

The Latin American Lawyer

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N.10 · 18 November 2019

Brazil

HIGH TIMES?

Law firms

MITIGATING RISK

In-house

"IN-HOUSE LAWYERS
SPEAK THE SAME LANGUAGE"

Costa Rica

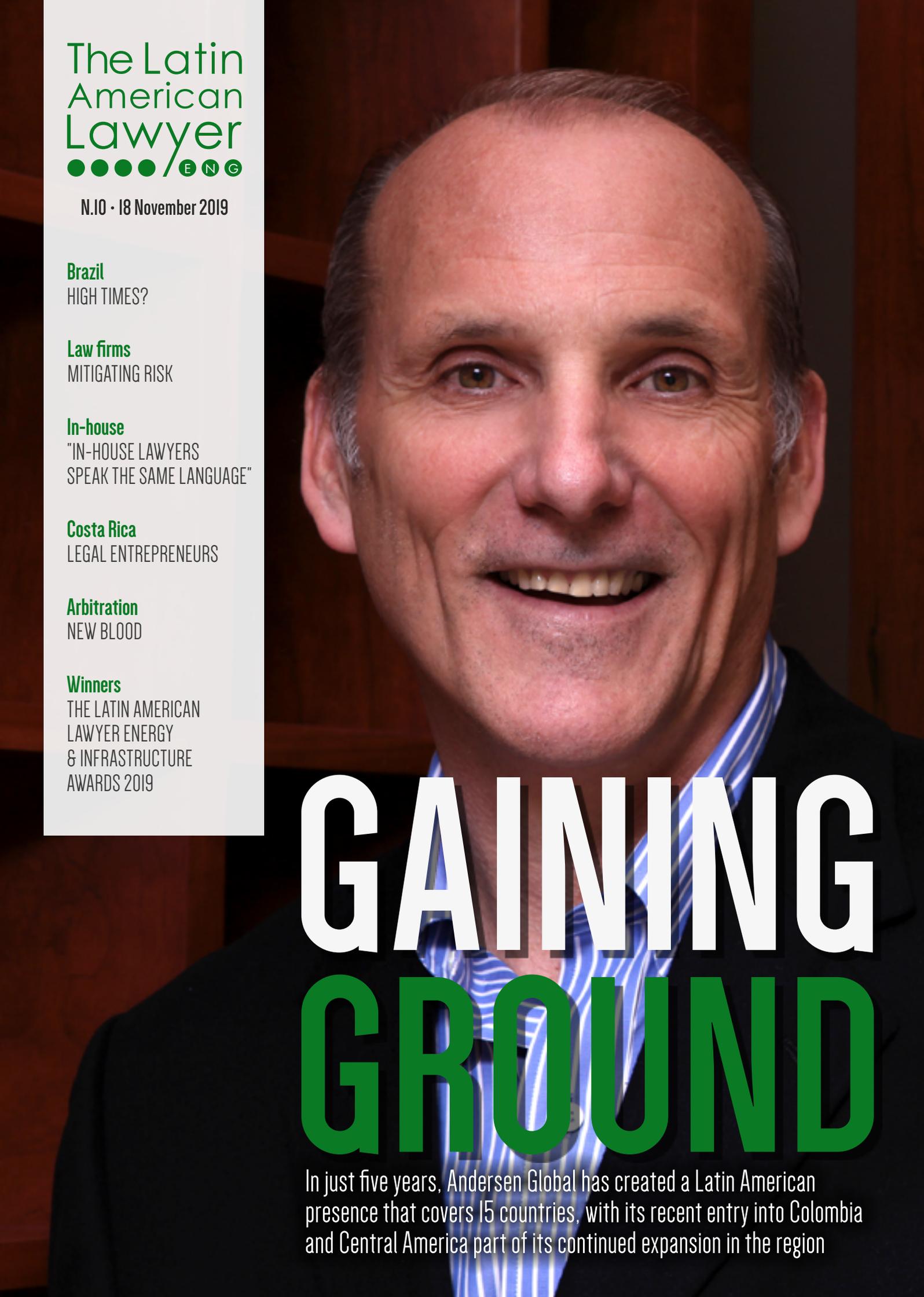
LEGAL ENTREPRENEURS

Arbitration

NEW BLOOD

Winners

THE LATIN AMERICAN
LAWYER ENERGY
& INFRASTRUCTURE
AWARDS 2019



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CHANGING

TIMES

By Adam Critchley

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Latin America has seen a year of changes in 2019, and which, as the year draws to a close, leave many political and economic uncertainties across the region that will make 2020 an unpredictable and challenging year.

This year began with the investiture of Jair Bolsonaro as President of Brazil, the region's largest economy. A conservative, pro-privatisation politician, Bolsonaro has come in for criticism for his repealing of laws protecting indigenous peoples' lands, and environmental conservation laws, while devastating forest fires in the country's Amazonas region caused consternation worldwide. And also in January, Venezuela's President Nicolás Maduro began a second six-year term. The National Assembly declared Maduro a 'usurper', and the May 2018 elections fraudulent, and named its leader, Juan Guaidó, interim president. The Organisation of American States declared Maduro's presidency illegitimate, while Guaidó has received recognition from 57 countries and the European Parliament, but the country remains in a political stalemate and a worsening economic and humanitarian crisis, with little optimism of a near-term solution.

In Mexico, left-wing Andrés Manuel López Obrador, who took office last December on an anti-corruption and poverty alleviation ticket, has struggled to staunch the ongoing violence among drug cartels and has unnerved investors with his cancellation of an already-underway \$14 billion airport project for Mexico City. And in Chile, mass protests erupted in October against the hike in public transport fares implemented by the government of President Sebastián Piñera, who took office in March 2018. Violent clashes between civilians and security forces have resulted in dozens of deaths, and Piñera's government has been criticised for its heavy-handed response to the protests.

And in November, Bolivia's President Evo Morales was ousted by the military after the legitimacy of the October general elections were called into question, and Morales was offered asylum in Mexico, leaving a power vacuum at home and a caretaker government in the hands of opposition senator Jeanine Áñez, a right-wing Christian. ■



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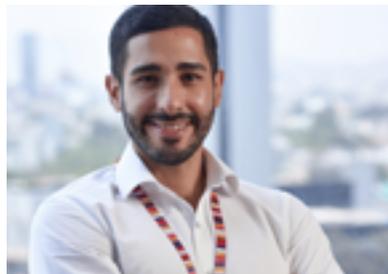
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MITIGATING RISK



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LANGUAGE"

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The Latin American Lawyer



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BRAZIL

Lefosse Advogados adds new partner to M&A practice

Brazil's Lefosse Advogados has strengthened its M&A practice with the addition of a new partner, **Gonçalo Capela Godinho**.

Gonçalo has 20 years' experience participating in high-end M&A and private equity deals and expands the firm's M&A practice of 13 partners. He brings international experience, having worked at Simpson, Thacher & Bartlett (London and New York) and at Holland & Knight (Miami and New York). He is a former Demarest Advogados partner and has also worked at Cardigos & Associados and Cuatrecasas, Gonçalves Pereira in Lisbon.

