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ANNA TAVARES DE MELLO

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**ATYPICAL TIMES**

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LATIN AMERICA HEAD

**IN-HOUSE**

BANCO DE CHILE'S  
MARIA ALEXANDRA CUEVAS

# EXIT STRATEGY

Thomas Laryea of Orrick talks us through Argentina's negotiations with its creditors and the bond swap that could be the country's first step towards pulling out of its economic tailspin



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# A (RUDE) REAWAKENING

By Adam Critchley

Latin America has been a world leader in many spheres. The colour television was invented by Mexican electrical engineer Guillermo González Camarena, the artificial heart by Argentina's Domingo Liotta, the stent by his compatriot Julio C. Palmaz, and those captcha codes of twisted letters and numbers to prove we are not robots were the brainchild of Guatemalan Luis Von Ahn. And that was just during the twentieth century.

The region was among the latecomers to the COVID-19 pandemic, however, with the virus arriving at the continent's shores in late March and propagating quickly, undetected, and in many countries, ignored. Cases began to proliferate, in the urban areas of the megacities and also in outlying villages, remote communities, often a long way or even cut off from medical assistance. And in so many cases, both in rural and urban areas, social isolation has not been an option, but rather a stark choice between earning or not eating; of starving or exposing oneself to contagion. A question of life and death, no less.

From across the pond we have watched Europe's release from lockdown, the return to work, school and a social life, and more conspicuously (and from this distance, bafflingly) the dash to vacation, a rush to paradise, and the consequential renewed spread of the virus and the re-imposition of lockdown measures. The conditions afflicting that continent are serving as a warning sign on Latin America's journey through the dark tunnel of the pandemic towards the (as yet imperceptible) light at the end of it.

The longed-for return to normality, or to the closest possible resemblance of it, towards a new normal that is quickly becoming habitual and quotidian, is likely getting nearer, but could be a rude reawakening if the normality (or as close as we can possibly get to it) is only short-lived. ■





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## ARGENTINA

### Argentina's O'Farrell unveils new management team

Argentinian law firm Estudio O'Farrell has announced its new management team, following the retirement of partners Daniel Calatrava and Fernando García Pullés.

The new team comprises senior partner **Uriel O'Farrell** and partners **Miguel A.M. Tesón**, **José Luis Zapata**, **María Agustina Fanelli Evans** and **Juan Pablo Fratantoni**.

Uriel O'Farrell specialises in corporate law, mergers and acquisitions, and energy transactions, regulation and litigation cases, and José Luis Zapata heads the firm's labour law department.

María Agustina Fanelli is a partner in its public and administrative law department. She joined the firm in 2000 and has been a partner since 2014, while Juan Pablo Fratantoni is a partner in the corporate and finance law and capital markets department. He specialises in mergers and acquisitions, and investments in energy and joint ventures. He joined the firm in 2017

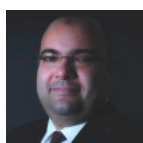
"The new scenario will reward those who best know how to read and adapt their service structure through innovation and agile models to the specific circumstances of each business, competitive environment and regulatory framework. In our case, we are confident that the measures and improvements introduced in recent times will have a meaningful impact on the quality of our service to clients," the law firm said.



# IMPLICATIONS OF COVID 19 ON GENDER EQUALITY IN THE LEGAL SECTOR

5 OCTOBER 2020 - 5:00 PM (CET)

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*Adsero - Ragy Soliman & Partners, Egypt*



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Private Sector Development Specialist  
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COSTA RICA

## ECIJA promotes partner in Costa Rica, adds partner in El Salvador

ECIJA has promoted **Daniel Valverde** to partner in the firm's labour law and human rights practice in Costa Rica, and hired **Karla Alas** as a partner in its technology practice.

For the last two years, Valverde has led the Costa Rica office's labour law practice, and is now the Madrid-headquartered global law firm's 127th partner.

He has a decade's experience in corporate employment consultancy, and which has been enhanced with his completion of a master's degree in international law and human rights from the United Nations-mandated University for Peace (UPEACE), helping to turn ECIJA's labour practice into one of the fastest-growing in Costa Rica.

"Valverde's background has allowed him to match the application of traditional employment law with interpretations stemming from international human rights instruments, translating them for a corporate world, and advising Fortune 500 companies on the application of best practices to avoid discrimination, workplace and sexual harassment, in addition to implementing the best standards on diversity issues to avoid contingencies in these areas," the law firm said.

Earlier this year, Valverde was appointed chief diversity officer of ECIJA Costa Rica.

"Daniel assumes his new role precisely as a result of his impeccable work directing two strategic practice areas for the firm, which have grown in number of clients, in billing and in complexity of the matters we attend to," Mauricio París, ECIJA Latin America regional manager, said.

For his part, Valverde said his promotion to partner means "a recognition of the effort and dedication that I have tried to give to both my peers and our clients".

The incorporation of partner Karla Alas strengthens the Spanish firm's technology practice in the Central American country, and which the firm describes as "a key department," bringing the number of partners in El Salvador to five, and who are backed by a team of nine lawyers.

"All of the team have the experience and academic skills to ensure that their clients receive services that provide real added value," the law firm said in a statement.

Alas has more than 24 years of professional experience in the areas of intellectual property, registration law, litigation, civil and corporate law, mediation, consumer law and customs procedures. She also provides legal support in conciliation and mediation processes, and for the last five years has specialised in digital law.



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ECUADOR

## Ecuador's Heka enlists new tax and finance partner

Ecuadorian law firm Heka Law has hired a new partner to bolster its financial and tax department.

**José Manuel Albornoz** joins the Quito-based firm as a partner in its financial and tax department, and who the firm describes as "one of the most experienced professionals in tax, financial and accounting issues in Ecuador, adding an extra element to the firm's expertise from that of traditional legal practices".

The firm said the addition of Albornoz responds to its awareness of the need for financial support and advice as an integral component of legal services.

"The arrival of José Manuel not only reinforces the number of services offered by the firm, but is also a clear demonstration of the professional quality and experience of our team, a key component in our strategy to penetrate and position ourselves in the Ecuadorian legal market," Heka partner Santiago Albán said.

José Manuel has more than 18 years' experience in financial and tax matters, of which he spent 13 years as manager of the tax team for "one of the most important law firms in Ecuador and the region", Heka said, without naming the firm.

"His experience has led him to work on local and international business group transactions, corporate restructurings, the purchase and sale of businesses, mergers, divestitures, tax audits, complex advice, and legal and financial restructuring, as well as resolving client enquiries and offering guidance on specific tax and labour issues where financial expertise is crucial for decision-making," the firm added.

"His wealth of knowledge allows him to seamlessly guide clients in procedures relating to tax refunds, audits, information requests, related parties and other corporate matters."

José Manuel has developed his practice with clients from various industries, such as oil, commerce, hotels, services, retail and health, among others.

"His experience allows him to provide support in procedures before the Ecuadorian Internal Revenue Service (SRI) and other tax and control authorities, such as the country's company registration authority. In addition, he is an accounting and tax expert accredited by the Judicial Council of Ecuador."

For his part, José Manuel says this new professional challenge represents a significant growth in his personal and professional life. "I have the will and determination to ensure that, with the rest of the team, we can achieve a synergy that allows us to stand out in the market, through our offering of quality and dependable services. I am sure that the skills and multi-disciplined expertise of other professionals at the firm will allow us to offer integrated services that add value to the solutions that our clients demand," he said.

He holds a specialisation in international financial reporting standards from the Technological Institute of Monterrey (Mexico) and a master's degree in financial management from ISEAD Business School, attached to the Universidad Complutense de Madrid.



#### DOMINICAN REPUBLIC

### Pellerano & Herrera promotes partner

Dominican Republic law firm Pellerano & Herrera has promoted **Caroline Bonó** to partner.

Caroline has been promoted from senior associate and her ascension consolidates the domination of female lawyers in the firm, which now number five out of the total eight, reinforcing the firm's continued support for female leadership in the Dominican legal industry. Caroline joined Pellerano & Herrera in 2017, and since then has led the firm's tax practice.

She has more than 13 years' experience in legal practice, focusing her work on tax, corporate law, and regulatory and labour laws.

She has advised both local and multinational companies active in various sectors, such as trade, renewable energy, electricity, industry, financial, automotive, tourism, mining, telecommunications and non-profit organisations.

Caroline is a law graduate from the Pontificia Universidad Católica Madre y Maestra, with a master's degree in business law (MADE) from the Universitat Pompeu Fabra in Barcelona, in addition to a master's degree in international taxation from the Universidad Internacional de la Rioja, also in Spain.

"Caroline is a key member of our tax team," managing partner Ricardo Pellerano said.

"This promotion is a recognition of her outstanding performance and professional ethics. We proudly welcome her as a partner of Pellerano & Herrera," he added.



#### MEXICO

### Sánchez Devanney names new Mexico City managing partner

Mexican law firm Sánchez Devanny's board of directors has elected **Turenna Ramírez Ortiz** as managing partner of its Mexico City office for the 2020-22 period, taking over from José Antonio Postigo Uribe.

As a result of the nomination, Turenna becomes part of the firm's board, together with Ricardo León, who is partner director, and Rafael Villamar, who is the managing partner of the firm's Monterrey office.

Turenna joined the firm in 2009 and heads its foreign trade and customs practice, and is currently co-chair of the foreign trade and customs section of the International Bar Association (IBA), and she has been recognised by Chambers & Partners Global, Legal 500 and Who's Who as a leader in her area of law.

She has more than 23 years' experience advising local and multinational companies in foreign trade and customs affairs, including the design and implementation of trade strategies, the auditing of foreign trade activities, multilateral trade deals, verification of product origin, and the analysis and negotiation of Mexican official rules in sensitive business areas, and she has served clients in a wide range of industries.

She has also participated in the negotiation of trade facilitation programs with the secretary general of the World Customs Organization.

