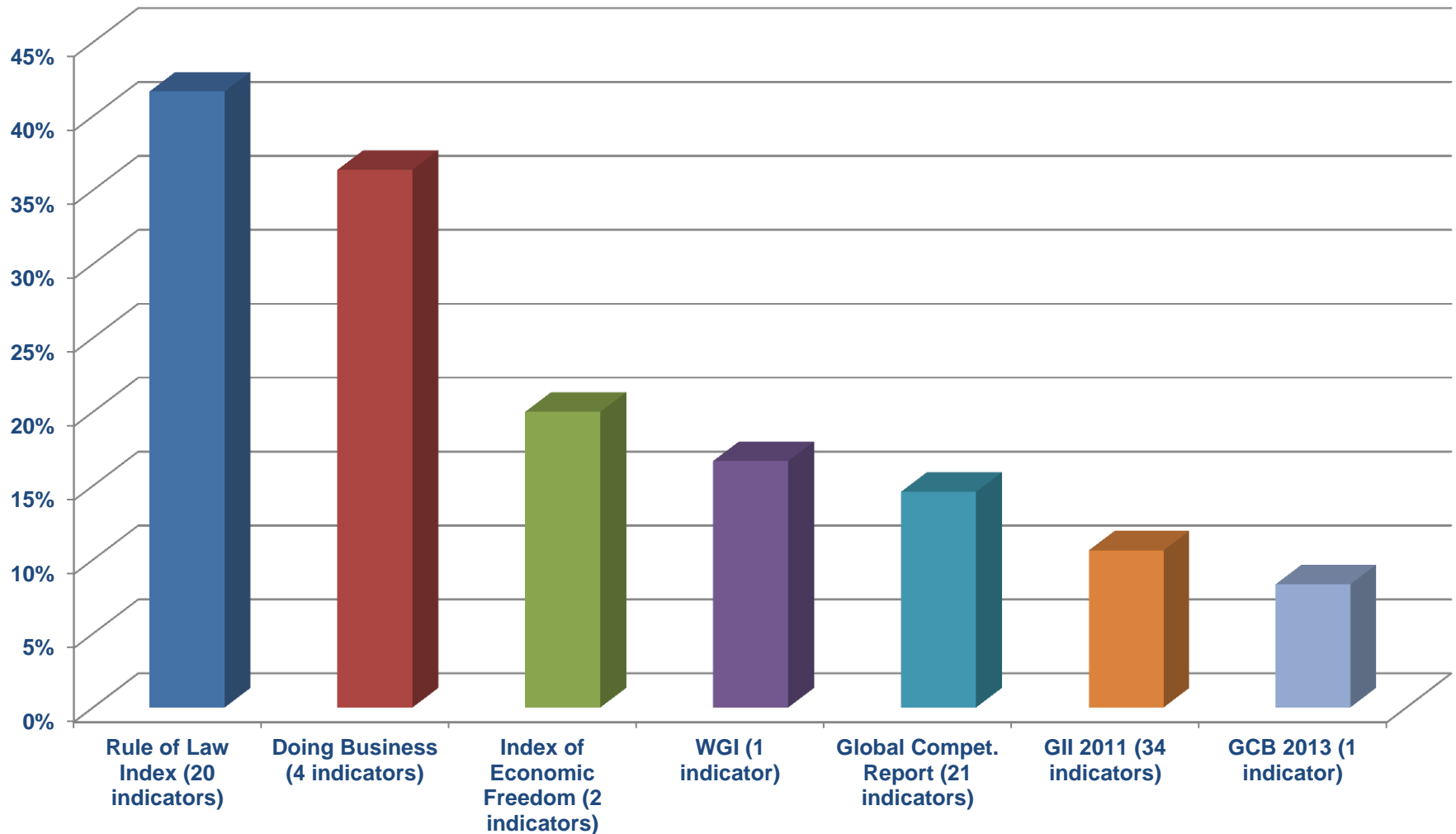
4. **Accountability.** Investors must be confident that the laws will be upheld and applied equally to government as well as the private sector and civil society: for example, anti-bribery and corruption issues.

5. **Due Process.** When disputes inevitably arise, they must be resolved not by ad hoc arrangements or special interventions, but in a fair, transparent, and predetermined process.