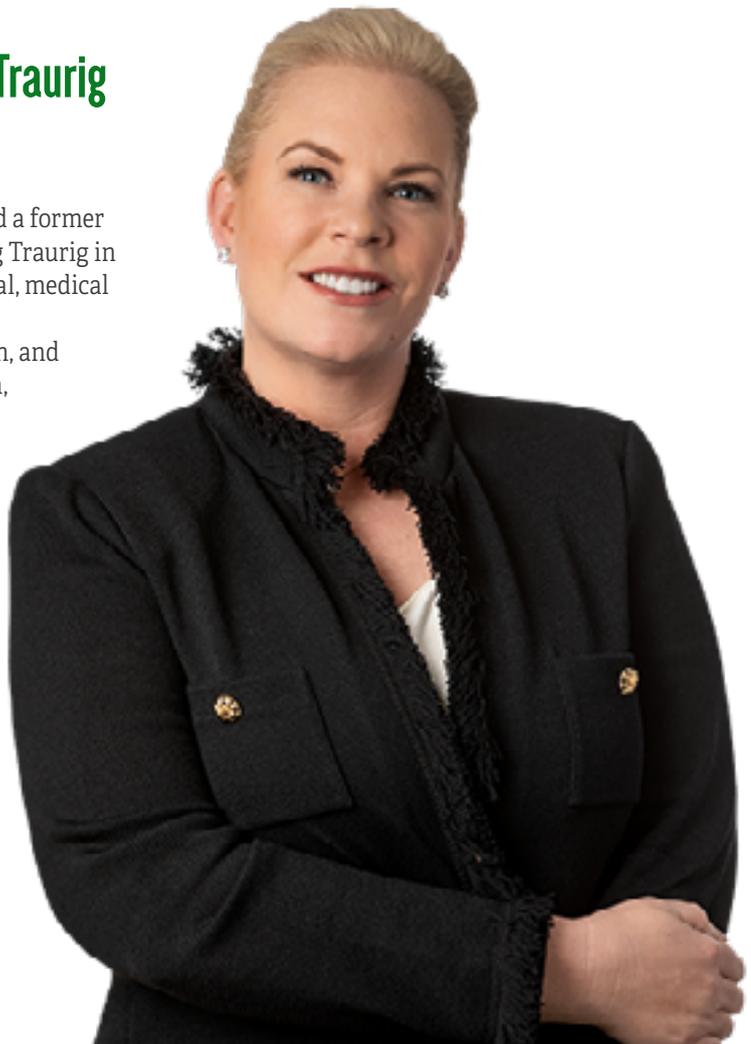
USA

Rebecca Ocariz joins Greenberg Traurig as shareholder in Miami

Rebecca A. Ocariz, a products liability attorney and a former senior counsel for IVAX Corp, has joined Greenberg Traurig in Miami as a shareholder in the firm's pharmaceutical, medical device and healthcare practice.

Ocariz moves to Greenberg Traurig from Ackerman, and has a wealth of experience in commercial litigation, having brought to completion numerous complex matters of professional negligence, business torts, deceptive trade practices, and construction.

She is a past president of the Miami-Dade Chapter of the Florida Association for Women Lawyers (MDFAWL) and serves on the board of the organisation's foundation.



MEXICO

Mexico's Jorge Jiménez joins Dentons' global board

Dentons' Mexico City-based partner **Jorge Jiménez** has been appointed a member of the law firm's global board. Jiménez has significant experience in the energy and natural resources and manufacturing practices, and has been focussed on fostering connection and integration in Dentons' fast-growing Latin America and the Caribbean region, the law firm said in a statement.

"Our global board members work together in the critical role of driving innovation and delivering value to our clients," **Joe Andrew**, global chair of Dentons, said.

"Jorge understands the importance of collaboration and connection, and will no doubt make a valuable contribution in helping the Global Board to meet its agenda," he added.

"Our polycentric approach means that all Dentons' regions have a voice on the global board," according to **Elliott Portnoy**, global CEO of Dentons. "Jorge will make a strong addition to the global board and help to drive the continued success of our Latin America and the Caribbean region and the firm."

BRAZIL

Felsberg recruits new head of RE and commercial law

Felsberg Advogados has recruited **Tatiana Millar de Castro Guerra** as the new head of its real estate and commercial law practices, and who will complement the environmental, projects and infrastructure, corporate/M&A, competition/antitrust and life sciences teams.

With her arrival, the firm now has 25 partners, of whom over 50 per cent are women.

A respected name in the market, Tatiana has vast experience in acting for multinationals in the drafting and negotiation of real estate contracts, including sale and lease-back operations, built-to-suit and EPC contracts, as well as sophisticated commercial contracts.

Her extensive experience includes assisting a consortium in relation to contracts for the São Paulo metro system, and acting in the sale and purchase of various industrial plants, the leasing of rural properties in the north of Brazil for the planting of palm destined for biodiesel, and joint ventures in the sugar and ethanol sector.

COSTA RICA

Colbs in Costa Rica recruits lawyer Víctor Murillo

Colbs Legal Studio has hired **Víctor Murillo**, a lawyer with ample local and international experience, to boost the Costa Rican law firm's services. With more than 20 years' experience, Murillo has worked in the Ministry of Foreign Affairs of Costa Rica, and in multinational companies as an in-house counsel, including Unilever, British American Tobacco Caribbean and Central America, Walmart Mexico and Central America, and Tigo/Millicom.





MEXICO

Greenberg Traurig grows its Latin America practice

Greenberg Traurig has expanded its Latin America practice with the addition of shareholder **Rodrigo Orozco Waters** and four associates in the firm's Mexico City office.

The team joins Greenberg Traurig from Orozco Waters Abogados, where Orozco Waters was the founder.

The associates are **Víctor Felipe Callarisa Rivera**, **Alfonso Malagón Lozano**, **Edgar Fernando Orozco Ceballos** and **José Manuel López Castro**.

"Rodrigo and his team bring a track record of experience in the areas of public-private partnerships and government financing that will be an asset to our clients," **José Raz Guzmán**, co-chair of the firm's Latin America Practice and the managing shareholder of the Mexico City office, said.

"They will add to the reputation of our multidisciplinary team that helps clients to identify and capitalize on business opportunities in Mexico and beyond."

ARGENTINA

Argentina's Becerra Abogados appoints of counsel

Becerra Abogados has announced the incorporation of **Alejandro Martín Becerra** as of counsel, following his retirement as a judge in the 10th criminal and correctional tribunal of Argentina in Buenos Aires after a career of more than 30 years as a magistrate. Becerra worked in Argentina's judiciary during 47 years, having been named secretary of the fourth court of appeals in 1985, a post he held for five years, before being named a judge of the national criminal court in 1990.

In 1993, with the modification of the penal process code and the reinstatement of oral tribunals, Becerra was named a member of the oral tribunal in the 10th criminal and correctional tribunal, a post he held until 2019.





ARGENTINA

Argentina's AVOA promotes Romina Iannello to partner

AVOA Abogados has promoted **Romina S. Iannello** to partner, and who has worked within the Buenos Aires-based law firm's corporate law, data protection and IT practices.

A graduate of the Universidad de Buenos Aires, Iannello also specialised in high technology law at the Pontificia Universidad Católica Argentina and took a diploma in state contracts and public infrastructure, and holds a master's degree in intellectual property and data mining from the Universidad Austral. Her promotion is part of AVOA's growth strategy as it aims to consolidate itself as a regional reference in laws linked to technology, the firm said.

LATIN AMERICA

Whirlpool promotes Tanya Jaeger de Foras to deputy general counsel

Whirlpool has promoted **Tanya Jaeger de Foras**, the former vice president and chief legal officer of Whirlpool EMEA, to deputy general counsel, a role in which she will have strategic supervision of Latin America, as well as EMEA, North America and Asia. Jaeger de Foras will also become the company's chief compliance officer from January 1, 2020.