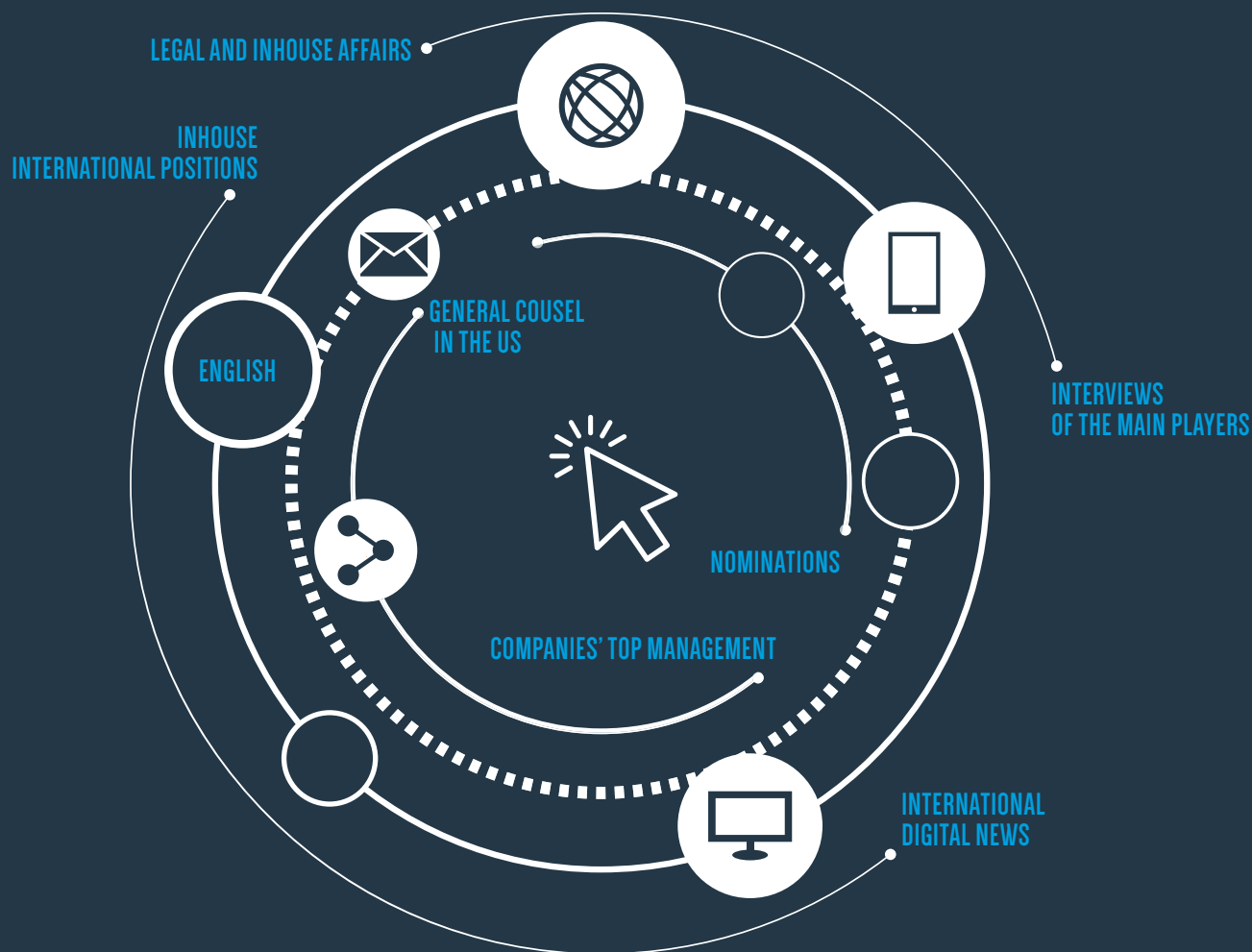
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ENRIQUE BARROS



VICENTE CORDERO

## CHILE

## Chile's Barros & Errázuriz promotes two partners

Chilean law firm Barros & Errázuriz has elected two of its senior associates to partner, **Enrique Barros**, who is a member of the financing and infrastructure practice, and **Vicente Cordero** is a member of the M&A/corporate practice.

Both have been with the firm for more than 10 years and represent, together with Sergio Eguiguren, the consolidation of a new generation of partners, the law firm said.

"I am delighted to welcome these two outstanding lawyers to the firm's partnership. Their election recognises their talent and dedication to our clients and the firm for a long time and represents an important step for the next decade of the firm," said Cristián Barros, Barros & Errázuriz's managing partner.

"I am confident that our new partners will continue to provide our local and international clients with a top-notch service, strengthen our capabilities and play an important role in the firm's growth," added Pablo Guerrero, head of M&A and the international practice of the firm.

With these two promotions, Barros & Errázuriz now has 25 partners, in addition to more than 100 lawyers.

Enrique focuses on advising Chilean and foreign companies and financial institutions on a variety of matters, from corporate and project financing, mergers and acquisitions, capital markets and public offerings of shares to the restructuring in various industries. He holds a law degree from the Universidad Católica de Chile and has an LLM from the University of California (UCLA). In addition, he has a degree in taxation applied to business from the Universidad Adolfo Ibáñez.

Between 2015 and 2016, he worked as a foreign associate in New York for law firm Shearman & Sterling, where he focused on capital markets, corporate financing and project financing in both the US and Latin America.

Vicente has focused his practice on advising local and international companies, financial institutions and private equity firms in a wide range of matters, including mergers and acquisitions, equity and debt offerings, corporate and project financings and reorganizations across various sectors. He holds a law degree from Universidad Católica de Chile and holds an LLM in banking and finance from Fordham University, New York, and has a degree in finance and accounting for lawyers from the Universidad de Los Andes. Between 2014 and 2017, he worked as a foreign associate at Chadbourne & Parke in New York, where he focused his practice on M&A, capital markets, corporate financing and project financing in Latin America.



# A REGION RESTRUCTURES

Numerous law firms across the region are engaged in restructuring the debt or the sale or purchase of assets of private or public entities, as governments, companies, entire nations adjust to the human and economic costs of the downturn caused by the lockdown.

Observers of Latin America's economies and business landscape are expecting an avalanche of M&As once the region begins to emerge from the COVID-19 pandemic, and by all accounts the buying and selling is already happening, coupled with the restructuring of debt by both governments and companies.

Odebrecht, the disgraced Brazilian infrastructure conglomerate that pleaded guilty in a US court in 2016 to bribing government



officials across the region in return for lucrative contracts, is undergoing a restructuring process, while Germany's WireCard, a company that fell from grace after it was found to be cooking its books, successfully disposed of its Brazilian assets in what is expected to be the first in a series of asset sell-offs worldwide, and in which Wirecard was advised in Brazil by Pinheiro Neto.

The biggest restructuring of sovereign debt in the region was achieved by Argentina in August, with a \$65 billion bond swap agreed with the majority of its creditors, which were advised by Orrick, while Cleary Gottlieb counselled the sovereign with a team led by partner **Andrés de la Cruz**, with partners Nicolas Grabar, Carmine Boccuzzi and Juan Giráldez.

Ecuador's President Lenin Moreno announced earlier this year that the country would seek to offload state-run assets that would include the electricity company, a state-run airline, and the post office. The country also successfully restructured \$17.4 billion of debt in August, assisted by Hogan Lovells.



Andrés de la Cruz

Brazil had announced a privatisation drive before the arrival of the pandemic, with plans to sell off parts of electricity utility Eletrobras put on hold, although lawyers and analysts in the country are confident that the sales will go ahead.

And Belize achieved a renegotiation of its bond payments, counselled by law firm Orrick, affording it breathing space as it struggles to ride the tidal wave of the pandemic that has severely impacted tourism, a sector on which the second-smallest country in Central America heavily depends.

## HOGAN LOVELLS ACTS FOR ECUADOR IN DEBT RESTRUCTURING

Hogan Lovells has represented Ecuador in the restructuring of the country's \$17.4 billion debt

The transaction was one of the first-ever tests of 'collective action clauses', and the law firm was involved in helping the country complete one of the largest international restructurings as it faces the crippling effects of the COVID-19 pandemic and historically low oil prices.

The transaction involved exchanging 10 existing international bonds maturing between 2022 and 2030 for three new bonds due in 2030, 2035 and 2040. Under the terms of the new bonds, interest payments will resume at the beginning of 2021, while the earliest principal comes due in January 2026, a significant reduction in Ecuador's debt burden.

The firm put together a team comprised of lawyers from its capital markets, IERP, BRI, LAE, and government relations practices from several locations including New York, Miami, Houston, London, Mexico City, and Washington, DC to collaborate on the landmark restructuring of its \$17.4 billion of international bonds.



The Hogan Lovells team worked on many unique aspects of the transaction, including structuring one of the first applications of collective action clauses in sovereign bond restructurings.

Collective action clauses have been primarily used in the debt markets to allow a supermajority of bondholders to agree to a debt restructuring that is legally binding on all holders of the bond, including those who vote against the restructuring. Along with the use of this mechanism, this deal was one of the largest international restructurings due to the COVID-19 pandemic.

The restructuring also faced many challenges, not the least of which was an action for a temporary restraining order and preliminary injunction filed by two creditor funds in the Southern District Court of New York where the firm's LAE team, on short notice, won a victory when the judge denied the request from the bench.

Hogan Lovells also was actively involved in the restructuring of Ecuador's bilateral debt and derivatives, including the reprofiling of its debt with China, and made sure the restructuring complied with a stringent set of policies and guidelines from the International Monetary Fund.

The Hogan Lovells IERP team was led by Houston partner **Bruno Ciuffetelli**, with the assistance of chief legal officer and Miami partner Jose Valdivia, and Miami partner Gaston Fernandez; partner Philip Robb and counsel Nick Tidnam from London. The law firm's capital markets team was led by partner Evan Koster, with the assistance of counsel David Tyler, senior associates Adam Lapidus and Philip Schuster and associate Juan Moreno, all from the New York office.

International Energy adviser Pedro Martinez from the Miami office; senior associate Dana Turjman from the Miami



Bruno Ciuffetelli

office, and senior associate Victor Barrientos from the Mexico City office, also participated.

The BRI team was led by US BRI co-head Ron Silverman with the assistance of counsel Philip Ehrlich, both from the New York office.

The LAE team was led by New York partner Dennis Tracey, with the assistance of New York partners Michael Hefter and Seth Cohen, London partner Kieron O'Callaghan and London counsels Hannah Piper and Jerome Finnis, as well as New York associates Austin Gassen, Julia Grabowska, and Jonathan Wieder.

The firm's government relations and public affairs team was led by partner Ivan Zapien in Washington, DC.

## PINHEIRO NETO COUNSELS PAGSEGURO ON WIRECARD BRAZIL ACQUISITION

Brazilian law firm Pinheiro Neto acted as counsel to PagSeguro Internet on its acquisition of Wirecard Brazil

The transaction entailed the purchase by PagSeguro, a Brazilian online payment company, of 100 per cent of the equity interest held by various entities of the WirecardGroup in Wirecard Brazil.

