LATIN AMERICA SPECIAL REPORT 2011: DRIVING A NEW ECONOMIC AND LAW FIRM DYNAMIC

Posted on 19 September 2011

Category: [Special focus: Latin America]

International investor interest is on the increase across Latin America but it is Brazil that remains the major focus, creating a new law firm dynamic in the region

Latin America continues to present mixed opportunities for international investors. Argentina continues to show slow growth while investor interest in Peru has dipped ahead of impending elections. Markets such as Chile, Colombia and Mexico may be seeing a rise in activity but to call Brazil the region's "sleeping giant" is now beyond cliché. It is here that the vast majority of foreign investment is now focused and which is drawing in new legal players, while re-enforcing the lead of the domestic and best-established foreign law firms, say many.

Brazil's statistics are impressive – the eighth-largest economy in the world; a population of over 200m; and stable political and judicial systems – but behind the numbers it has often failed to deliver on its potential.

It may have the fastest-growing economy in Latin America but its businesses have however been among the slowest of the BRIC (Brazil, Russia, India and China) nations to expand onto the international stage. But despite some concerns over inflation, there is confidence that Brazil may finally be the "next big thing". Such is its economic strength that some lawyers see a growing disconnect between the country and its nearest neighbours.

Joan Roca Sagarra, Managing Partner of one of Spain's largest firms Roca Junyent, highlights the recurring attraction of the region to Iberian businesses. "Latin America is a big market but it seems to be becoming a case of 'Brazil and the others'. It seems to be getting the bulk of regional investment from all over the world."

Long-gone however are the days when Iberian and US companies, almost alone, targeted Brazil for its natural resources.

"Our focus is on advising investors from any part of the world and we now see companies from all continents looking for opportunities in Brazil," explains Rafael Dutra, a Partner with Dias Carneiro Advogados, the referral firm of Uría Menéndez. Dias Carneiro recently worked on China's Chongqing Polycomp International's purchase of fibreglass company Capivari Fibras de Vidro and State Grid's $1.8bn purchase of seven Brazilian power transmission companies from Isolux, Elecnor, ACS Cobra and Abengoa.

Seven of Brazil's ten biggest deals in 2010 involved foreign investors, among them Telefónica (Spain); Sinopec (China); Norsk Hydro (Norway); LAN Airlines (Chile); Qatar Holding; and Portugal Telecom. This year has seen French supermarket Carrefour's $3.4bn offer for a stake in Cia Brasileira de Distribuicao; Japan-based Investor Group's $1.9bn deal with CBMM; and Swiss giant Zurich's $1.6bn bid for Banco Santander's Latin American insurance business.

"Foreign investment is coming from a variety of sources, including China, South Korea, India, and the US and Europe," agree Jose Luis Freire, Managing Partner of national firm TozziniFreire Advogados in São Paulo, which works closely with Lisbon's PLMJ. "Of course, Iberian companies have been very quiet in their domestic market so are now looking for more opportunities in Latin America."

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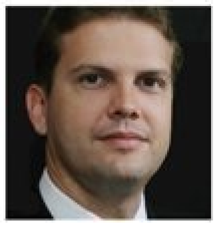

For some observers however, Brazilian outward investment has to date been too limited to the Americas. State-owned oil and gas company Petrobras, for instance, has built up assets in Argentina, Bolivia, Peru and Paraguay with deals such as the purchase of Perez Companc Energía in 2005 and Esso's distribution company in Chile in 2009. Last year saw mining giant Vale purchase Canadian mining group Inco for $18bn.

Freire believes however that the market is changing and Brazilian investors are looking elsewhere. "We see mining, energy and financial companies looking all over the world. Our local currency is strong so international assets are relatively cheap," he says.

Portugal has been a point of interest, with Petrobras, Oderbrecht and companies like Companhia Siderúgica Nacional, Votorantim and Camargo Corrêa all active. Embraer has a subsidiary in Portugal (OGMA) as well as a joint venture in China. In June, the Bank of Brazil and Angola's BIC bank were linked to the sale of nationalised bank Banco Português de Negócios.

The privatisation programme now being implemented by the Portuguese Government under the terms of its €78bn bailout is therefore raising particular interest among Brazilian businesses, agrees Alexander Bertoldi, Managing Partner of Brazil's largest firm, Pinheiro Neto, which works alongside Vieira de Almeida.
"Portugal may be a relatively small market but it offers direct access to the EU, to businesses with a tradition of international growth and cross-border management expertise – which is still lacking among many Brazilian businesses," he says.

Law firm influx

"Foreign firms are only permitted to practise international law so new entrants are mainly competing with each other for cross-border matters."
Jose Luis Freire, Managing Partner, TozziniFreire Advogados