Before joining Whirlpool in 2005, Jaeger De Foras had worked in companies including Pfizer and Luxottica, and as a consultant for US law firm Sullivan & Cromwell.



Mexico White & Case promotes M&A partner in Mexico City

White & Case has named **Henri Capin-Gally** as a partner in the firm's global mergers and acquisitions practice in Mexico City.

The appointment is one of a slew of promotions of 45 lawyers around the world, the firm's largest class ever, and which represent 13 of the firm's global practices in 21 locations.

Also a member of the firm's antitrust practice in Mexico, Henri advises on a variety of complex corporate and financial transactions including domestic and global merger clearances and antitrust matters.

Independent and international

WIDELY REGARDED AS ONE OF
THE LEADING CORPORATE BOUTIQUES IN SPAIN

ABOGADOS

ARAOZ & RUEDA



SHOPPING SPREE

Mergers and acquisitions across Latin America have made the headlines over the past couple of months, with Colombia seeing the biggest upswing in the region in terms of M&A value during the first 10 months of this year

Colombia's overall M&A deal value jumped 203 per cent in the year to October, in comparison with the same period of 2018, totalling \$7.89 billion, based on 56 transactions of disclosed sums, and with a total of 167 deals, a 23 per cent increase in the number of deals year-on-year.

The country ranked fifth in Latin America however in terms of the number of deals, with Brazil leading, having recorded 1,081 deals to end of October, a 7 per cent increase relative to the same period in 2018, according to a November report by Transactional Track Record. However, Brazil's aggregate deal value fell by 2 per cent to \$43.21 billion, based on 482 transactions whose values were disclosed.

And despite seeing fewer deals this year compared to 2018, Mexico ranked second in the region by volume to October, with 240 deals, a 19 per cent year-on-year decline, while aggregate deal value decreased by 2 per cent to \$13.57 billion, based on 93 deals for which sums were disclosed.

Chile ranked third, chalking up 201 deals, a 2 per cent increase on the first 10 months of 2018, totalling \$11.02 billion, a 58 per cent value increase.

Among the recent deals making headlines were higher education provider Centro Nacional de Ensino Superior's (Cenesup) 194.8 million reais (\$46.7 million) acquisition of 100 per cent of the equity of Sociedade de Desenvolvimento Cultural do Amazonas (Sodecam), a market leader in

the private education sector in northern Brazil. Cenesup was advised on the deal by Pinheiro Neto.

Cloud computing company Akamai Technologies bought out its largest Latin American channel partner, Exceda, and its related assets in Brazil, Mexico, Argentina, Chile and the US, in a deal of undisclosed value, and which is expected to add \$15 million to Akamai's revenues in 2020. Jones Day acted as counsel to Exceda.

And law firm Holland & Knight represented Canadian value retailer Dollarama in its acquisition of a 50.1 per cent interest in Latin America retailer Dollarcity, giving the former, which has 1,236 locations across Canada, a second growth platform to complement its existing Canadian growth strategy. Dollarcity operates more than 180 stores in El Salvador, Guatemala and Colombia and has plans to reach a target of up to 600 stores by 2029.

PINHEIRO NETO ADVISES ON \$47M PRIVATE EDUCATION M&A

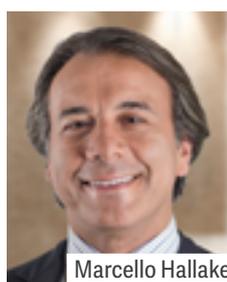
Brazilian law firm Pinheiro Neto advised higher education provider Centro Nacional de Ensino Superior (Cenesup), a subsidiary of Ser Educacional, on its acquisition of 100 per cent of the equity of Sociedade de Desenvolvimento Cultural do Amazonas (Sodecam), a market leader in the private education sector in northern Brazil.

Sodecam, which was owned by Rede Internacional de Universidades Laureate Ltda., also known as Group Laureate, has around 25,000 students enrolled on its higher education courses.

The deal's value was 194.8 million reais (\$46.7 million), from which a net debt of 9.81 million reais (\$2.3 million) will be deducted.



Joamir Müller Romiti Alves



Marcello Hallake

Pinheiro Neto's team was led by partner **Joamir Müller Romiti Alves**, with associate **Élcio Aulicino Borges**.

Practice area

M&a

The deal

Buyout of higher education provider

Firm

Pinheiro Neto

Partner

Joamir Müller Romiti Alves

Value

\$46.7 billion

EXCEDA ENGAGES JONES DAY FOR SALE TO AKAMAI

Law firm Jones Day has acted for Exceda in connection with the sale of the company, and related assets in Brazil, Mexico, Argentina, Chile and the US, to Akamai Technologies.

Exceda was Akamai's largest channel partner in Latin America, offering the full portfolio of Akamai products. The combined Akamai and Exceda teams will allow Akamai to scale its Latin American business to meet the increasing demand for security and web acceleration services, as well as cloud infrastructure investments in the region, the two companies said in a joint statement.

The core Jones Day team advising Exceda was led by **Marcello Hallake** (pictured), in São Paulo and New York, and included Nathalia Cipelli in São Paulo.

Practice area

M&A/IT

The deal

Buyout of technology company

Firm

Jones Day

Partner

Marcello Hallake

28-29 NOVEMBER 2019

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HOLLAND & KNIGHT ASSISTS DOLLARAMA IN PURCHASE OF DOLLARCITY STAKE

Holland & Knight represented Canadian value retailer Dollarama in its acquisition of a 50.1 per cent interest in Latin America retailer Dollarcity.

The deal will give Dollarama, which has 1,236 locations across Canada, a second growth platform to complement its existing Canadian growth strategy. Dollarcity operates more than 180 stores in El Salvador, Guatemala and Colombia and has plans to reach a target of up to 600 stores by 2029.

Holland & Knight's representation of Dollarama was led by partners **Roberto Pupo**, **Emma Solaun** and **Ieuan Mahoney**, and who were assisted by partners **Vicente Umaña** and **Adolfo Jimenez** and associates **María Dobles Madrigal** and **Lucas Saffon-Lopez**.

Practice area

M&A/Retail

The deal

Buyout of retail chain

Firm

Holland & Knight

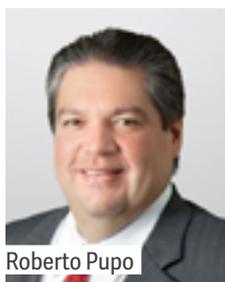
Partner

Roberto Pupo

TOZZINIFREIERE ADVISES GEREMIA REDUTORES ON SALE TO WEG GROUP

Brazilian law firm TozziniFreire Advogados has advised Geremia Redutores, a Brazilian family company located in Bento Gonçalves, Porto Alegre that manufactures gearboxes and transmission components, on its sale to Weg-Cestari Redutores, part of the WEG Group.

WEG Group is a Brazilian company that also manufactures gearboxes, electric



Roberto Pupo



Maria Medeiros

motors and other automation components. TozziniFreire's team was led by partners **Maria Medeiros** (pictured) and **Vivian Fraga**, with associates **Mylena Augusto de Matos**, **Daniel Born Roman** and **Raphael Bezerra Pereira de Souza**.