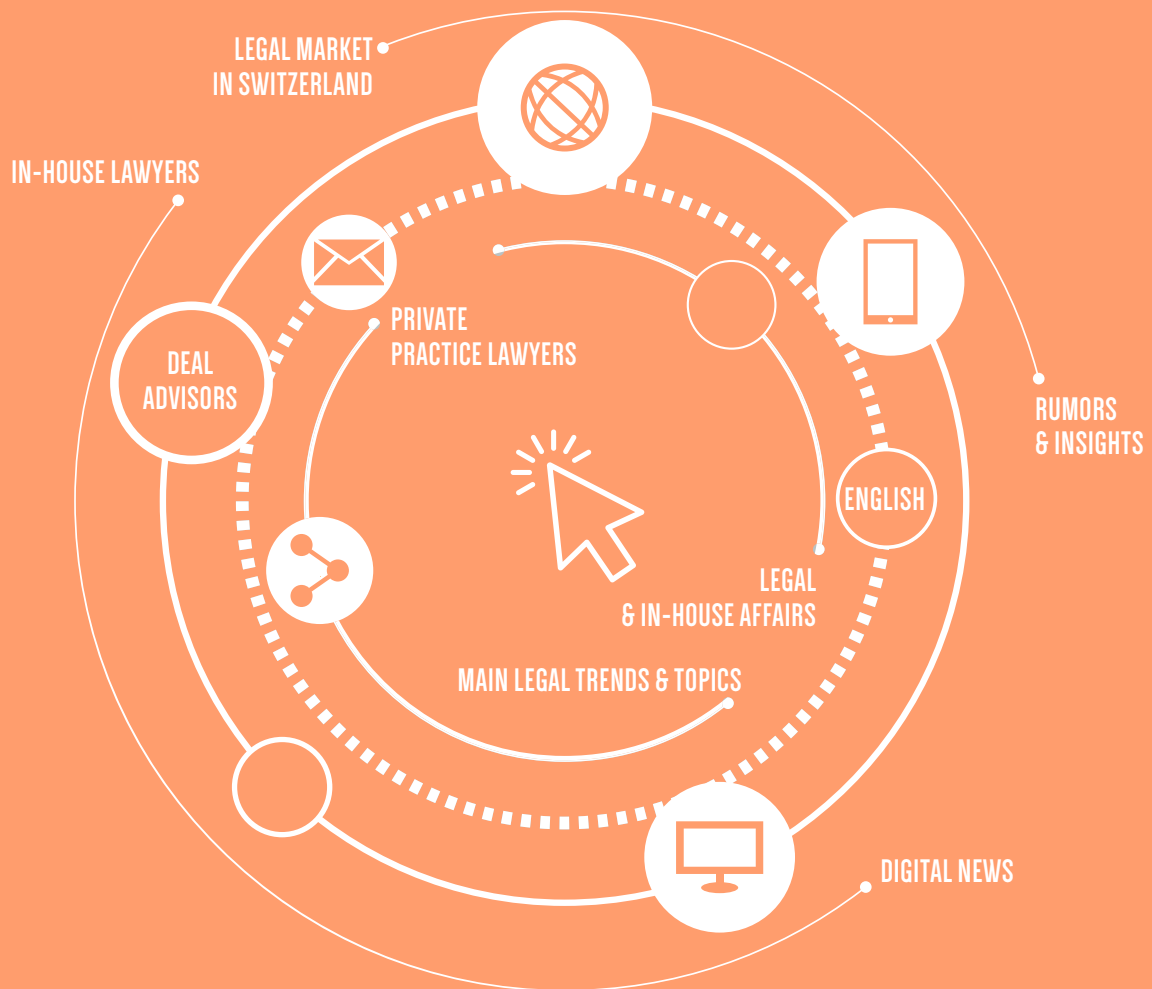
The sale of WireCard's Brazil business is the first disposal of assets following the German company's collapse after an accounting scandal earlier this year. Wirecard filed for insolvency owing creditors 4 billion euros (\$4.71 billion) after disclosing a 1.9-billion-euro hole in its accounts.

Prosecutors suspect Wirecard executives of masterminding a criminal racket to fake the company's accounts.



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The asset sale in Brazil is the first of several sell-offs expected, including the company's operations in the UK and the US.

Pinheiro Neto's team advising PagSeguro was led by partners Fernando Mirandez Del Nero Gomes and Bruno Balduccini, with senior associate Tiago Eler Silva and associates Marcelo Junqueira de Mello, and Ana Cristina do Val Fausto.

Wirecard was counselled in Brazil by Mattos Filho, Veiga Filho, Marrey Jr. and Quiroga Advogados.

## DAVIS POLK ADVISES BONDHOLDERS ON ODEBRECHT DEBT RESTRUCTURING

Davis Polk & Wardwell advised an ad hoc group of bondholders of Odebrecht Engenharia e Construção (OEC) on the restructuring of approximately \$3 billion of OEC's notes

OEC filed an application on August 19 for confirmation of its extrajudicial reorganisation plan with the São Paulo Bankruptcy and Reorganization Court to have its restructuring transactions approved in Brazil.

The filing follows the successful completion of a consent solicitation through which holders of more than 73% of all outstanding notes consented to the restructuring. The filing and agreed transactions are the result of extensive negotiations between the ad hoc group and OEC to develop and implement a reorganisation for OEC, Davis Polk said.

As consideration in the restructuring, noteholders will receive a combination of new senior notes as well as an equity-linked instrument to be issued by a new holding company that will sit directly above OEC.

The transaction will result in significant deleveraging of OEC's balance sheet and provide cash-flow relief for the company in the form of extended note maturities and the ability to pay some or all interest in kind rather than in cash during the first five years after issuance.

OEC's new notes will also provide noteholders with higher interest rates, additional guarantees, enhanced covenants, an excess cash flow sweep, and other improved debt terms relative to existing notes, as well as a share of OEC equity distributions until 2058.

As part of the restructuring, OEC will also modify its governance structure to provide for, among other things, enhanced independent representation and involvement on its board. The restructuring is expected to be fully implemented following, among other things, judicial approval of the restructuring plan in Brazil and recognition in the US.

OEC is one of the largest engineering and construction businesses in Latin America, historically operating in 16 countries. In addition to its financial restructuring, OEC and certain of its affiliates have entered into numerous agreements in recent years to resolve liabilities relating to the so-called 'Operation Car Wash' corruption scandal and re-establish the company's market-leading position.

OEC pleaded guilty to corruption and bribery charges in a US court in 2016 relating to several companies and individuals in a number of Latin American countries.

"In representing the ad hoc group, Davis Polk has brought to bear its leading restructuring and capital markets and regulatory enforcement practices, as well as the firm's substantial experience and strong relationships in the region," the law firm said.

The Davis Polk restructuring team includes restructuring partner **Timothy Graulich** and associates David Schiff and Jarret Erickson, and partners Tatiana R. Martins, Antonio J. Perez-Marques and associate Trishna Velamoor, who are providing litigation advice, while the corporate team includes partner Manuel Garciadiaz, counsel Drew Glover and associates Rebecca L. Roman, Richard Corbett and Amanda Rae Schwarzenbart.

The team is based across the firm's New York, Northern California and São Paulo offices.

## ORRICK REPRESENTS BONDHOLDERS IN BELIZE BOND REPROFILING

Orrick represented the steering members of the committee of bondholders in addressing and consenting to Belize's request to delay its repayments

The steering committee had been constituted to address Belize's request to capitalise payments from August 2020-February 2021 regarding the Central American country's New York law-governed US-dollar bonds due 2034.

Belize had announced on August 10 that the requisite approval of bondholders had been received in connection with the consent solicitation.

Belize had requested a payment delay as it struggles with the adverse economic conditions caused by the COVID-19 pandemic.

Belize's Prime Minister Dean Barrow had said in May that the international community should look to providing some form of debt relief in the wake of the economic downturn caused by the



Lorraine McGowen



Timothy Graulich

pandemic. Belize's economy is heavily reliant on tourism and was seriously impacted by the slump in arrivals and the closure of the country's borders.

Barrow was quoted by local media at the time as saying "some kind of debt standstill was necessary" in anticipation of the country's upcoming bond repayment in August of this year.

Also in May, Moody's downgraded Belize's credit rating from B3 to Caa1. The credit rating agency noted there is an "increased and now very high probability" that the country would either defer on interest payments or enter into a distressed debt exchange because of the economic difficulties caused by the COVID-19 pandemic. Orrick's team advising the committee featured **Thomas Laryea, Lorraine McGowen** and **Nell Scott**.

"The approval of bondholders to Belize's request for temporary forbearance of bond payments during this crisis period demonstrates the constructive approach of long-term investors and their preparedness to provide time in which Belize can advance its plans to diversify and grow its economy," Laryea said. 📄



COVER STORY

# EXIT STRATEGY

THOMAS LARYEA





Following its bond swap agreement with its creditors in August, Argentina now faces the challenge of reviving its economy. We talked to lawyers in Argentina and the US on whether the debt restructuring is the first step towards the country's exit from its economic crisis, or simply a quick fix until the next default.

by Adam Critchley

# ENERGY & INFRASTRUCTURE

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Right on deadline, Argentina reached an agreement with its creditors in late August for the restructuring of its debt via a bond swap, following the country's ninth default on its \$65 billion debt obligations in May. We talked to lawyers in Argentina and the US on whether this is the first step towards the country's exit from its debt crisis, or simply a quick fix until the next time.

The agreement between Argentina and its creditors served to allay fears of a messy and protracted default, and which is seen as possibly setting a precedent for future sovereign debt crises. As a result of the agreement, Argentina will issue a total of \$63.2 billion in new dollar-denominated bonds as part of the exchange, and 4.18 billion euros (\$5.01 billion) of debt denominated in the single currency, while continuing to work with the retail bondholders in Europe who hold the one per cent of debt that wasn't included in the agreement, according to Economy Minister Martín Guzmán.

The deal is a major victory for Latin America's third-largest economy as it struggles with a severe recession that has been exacerbated by the COVID-19 pandemic and the subsequent economic lockdown imposed to staunch its spread. The deal also contrasts sharply with the country's 2005 debt restructuring, which saw around a quarter of bondholders accept the government's offer, and which led to more than a decade of legal battles, dark times that many observers feared would be repeated as this year's negotiations dragged on under the black cloud of the pandemic.

## 'AN EXERCISE IN COMPROMISE'

"The length of the process did not surprise me due to the complexity of the situation,"

ONE OF THE CHALLENGES IN THE PROCESS WAS THE BASIS FOR ASSESSING DEBT SUSTAINABILITY IN THE ABSENCE OF A CLEARLY FORMULATED FORWARD-LOOKING ECONOMIC REFORM PROGRAM.

THOMAS LARYEA, OF COUNSEL, ORRICK



**Thomas Laryea**, of counsel at law firm Orrick, who represented the steering members of the Argentina Creditor Committee (ACC) in the successful negotiations with the Argentinian government, tells *The Latin American Lawyer*. "The process essentially lasted from January through August, but I would say that while there were some discussions in the first half of this period, engagement by the government in a manner approaching 'negotiations' did not commence until after the default in May," he says.

