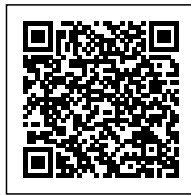


SPECIAL REPORT 2015 LATIN AMERICA: ON SAFARI

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Latin America's emerging Pacific trade bloc – consisting of Chile, Colombia, Mexico and Peru – offers a wealth of opportunities for law firms in Spain, but to win the hunt for business offered by the 'Pacific Pumas', firms will have to tread carefully

The Latin American market is becoming increasingly important for law firms in Spain, but what's the best way to crack it? The rise of the Pacific Alliance countries – namely Chile, Colombia, Mexico and Peru (which have been collectively dubbed 'The Pacific Pumas') – have excited investors and law firms alike. Uría Menéndez is one of the Spanish firms to have bet heavily on this region with the formation of Philippi, Prietocarrizosa & Uría. Other law firms looking to follow suit are warned to develop their strategy carefully – such a move involves considerable investment and the selection of the right partners. It is also vital that the partners a firm chooses properly buy-in to the project. The thawing of relations between Cuba and the US has also wedged open a window of opportunity, but law firms in Spain must act quickly if they want to capitalise – it is anticipated that an international firm will open in Havana soon and the betting should not be against it being one of the US players. Meanwhile, one of the other issues facing law firms in Latin America is corruption, the shadow of which is never far away – lawyers warn of 'state attorney mafias', particularly in Mexico. All in all, opportunities abound in this wildly diverse region, but only the most astute law firms will be

in a position to capitalise.

Pablo González-Espejo, partner at Uría Menéndez, says there are currently two main opportunities for law firms in Latin America: "Law firms in Spain are exploiting the Spanish connection with the region – Spanish firms are now more aware of the opportunities there, while non-Spanish firms are using their Spanish partners to develop a practice in Latin America, for example UK firms are focusing on Latin America from their Spanish offices. Meanwhile, there is also a trend for in-bound Spanish investment from Latin America into Europe – they are using Spain as a base [to access European markets]." Bird & Bird partner Javier Fernández-Samaniego says that while UK firms do not have a significant strategic interest in Latin America – and instead prefer to focus on locations such as Singapore and Hong Kong – most European clients that do have interests in the region ask for the firm's Madrid office to be involved in the work. He adds: "In-bound work from Latin America to Europe presents an opportunity as the strong dollar makes Spain an opportunistic place." Fernández-Samaniego adds that Cuba also has potential – largely due to the expertise of Bird & Bird partner Hermenegildo Altozano – but he does not see any UK firm opening in Latin America in the near future. Jones Day partner Javier López Antón says that law firms seeking to make a success of a Latin American office need to be prepared to put sufficient financial resources into the venture: "To be a player, you need to make a relevant investment."

What are the biggest challenges currently faced by law firms operating in Latin America?

"Changing business and services provision cultures in the region. Developing fair market-oriented services, providing high quality services at reasonable fees for both clients and service providers without predated the market." **David Jiménez, partner, Chadbourne & Parke**

"Challenges faced by law firms are often tied to political and even cultural issues in any given country. Firms in Latin America are often managed differently compared to international law firms. Bridging the gap between institutionalised business processes of international law firms and the local reality and culture can prove to be challenging. Also, a top priority for governments across the region is to tackle long-standing structural problems to improve investors' trust. The business environments, infrastructure, and education need to be improved for foreign and local investment to flourish. A more recent generation of lawyers in the region have adapted to the international firm culture and are able to navigate seamlessly between the two contrasting environments. This factor has helped greatly in the expansion of international law firms in Latin America." **Boris Otto, partner, Holland & Knight**

"In a challenging and increasingly demanding market, the ability to quickly adapt and retain talent will be key. With a substantial number of deals being backed up by sophisticated PEs and sovereign funds, those able to invest in training, recruitment and organic growth will be the ones thriving. A second challenge will be to continue operating successfully a market where the number of international firms is increasing by the day." **Thiago Sandim, partner, Demarest**