Practice area

M&A

The deal

Buyout of family-owned company by WEG Group

Firm

TozziniFreire

Partner

Maria Medeiros

BAKER MCKENZIE REPRESENTS ESTÁCIO PARTICIPAÇÕES ON ADTALEM ACQUISITION

Law firm Baker McKenzie represented Estácio Participações, a Brazilian education business, in connection with its acquisition of the Brazilian portfolio of Adtalem Global Education.

The transaction advances the company's strategy to become a leading workforce solutions provider, and is slated for completion in the first half of 2021, and is valued at 1.92 billion reais (\$465 million).

The lead lawyers engaged on the transaction were New York-based **Alan Zoccolillo**, **Kai Kramer** and **Matthew Hayes**.

Practice area

M&A

The deal

Buyout of Brazilian portfolio of global education business

Firm

Baker McKenzie

Partner

Alan Zoccolillo

Value

\$465 million



Alan Zoccolillo

In just five years, Andersen Global has created a Latin American presence that covers 15 countries, with its recent entry into Colombia and Central America part of its continued expansion in the region

GAINING GROUND

MARK L. VORSATZ



Andersen Global, an international association of legally separate, independent member firms comprised of tax and legal professionals around the world, recently announced its expansion in Latin America, entering the Colombian market via a partnership with local firm Jiménez, Higuita, Rodríguez & Asociados (JHR), and expanding its Central America presence in conjunction with local firm Central Law, giving the US-based firm eight additional locations in six Central American countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

“Colombia is a very important market, and our objective is to have comprehensive geographic coverage,” Mark L. Vorsatz, chairman of Andersen Global, tells *The Latin American Lawyer*. The company has more than 4,500 professionals worldwide and a presence in more than 146 locations through its member firms and collaborating firms.

15

THE NUMBER OF
LATIN AMERICAN
COUNTRIES
IN WHICH
ANDERSEN
GLOBAL OPERATES

“We believe we have the largest legal platform from a geographic standpoint, but we still have a number of countries that we are pursuing. We are in discussions with firms in Chile and have started conversations in the Dominican Republic, and we also need to expand our platform in Brazil and Mexico and are pursuing discussions in those markets,” he says, although admits it will be another couple of years before the company feels that it has substantially completed that platform.

But when entering a new market it is vitally important in choose the right partner, as was the case with law firm Jiménez, Higueta, Rodríguez & Asociados (JHR) in Colombia.

WE THINK THAT AN INTEGRATED STRATEGY FOR LATIN AMERICA WILL BE A WINNING FORMULA

MARK L. VORSATZ



“They have an outstanding tax practice, with critical mass, they are young and energetic and have doubles their size in around two years,” he says. “We felt that they were an excellent fit culturally and had good chemistry. We have already had over a dozen opportunities to work together, and we may either continue to explore a more general legal practice, or try to expand the existing platform.

AN INTEGRATED STRATEGY

“In the short time that we have worked with JHR, we have had a number of opportunities for services in a number of countries, and most domestic firms cannot compete effectively as clients want one-stop shopping. We think that an integrated strategy for Latin America will be a winning formula,” he says.

JHR, founded in 2017, employs some 50 legal and tax professionals and provides services to local and foreign companies, both private and public, and specialises in tax, customs, and exchange law.

“As all of the economies mature, there will continue to be more and more cross-border opportunities, and more inbound and outbound work, and it will be more important to have a platform that can serve other markets,” Vorsatz says.

He also hopes that Andersen’s entry into Colombia can be “disruptive”.

“In most markets that we have entered, we have started to change the perspective of local firms. We are presently in 73 countries and have broad ambitions. We are obtaining multijurisdictional opportunities on a daily basis. Having a broader platform is important to compete for those opportunities and clients do not have many options if they desire a seamless and borderless approach,” he says.

“We also expect a continued increase in cross-border activity.”

He also envisages JHR growing as a result of Andersen’s involvement with the law firm.

“If they perform as we would expect, we would anticipate a systematised growth in their practice. In about 52 months, we have gone from no practice in Latin America to 15 countries, 30 locations, and almost 1,000 people. We would expect to

continue to grow at a fairly rapid pace. Our plans for 2020 would be to increase our headcount by about 25-30 per cent in the region," Vorsatz says.

And Andersen's entry into Colombia may also make other firms turn their attention towards the country, he says.

"Colombia is an important market and Latin America will continue to be an important region for growth. Dentons is a good example of a law firm pursuing the geographic strategy that we are pursuing," he says.

Dentons this year bolstered its presence in Latin America by combining with law firms in Argentina, Uruguay and Honduras.

A SOLID PLATFORM IN COSTA RICA

And regarding Central America, Andersen's outlook and strategy are similar to those for Colombia.

"We thought it was important to add a practice with a solid platform in Costa Rica. The addition of Central Law provides us with additional coverage in Honduras, Nicaragua, El Salvador and Panama," he says.

MOST DOMESTIC FIRMS CANNOT COMPETE EFFECTIVELY AS CLIENTS WANT ONE-STOP SHOPPING

MARK L. VORSATZ



CLIENTS DO NOT HAVE MANY OPTIONS IF THEY DESIRE A SEAMLESS AND BORDERLESS APPROACH

MARK L. VORSATZ



Founded in 2003, Central Law is led by managing partner Rafael Quirós Bustamante, and has expanded to include more than 70 legal professionals, providing legal advice in banking and finance, civil law, commercial law, corporate law, immigration, labour and employment, mergers and acquisitions, arbitration, litigation, maritime law and tax.

"There are several regional firms that are pursuing this strategy, such as Consortium and Arias, and which have been extremely successful," Vorsatz says. "However, none of those firms are global in capabilities or strategy, nor do they have a significant practice in the US," as Andersen Global does, he says.

"We think that, over time, this will be beneficial to our practice in the region, as well as for the overall firm. This is our philosophy that one plus one equals seven. We have a multiplier effect." 



HIGH TIMES?

Brazil is likely to approve the cultivation of *cannabis sativa* for medicinal purposes later this year, setting a legal precedent, although how the legislation would work is still to be defined, according to Isabela Amorim Diniz Ferreira, a corporate lawyer at Farroco Abreu Advogados in São Paulo.

Brazil's National Health Surveillance Agency (Anvisa) is expected to establish a new regulation on the use of hemp for medical purposes by the end of this year, and which would allow the controlled cultivation of *Cannabis sativa* for medicinal purposes and the registration of medicines produced with active ingredients of the plant in the country.

"Approximately 40 countries have already authorised the use of *cannabis* for medical purposes, and if Anvisa meets the international health trend, Brazil will also be part of this avant-garde group," Isabela Amorim Diniz Ferreira, a corporate lawyer at Farroco Abreu Advogados, tells *The Latin American Lawyer*.

She says that regulating the use of substances extracted from this plant will not only bring social gains, but also economic benefits. US-based consultancy New Frontier Data estimates that the cannabis business could attract \$5 billion in investments over the next three years.

The move would respond to demand for the plant as medication, with studies showing that patients with severe ailments such as epilepsy, Parkinson's disease, multiple sclerosis, autism and malignant neoplasms can achieve relief from their symptoms by using cannabis.

Anvisa's approach to cannabis has softened in recent years, allowing since 2015 the import of cannabidiol-based products in combination with other cannabinoids, including THC, for patients, and current data provided by the regulatory agency indicates that between 2015 and 2019 more than 9,000 authorisations were granted to import medicines made from cannabis extract.

And in 2017, cannabis sativa was included in the list of medicinal plants and Anvisa granted the first registry of Cannabidiol and THC-based medicine Mevatyl, used in the treatment of multiple sclerosis.