But despite the shorter than expected negotiation period, the talks were complex, he adds. "One of the challenges in the process was the basis for assessing debt sustainability in the absence of a clearly formulated forward-looking economic reform program. Bondholder organisation admittedly was also a challenge that affected the dynamic and the timeframe of the process. The presence of three creditor committees and some bondholders engaging actively alongside those committees was a complicating factor."

The process was also no doubt impeded by the COVID-19 pandemic, which has severely affected Argentina, much of which remained in lockdown until early September, and with the number of confirmed cases close to 500,000 at the time of writing, the country now ranks



among the top 10 for the number of infections. Some observers anticipated that the adverse economic and humanitarian conditions may have influenced the bondholders' negotiations, making them less inclined to push harder for a better deal.

"The Covid-19 pandemic was certainly a factor,"

ONE OF THE CHALLENGES IN THE PROCESS WAS THE BASIS FOR ASSESSING DEBT SUSTAINABILITY IN THE ABSENCE OF A CLEARLY FORMULATED FORWARD-LOOKING ECONOMIC REFORM PROGRAM.

THOMAS LARYEA, OF COUNSEL, ORRICK

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Laryea says. "But, I think that there has been a misplaced tendency to view COVID-19 as if it were a factor that only affects sovereign debtors in this context. The fact that the pandemic is global also has implications for the investors who are incurring losses on the Argentina bonds at the same time as they are absorbing other economic challenges at home and in other markets. Also, bondholders recognise the case for cash-flow relief during the height of the crisis, but they also recognise that the current challenges caused by COVID-19 that all countries are facing to some degree should not be an excuse for countries not to engage in economic reforms that would bolster their payment capacity over the longer term," he says.

And with respect to a drawn-out process or a failure to reach agreement leading to litigation, as occurred in 2005, Laryea believes the litigation risk is generally over emphasized in sovereign debt restructurings.

"The overwhelming majority of investors are geared towards a negotiated resolution and only consider litigation as a last resort," he says.

But such multi-player wrangling in a complex negotiation process is not uncommon, and something that Laryea is accustomed to.

"In my experience, there is rarely, if ever, a unanimous position among creditors in sovereign debt restructuring. This is essentially an exercise in compromise. We don't have a sovereign bankruptcy law or a bankruptcy judge to determine the merits of the different views among the parties. I believe that the ACC played a highly constructive role among the bondholders and in the collective engagement with Argentina. Because the ACC had members that held both the Exchange Bonds (dating from 2005) and the Global Bonds (dating from 2016), the ACC was hardwired to work towards



FERNANDO HERNÁNDEZ



THE 'CASA ROSADA,' THE PRESIDENT'S OFFICIAL RESIDENCE, IN ARGENTINA'S CAPITAL BUENOS AIRES

ONE OF THE CHALLENGES IN THE PROCESS WAS THE BASIS FOR ASSESSING DEBT SUSTAINABILITY IN THE ABSENCE OF A CLEARLY FORMULATED FORWARD-LOOKING ECONOMIC REFORM PROGRAM.

THOMAS LARYEA, OF COUNSEL, ORRICK

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common ground. I would also say that the ACC members and advisers had deep experience of the institutional dynamics within Argentina and with respect to the international players, including the IMF, and that this experience benefited the process.”

THE RESTRUCTURING OF THE DEBT WITH THE PRIVATE INTERNATIONAL BONDHOLDERS IS A FUNDAMENTAL STEP IN THE REORGANISATION OF THE ARGENTINIAN ECONOMY.

FERNANDO HERNÁNDEZ, PARTNER, MARVAL O'FARREL MAIRAL

”

The so-called exercise in compromise seems to imply that investors will lose money on the deal, with Argentina paying back at a lower per-dollar rate, but such a face-value evaluation is too simplistic, Laryea says.

“Bondholders, as a whole, certainly gave up

IN THE MEDIUM TERM THERE COULD BE AN IMPROVEMENT IN THE CONDITIONS FOR ARGENTINIAN COMPANIES' ACCESS TO FINANCING AND CAPITAL MARKETS."

FERNANDO HERNÁNDEZ, PARTNER,  
MARVAL O'FARREL MAIRAL



significant value relative to their legal claims," he says. "However, the valuation of how much bondholders gave up is complicated. In part, the valuation depends on the price at which the respective bondholder bought their bonds. Also, in a forward-looking sense, bondholder recovery would depend on the exit yield that the markets will attach to the new bonds and that depends on the judgment of Argentina's ongoing credit worthiness."

The difficulty of the legal negotiations was also due to the Argentinian government's intention to implement a 'Pac-Man strategy,' **Fernando Hernández**, a partner at Buenos Aires-based law firm Marval O'Farrel Mairal, says.

"That strategy consisted of allowing the reassigning of a series of bonds that could be used for collective action clauses, leaving the rest outside of the swap," he says. "The strategy would allow it to achieve partial swap closures that by offering futures that were better than the restructured bonds, and the eligible non-restructured bonds, would allow it to add more bonds to the restructuring with each partial closure," Fernando Hernández says. "The negotiation was difficult but, fortunately, as the results show, the two sides' positions were not so far apart," he says. "Given the situation created

by the pandemic and the subsequent lockdown, and the uncertainty regarding the future, the country's creditors have demonstrated a more conciliatory approach, expressing a preference to show patience and allow for private restructuring rather than pushing for possible legal action," he adds. "The restructuring of the debt with the private international bondholders is a fundamental step in the reorganisation of the Argentinian economy. With the success of the swap offer, the government achieved a quick exit from the default situation with its private creditors, and the new due date of 2025 implies a substantial breather regarding its foreign debt obligations."

## OUT OF THE 'LABYRINTH'

Centre-left President Alberto Fernández, who took power in December, said after the agreement had been reached that Argentina had been in a "labyrinth" of debt that has now been solved, but that challenges remain, the first of which is to reactivate the domestic market, as consumption has slumped along with demand for the country's exports, and international commodities prices. For his part, Guzmán said that Argentina also needs to turn its attention to striking a new deal with the International Monetary Fund to replace a defunct \$57 billion loan facility agreed with the country in 2018, but which will not likely be agreed upon before the spring, and that the country also needs to resolve the debts burdening its provinces. The country is not out of the woods yet.

"The restructuring of the bonds is only part of the solution," Laryea says. "We know that Argentina needs to refinance its exposure to the IMF, which remains its largest creditor. And we know that Argentina needs to implement a program of economic reforms that would contribute to debt sustainability and to the welfare of the Argentine economy and people. These reforms need



to be sustained over the longer term. Accordingly, it would be a mistake to look to the bond restructuring as a quick fix.”

President Fernández has pledged to seek a deal with the IMF that imposes no conditions on the country’s economic policy, such as the implementation of new austerity measures, no doubt wary of the population’s opposition to yet another bailout. Argentina and the IMF have a long and chequered history. The country has negotiated no fewer than 21 arrangement with the IMF since joining it in 1956, which include the \$57 billion loan negotiated in 2018, the largest in the IMF’s largest, while the Fund called a halt to providing aid to the country in 2001 amid the then government’s inability to meet the conditions for loans.

“Conditions to IMF financing is a legal and policy requirement of the IMF,” Laryea says. “Accordingly, I do not take literally the suggestion that Argentina expects to negotiate a new IMF program without conditions. The foremost question is what is the content of the economic reform program that the Argentinian government proposes in order to appropriately enhance the sustainable output of the economy. After that, the secondary issue is which aspects of the economic reform program would the IMF consider to be critical in order to establish them as conditions for IMF financing. I consider that the ball is very much in the court of the Argentinian government at this stage.”

Any new IMF plan will have to be sent to the country’s Congress for approval before the deal is signed, and which could take the form of a stand-by arrangement, as per the 2018 deal, or an extended fund facility, minister Guzmán has said, after admitting that the 2018 IMF deal “deepened the recession.”

And according to Marval O’Farrell Mairal’s Hernández, before requesting support from the IMF, Argentina’s

government has to renegotiate the debt it took on in 2018.

“In that renegotiation, the IMF will surely impose conditions, and which could be related to the reduction of the country’s fiscal deficit, and reduction and control of monetary issuance, avoiding further currency depreciation and controlling inflation, among other conditions. The Argentinian government has not yet presented its economic plan, but some of those conditions, such as the reduction of the fiscal deficit and the control of monetary emissions, would require a reassignment of the budget, and the imposition of austerity measures.”

He says that such measures are necessary “so that the agreement with bondholders isn’t just a breather.”

“Those structural changes need to be oriented towards reducing and controlling inflation, strengthening the currency and stabilising the exchange rate, reducing the fiscal deficit and guaranteeing judicial stability to attract investments and access international capital markets at reasonable rates,” he says. “That is a task that is not only complex in itself, but which is made even more complex by the economic consequences of the COVID-19 pandemic.”

“It’s difficult to forecast the future, and Argentina’s macroeconomic situation is very complex, but the recent and successful restructuring of the country’s sovereign debt is a good kickstart to the reconstruction of the Argentinian economy,” Hernández says.

“Depending on the agreement with the IMF, the length of the lockdown and the effects of the COVID-19 pandemic and, crucially, the path the government takes with the policies and measures that it adopts, and the effect they have, in the medium term there could be an improvement in the conditions for Argentinian companies’ access to financing and capital markets.” ■