"With the increase in globalisation, there is not only an influx of clients, but also of global law firms, establishing themselves in the region. Therefore the competition in a once restricted market is fiercer than ever, with new international firms opening branches and establishing alliances. This is healthy for the practice, but it does create new rules in a once established playing field. Brazil is still holding this off to some extent, due to the ban of foreign law firms practicing in Brazil, but it is an exception in the region. In connection to this, a challenge is to be able to offer truly Latin America-wide services of the same level, with local practitioners. There may be a trend of new alliances formed between national firms throughout the region to meet this challenge." **Raquel Stein, lawyer, Carvalho, Machado, Timm e Luz Advogados**

"The more difficult economic situation in countries such as Argentina and Brazil, which are important economies in Latin America, in addition to some political problems which the Brazilian Federal government is currently facing, has scared off some important potential investment in these countries. However, although the volume of direct investment and projects in general may suffer in certain countries, particularly Brazil and Argentina, there may also be other opportunities for law firms in areas such as litigation, arbitration, and labour. A challenge that international law firms may face is the valuation of the US dollar against some of the local currencies. Political disputes and instability may also be an issue in certain countries, such as Venezuela." **Juliano Lazzarini Moretti, partner, Lazzarini Moretti Advogados**

"Innovation and protection of intellectual property rights. One of the main challenges facing IP firms in Latin America is the outdated legislation issued by the Andean Community. The speed of the technological changes requires rules foreseeing all situations that may currently occur. One aspect that should be mentioned is intellectual property rights relating to content hosted on social networks. Other challenges include the right to data protection and rules providing protection to consumer privacy. Also, there are too few incentives provided by the authorities to encourage investment in innovation and development – according to some studies in Latin America the number of patents calculated per million inhabitants is less than one." **Oscar Mago, founding partner, OMC Abogados & Consultores**

"One of the biggest challenges faced by law firms operating in Latin America is undoubtedly the cultural aspect, which varies widely from country to country and even from region to region, as in Brazil, due to its huge dimension. The need to adapt and to be familiar with the local market is the key to success. Therefore, it is crucial to have a network of affiliates (or partners) composed by local lawyers who know and can master the regional idiosyncrasies and who can give a 'familiar' face to the business, as in Latin American countries in general, personal relationships are very important." **Luís Guilherme Pereira, partner, Queiroz Cavalcanti Advocacia**

"Economic and social instability. For law firms, this implies huge legal uncertainty that they have to handle with their clients. Furthermore, corruption is also a systematic problem that can be seen throughout Latin America. Thus, law firms have the responsibility to avoid corruption in transactions and procedures involving governmental authorities. Additionally, brain drain in Latin America is also a big challenge, since many Latin American students leave their countries to study abroad, where they find new job opportunities instead of coming back and applying their knowledge back home. Finally, for domestic law firms, it is a challenge to remain competitive alongside international law firms from the US and Great Britain. However, if a law firm participates in international cases or cases that involve an international entity, this helps build international networks that should be strengthened and nurtured." **Lucía Ojeda Cárdenas, partner, SAI Derecho y Economía**

"As one of the adverse effects of the Brazilian economy, companies in general are reducing costs, including the demand for legal services. In moments such as this, law firms must know how to listen to their clients and be knowledgeable about clients' financial problems. It is only a few that have a faithful view of the big picture and are skilled enough to learn to adapt and to provide their clients with customized and cost-wise legal services. Law firms must be fully aware that in moments of economic crisis, it is of utmost importance to be even closer to their clients, adopting innovative legal fees customised specifically to clients' needs at a given time. Law firms may play an important role in helping companies to succeed and to strengthen for a new cycle of business prosperity." **Carlos Roberto Siqueira Castro, partner, Siqueira Castro Advogados**

"The biggest challenges are those arising from the expansion of global firms, the lack of economic growth, cyber risk, and protectionism." **Yves Hayaux-du-Tilly, partner, Nader, Hayaux & Goebel**

LatAm firms opening in Spain?

Gonzalo Barboza, partner at Arochi & Lindner, a Mexican firm that opened an office in Barcelona in 2014 says that with Latin American clients investing in Europe, there were many reasons for opening an office in the Spanish market. He adds: "More Latin American firms could open in Spain, but it is risky as it is a well-established market." Barboza says that Arochi & Lindner practices intellectual property law, which is a "very specialised area", and that it would be harder and would require a bigger investment for a Latin American firm that practiced other types of law to establish an office in Spain.