"The number of court decisions authorising the import of medicines containing cannabis for therapeutic purposes has dramatically increased in recent years, and the push towards regulation to allow the controlled cultivation of cannabis sativa for medicinal purposes therefore makes sense," Diniz Ferreira says.

For example, the Brazilian judiciary recently authorised the parents of an autistic child with severe epileptic seizures to grow cannabis for medicinal uses and, in another case, a stomach cancer patient was granted a Habeas Corpus not to be arrested for importing and planting cannabis seeds to extract oil for medicinal purposes.

Anvisa has so far held two public consultations to debate the clear and transparent rules required for the medicinal use of cannabis, and while there is public acceptance of a policy to allow safer access to medication, in addition to the possible economic benefits, such as job creation, increased tax collection and a reduction in the number of lawsuits relating to the purchase of cannabis,



ISABELA AMORIM DINIZ FERREIRA

“

THE NUMBER OF COURT DECISIONS AUTHORISING THE IMPORT OF MEDICINES CONTAINING CANNABIS FOR THERAPEUTIC PURPOSES HAS DRAMATICALLY INCREASED IN RECENT YEARS.

”

there is concern that Anvisa will bow to pressure from politicians and the pharmaceutical industry when it comes to ruling on the use of cannabis by patients, Diniz Ferreira says.



“There are also fears that pharmaceutical companies will market the drug at high prices, given that the discussions have not yet begun on whether individuals would be able to legally grow cannabis for medicinal consumption,” she says.

“The conservative administration believes that any loosening of legislation relating to cannabis could lead to an increase in recreational use, with the belief that the plant should not be grown in Brazil but imported from abroad.”

“We therefore need to await Anvisa’s position and see whether the regulatory agency will give in to political and pharmaceutical pressures or cherish

“

WE COULD BE SEEING A NEW
AGRICULTURAL COMMODITY

”

the democratisation of medicinal cannabis, an initiative that could be an important first step to extending the horizon of cannabis use beyond medicinal purposes,” she says.

She also points to the use of cannabis for the production of hemp and paper, and its potential as a vital raw material in the textile industry.

“We could be seeing a new agricultural commodity.”

“Considering that agribusiness is a fundamental contributor to the national economy, and Brazil is one of the world’s leading suppliers of agricultural products, we look forward to seeing the next chapters of the national public policy on this matter.” ■



RUTÍ SMITHLINE

MITIGATING RISK

DLA Piper Chile launches
a white-collar crime practice

DLA Piper announced in September the opening of a white-collar crime practice in its Chilean office, led by counsel Ignacio Schwerter, and which the law firm said would meet clients' needs under new legal changes that have substantially extended criminal liability relating to bribery, corruption, unfair administration, incompatible negotiation, environmental crimes, and breaches of capital market rules, while complementing the work of DLA Piper Chile's existing litigation and compliance practice areas.

The Latin American Lawyer spoke with counsel Ignacio Schwerter about the new practice, and how its creation obeys the demands of clients in the South American country.

44

The number of lawyers at DLA Piper Chile

RISKS CAN ONLY BE MINIMISED WHEN A CLIENT UNDERSTANDS THAT SPECIALIST LAWYERS IN PENAL LAW SHOULD TODAY BE TAKEN INTO ACCOUNT IN DECISION MAKING OR IN THE EXECUTION OF CERTAIN OPERATIONS

The Latin American Lawyer: Why has DLA Piper launched a white-collar practice in Chile?

Ignacio Schwerter: Globalisation has made trade relations across the world more complex, with the need to set up businesses in many countries, and therefore their impact and their exposure is heightened. At a local level, this new reality has implied significant legislative changes, for example, the creation of new crimes in economic law, and which fill existing loopholes in obsolete penal codes, and the increase in penalties for certain conducts for which infractors can be penalized, as well as an increase in the numbers and type of crimes that can attribute responsibility to a person.

DLA Piper Chile has been following these changes closely, and has reacted to its clients' needs. Clients demand a global and complete service that covers all areas of law, and it is therefore no surprise that it has incorporated financial law into its practice areas, and less so when we consider that, at a global level, DLA Piper has an excellent white collar practice, but which needed to be strengthened at a local level in Chile.

What are the biggest opportunities in this area for the firm?

It's a new thing to invest in the development of practice areas not traditionally offered by local firms, and for that reason there are many opportunities. Chile's penal processing system was

modified recently, and has required adaptation to this new reality. Specialisation in penal matters and the formation of working groups with lawyers who are experts in other areas allows us to give an integral solution to important and complex cases. This is the opportunity that we need to know how to take advantage of. Boutique law studios lack that level of global specialization and the capacity to put together teams that incorporate areas that are distinct from the penal sphere. And to that we can add the firm's global expertise, which allows us to deliver on themes with much experience, not only at a local level, but also incorporating much knowledge from other jurisdictions.

Has Chile seen an increase in white-collar crime in recent years, in comparison with other countries in Latin America?

I don't know the figures regarding the increase that other countries have seen in the number of crimes of this nature. But Chile, in the first quarter of 2019, saw an increase of 11,908 such cases, according to the Public Ministry, compared with the same period of 2018, and it is the increased judicialisation of these cases that mark the increase.

What are your clients' main demands in this kind of case, and how can the rise of such crimes be mitigated?

Risk mitigation can be achieved by dealing directly with a specialist lawyer, in an opportune and

CLIENTS DEMAND A GLOBAL AND COMPLETE SERVICE THAT COVERS ALL AREAS OF LAW, AND IT IS THEREFORE NO SURPRISE THAT DLA PIPER HAS INCORPORATED FINANCIAL LAW INTO ITS PRACTICE AREAS

discreet way. Risks can only be minimised when a client understands that specialist lawyers in penal law should today be taken into account in decision making or in the execution of certain operations to advise the client on how to avoid committing such crimes.

Given the high profile of such crimes, do these have an impact on the way the law firm operates, or on the way in which it deals with its clients?

Of course. The relationship between the client and a penal lawyer is very broad, of deep confidence and much dedication. This should be understood and internalized within the firm, and which must

THE GLOBALIZED WORLD
IS IN CONSTANT MOVEMENT,
AND THE SAME GOES FOR PENAL
LAW, AND WHICH SHOULD
ADAPT TO THE NEW REALITY

11,908

The increase in the number of white-collar crime cases in Chile in IQ19, compared with the same period of 2018

adapt itself to this new way of working. This implies a wider focus, and which goes beyond penal economics, and coordination with other practice areas, all under the sense of urgency that these themes imply for the client due to the serious consequences.

Do you see any emerging trends in white-collar crime in the coming years?

It is probable that legal modifications will continue to be made in the sense of sanctioning new 'economic' conduct, or the increase of penalties applied currently for such crimes. It is also probable that the catalogue of crimes that attribute penal responsibility will expand. The globalized world is in constant movement, and the same goes for penal law, and which should adapt to the new reality. ▣

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THE LATIN AMERICAN LAWYER ENERGY & INFRASTRUCTURE AWARDS: WINNERS

THE WINNERS OF THE LATIN AMERICAN LAWYER ENERGY & INFRASTRUCTURE AWARDS WERE ANNOUNCED AT A CEREMONY AT THE JW MARRIOTT IN MEXICO CITY ON 24 OCTOBER



Attorney of The Year: Derek Woodhouse (CMS Woodhouse Lorente Ludlow - Mexico)



The award ceremony gathered guests from the legal sector to recognise the excellence of lawyers specialising in the Latin American energy and infrastructure sectors.

