

# AGENDA LATIN AMERICA 2013: LEGAL STRATEGIES FOR NEW INVESTMENT

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**Iberian Lawyer recently hosted an online session with a group of leading law firms and companies to discuss the current opportunities and trends in Latin America for new investment. The session was supported by Basham, Ringe y Correa, KermaPartners and Hunton & Williams.**

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Latin America continues to experience economic growth, with many of its countries now experiencing long-term stable economic conditions. The high credit ratings of many have opened

them up to large, long-term foreign investment, and significant opportunities exist, with the development of projects in a wide array of sectors that are crying out for funding.

One of the main conclusions of the debate highlighted the fact that there are currently a group of countries in Latin America, such as Colombia, Chile, Mexico, Brazil and Peru, that offer the confidence required to invest and develop business. However, it is still important to think strategically when investing in the region. Fernando Peláez-Pier at KermaPartners said that within the region there are a group of countries that implemented legal reforms such as new tax legislation, which has increased the confidence of investors.

The major Spanish companies have been in Latin America doing business for decades, but a new wave of companies is entering the region due to the current European economic situation. Virginia Beltramini, Head of Corporate at Atento, Spain, mentioned that for Atento, Latin America is a natural market as it offers possibilities of growth, with Brazil, Panama and Mexico being the ones that bring in higher revenue.

There is more legal and financial stability that encourages further investment and development from abroad, according to Fernando Alonso from Hunton & Williams. "The sovereign debt and fiscal positions developed domestically has made public resources for financing less available; however there is the benefit of a stronger local market that is capable of financing it through entrepreneurs or private funds." Still, infrastructure is a sector with opportunities together with transportation, said the experts, but one of the trends highlighted by Alonso is the rising of a more dynamic middle class that brings growth in consumer goods.

One of the current star countries is Mexico, offering not only economic stability but also legal reforms to protect investors. There is a trend of Mexican conglomerates being able to invest and do business around the world. Juan Carlos Serra from Basham, Ringe y Correa suggested that many companies look at Mexico as a business hub to coordinate all their LatAm operations. The companies establishing there are the big global players, interested in serving the domestic market and coordinating the intra-Latin American transactions.

### **Who is investing in Latin America?**

The funding trend is seeing new players arriving with resources to support projects including cross-regional investment. And China is seen as one of the key players. Alonso agreed that over the last years there has been more inter-Latin American investment. "Before, the main funds depended on European sources of capital, but now we see a boom of investment from companies and funds within the region. There is a new game where the sources of financing do not come from Europe but from neighbouring countries". In addition, Fernando Peláez-Pier, Special Adviser for Latin America at KermaPartners, stressed that over the past few years, China has also been playing a key role as an investor in LatAm.

One of the main fears that companies have when investing abroad is managing legal risk when. Sectors like energy, require an in depth analysis. Javier Villalón, Legal Counsel at Solaria Energía y Medio Ambiente, Spain, suggested that it is essential to conduct good research on regulation and political support for international investment, but overall it is crucial to identify a good local partner to help with the lobby or possible public tenders.

In LatAm the obstacles tend to be other global players competing and occasionally some monopolistic approaches to certain sectors. Political risks are always there but it is a question of learning how best to manage the changes.

Often strategic sectors are restrained by government control. Serra from Basham, Ringe y Correa

explained that in Mexico there are monopolistic sectors, one being energy in particular Oil & Gas. But Telecoms is an open market that offers opportunity for international players. There are now new rules to open competition and develop a special arm for antitrust competition to break monopolistic behaviours.

There are huge opportunities in infrastructure and it is crucial to find the right partner, whether Spanish or from other countries. It is important to be humble and learn from local people, said Sandra Martín, BoD Secretary and Head of Legal America at Indra in Brazil. The competition is strong, so companies need to prove that they can offer something interesting and better than others.