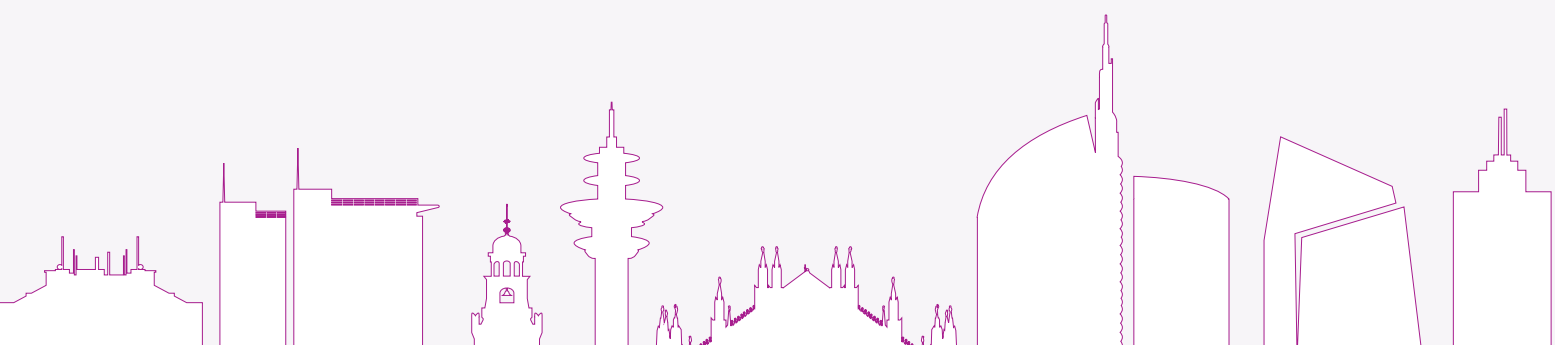
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MONDAY 7 JUNE			Partners	Address
9:00 - 13:00	 CWP	Opening conference: "Innovation and artificial intelligence" (Lunch to follow)		Tbc
14:00 - 16:00	 CWP	Roundtable: "New media"		Tbc
16:00 - 18:00	 CWP	Roundtable		Tbc
From 18:30	 SEP	Corporate Counsel Cocktail		Tbc
TUESDAY 8 JUNE				
8:00 - 9:30	 CWP	Breakfast on Finance		Tbc
9:15 - 13:00	 CWP	Conference: "Africa and the Middle East" (Lunch to follow)		Tbc
14:00 - 16:00	 CWP	Roundtable: "Cross border litigation"		Tbc
16:00 - 18:00	 CWP	Roundtable: "CSR & Sustainability: Business Ethics in Crisis Situations"		Tbc
18:00 - 20:00	 SEP	Networking Roundtable		Tbc
From 19:00	 SEP	Best PE Deal Makers Cocktail		Tbc
WEDNESDAY 9 JUNE				
6:15 - 8:30	 SEP	Corporate Run		Tbc
9:00 - 13:00	 CWP	Conference: "LATAM" (Lunch to follow)		Tbc
11:00 - 13:00	 CWP	Roundtable		Tbc
















## Legalcommunity Week 2021 – Program (in progress)

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14:00 - 16:00	 CWP	Roundtable on Arbitration		Tbc
18:00 - 20:00	 SEP	Discussion and Cocktail		Tbc
18:30 - 20:30	 SEP	Talks & Cocktail		Tbc
19:30 - 23:30	 SEP	Corporate music contest		Tbc
<b>THURSDAY 10 JUNE</b>				
9:00 - 13:00	 CWP	Conference on Finance (Lunch to follow)	<b>CHIOMENTI</b>	Tbc
19.15 - 23:30		Legalcommunity Corporate Awards		Tbc
<b>FRIDAY 11 JUNE</b>				
18.00	 SEP	International guest greetings		Tbc

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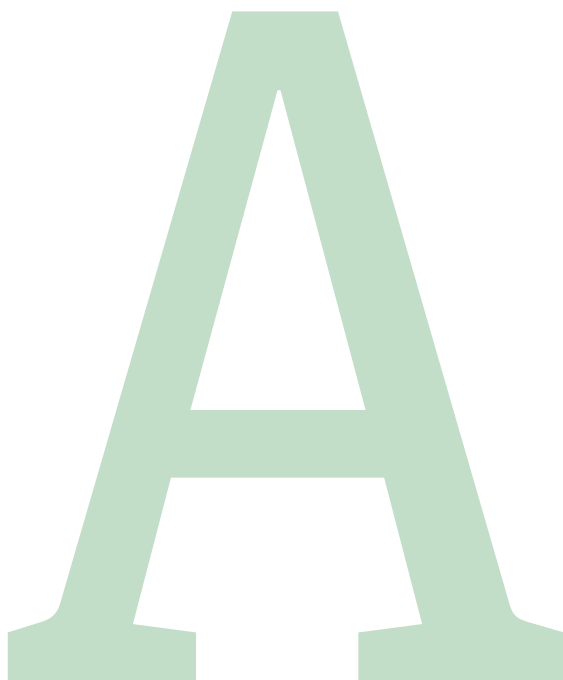
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# FIRE SALE

There's no smoke without fire, and lawyers and analysts are expecting Brazil's M&A activity to increase as the country emerges from the pandemic and companies seek to divest assets to stay in business, coupled with a planned raft of privatisations by the government. We sat down (albeit virtually) with lawyers from firms Lefosse and Pinheiro Neto to talk about the unfolding panorama.





Analysts have pointed to both a fire sale in Brazil and a 'V-shaped' recovery, with the country expected to pull out of the downward economic spiral caused by the pandemic faster than its regional neighbours. Such a scenario would mean that bargains could be up for grabs for investors, and across various sectors, and which would see the country's already busy M&A activity increase significantly.

A depreciated currency will no doubt aid the movement of assets, but the long-awaited state sell-off as part of a privatisation plan that has been postponed due to the pandemic may face obstacles following legislative elections in November, in which candidates to congress opposed to the government's plans may gain seats.

"The interest rates are so low down here in Brazil that if you want to make more money on your money, the only way is to look for a little bit more risk," **Carlos Mello**, managing partner at Lefosse Advogados, says.

"I think we're in a guessing process, but there are a couple of trends that we can identify: Companies heavily impacted by the pandemic will be looking for opportunities as they try to invent themselves, and that is going to happen no matter what. But e-commerce has seen a lot of growth during the pandemic, and they will be looking to take opportunities, and I think we can expect more of that with reasonable certainty," he says.

"But even if people expect a rapid recovery, that

## CARLOS MELLO

### CV

Lefosse Advogados' managing partner, he has acted as leading counsel on several of the most important equity deals in Brazil in the past few years and has developed a successful practice covering M&A and private equity. Prior to joining Lefosse Advogados, Carlos was partner at Mattos Filho, Veiga Filho, Marrey Jr. & Quiroga, and an associate at Milbank, Tweed Hadley & McCloy in New York. He has a law degree from the Universidade de São Paulo, his LLM from Columbia University, and was admitted to the New York State Bar Association in 2002.

**"BRAZIL'S STRATEGY, OR NON-STRATEGY, OF MAINTAINING BUSINESSES OPEN WILL LIKELY RESULT IN A FASTER ECONOMIC GROWTH."**

Carlos Mello, managing partner,  
Lefosse Advogados







will vary a lot from country to country, and Brazil's strategy, or non-strategy, of maintaining businesses open will very likely result in a faster economic growth right after the pandemic, and if that occurs then maybe there won't be too many cheap assets on sale."

"But Brazil still will be an interesting jurisdiction, and people will be looking for opportunities here. I definitely expect to see more M&As," Carlos says.

## COMPANIES LOOKING FOR CASH

"Our expectation too is that there will be an increase in M&A deals in Brazil post-pandemic, as companies seek to restructure and sell assets," according to **Antonio Morello**, a corporate M&A partner at Pinheiro Neto Advogados.

"Actually, the M&A environment is already hectic in Brazil. Further to the need of many companies to restructure assets to cope with the fallout from the pandemic, Brazilian assets have become very attractive to foreign investors on account of the sharp Brazilian currency devaluation," he says.

And according to **Rodrigo Junquiera**, a partner at Lefosse Advogados, there will likely be more opportunities than in the past.

"We've seen this kind of movement, after the boom in IPOs in 2007 and 2010, for example, and you now have a lot of companies capitalizing, looking for cash," he says.

And although the government's privatisation plans have been put on hold, the process may hit the ground running once there is an invitation for bids, he

**"I BELIEVE THAT CONGRESS DOES NOT WANT TO SELL THE VERY LARGE COMPANIES, AND THERE WILL BE PRIVATISATIONS OF SMALLER, NON-CORE ASSETS WHICH CAN BE SOLD PRETTY FAST."**

Rodrigo Junquiera, Lefosse Advogados

## RODRIGO JUNQUIERA CV

A partner at Lefosse Advogados, Rodrigo specialises in mergers, acquisitions and in a wide range of financial transactions, including both equity and debt capital markets, where he has acted as issuer's and underwriter's counsel in securities offerings, and as counsel in some of the largest M&A and capital markets transactions in Brazil. Before joining Lefosse, he was partner at Mattos Filho, Veiga Filho, Marrey Jr. & Quiroga. He obtained his law degree from the Pontifícia Universidade Católica de São Paulo, and his bachelor's degree in business administration from Fundação Getúlio Vargas (FGV). He gained international experience as an associate in the New York office of Davis, Polk & Wardwell.

believes.

"Everybody expects the really large companies, such as Eletrobras, to go public," Carlos says. "But having said that, it is a very difficult process, the pandemic came as a surprise to the government and all the measures it required. But I believe that congress does not want to sell the very large companies, and there will be privatisations of smaller, non-core assets which can be sold pretty fast, but the more complex ones, the big ones that people have been waiting decades for, will be delayed."

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## ANTONIO JOSÉ MATTOS MORELLO CV

*A partner at Pinheiro Neto since 1998, Antonio focuses his practice on M&A, corporate law and fashion law. Prior to joining Pinheiro Neto he worked at law firm Linklaters in the US. He is a graduate in law from the Universidade de São Paulo and is a general counsel at the Canadian Chamber of Commerce in Brazil, as well as for the French Chamber of Commerce in Brazil. He is also a board member of the Brazilian Bar Association in São Paulo, and a member of the Law Firms Committee. He is based in São Paulo.*

“Privatisation always poses a big challenge to any government, as there are many political issues involved. If privatisation actually goes ahead, it will most likely concentrate on less relevant companies than on the big ones,” Pinheiro Neto’s Morello says.

“From a political perspective, it is difficult to privatise companies like Eletrobras, Banco do Brasil or Petrobras. Selling a government-owned company is not an easy decision. Instead, the government may focus on concessions, like roads, railroads, ports, and basic sanitation, as the government lacks capacity to invest in those areas and Brazil’s infrastructure gap is huge. Several foreign investors -- strategic players, institutional investors and private equity funds being among them -- have already shown interest in those projects,” he says.

The other obstacle to privatisation could be the lack of foreign capital, given the belt-tightening the pandemic has caused, and which may result in investors’ appetites cooling.

“In the recent boom of IPOs in Brazil we saw a lot of local investors, we have not seen a big move in terms of international investors looking at Brazil, and the assets that the government is seeking to privatise will need foreign money, and right now I don’t see a lot of that, the pandemic and depressed economies are keeping them away,” Rodrigo says.

State oil company Petrobras already has an asset divestment program in progress, which most recently saw the state-owned oil company sell a 100-per cent participation in 10 oil and gas fields in

## “THE M&A ENVIRONMENT IS ALREADY HECTIC IN BRAZIL.”

Antonio Morello, Pinheiro Neto

the Enchova and Pampo clusters, and which were originally acquired by Petrobras in the country’s Round Zero auction.

“The sell-off of the Petrobras assets is more of a mature process that has been going on for about five years, and that will continue, it is expected they will sell a lot of blocks and they will sell refineries, but when we speak about new privatisations we are looking at Eletrobras,” Carlos says.