With these recognitions, the achievements of the leading players in the sector in their different disciplines are rewarded.

The winners were decided by a jury consisting of leading experts from the Latin American legal sector – for more information about the jury, [click here](#)

The winners were as follows:



Law Firm of the Year / Law Firm of the Year - Finance: Marcelo V. de Moura (Pinheiro Neto Advogados - Brazil)



Attorney of the Year - M&A: Sergio Amiel (Garrigues - Peru), collect the prize Daniel González (Garrigues -Peru)





Law Firm of the Year - M&A: Felipe Quintero Serrano (DLA Piper Martínez Beltrán - Colombia)



Law Firm of the Year - M&A Infrastructure: Marcio Baptista (Tozzini Freire Advogados - Brazil)



Attorney of the Year - Finance: Bertha Argüello (Arias-Nicaragua)





Attorney of the Year - Renewable Energy:
Rodolfo Rueda Ballesteros (Thompson & Knight LLP - Mexico)



Law Firm of the Year - Renewable Energy:
from left, César Alejandro Villegas Ávila (Acciona Energía),
Paolo Salerno (Salerno y Asociados Expertos en Energía - Mexico)



Attorney of the Year - Administrative & Environmental Law:
Clemente Pérez (Guerrero Olivos - Chile)





Law Firm of the Year - Administrative & Environmental Law
Law Firm of the Year - Litigation: from left, Jimena Cabrera, Franco Lammoglia, Fernanda Hernández Garibay (Lammoglia Abogados - Mexico)



Attorney of the Year - Tax: Eduardo Mayora (Mayora & Mayora - Guatemala)



Law Firm of the Year - Tax: Fernando Vargas Winiker (EY Law - Costa Rica)





Law Firm of the Year - White Collar Crime: Hugo López Coll, Héctor Sánchez (Greenberg Traurig - Mexico)



Law Firm of the Year - Oil & Gas: Santiago R. Parra, Jorge E. Paul, Gustavo Esteban, Juan Carlos Andrade (LEC Abogados - Venezuela)



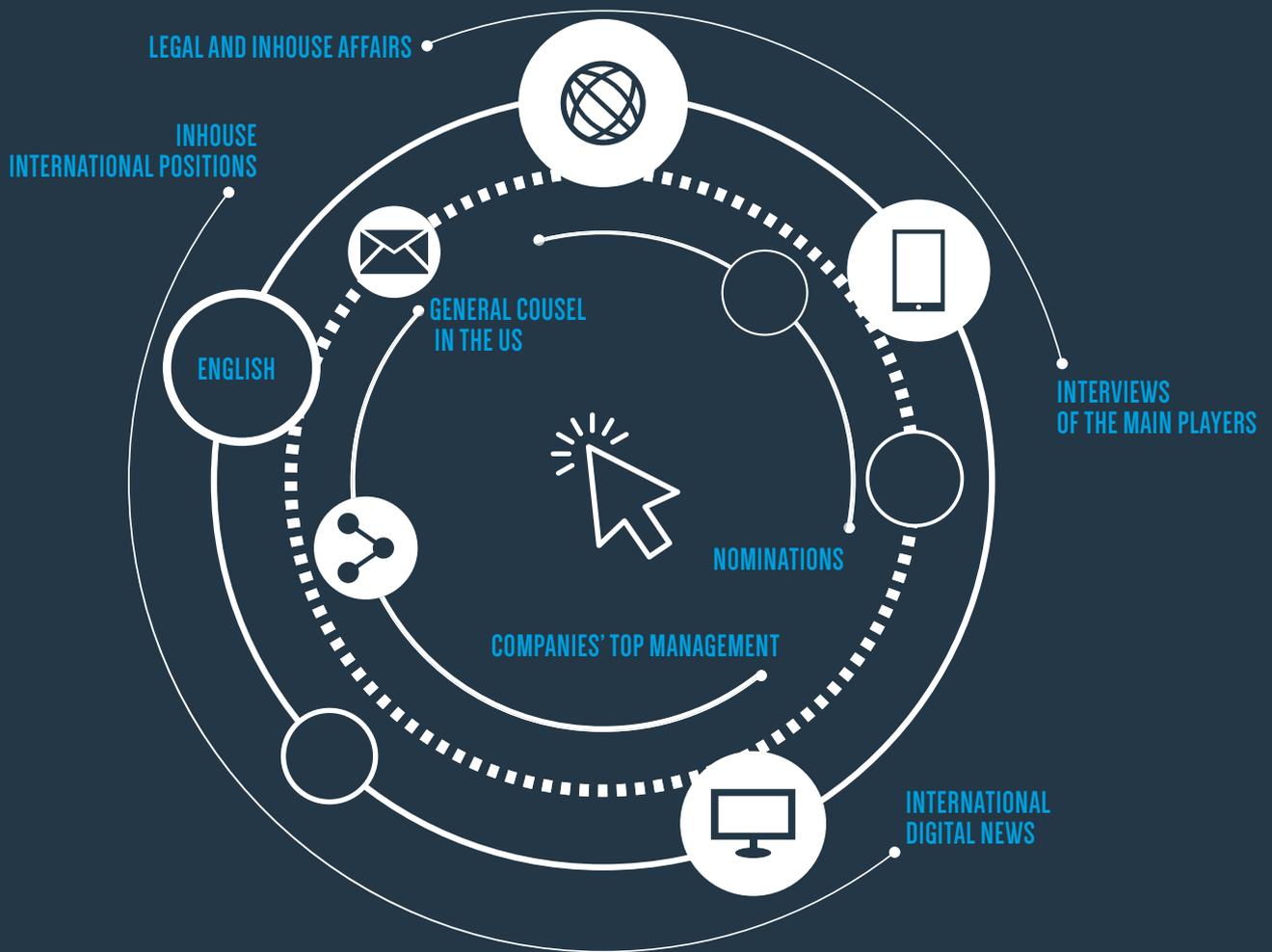
Attorney of the Year - Tax / Best Practice Finance: from left, Eduardo Mayora, Rafael Briz, Rafael Pinto (Mayora & Mayora - Guatemala)





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Law Firm of the Year - Arbitration: Bertha Argüello (Arias - Costa Rica)



Attorney of the Year - Competition & Regulatory Law: Lucía Ojeda (SAI Law & Economics - Mexico)



Up & Coming: Alejandro León (Allen & Overy - USA)





"IN-HOUSE LAWYERS SPEAK THE SAME LANGUAGE"

Ripley's in-house legal team in Peru has seen a shift in how its role is perceived by the company, from being an area of support to an essential ally in business development

MAURICIO BALBI BUSTAMANTE



“We work with a collaborative philosophy in Ripley, and we are always looking for synergy between our in-house legal team and external law firms,” Mauricio Balbi Bustamante, head of legal at Grupo Ripley, a Chilean department store, financial services and shopping mall management group which also operates in Peru, tells *The Latin American Lawyer* from Lima.

“We use external law firms to attend to specialised and highly complex issues that require an integral analysis on affairs that are not part of our core business, such as, for example, consultations regarding real estate, intellectual property, personal data protection or permits and licensing,” he says.

“We also seek external counsel in processes or procedures before a judiciary or administrative court, such as tax and labour laws, penal processes and consumer protection, among others.”