Indices/Surveys Sampled and Mapped

- 12 indices/surveys included in initial sample
 - World Economic Forum: *The Global Competitiveness Report 2012-13*
 - The World Justice Project: *Rule of Law Index 2012-13*
 - Transparency International: *Global Corruption Barometer*
 - Transparency International: *Bribe Payers Index*
 - Transparency International: *Corruption Perceptions Index*
 - Transparency International: *Putting Corruption Out of Business Survey*
 - Freedom House: *Freedom in the World*
 - Heritage Foundation: *Index of Economic Freedom 2013*
 - Global Integrity: *Global Integrity Index*
 - World Bank: *Worldwide Governance Indicators*
 - The World Bank and the International Finance Corporation: *Doing Business 2013*
 - Millennium Challenge Corporation: *Selection Criteria and Methodology*
- Due to methodological challenges out of the above 12 indices and surveys included in the initial sample 7 were deconstructed for the purposes of the “Mapping” phase

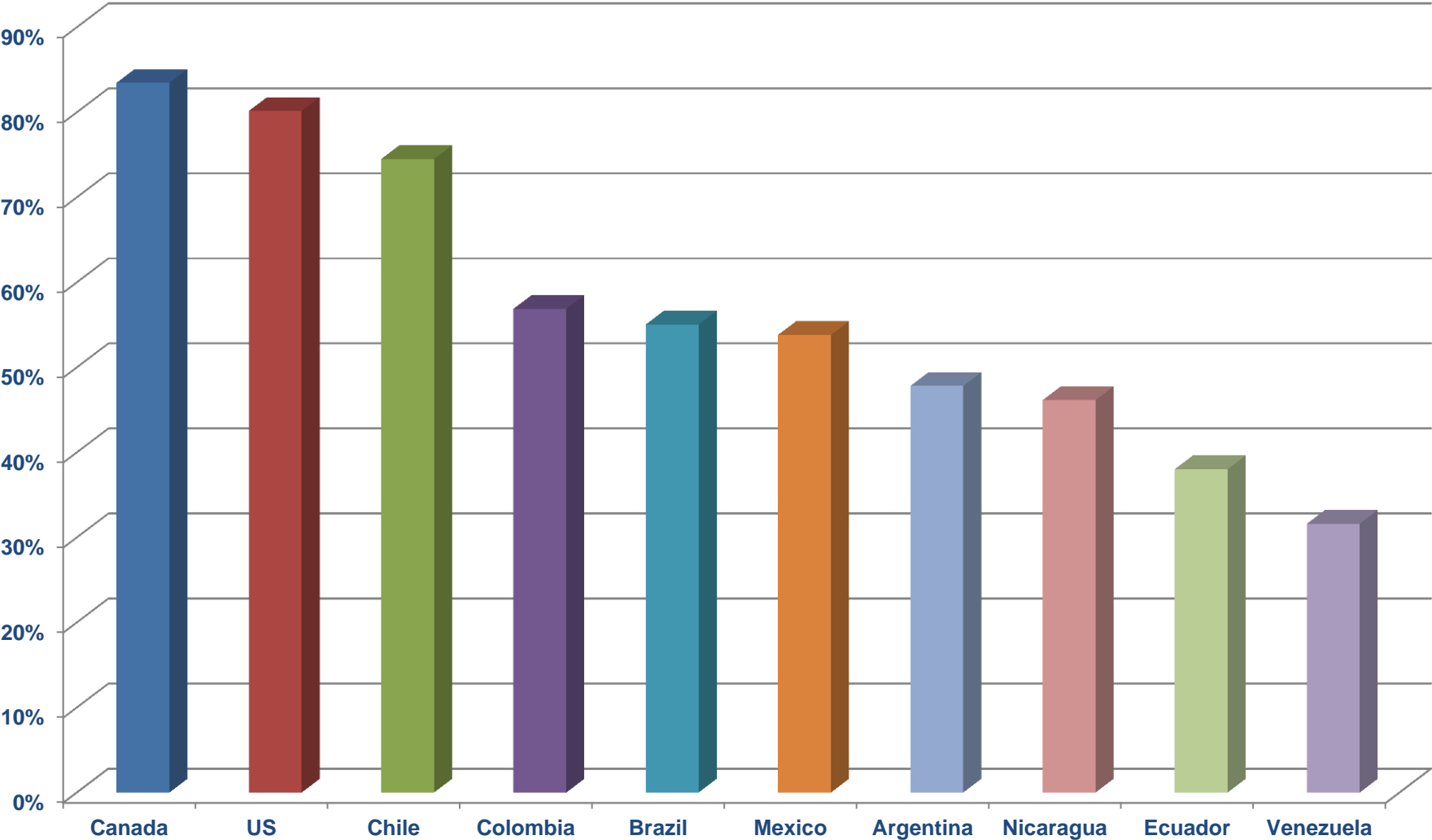
Main Findings: No. of rule of law business indicators, % available indicators