“A lot of congress members are looking at the elections in November, when lawmakers will be up for re-election as one-third of congress members and the mayors of the major cities will be renewed, and the privatisation issue does not look good to all of them. But I think the privatisations will take place next year, although It’s highly dependent on the political scenario,” Carlos says.



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## ELECTIONS AS A BAROMETER

Brazil had been perceived as having emerged from its recent political crises, following the imprisonment of former president Luiz Inácio Lula de Silva and the impeachment of his successor, Dilma Rousseff, and against the backdrop of the *Operação Lava Jato*, the biggest corruption investigation in the country's history, and which has implicated dozens of individuals within the country's political and business elite. But the government of President Jair Bolsonaro has proved divisive, a situation exacerbated by the COVID-19 pandemic, although the insider view is that things are under control and the country is enjoying relative stability.

"Those are the costs of being a democracy," Carlos says, referring to the political upheaval of the last five years. "Take the Dilma situation, for example. The constitution provides for impeachment, and although it's perceived as instability it is also a sign that the country's institutions are working as they should."

"But a lot of people were unhappy with the impeachment of Dilma, and a lot of people were unhappy with the election of Bolsonaro. The elections this year, while small, will give us an idea of what we might see in the presidential elections in 2022," Carlos says.

"There is a certain political friction in Brazil right now, and it shows. But at the same time there has not been a major disruption. There are conflicting opinions and strategies that show the division in the country, but it's also just democracy," he said.

## 'TOO BIG TO FAIL'

Brazilian conglomerate Odebrecht, which is a kind of 'elephant in the room' in the country, having been embroiled in a scandal involving the payment of bribes across Latin America to secure lucrative contracts, is currently engaged in a restructuring, and is moving assets to market.

"The sell-off will continue, but some of those assets are difficult to sell," Carlos says, however.

"Odebrecht is almost too big to fail, and so banks will always be lenient towards it to avoid losses on their balance sheets, and Odebrecht will have trouble selling assets, but also wants to stay friendly with

the government in order to conclude its contracts and move forward, and on the other hand nobody really wants Odebrecht to fail," Carlos says.

"The Petrobras assets are super important, and as it has had a monopoly on those assets for more than 50 years, there is a lot of interest in them now that they are becoming available," he adds.

The depreciation of the currency will also play a role in any potential sell-off, however.


"The expectation is that the exchange rate will not vary greatly, so the assets will remain cheaper for foreign investors, with stronger results in the medium and long run. There are lots of business opportunities in the education, health, energy, real estate, infrastructure and services sectors," Pinheiro Neto's Antonio Morello says.

"The real fluctuates a lot, and it is not surprising that it is performing better than the currencies of neighbouring countries, the Brazilian economy is big and there is more stability, but the idea that the devaluation of the real is driving investment and asset divestments is not really true, it depends on the asset," Rodrigo Junquiera says.

Six months into lockdown, law firms have remained busy, and lawyers in Brazil are expecting the workload to increase.

"We were busy at the beginning of the pandemic, many clients had problems, they had to renegotiate contracts, and as the pandemic moved on we were looking at how to assist our clients in the health sector, and now that the economy is slowly reopening we are seeing that there is a momentum of equity offerings, and there is some M&A activity, as people try to move forward with their business activities," Carlos says.

"We are super busy and we are cautiously optimistic for 2020 in terms of revenues," he adds. Lefosse has participated in more than a dozen M&A deals so far this year, such as advising the shareholders on the sale of 25 per cent equity interest in Porsche Brasil to Porsche Aktiengesellschaft, and AES Holdings Brasil on the acquisition from BNDESPar of a stake in the share capital of AES Tietê Energia.

See the year-to-date rankings of Brazilian law firms' M&A activity on page 39. 

## RANKINGS

## TOP 10 - PERFORMANCE OF BRAZILIAN LAW FIRMS IN M&amp;A (JANUARY-AUGUST 2020)

N.	LAW FIRM	TOTAL VALUE (MILLIONS OF \$)	NUMBER OF TRANSACTIONS	2019 RANKING
1	<b>Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga</b>	3,163.71	41	2
2	<b>Cescon, Barrieu Flesch &amp; Barreto</b>	2,299.29	30	23
3	<b>Trench, Rossi e Watanabe</b>	1,598.12	9	50
4	<b>Tauil &amp; Chequer (Mayer Brown)</b>	1,396.27	14	4
5	<b>Spinelli Advogados</b>	1,130.87	2	22
6	<b>Pinheiro Neto</b>	1,119.22	3	3
7	<b>Lobo de Rizzo</b>	1,040.54	12	17
8	<b>Machado, Meyer, Sendacz e Opice</b>	977.74	10	1
9	<b>BMA – Barbosa Müssnich Aragão</b>	849.19	11	7
10	<b>Pinheiro Guimarães</b>	706.41	7	14

## TOP 10 BY DEAL VALUE

N.	LAW FIRM	NUMBER OF TRANSACTIONS	TOTAL VALUE (MILLIONS OF \$)	2019 RANKING
1	<b>Veirano Advogados</b>	56	255.07	4
2	<b>Mattos Filho, Veiga Filho, Marrey Jr. e Quiroga</b>	41	3,163.71	3
3	<b>Derraik &amp; Menezes</b>	33	93.41	12
4	<b>Cescon, Barrieu Flesch &amp; Barreto</b>	30	2,299.29	8
5	<b>Baptista Luz</b>	23	293.02	28
6	<b>Demarest</b>	17	518.71	6
7	<b>Lefosse Advogados</b>	16	470.99	11
8	<b>Tauil &amp; Chequer (Mayer Brown)</b>	14	1,396.27	24
9	<b>Dias Carneiro</b>	14	52.10	13
10	<b>Lobo de Rizzo</b>	12	1,040.54	15

\*Source: Transactional Track Record





# ATYPICAL TIMES

Mexico City-based partner Juan Francisco Torres Landa was named head of Hogan Lovells' Latin America practice in July, and who talks about the challenges of his new role, and those the entire region faces as it grapples with the human and economic cost of the COVID-19 pandemic, with Latin America now one of the world's worst-hit regions.



Timing is everything, or so the saying goes, and Juan Francisco's adoption of a new and expanded role could not have come at a more challenging time, as the world grapples with the COVID-19 pandemic and the subsequent economic fallout. "It's a big challenge," he says, even without the grim panorama of the death toll and recession unfolding globally. But he remains upbeat, highlighting the law firm's and his team's ability to continue to provide what he describes as the "noble" services that the firm's clients require in order to navigate these challenging times.

"I've spoken to a lot of colleagues in the region, and we have had an atypical time in many senses, but the positive side has been that we knew there would be an important restructuring in the firm, and which meant a lot of changes," he says, referring to the designation earlier this year of **Miguel Zaldívar** as Hogan Lovells' global CEO, a fellow Latino, of Venezuelan origin and who trained in the US, and who had occupied the role of managing partner in Asia, based in Hong Kong.

"We now have one area for the Americas, from Alaska to Patagonia, and it made sense to make Latin America a priority area, which is not to

"WE HAVE HAD AN ATYPICAL TIME IN MANY SENSES, THE POSITIVE SIDE HAS BEEN THAT WE KNEW THERE WOULD BE AN IMPORTANT RESTRUCTURING IN THE FIRM, AND WHICH MEANT A LOT OF CHANGES."

**Juan Francisco Torres Landa,**  
Hogan Lovells' Latin America practice head

say that it wasn't before," Torres Landa says. "A steering committee for Latin America was formed, comprised of seven partners, and which I direct, and which are spread across the offices in Miami, Madrid, New York, Washington, Mexico, São Paulo, and Monterrey. They do not exclude other offices of the firm, but are the ones that have most involvement with clients in Latin America. What we have done is build on a base that was already successful, and to grow even more in the region," he says.

## A PAN-REGIONAL PRESENCE

While the firm has a significant presence in Latin America, it complements that reach through its partnerships with local firms, he explains.

"We have strategic alliances with the most outstanding firms in the region, and we have been working closely with them for many years, but also in the last few months to take advantage of the impasse caused by the pandemic, to see how we can be more efficient and profitable by serving our clients without any variation in terms of quality," he says.

"In the last few months we have been in touch with all those firms, over Zoom calls, and there is a recognition of the importance of Hogan Lovells in the region, and the way we work with all of those partners, in Brazil, Chile, Mexico, and in the Caribbean. We are not Anglo-Saxons who have never even been in the region, without meaning to criticize anybody, but rather we are Latinos with experience of living and working in the region."

## JUAN FRANCISCO TORRES LANDA CV

*Juan Francisco joined Barrera Siqueiros y Torres Landa (now a part of Hogan Lovells) in 1983 and was named a partner in 1995. He also spent time as an associate foreign lawyer in Washington, DC, in 1990. He has held the post of senior lecturer at several universities in Mexico, such as the National Autonomous University (UNAM), Instituto Tecnológico Autónomo de México (ITAM), and the Universidad Iberoamericana. He has also been invited as a keynote speaker to numerous forums, both in Mexico and abroad. He has ample experience in advising clients on civil, commercial, and corporate affairs, project financing, mergers and acquisitions, foreign investment, arbitration, migration, environmental law, antitrust, mining, taxation and telecommunications.*

"We acknowledge that the way of doing business in the region is being there, with a direct presence in the region, as in Mexico. But Mexico is different to other countries, for example in Brazil we cannot work in local laws, the country forbids that and we can't expand much more, we work with partner firms, and so it's a different way of working, but we work very well with them, and our strategic allies, in various countries, and not just in Latin America, allow us to work across multiple jurisdictions, and we have established a standard of quality that is attractive to our clients, and these are long-term relationships with local law firms, that have even been passed down across the generations."

He explains that, as the region's largest and second-largest economies, Brazil and Mexico have traditionally gone head-to-head in terms of which one is the most important market for

"IT MADE SENSE TO MAKE LATIN AMERICA A PRIORITY AREA, WHICH IS NOT TO SAY THAT IT WASN'T BEFORE."

"WHAT WE HAVE DONE IS BUILD ON A BASE THAT WAS ALREADY SUCCESSFUL, AND TO GROW EVEN MORE IN THE REGION."

the firm, and are constantly vying for first place and for attention from the firm. "It's like populism versus progress, it used to be the case that it was progress here and populism there, but now things are the other way around," he says.

And the firm is also seeing opportunities in other countries in Latin America, he says. "That is the advantage of being a global firm," he says. "We remain occupied precisely because we are a multi-jurisdictional, full-service firm. But the local market in Mexico is also very important and keeps the firm sufficiently occupied, he says. "There are regional and cross-border issues, and that allows us to keep busy, rather than just focusing on the local market, but in the context of the pandemic, there is also suddenly the need to focus on regulatory and labour issues, for example."