As Ripley operates in Chile and Peru, the company uses a law firm in each jurisdiction, he says.

“An external law firm adds value to the business when it has an in-depth knowledge of the industry and the economic, social and technological contexts in which it operates. That is not always easy. Law firms’ distance from our day-to-day business means sometimes it can be difficult for

them to get inside the company’s culture and synchronise with its needs.”

He says that, since March 2018, Ripley has maintained a relationship with law firm Miranda & Amado. “As a full-service firm, they advise us on a wide range of issues related to our day-to-day business.” However, when Ripley seeks an external firm for a particular case it will invite bids from selected firms.

“Among the main attributes we look for are the prestige of the law firm within the market, the capacity of the firm to advise us in an integral way, either by offering multiple specialities or by developing alliances with strategic partners, and in the external firm’s capability of understanding the needs of our business and operations, and to design legal strategies that allow the legal and reputational risks that we face to be adequately mitigated,” he explains.

“But above all it is fundamental for us that the external law firm is aligned with our corporate principles, that it maintain high standards of integrity and promotes diversity and innovation in the legal profession.”

IT IS FUNDAMENTAL FOR US
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He says that the biggest advantage of using an external law firm is working with professionals with ample knowledge of specialised themes that can provide Ripley with a response that is characterized by sophisticated legal analysis, with experience and trajectory in the industry, which brings his in-house team security and reliability, above all in the management of governmental issues.

“Furthermore, the fact that an external firm has a solid legal infrastructure allows it to attend to and process multiple requirements simultaneously in an agile and effective manner.”

But there can also be complications when using an external firm, he explains.

“Sometimes some of the areas [of the company] have trouble understanding the recommendations made by law firms, as they sometimes use complex language, while in-house lawyers ‘speak the same language’ and therefore it is easier for us to connect with the firms and provide an effective and pragmatic answer.

AN EXTERNAL LAW FIRM
ADDS VALUE TO THE BUSINESS
WHEN IT HAS AN IN-DEPTH
KNOWLEDGE OF THE INDUSTRY
AND THE ECONOMIC, SOCIAL
AND TECHNOLOGICAL CONTEXTS
IN WHICH IT OPERATES

WE HAVE SEEN A REVALUATION
OF THE ROLE OF THE IN-HOUSE
LAWYER, FROM BEING AN AREA
OF SUPPORT TO BEING AN
ESSENTIAL ALLY IN BUSINESS
DEVELOPMENT, MEANING THAT
OUR TEAM PARTICIPATES
IN ALL PROCESSES FROM
BEGINNING TO END

“For us, the impact of digital transformation presents a very important challenge. All industries, especially those related to banking and e-commerce, are being redefined by emerging technologies, and that means that we have to learn about them and adapt to new ways of working, such as with Agile, so that we can provide adequate and precise counselling to the company.

In addition, the emergence of new business models demands that we are permanently up to date with the new trends, such as the Internet of Things, APIs, cloud computing, data analytics, open banking and artificial intelligence.”

He says that his team’s workload has increased in recent years as Agile methodologies are implemented and the company’s growth strategy has become multi-channel, and which in turn have increased demand for agility, flexibility, and precise response capacity.

“But we have also seen a revaluation of the role of the in-house lawyer, with the company having moved from seeing us as an area of support, with little collaboration, to an essential ally in business development, meaning that our team participates in all processes from beginning to end.”

JAVIER ESCALANTE MADRIGAL



LEGAL

ENTREPRENEURS

Since its foundation in January 2018, Costa Rican law firm Colbs has more than tripled the size of its team of lawyers, doubled its office space and seen its revenues increase by 30 per cent



With its team of lawyers now numbering 13, Colbs' founding partner **Javier Escalante Madrigal** is quick to point out that human talent is among the factors that have contributed to the young firm's rapid growth.

"I think we have set out a novel proposal of how a law firm should be, young and modern, but at the same time technical and in-depth in legal themes. This has attracted a lot of young talent, keen to work in cutting edge themes within a collaborative approach," he tells *The Latin American Lawyer*.

"Furthermore, our network of contacts has been indispensable to create strategic alliances and bring added value to our clients."

Colbs was formed as a result of Escalante Madrigal leaving law firm Sfera, having, he says, gained the experience to move forward, and after finding a law partner who shared his vision.

"My experience in all the law firms I have worked in has been very positive, but I began to develop a different idea of how the exercise of the profession should be, and I found that shared vision in Sebastián Jiménez," he explains. "As well as lawyers,

we are also 'legal entrepreneurs', because we decided to launch our own firm with a structure of collaboration that would incentivise the growth of the team and implement a different approach in the relationship with our stakeholders."

STARTING FROM SCRATCH

He describes the experience of founding his own firm as "fantastic", but says that it was not plain sailing.

"Starting from scratch is not easy, but then nobody told me it would be. With a little mysticism, the right team and believing in what one is doing can achieve great things," he says.

"The main challenge is, without a doubt, positioning a firm composed of young lawyers within the market and competing with firms with a long history," he adds. "In addition, there are many challenges within the internal organisation that need to be taken care of, such as continuing to generate capacities for the personnel to attend to more and more complex requirements."

"I sincerely believe we have exceeded our own expectations. We never imagined we would grow so rapidly and with such robustness, considering that Costa Rica is going through a complex economic situation and there are many tax and labour reforms being passed. But with a lot of work we have been able to give ourselves an important position in the country and see significant growth."

But despite the current economic difficulties, he believes that Costa Rica offers many opportunities for the law firm, such as in corporate law, real estate and arbitration.

I THINK WE HAVE SET OUT A NOVEL PROPOSAL OF HOW A LAW FIRM SHOULD BE, YOUNG AND MODERN, BUT AT THE SAME TIME TECHNICAL AND IN-DEPTH IN LEGAL THEMES

Javier Escalante Madrigal

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SEBASTIÁN JIMÉNEZ AND JAVIER ESCALANTE MADRIGAL

“However, there are other areas that, within the context of the ‘fourth industrial revolution’, are also gaining strength, such as intellectual property, data protection, legal tech, environmental law, aeronautical law, regulatory law, among others.”

A FIVE-YEAR PLAN

He says that the firm has a five-year plan, drawn up by Roberto Artavia, former dean of Central America’s largest business school INCAE, and which aims to consolidate the firm’s mainstream practice areas, while seeking ‘blue oceans’ in which the firm can excel in the long term.

Part of the reason for the firm’s rapid growth is its different business model, he believes.

“In Colbs we are implementing a business model of providing legal services, unlike the common structure of an association of firms of lawyers. We want to be a one-stop shop for our clients in legal issues and, internally, work with a model of complete collaboration and integration among all the different departments and practice areas,” he says.

PART OF OUR STRATEGIC PLAN HAS BEEN TO OPEN AND GIVE IMPETUS TO LESS TRADITIONAL PRACTICE AREAS THAT ARE GAINING IMPORTANCE GLOBALLY

Javier Escalante Madrigal

“We aspire to having the capacity to manage a transaction in all its aspects and, at the same time, advise our clients on the environmental implications, intellectual property or data protection issues that such a transaction could have.”

“Part of our strategic plan has been to open and give impetus to less traditional practice areas that are gaining importance globally, such as intellectual property, environmental law, data protection and privacy, legal tech and regulatory law.”

He says the firm’s ‘war horses’, in the sense of the sectors that provide more work for the firm, are corporate law (M&A), real estate, litigation and arbitration, as well as aeronautical and tax law.