Applying the Dashboard

- Pugatch Consilium has applied the Dashboard to a regional sample of countries
 - Sample of countries limited to 1 region and 10 countries
 - First region is Americas, countries are: Argentina, Brazil, Canada, Chile, Colombia, Ecuador, Mexico, Nicaragua, U.S. and Venezuela
 - Main findings based on combination of indicators extracted from 6 indices (all indicator scores normalized to a percentage prior to aggregation)
- * Note: Number of indicators from each index varies – some indices had high number of indicators relating to RoL and business; other indices a lower number

Overall results, the Americas, % available score



Analysis

- Dashboard reveals that business RoL is:
 1. Strongest in North America and Chile
 2. Medium in Colombia, Brazil and Mexico
 3. Low in Argentina, Nicaragua, Ecuador and Venezuela
- While results broadly correlate with measures examined and upon which the Dashboard is built, there are nevertheless some differences:
 - In the *Rule of Law Index* Mexico achieves one of the lowest scores in the Absences of Corruption and Civil Justice categories but overall in the Dashboard is in the middle
 - In the *Index of Economic Freedom* there is a significant and pronounced drop-off between the top countries (the U.S., Canada and Chile) and other countries , while in the Dashboard this gap is more moderate

Policy Recommendations: The Americas

- **Greater emphasis of the operational aspects of rule of law issues relating to business** – Identifying and acting on operational rule of law impediments and challenges to business are of critical importance to stimulating local commerce and attracting investment
- **More coordination and training** – Greater coordination and training of officials on business concerns could prove to be helpful in improving the rule of law and business environment
- **Increased dialogue and consensus building built around empirical and evidence-based research** – Communication between business and government at all levels is vital for commerce and growth. Engaging in dialogue based on empirical evidence (such as the Dashboard and mapping of national rule of law and business environments) is more likely to lead to greater understanding and consensus

Conclusions and Next Steps for Further Research

- The findings of the report and Dashboard can be distilled into two key areas:
 1. Greater need for the business community to understand the coverage and meaning of existing rule of law indices and surveys, and their operational implications
 2. There are gaps relating to the practical on-the-ground rule of law needs of business in the current research
- Dashboard fills a role and void in the existing research – it is a tool to be used by all stakeholders
- **But** there is a need to complement existing work
- The inclusion of new and more detailed rule of law business indicators in existing measures would strengthen the overall body of research

Conclusions and Next Steps for Further Research

- U.S. Chamber has identified seven critical areas of rule of law and business
 1. Corruption and bribery, specifically as they apply to government procurement and other business activities
 2. Regulatory and policy trade barriers, such as the adoption of protectionist measures
 3. Existence and enforcement of real property and intellectual property protection laws
 4. Adherence to trade, investment, and tax treaties or agreements
 5. Resolution of business disputes and outcomes
 6. Transparent government policymaking
 7. Adherence to litigation and international arbitration rulings regarding sanctity of contracts and agreements and the expropriation of land, facilities, or businesses
- Current indices and surveys only cover parts of above categories
- No index or survey mapped includes indicators directly relevant to areas 4 and 7
- Similarly, areas 2, 5 and 6 are only partially covered – less than half of indices and surveys mapped include indicators relating to these areas

Take Home Messages

- There is a real need to measure and understand the RoL as it relates to business: ‘Good business demands good governance’
- Dashboard fills a role and void in the existing research and is a tool to be used by all stakeholders
- Developing new and more detailed rule of law business indicators in existing measures is an inclusive process – we welcome feedback from all stakeholders on what more work and specific indicators are needed

Thank you!