With their historic ties, Portuguese and Spanish firms should be well positioned to capitalise on the investment flows both in and out of Latin America, believe many.
Alongside Brazil, where Uría Menéndez has its own offices in São Paulo, the firm operates a "best friends" network across the region. Garrigues is likewise prominent through its Affinitas network. The firm is applying to operate in São Paulo and has a formal association with Rio de Janeiro-based Schmidt Valois Miranda Ferreira & Agel.
Gómez-Acebo & Pombo and Cuatrecasas Gonçalves Pereira also have deep regional ties, albeit in Brazil both have looked to broaden their referral options. Gómez-Acebo & Pombo continues however to work with Pinheiro Neto, while Cuatrecasas opened in São Paulo last year after the dissolution of its formal ties to national firm Machado Meyer Sendacz e Opice.
Among Spain's leading firms, Roca Junyent therefore stands out, having to date preferred to maintain wider relations, including through the Terralex Network, although it does have strong ties to Argentina's Estudio O'Farrell. Like a growing number of Iberian firms it is though focusing more effort on facilitating Middle East and Asia investment into Latin America – it has a base in China as do Garrigues, Cuatrecasas and Uría Menéndez, while Lisbon's PLMJ and Morais Leitão Galvão Teles Soares da Silva (MLGTS) have established China ties for the same reason.
Among the Portuguese firms the traditional focus has inevitably been towards Brazil but the leading firms also all operate regional referral networks. PLMJ has maintained its joint venture with TozziniFreire since 2004, MLGTS' relationship with Mattos Filho Veiga Filho Marrey Jr. e Quiroga Advogados goes back to 2006, while Vieira de Almeida has long-standing ties to Pinheiro Neto, and SRS Advogados is associated with national firm Veirano Advogados.
Brazil's rising economic fortunes have also prompted renewed interest from US and UK-based firms. A decade ago the number of prominent Anglo-Saxon firms could be counted on one hand, today they are flooding into the market.
Most recently, UK insurance specialist Kennedys, for instance, has formed an alliance with Torres Marcellino & Associados, while offshore firm Harneys, French giant Fidal, Germany's Heuking Kühn Lüer Wojtek and UK-based DAC, have also all linked up in Brazil.
Alongside the likes of established players such as Clifford Chance, Linklaters and Allen & Overy, it is however the top New York practices that are now expected to make the most impact. Davis Polk & Wardwell and Cleary Gottlieb Steen & Hamilton have both announced Brazilian launches, echoing the arrival in 2009 of Simpson Thacher & Bartlett. Jones Day has also opened, under the lead of former Madrid Managing Partner Luis Riesgo, while Dewey & LeBoeuf, Shearman & Sterling, Milbank Tweed Hadley & McCloy and Skadden are increasingly active. DLA Piper has also opened through a local association.
In addition to M&A, capital markets work is central to this push. The main domestic stock exchange is São Paulo's BM&F BOVESPA, but most public companies have secondary listings on the New York Stock Exchange or under a Rule 144A offering. The US is a key destination for notes offerings too. Examples include Davis Polk acting for Gafisa on the SEC-registered offering of 85.1 million shares, and Cleary Gottlieb advising Petrobras on its $70bn share offering to fund exploration; the world's

largest-ever offering.
Finance is another factor, say lawyers. Financing for major transactions and projects tends to be governed by US (or sometimes UK) law. This puts US banks – and law firms – in a strong position, not least with the Brazilian Government looking to invest $350bn in transport and energy infrastructure over the next decade.

Local restrictions

The Anglo-Saxon push should, however, have little impact on the Iberian law firms' standing as transactions have a clear divide in terms of the legal systems used, note some. Private and company law is largely influenced by Portugal and Spain's civil code while public law takes its lead from the US.

This gives the two sets of law firms distinct markets. The Anglo-Saxons focus on M&A, capital markets and finance but most crucially do not practise Spanish or Portuguese law. The Spanish firms in turn can leverage off the heavy investments of their domestic clients.

"International activity often comes via subsidiaries located on the Iberian Peninsula and, besides the fact that Iberian companies still make considerable investments in Brazil, I do not believe that these links will become less important," says Dutra at Dias Carneiro Advogados.

Such a perception is evidenced through the deal statistics. There were 14 major M&A deals in 2010 for Spanish firms and at the half-way point of 2011, already 13 completed deals.

"Since the end of the 1990s, Spanish, or rather Iberian companies have been among the main players in M&A transactions in Brazil," explains Andoni Hernández, Managing Partner of Cuatrecasas' São Paolo office. "Our own decade-long presence has enabled us to participate in regional transactions on behalf of investors from other European countries and now investment centres like China and the Middle East."

It is worth noting however that local practice restrictions do apply to foreign law firms, with the Brazilian Bars effectively banning them from practising local law. This has given the domestic firms a lead on local (and regional) deals with a Brazil component and reinforced their market positions; giving them also a dominant position in the Latin American transactional market. According to Thomson Reuters, four of the top six M&A advisers in the first half of 2011 were Brazilian: Pinheiro Neto Advogados (first); Souza Cescon (third), Barbosa Mussnich & Aragão (fourth) and Machado Meyer Sendacz & Opice (sixth). No other Latin American firms feature.

"Foreign firms are only permitted to practise international law so new entrants are mainly competing with each other for cross-border matters," says Freire at TozziniFreire. "Lots of the big M&A deals involve companies with shares listed abroad, and this is where most of the work is for the non-local firms."

So while cross-border work is on the up, the restrictions on legal practice mean that capitalising on Brazil's domestic potential remains out of reach for many law firms. For Roca, such a situation means that while São Paulo may be emerging as a regional finance centre it has some way to go before it emerges as Latin America's legal capital. "It would be great if Brazil can show it really is global but there has always been a question mark over it."

Even so, the major Madrid and Lisbon firms need worry less whether Brazil does or does not emerge on the global stage – with Iberia's own economic troubles many clients see the region as strategically important and inbound work continues. They also do not need to worry about US competition either, as many continue to operate "fly in, fly out" operations, and apart from notable exceptions like Jones Day, Baker & McKenzie or DLA Piper, most have no intention of practising Spanish let alone Portuguese law.

The competition for Iberian firms – whether in São Paulo or across Latin America – therefore remains largely among themselves.