He also sees the legal sector going through change in Costa Rica.

STARTING FROM SCRATCH IS NOT EASY, BUT THEN NOBODY TOLD ME IT WOULD BE

Javier Escalante Madrigal

“We see the legal departments of the ‘big four’ consultancies seeking to reopen a space for themselves in the market, as well as the splitting up of larger, older law firms, and which we understand as an adjustment in the generational takeover within the law profession.”

He believes the firm also has the advantage of operating in a market in which few global firms have set up operations.

“There are few global firms with a presence in Costa Rica and they established their presence here by striking up fusions with local firms. I think the Costa Rica market is very competitive with well-positioned local firms, and global firms looking to do business in the country would do well to create alliances with local firms, such as ours, as we have a great installed capacity and a network of consolidated contacts. This is an opportunity for Colbs, due to the flexibility and efficiency with which we operate, and for the quality of service we offer.”

NEW BLOOD

Freshfields has strengthened its Spanish arbitration team with the incorporation of Lluís Paradell to its Madrid practice, who joins the firm with a wealth of experience and expertise in Latin America.



LLUÍS PARADELL

Freshfields Bruckhaus Deringer recently announced the incorporation of Spanish international arbitration specialist Lluís Paradell to its Madrid practice, bolstering the firm's international arbitration capabilities in Spain, and which include a strong Latin America focus.

"Freshfields' international arbitration practice is recognised as best in its class, both in Spain and around the world," Paradell says.

Focussing on investor-state and commercial arbitration, Paradell has represented multinational companies across several jurisdictions, such as Repsol, in its arbitration under the Spain-Argentina bilateral investment treaty, and Gas Natural, Aguas de Barcelona and Abertis in arbitrations against the Argentinian government.

He has also advised various Spanish investors in their claims against Venezuela and Bolivia and has acted for governments in investor-state arbitrations, most recently for Guatemala.

Described by Rafael Murillo, head of the firm's disputes and arbitration practice in Spain, as "a star of the international arbitration arena", Paradell covers cases across a broad range of sectors, from energy, banking and financial services, to water, telecommunications, food distribution and mining, while his commercial arbitration practice includes mostly post-M&A disputes under oil and gas contracts.

THE RISE OF ARBITRATION

Paradell's incorporation to the Madrid practice reflects the importance of the arbitration practice for the firm, as well as the increase in the number of cases taking place, particularly in Latin America.

"We are seeing a boom in arbitration as a result of an increase in cross-border investment, and arbitration is the only effective way of resolving a controversy abroad for a large-scale investor because, in many cases, in the event of a dispute against a government or a business partner, you need a neutral tribunal," Paradell tells *The Latin American Lawyer*.

"Added to that is the complexity of such cases, such as in large-scale construction, infrastructure or water projects, and which require large costs, and in arbitration there are guarantees."

ARBITRATION IS THE ONLY EFFECTIVE WAY OF RESOLVING A CONTROVERSY ABROAD FOR A LARGE-SCALE INVESTOR BECAUSE IN MANY CASES, IN THE EVENT OF A DISPUTE AGAINST A GOVERNMENT OR A BUSINESS PARTNER, YOU NEED A NEUTRAL TRIBUNAL.

LLUÍS PARADELL

“With more privatisation and the entry of more foreign capital, the number of arbitration cases will increase, and not only in Latin America,” he says.

He says the sectors that see the largest number of arbitration cases are energy, mining, water, infrastructure and transport.

“Investment arbitration is also very common, as bilateral and regional free trade agreements contain clauses for investment protection, and which have been signed since the 1990s as a result of the opening of the global economy and the arrival of more flows of direct foreign investment into Latin America,” Paradell says.

“In Peru, for example, arbitration is contained within the laws that rule public bids for projects,” he says.

OUR PHILOSOPHY IS NOT TO SET UP A BASE IN LATIN AMERICA, BECAUSE WE HAVE A VERY GOOD RELATIONSHIP WITH THE BEST LAW FIRMS IN OUR STRONGER *TOGETHER* NETWORK

LLUÍS PARADELL

Latin America has seen a wave of political changes, from the devaluation in Argentina in the early 2000s, to the problems in Venezuela, and now Chile and Bolivia, for example, and which are expected to lead to an increased use of arbitration.

And in Mexico, the cancellation of the planned airport project by President Andrés Manuel López Obrador, and the subsequent modification of contracts already signed with construction companies and investors, is another example of how arbitration is on the increase.

Greater private participation in public works projects, as well as the energy sector, will also likely spur a greater use of arbitration in the region.

“The fact that many states consider foreign investment to be the best way to develop some sectors, particularly infrastructure, will give way to controversies,” he says. “The problem emerges when the model has not been studied deeply enough and it doesn’t work, which is what happened in Bolivia with the privatisation of water, for example, and the government will turn into problems respecting the contract signed, and at the same time there may be a lack of a stable legal framework to resolve the controversy.”

2,800+

The number of lawyers working at
Freshfields Bruckhaus Deringer

“For us it is very important when we advise on such controversies to try to resolve it before we reach arbitration, to avoid costs and lengthy cases, as there is interest on behalf of both the state and the investor to reach an agreement quickly. Arbitration is the last resort,” Paradell says.

“Arbitration is a practice that attracts young lawyers and, given the complexity of such cases, the law firm puts together a very capable and competent team, with a good balance between senior and junior lawyers, and which gives us a competitive edge, as there is much competition among law firms in the area of arbitration, and efficiency is the key, with a good control of the number of hours invested in the case.”



FRESHFIELDS TEAM (LEFT TO RIGHT) KATHERINE DEL MAR, SENIOR ASSOCIATE; RAFAEL MURILLO, DIRECTOR OF THE ARBITRATION PRACTICE IN SPAIN; PATRICIA BELTRÁN, ASSOCIATE; LLUÍS PARADELL AND LAURA LOZANO (ASSOCIATE)

HIGH-QUALITY LATIN AMERICAN LAWYERS

He also highlights the high quality of lawyers in Latin America, whom they know well thanks to their relationship with the best local law firms included in their *StrongerTogether* network across the region, a programme that has proven to be quite successful and the right business model used worldwide.

“There are very good lawyers in those *StrongerTogether* local law firms, and it would not make much sense to try and compete with them. In addition, the region is very varied, Mexico and Brazil could be considered as continents themselves, and so opening an office in Bogotá, for example, would make it difficult to cover cases in other countries,” says Paradell.

160

The number of dedicated specialist lawyers across the firm’s network in Freshfields International Arbitration Group

“We have Latin American lawyers within the firm, many of whom come from our *StrongerTogether* network, and we have ‘foreign associates,’ who spend some time with us in one of our offices, such as in New York or Washington DC, and some of those end up staying with Freshfields.”

ARBITRATION IS THE ONLY EFFECTIVE WAY OF RESOLVING A CONTROVERSY ABROAD FOR A LARGE-SCALE INVESTOR

LLUÍS PARADELL

Despite Freshfields’ active participation in arbitration cases in Latin America, the law firm does not see the need to have physical presence in the region. “Our philosophy is not to set up a base in Latin America, because we have a very good relationship with the best law firms in our *StrongerTogether* network in each country, and we have worked very well with them. We work as one team built on mutual respect – there is no ‘them and us,’ Paradell explains. “When they advise on investments and something occurs that could lead to arbitration, they contact us. If we had an office in the region those firms might see us as a competitor and not as a collaborator.”



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