And the pandemic, he says, underlines the need for the firm to maintain its diversity, in terms of being able to serve multiple sectors, and multiple needs, simultaneously.

"We resist cyclical or counter-cyclical changes, the adverse impact that the pandemic is having, for example, is affecting all sectors, but because we are able to serve all of them, we can cater to multiple needs. You have to adjust to market demands. In these times, for example, the hospitality, real estate, tourism sectors are having a really bad time of it, but e-commerce, logistics and IT, cyber security, for example, are super busy, and so having the capacity to diversify allows us to move with our clients. We are not an accordion that has to expand and retract according to one line of affairs, but rather we are able to shift our focus by diversifying," he says.

## THE POST-PANDEMIC PANORAMA

There is much speculation among economic analysts in Latin America that there will be major asset divestments as companies seek to restructure

“THE ECONOMIC DESTRUCTION THAT IS GOING TO TAKE PLACE WILL BE BRUTAL. SO MANY COMPANIES ARE GOING TO BE UNABLE TO SURVIVE. IT’S NOT A PRETTY PICTURE.”

and avoid bankruptcy, and Torres Landa also anticipates that.

“In the next few months there will be a lot of restructuring, there is a serious economic contraction the kind of which hasn’t been seen since the 1930s, and there are no resources to absorb that hit, many companies can’t pay their rent or their salaries. It’s not about rescuing the big companies, but the small and medium-sized ones that cannot remain afloat because there is no liquidity in the economy. There are some 4.5 million companies in Mexico, but only 40,000 of those have more than 100 employees, which

means there is a huge number of companies at risk, and the destruction that is going to take place will be brutal. So many companies are going to be unable to survive. It’s not a pretty picture.”

The Mexican government has provided some financial support to small companies, but which has been widely perceived as grossly insufficient, and it has been disbursed as credit, meaning that it will have to be paid back.

“There is no bailout. There is a serious problem and we are not going to see good times for many companies, and it’s very worrying,” Torres Landa says. “But while we don’t like what we are seeing, we are working to meet our clients’ needs.”

“The pandemic is nobody’s fault, but in Mexico the way the crises has been handled means that a lot of blame lies with the government, and its incorrect way of handling the economic and health crisis has increased the number of deaths. A lot of deaths could have been avoided. But from the economic point of view, we don’t have the bases for a healthy economic recovery,” he says, bemoaning the Mexican government’s focus on large-scale infrastructure projects, such as a tourist train for the Yucatán peninsula.

“How are we going to see an economic recovery if part of the death toll includes the companies that have disappeared? You can’t grow if you’re dead. And that means it’s impossible for the economy to recover and grow. Instead of supporting companies so that they survive, the government is focusing on large-scale and unviable projects that are simply using up finite resources,” he says.

And while the firm had not been expecting to report a good year in terms of revenues, the reduction in income may be less severe than they had previously anticipated, he says, estimating that the firm’s drop in revenues year-on-year in 2020 will likely be less than 5 per cent. “Things will probably be less severe for the firm than how we had anticipated it at the start of the pandemic. But anything is possible,” he says.

“There’s a lot of work to be done. There’s no alternative, just hard work and discipline.”







# BOUNCING BACK

Mergers and acquisitions across Latin America had been brisk in 2019 and even up until, and during, the onset of the COVID-19 pandemic, but which dropped sharply in the second quarter of this year as the region endured lockdown. Anna Tavares de Mello, a partner at Trench Rossi Watanabe in Brazil, talked to us about the panorama going forward as the region's economies reopen and investors line up to acquire distressed assets

# M

M&A recorded double-digit growth in the region in 2019, with a combined value of \$85.9 billion, an increase of 12.4 per cent on 2018, according to Mergermarket, despite the number of deals dropping slightly, from 675 to 659. The region also bucked the global trend, as deal values dropped by 6.9 per cent worldwide last year.

That trend looked set to continue, but M&A purse strings tightened in Latin America

in the second quarter of this year however, with the region recording the sharpest drop in transactions globally, with deal value crashing by 95 per cent compared with the second quarter of 2019, while deal volume declined by 61 per cent, according to a report by law firm White & Case.

Among the deals that have closed in Latin America since the arrival of the pandemic were the purchase of Brazilian

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“OUR FIRM IN BRAZIL RECOVERED AFTER THOSE FIRST TWO MONTHS OF THE PANDEMIC, AND WE WERE WORKING THE SAME NUMBER OF HOURS AS LAST YEAR, WHICH IS A GOOD SIGN.”

Anna Tavares de Mello

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oil and gas fields by UK-based Trident Energy, as part of state-owned oil and gas company Petrobras' asset divestment, and which marked Trident's entry into Brazil, an \$851 million deal in which the British company was advised by law firm Pinheiro Neto, which also advised local online payment services company PagSeguro on its acquisition of Wirecard Brazil, the first asset disposal by Germany-based Wirecard following its collapse earlier this year after an accounting scandal.

Other deals closed in mid-pandemic include the \$145.6 million purchase of a São Paulo office tower by Fundo de Investimento Imobiliário, and which was advised by Lefosse Advogados, Brazilian private equity fund Fundo de

Investimento em Participações Multiestratégia Performa Key de Inovação's purchase of a stake in Contech Produtos Biodegradáveis, with the former counselled by TozziniFreire, and the sale of a Bogotá shopping centre by Colombian private equity firm Fondo de Capital Privado Nuevomundo, which was advised by Gómez-Pinzón, to Chile's Mallplaza for an undisclosed amount.

In addition to the sale of distressed assets, some countries such as Brazil and Ecuador are planning privatisations, and which in the case of Brazil were planned for this year. The government of President Jair Bolsonaro plans to raise 1.3 trillion reais (around \$323 billion) from privatization, including of airports, ports, the state-run electric power company Eletrobras and the post office.

For an up-close and expert view on the panorama for M&A in the region, we spoke to **Anna Tavares de Mello**, a partner at Trench Rossi Watanabe, a member firm of Baker McKenzie, in Rio de Janeiro.

**Q: Where do you see M&A opportunities arising in Latin America?**

A: Brazil and Mexico are the countries where M&A deals have dropped less than in other countries, with not much difference between quarters, but Colombia and Peru for example, which saw a lot of deals last year, have seen the biggest drop. But even in Brazil and Mexico, where deals maintained their momentum, we are seeing much fewer multi-jurisdictional deals, but rather deals are now concentrated in-country. At the

95%

**the reduction in deal value of M&As in Latin America in the second quarter of 2020, compared with the same period last year**

beginning of the pandemic, for the first two months, we saw a slowdown in all of Latin America as we all tried to adjust and adapt to the different lockdown strategies. We were all impacted, but in different ways. But after two months, we saw deals start again in Brazil, deals that had been put on hold restarted but in a fast-track mode, as companies were keen to close deals faster, especially those selling assets. Our firm in Brazil recovered after those first two months of the pandemic, and we were working the same number of hours as last year, which is a good sign.

**Q: Are the Brazilian government's privatization plans still on track?**

A: In Brazil we have had positive economic opportunities announced by the government, even though we are not at such a stable time. President Bolsonaro is a character and there have been issues with his speeches, and which caused confusion, but in August we heard the announcement of the privatisations, which will not happen this year but perhaps in the next 12 months. I believe the privatisations will happen. The government initially said

they would take place this year, but we think now it will be next year. This has attracted a lot of interest among investors. Brazil is always seen as a place of opportunity and I think the recovery will be fast, and the privatisations will take place.

**Q: What will be the most attractive assets within the privatization plan?**

A: Eletrobras and the post office. Eletrobras is the jewel in the crown, it's an attractive asset.

**Q: In which sectors do you expect to see the most M&A deals as the pandemic eases?**

A: Healthcare and technology. For obvious reasons. We all need both. Everything depends on technology these days, especially in the pandemic, for home working, home schooling, training, and all companies have a need to implement technology and invest in it. And also in healthcare and life sciences and pharma. As well as energy and infrastructure. And agribusiness. And not just in Brazil, but in most countries of the region. We have seen a lot of Asian investors coming to Brazil, as they have recovered already and are ready to buy. The Chinese investors especially, who are already looking for deals in the region. The entertainment, real estate and hospitality will be looking to restructure, they are suffering the most, and we will see distressed opportunities there, and private equity firms are looking, especially as assets are less expensive now because of the currency devaluation. Companies are looking to consolidate their businesses, to restructure or strike up joint ventures so that they can survive the crisis.

# 12.4%

**the increase in M&A values in 2019 in Latin America compared with 2018**

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BRAZIL IS ALWAYS SEEN AS A PLACE OF OPPORTUNITY, AND I THINK THE RECOVERY WILL BE FAST.

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**Q: But despite the attractiveness of assets, some companies and investors may still be hesitant to buy as they need to evaluate their targets given the uncommon situation this year, with the pandemic having impacted so many businesses' performance.**

A: Yes, this has been a very different, and much more profound, crisis than a regular economic crisis. We have seen in the law firm that clients are trying to close the gap in their evaluation of companies when carrying out due diligence. We are seeing that when you cannot predict how a company can perform, earn-out provisions are being negotiated, so that part of

the purchase price is paid in the future based on the company's performance. Sellers don't like it, but it's a way of bridging the gap in the evaluation of assets. Something else new that we are seeing is private equity firms looking to pay a lower price to then resell the asset later for a much higher price, and so we are seeing clauses put into contracts to give the seller the right to receive an amount due to the re-evaluation of the asset. Due diligence is much more focused right now on the solvency of companies than any time before.

**Q: Will deals necessarily take place as quickly in the 'new normal', post-pandemic?**

A: Sellers are still in need of cash and they want to avoid bankruptcy, and to avoid that they will be looking to sell quickly, even if it's for a low price, to give them a cash injection. Some companies that are very stressed want to sell so that they can save the other piece of their business, and deals may develop very quickly because of that.

**Q: Is Brazil seen as more stable by investors now, following the bribery and corruption scandals of 'lava jato', and the impeachment of former president Dilma Rousseff, followed by an interim government?**

A: We came from several years of corruption and scandals, and so we all put a lot of hope into the new government creating economic stability for Brazil, but because Bolsonaro is such a controversial figure, combined with the moment, the economic scenario, all that was happening at the same time didn't help and



## Anna Tavares de Mello CV

*Anna practices mainly in the areas of M&A, private equity and corporate, major projects, insurance and reinsurance, oil and gas, and banking and finance. She joined Trench, Rossi e Watanabe in 1996 and became a partner in 2001. She also worked as an associate in the Baker McKenzie's New York office in 1998. She graduated from the Pontifícia Universidade Católica do Rio de Janeiro Law School and earned her master's degree in corporate law from the Universidade Cândido Mendes. She also studied a corporate finance course at New York University.*

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THIS HAS BEEN A VERY DIFFERENT AND MUCH MORE PROFOUND CRISIS THAN A REGULAR ECONOMIC CRISIS.