Broseta partner Julio Veloso believes that, while law firms may have different strategies depending on their clients, it is "natural" for law firms in Spain to look to expand in Latin America. "Most of us are focused on Latin America and there are now opportunities for Latin American countries to come into Europe – we [Spain] can be the gateway into Europe," he says. "We also have a great opportunity to be a hub for investors from Europe and China, for example, to go into Latin America." Veloso highlights the fact that investors are showing an interest in Colombia, Peru and Mexico, in particular. Commenting on Uría Menéndez's decision last year to take a 30 per cent share in a new firm created as a result of merger between two of its "best friends" in Latin America – Chile-based Philippi, Yrarrázaval, Pulido & Brunner and Prietocarrizosa of Colombia – González-Espejo says: "We set up in Chile and Colombia and we intend to expand in Peru and subsequently Mexico."

López Antón says that, for Jones Day, the Pacific Region is the target. He adds: "Central America does not have the volume or size of business, we are in Brazil, but there are legal hurdles to be overcome there."



“ More Latin American firms could open in Spain, but it is risky as it is a well-established market. ”
Gonzalo Barboza
Arochi & Lindner

Don't be naive

Fernández-Samaniego argues that Cuba currently offers a "window of opportunity", but he adds: "Sometimes in Spain we can be a little naive in underestimating US influence in the Central America and Caribbean region – on Cuba I think we will see soon which is the first Spanish or international firm to open in Havana but that movement requires courage and a long-term view." Fernández-Samaniego

continues: "Our firm is very active there through Hermenegildo Altozano's Cuban practice but we don't contemplate immediate openings in Havana or elsewhere in the region but rather strengthening other ways of cooperation with our selected local best friends which have proven to be successful for our specific client needs."

González-Espejo says that Uría Menéndez is monitoring recent developments in Cuba, but he adds: "There are few certainties there, you have to make sure that it is not only about doing PR – to Spaniards, Cuba has a romantic attraction, but thinking rationally, at this point we need to focus on understanding the implications for clients arising from investing in Cuba." One partner at a major international law firm says that Canada, Spain and the US already have a lot of business in Cuba. He adds: "Cuba is a place that needs to be built from scratch."

Veloso says he is surprised that there is not a law firm covering the whole of the Latin American region. "There was an opportunity for big Spanish firms to become a big regional player 15 years ago, but we now have strong Latin American firms and growth is expected to average 2.3 to 2.5 per cent in all countries this year," he says. "It's much tougher now for Spanish firms, but a firm like Uría Menéndez or Garrigues may try it."

Barboza says that the best strategy for law firms in Latin America is to "understand the clients and legal environment in each country". He continues: "You have to adapt the rules and procedures as each Latin American country is different – whereas there is more homogeneity in Europe." However, Barboza believes there will be a pan-regional firm at some time in the future. He adds: "There are more US firms opening in Mexico, it is a huge market." López Antón argues that Mexico is not an easy market for foreign law firms to break into. "There are firms there with close links to the

government and with major clients."

Veloso adds that people can be "very nationalistic and chauvinistic in Mexico". One partner at an international firm says that it is "impossible" for foreign firms to do business for the Mexican government. "It's a very nationalistic country," he says. "There is a 'mafia' of state attorneys and we have been a victim of this quasi-corrupt approach." Veloso says: "A common mistake the Spanish make is that we believe that because we speak the same language, it will be the same as being in Spain – it's not."

Risking your reputation

González-Espejo says one of the big challenges of providing legal services in Latin America is ensuring that client expectations are met. "It requires resources from head office as you have to deliver a deal overnight, there are cultural differences [in Latin America], you always need people on the spot, we have partners in Chile and Colombia and they are supported by additional lawyers," he says. González-Espejo adds that in order to develop this type of working environment, associate lawyers from Chile and Colombia come into Uría Menéndez and develop several "joint training" initiatives. He continues: "We [Uría] have seven or eight partners working daily helping on the integration of Philippi, Prietocarrizosa & Uría (PPU)."