Martín said that when investing abroad you have to be open-minded and be 'local', looking for partners to help you on the way, and that public bidding is very difficult. Corruption has been the main obstacle and to avoid that they have become very bureaucratic.

Latin America in their economic development as it is seeing a more sustainable growth the investors are also changing and do not seem to look for the big collateral gain in a short period of time, but a more long term approach. Juan Carlos Serra at Basham mentioned that now investors are being more reasonable in collateral gain and are more careful on the day-to-day management of the companies where they are investing.

## **Investment risks**

When talking about investment, the group discussed that it is not only business risk but also the risk of potential conflicts that might arise. Peláez-Pier at KermaPartners suggested that the shareholders agreement is crucial to try to prevent potential conflict.

As many companies' Legal Departments manage LatAm as a region, the challenge is to find a way to effectively coordinate the legal support provided, considering the differences from country to country. Beltramini from Atento mentioned that the structure of the in-house legal department wants to focus on the different requirements per country so there is at least one point of contact internally and then a very strict process to select domestic firms that provide the support per country. When the transaction is cross-border, the external firm providing support is often a global firm.

Villalón from Solaria said that the company often does not understand the market that well, so it is crucial to get the right domestic lawyer that understands well the sector. It is difficult when your sector is new in the market, as sometimes that means that the lawyer is learning with you. In this case you need to trust the lawyer and the lawyer needs to understand the cultural background of the company.

The current opportunities that the region is bringing, is highlighting a trend now for global firms wanting to open offices in LatAm, said Peláez-Pier from KermaPartners. Strategically, the participants commented that global firms see the opportunity that opening offices might present to their clients, as they can offer a closer input in the legal market and control quality services and legal advice.

When they are abroad and facing conflict, companies feel more vulnerable as they do not understand the legal market as well. Martín from Indra suggested that to resolve disputes, the best approach to take varies. In Mexico, there has been a big reform to make the process faster and the improvement is noticeable.

In Brazil, it has been better than expected. Employment courts work well and faster, although they are very protective of the employees. When you work locally, it is difficult to include a clause for international arbitration, so when working with the administration they look for domestic methods to

resolve disputes. In Colombia, they use arbitration for public bidding, which works very well, much better than most were expecting.

## **Arbitration clauses**

Lawyers consider that including International arbitration clauses is the most recommendable way to deal with disputes in LatAm. On the other hand, the majority agreed that the strategy has to be on a case-by-case basis. Serra from Basham, Ringe y Correa emphasised the fact that the majority of international arbitration cases settled before the award. And that enforcement can take a while in Mexico.

For the larger financings or larger M&A, parties choose New York Law Y to govern the transaction, over the international arbitration option, said Alonso at Hunton & Williams. In terms of credit facilities, if they are international they could be governed by New York law, but if other collateral credit is local then it could be governed by local law, and there can also be hybrids.

## **Leading the change**

When markets are growing, international law firms want to get closer to them and follow their clients. In the session, the participants discussed who is leading the change on legal provision and they suggested that clients are the ones changing the way that they buy legal services.

Beltramini from Atento suggested that it depends on the situation, however, as sometimes local or international law firms have knowledge necessary for clients and on other occasions companies are restricted by internal procedures and have to put requests for support from law firms. Villalón at Solaria said that the clients are pushing the law firms to provide different services to respond to their needs.

When working in legal markets that are monopolistic or protective, like in Brazil, the challenge to lead the change is bigger as the competition is smaller. Martín from Indra considered that standards vary and the price and quality are not always fair, but it is crucial to coordinate with each other. Spanish law firms want to have a role in LatAm but companies do not always want their support as coordinators. The best value offering Spanish law firms can make is to refer to the best local team to assist the company.

Law firms and companies are facing challenges especially with increasing competition. But law firms have to manage converting capped fees into profitable fees, said Peláez-Pier at KermaPartners.

Law firms are now listening and there has been an evolution to benefit of the client. New investment means new opportunities for law firms, and clients are leading the change.