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the government did not show immediate results. Even though I am not a big fan of Bolsonaro, I think he was able to create a government with credibility among the financial markets and investors. If the pandemic was

not with us I think we would be doing much better now. But we had to change what we had before, we lost the credibility of the world with the 'car wash' scandal and the domino effect. And now, this year, we are starting to reopen the economy and things are starting to go back to 'the new normal'.

**Q: How is the law firm doing? People talk about times of crisis as being times of opportunity, is that the case for Trench Rossi Watanabe now?**

A: We are doing well, we are a full-service law firm and that helps when you have to deal with crises, when you have different areas, so that if you don't have opportunities in one area you will have them in other areas. Some areas will have less work but you compensate with more work in other practices. In the pandemic we had a lot

of work in our labour team, they were busier than ever because companies needed to terminate employees, reduce their work hours, etc. And that was happening right across Latin America. Law firms would have had a lot of work in this area, while M&A and deals were also ongoing, due to companies booming or because of the stress they were under. So, our corporate and restructuring teams were very busy. You always have practices that are booming and other that don't do so well. But comparing our revenues this year and last year, we have not seen a reduction. I am optimistic and I see a lot of opportunities, things will start to grow again, some companies will have cash and they will want to invest. We have a lot of IPOs going on, and we didn't expect that area to recover so quickly, but it did. ■



# SEEKING EXPERTISE

External counsel provide insight and expertise, specialist and expert backup to help Banco de Chile navigate the legal terrain, according to Maria Alexandra Cuevas Knezaurek, the bank's in-house legal counsel in Santiago.



Expertise, a good reputation, and accessible fees are the criteria for choosing an external law firm for Banco de Chile's in-house legal team, and while a global firm may command more respect and prestige, an international presence is not a requirement to be selected, Maria **Alexandra Cuevas Knezaurek** says.

"Depending on the speciality, there are some law firms with which we work more often, but in general each case is considered on an individual basis, especially because, in many cases, the legal services are paid for by the client. In general, it is very important that the firm has a good reputation in the corresponding jurisdiction," she says.

"We choose a law firm by obtaining quotes, and which are evaluated depending on the particular task at hand and the requirement of the operation, such as timescale, depth, etc., but prior experience with the firm is also taken into account."

"The benefits of using an external firm are especially perceptible when the company does not have a specialist in the issue in question," she says.

"The challenges or difficulties arise when we use new suppliers and the way of working or the product is new, especially given that time is of the essence in many transactions. Another challenge is when we do not know a particular professional for a certain task, or we do not have a direct contact that can initially attend to a requirement, especially abroad."

## TOP AMONG TALENT

Founded in 1893, Banco de Chile is a commercial bank providing a broad range of financial services to all segments of the country's financial market, both directly and indirectly through its subsidiaries, which include Banchile Brokers, Banchile Citi Global Markets, Banchile Insurance Brokers and Securitizadora SA.

The company operates more than 400 branches across the country and, through its partnership with Citi, offers customers services and access to a wide range of products in other countries. The bank also has representative offices in Beijing and São Paulo.

**"IN GENERAL, IT IS VERY IMPORTANT THAT THE FIRM HAS A GOOD REPUTATION IN THE CORRESPONDING JURISDICTION."**

Maria Alexandra Cuevas Knezaurek, In-house legal counsel,  
Banco de Chile

### MARIA ALEXANDRA CUEVAS KNEZAUREK CV

👁 Maria is a graduate of the Pontificia Universidad Católica de Chile and holds a master's degree in comparative law and international contracts from the Universidad de Chile, in addition to a certificate in international commercial arbitration and a graduate certificate in international contracts and business law from the American University Washington College of Law in the US. Among her former roles prior to working as in-house counsel at Banco de Chile, Maria worked as an associate at Chilean law firm Russi & Eguiguren.

**"THE BENEFITS OF USING AN EXTERNAL FIRM ARE ESPECIALLY PERCEPTIBLE WHEN THE COMPANY DOES NOT HAVE A SPECIALIST IN THE ISSUE IN QUESTION."**

The bank is the third-largest in Chile, after Banco Santander Chile and Banco del Estado. Having ranked second place in 2019, Banco de Chile this year ranked top in Merco Talento Chile's annual list of the top 100 companies in the country for attracting and retaining talent, ahead of Nestlé, state-owned copper producer Codeloco, BCI and Banco Santander.

## FEES AND PRESTIGE

She says that the choice of a law firm depends on both a firm's prestige and the fees it charges.

"Considering the importance of the operation, fees play a key role in the hiring of legal services. And the same applies to the prestige and backing of a law firm, which is also essential for hiring its services."

That prestige can be more apparent if the law firm has a global presence, but having a global presence is not a requirement for the firm to be considered as external counsel, she says.

She says that external law firms add value to the company's business by covering those aspects that the in-house team cannot cover due to the specialist expertise needed in the advice or the operation.

"A global presence often also facilitates communication, especially when we are dealing with clients with both a local and global presence," she says. She adds that her in-house team carries out the majority of Banco de Chile's day-to-day legal work, and that cases in which external law firms are required are the exception and for specific cases. And the in-house team also takes care of interpreting and applying new legislation, unless it is a specific theme in which the in-house team does not have the specialisation.

"The introduction of new legislation always brings new challenges, especially if the legislation is far-reaching," she says. "For example, the new European Data Protection Law presents challenges that need to be faced by the entire industry in general." 📄

# MAPPING THE TERRITORY

## NAVIGATING BANKRUPTCY SALES IN BRAZIL, COLOMBIA AND MEXICO

As Latin America grapples with the effects of COVID-19 and companies seek to divest assets in connection with their reorganisation plans, a key question is whether local bankruptcy laws allow for the divestiture of such assets.

By Enrique J. Martin (Miami), Dan Moss (Washington), Wade Angus (São Paulo), José Antonio Vázquez (Mexico City), Luis A. Vélez (Miami) and Arturo de la Parra (Mexico City)

Under the US Bankruptcy Code, ailing companies may divest assets either through relatively quick Section 363 sales or through a Plan of Reorganisation, both of which entail a transparent, court-supervised, sale process that is designed to achieve the highest and best value for the assets that are delivered to the buyer, free and clear of all claims and interests, such as no successor liability.

To navigate the complexities of divestitures through bankruptcy proceedings, we have prepared a brief summary of the legal framework for bankruptcy sales in Brazil, Colombia and Mexico.

### BRAZIL

Brazilian bankruptcy law allows debtors in a court-supervised judicial recovery process to sell a division or assets of business divisions (known in Brazil as UPIs) free and clear of all liabilities, including liabilities arising out of tax and labour claims. Although the sale of a division or assets can be part of a debtor's judicial recovery plan, Brazilian bankruptcy law does not expressly provide for the sale of the entire business or substantially all of its assets. A UPI transaction is supervised by the Brazilian bankruptcy court and must be completed through an auction process – either with live bidding or the delivery of sealed proposals. The division or

“BRAZILIAN BANKRUPTCY LAW ALLOWS DEBTORS IN A COURT-SUPERVISED JUDICIAL RECOVERY PROCESS TO SELL A DIVISION OR ASSETS OF BUSINESS DIVISIONS FREE AND CLEAR OF ALL LIABILITIES.”

assets are sold to the highest bidder, even if the highest bid is lower than the appraisal value. Notice of a UPI sale must be published in a widely circulated newspaper prior to the auction date. The debtor, creditors or the Public Attorney's Office have a limited window to challenge a UPI sale. The bankruptcy court will rule on any challenge within five days and if the challenge is dismissed the assets then transfer to the buyer.

### COLOMBIA

Colombia's insolvency statute provides for reorganisation or mandatory liquidation. However, Colombian bankruptcy law does not expressly allow debtors in reorganisation proceedings to sell their core assets free and clear of liabilities. In response to the COVID-19 pandemic, a debtor may sell its non-core assets as part of the reorganisation process, and use the proceeds to pay its debt without court approval. Even though it is uncommon and is not expressly provided for in the law, a sale of core assets during reorganisation would require the approval of a majority of the participating creditors and confirmation by the court. If a debtor enters mandatory liquidation, the debtor must proceed with an auction (usually piecemeal), and agreements with stalking horse bidders are prohibited. Given Colombia's



WADE ANGUS



ARTURO DE LA PARRA



ENRIQUE J. MARTIN



DAN MOSS



ANTONIO VÁZQUEZ



LUIS A. VÉLEZ

restrictive reorganisation laws, distressed asset deals are not common.

## MEXICO

Mexican bankruptcy law allows for partial and complete sales depending on the stage of the bankruptcy proceedings. During the initial mediation, the debtor and the creditors may reach an agreement on a reorganisation and the mediator may sell non-core assets in a court-sanctioned public auction. Assets that are perishable, costly to maintain, or likely to substantially decrease in value may be sold without an approval. During the bankruptcy stage, a debtor may sell separate assets, core assets or even the whole company to maximise sale proceeds. Any such sale must also occur through a court-sanctioned public auction. However, the debtor may propose an alternative sale mechanism if it can reasonably prove that it maximises sale value.

Brazil and Mexico do provide for a mechanism for divestitures through bankruptcy proceedings, unlike Colombia, which does not expressly provide for debtors in reorganisation proceedings to sell their core assets. Companies that have debt governed by US law (such as Delaware or New

**“COLOMBIAN BANKRUPTCY LAW DOES NOT EXPRESSLY ALLOW DEBTORS IN REORGANISATION PROCEEDINGS TO SELL THEIR CORE ASSETS FREE AND CLEAR OF LIABILITIES.”**

York law) or assets or operations within the US should also evaluate whether filing under Chapter 11 of the US Bankruptcy Code would be a beneficial forum to market and sell their assets.

Chapter 11 is a recognised and reliable process by which many multinational entities effectuate asset sales, balance sheet reorganisations, and operational restructurings. If a Latin American company must restructure its operations and finances under local court structures, parties should consult with counsel whether a Chapter 15 bankruptcy proceeding may be initiated in the US.

Under Chapter 15, US courts recognise foreign restructuring proceedings and are the vehicle by which foreign restructurings are implemented in the US, particularly if a foreign entity has US-based creditors or US-based assets that serve as collateral. Companies in Latin America that intend to divest assets as part of their bankruptcy proceedings should consult with counsel in all relevant jurisdictions before deciding on a particular course of action. In addition, buyers interested in acquiring distressed assets throughout the region should consult with advisors in the applicable jurisdictions to assess the impact of each country's regulations on the target asset. 

*The authors are lawyers at global law firm Jones Day.*

*The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the law firm with which they are associated.*



# The Latin American Lawyer



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