Fernández-Samaniego says that another challenge for law firms looking to open offices in Latin America is the protection of their reputation. "Firms main task is selecting the right people – corruption is a big thing in most Latin American countries," he says. "The regulatory environment is also a challenge – meanwhile, individual countries have other specific challenges, for example Argentina is a great source of business, but there are challenges such as currency control issues and regulatory changes, for example."

López Antón believes that finding the right partner in Latin America in order to truly become a local player is the challenge facing foreign law firms that want to open in the region. "We [Jones Day] found the right partner in Mexico, but it's not always easy [for firms] to combine and share the same targets," he adds.

Fernández-Samaniego says that most lawyers in Latin America "speak extraordinarily good English and show good levels of commitment". He continues: "We work with partners in Brazil who have plenty of work – it would be difficult for foreign firms to attract them as they don't want administrative burdens or conflicts of interest."

Veloso says the challenge for law firms looking to capitalise on opportunities in Latin America is to "bet on what might happen". He adds: "Our challenge is that the world has changed, the Latin American region is now becoming attractive, there are a lot of investors and lawyers are looking at them – there is room for lots of different strategies."

Barboza says he understands the hesitant approach of big firms when it comes to using their brands in Latin America. "Such firms might have to explain to clients why they cannot deliver the same way in certain territories as they do elsewhere," he adds. "From my own experience as an in-house lawyer, it can be sometimes hard to implement solutions for different jurisdictions in Latin America without the flexibility to adapt to local conditions."



“ In-bound work from Latin America to Europe presents an opportunity as the strong dollar makes Spain an opportunistic place. ”

Javier Fernández-Samaniego
Bird & Bird

Copy the 'Magic Circle'

The quality of lawyers in Latin America is "extremely good", according to Veloso. "The challenges are to manage clients' expectations and timescales – clients think the market is the same as it is in Spain, but it's not." Fernández-Samaniego says that local players in Latin American legal markets will face the challenge of globalisation. He adds: "The winning strategy will be to

try to do what the 'Magic Circle' firms did in Europe, but US firms have the best chance of achieving this." Barboza says the key to success for foreign firms in the Latin American market is "forming the

right umbrella firm that the local market can identify with in addition to finding the right local partners". He adds that he thinks Uría Menéndez's approach [of taking a 30 per cent stake in a newly merged firm spanning Colombia and Chile] is "likely to succeed".

González-Espejo says that, in order to properly define a strategy, it is important that law firms do not look on the exercise as "we're going to Latin America", instead it is important that the local lawyers involved "feel they are part of their project". He adds: "Local lawyers are sophisticated and have great careers in a growing environment, if PPU succeeds, it will be because we have made all the partners in Spain, Portugal, Chile and Colombia feel part of a joint project."

Fernández-Samaniego adds that the "recipe for success [for foreign firms in Latin America] is to attract and retain the best local talent".

Veloso says it is a mistake if law firms think they can go into Latin America and teach lawyers how to do business. He adds: "The key is to approach it in a humble way, we are guests in their countries."

Bernardo Gutiérrez de la Roza, founding partner, Ontier, says: "Today, [in Latin America], it is not enough to be experts in the local law and its legal system. Law firms also need to be familiar with the cultures and the society of the countries where they operate."

Latin America has plenty to offer in terms of growth opportunities for law firms in Spain. The 'Pacific Pumas' are hunched and ready to pounce, while Cuba, to use business parlance, offers "clear blue water" for firms willing to take the plunge. But establishing a presence in Latin America is fraught with potential pitfalls. The opportunities are there for all to see, but in order to take them, law firms must develop their strategy carefully.

What are currently the biggest opportunities for law firms in Latin America?

"There are promising developments taking place in the Pacific Alliance for companies in the life sciences sector. Its agenda on regulatory soft harmonisation is creating interesting opportunities for companies, who will require lawyers that can help navigate these changes. Those law firms with regional presence and capabilities in life sciences will be well positioned to take on these opportunities." **Christian Lopez-Silva, partner, Baker & McKenzie**

"Challenging times have presented interesting opportunities to New York law firms in Latin America. Obvious areas are FCPA compliance investigations and arbitration. In addition, our private clients remain active in the region, in particular in view of the somewhat countercyclical nature of their business." **Grenfel S. Calheiros, partner, Simpson Thacher & Bartlett**

"I think that the biggest opportunities for law firms in Latin America are, in fact, at the same time its challenges. I believe that right now law firms in general in Latin America have a lack of internal institutionalisation. This has been achieved by few firms and consequently this is a big opportunity for the rest. When firms have a better degree of institutionalisation, they are able to project themselves into the future and not just be a group of single practitioners or a family owned firm, which has a successful story but once there are problems within the group or one of the important partners retires, the firm disappears. Competition will get stronger and stronger, and talent will move to the firms that give it a long run projection. It is easier to attract talent in a firm that has a long-term view and an active interest in projecting itself to the future, than in one in which there is no common long term goal." **Juan Francisco Gutiérrez, partner, Philippi, Prietocarrizosa & Uría**

"Three main fields may be identified where law firms have significant opportunities in Latin America and in Brazil at the present moment. Firstly, the general continent low market value scenario has been attracting a number of foreign investors interested in buying cheap assets and cheap credits, or even investing in local companies' restructuring. Secondly, the growing number of companies unable to face their financial obligations has given rise to an increase in restructuring and debt collection procedures, where banks, assets, equities and multimarket funds from all over the world have changed their tolerant position in order to pursue their financial interests. Finally, the developing infrastructure industry where, even if a slowdown may be observed, an important number of issues have arisen due to contract termination and breach of pre-contractual agreements, for example." **Daniel Levy, associate, Ferro, Castro Neves, Daltro & Gomide Advogados (FCDG)**

"Investments in infrastructure projects are still a major opportunity for firms in Latin America as a result of the still significant needs of the countries in the region." **Roberto Vianna do R. Barros, partner, Campos Mello Advogados**

"As a consequence of the downside of commodities prices and the suspension of several mining and energy projects, as well as the undervaluation of local currency, we are seeing a lot of interest from foreign investors, mainly private equity, in acquiring small or mid-size companies (USD\$ 20 million-USD\$200 million) that have a mature and proven business that can be expanded to countries such as Peru and Colombia or is already operating there. Likewise, as a consequence of tax and labour reforms, Chilean companies will increase their investment in Peru and Colombia and even Mexico. In turn, judicial and community challenges to large projects are presenting lot of opportunities for lawyers. Likewise the recent tax reform will provide plenty of work for lawyers in Chile." **Gonzalo Delaveau, partner, Honorato Delaveau Abogados**

The biggest opportunities in each country depend on the performance of each country's economy and its place in the global economy. Brazil's economy is not a disaster (like in a few countries in the region) but will not perform well in 2015 or at the beginning of 2016. But the place the country has in the global economy continues to be significant. The amount of foreign direct investment remains steady and this continues to generate a great deal of M&A work. Also, the problems currently faced by the construction companies and Petrobrás will force both to divest a relevant amount of their assets, again generating another great deal of M&A work." **Jose Luis de Salles Freire, founding partner, TozziniFreire Advogados**

Latin America, and Brazil in particular, is in a transition phase – a period which combines a series of investigations involving the political and corporate worlds, with an economic recession, high interest rates, rising unemployment and inflation. This follows a period of enthusiasm and escalating commodities prices. In a challenging scenario like this, well-connected firms with a diverse base of long term clients and multiple areas of practice find opportunities for growth in areas such as compliance, mid-size M&A, restructuring and recovery, and litigation. The Olympic Games will bring opportunities in real estate and media." **Pedro Aguiar de Freitas, managing partner, Veirano Advogados**

Currently, there are interesting business opportunities for Spanish companies in the Brazilian energy sector. In particular, we should mention the photovoltaic (PV) industry. The Spanish companies have strong know-how and worldwide experience of engineering, construction and procurement of PV plants necessary to develop the Brazilian solar market. We expect to see a PV boom during the second semester of 2015 and during the year 2016. **Francisco Javier Villalón Vara, partner, FPV Proyectos Empresariales**