GLOBAL SPECIAL REPORT 2013: HAVE YOU SOLVED THE GLOBAL PUZZLE

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2013 continues to be a hard year, and the quest for internationalisation is stronger than ever. Asia-Pacifi c, Africa, Latin America and the Middle East are the prime targets, and clients and their law fi rms are expanding their operations as part of very calculated international strategies. Globalisation is a complicated puzzle, but many are close to solving it.

The Eurozone is not what it once was– not by a long shot. Still in the midst of a seemingly never-ending crisis, its Member States are recovering at diff erent speeds. And bringing up the rear is the Iberian Peninsula, held up as a poster child for austerity gone wrong, and, lawyers say, shouldering much of the blame for dragging the Eurozone further into crisis. The IMF recently admitt ed that the Greek bailout was not the most adequate, and many speculate that the same will soon be said about Portugal.

As always, however, the bad doesn't fully outweigh the good. From a global perspective, a recessionary Eurozone equals a 'cheap' market, and Portugal and Spain are high on foreign investor's agendas, which in turn is bringing much needed stimulus to the market. But despite this hint of optimism, Iberian investors and their law fi rms continue on their quest to get to grips

with the global business puzzle. Slowly but surely they are bringing the pieces together – and a few are close to completing it. Some pieces are easier to fi nd than others, and some still remain elusive. But despite the challenges they may face, the desire to 'go global' burns brighter than ever.

Domestic diffi culties

In Spain, practice areas such as labour and employment and fi nancial restructuring show continued grow, while others, such as M&A, remain at a low ebb. "There have been signs of improvement in the M&A and private equity market in the second quarter of 2013," says Fernando Vives, Managing Partner of Garrigues, "although it remains to be seen if this trend will be consolidated".

But the Spanish Government's austerity measures and signifi cant reforms are, say lawyers, starting to show some tangible results. Spain's market stands bett er than in 2012, according to Juan Jiménez-Laiglesia, Co- Managing Partner of DLA Piper Spain.

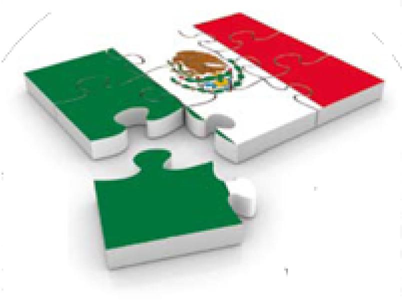
"Finding local lawyers that share the same approach to client's needs and are willing to become part of international structures is essential to the success of its 'African' projects."
Miguel Castro Pereira,
Managing Partner,
Abreu Advogados.

And while reforms are currently pending, political commitment is now much clearer about actually facing real issues. "I think we are currently a very att ractive investment opportunity," says Jaime Folguera, a Partner at Uría Menéndez. "Asset prices have dropped, the economy is giving signs of recovery and there are large privatisations in the pipeline, so we are expecting M&A activity to increase in the next 12 months."

Foreign investors have been busy making deals and investing, especially those from Germany, the UK and US.

In fact, these three countries accounted for the majority of investments in Spain in 2012, according to Juan José García, Managing Partner at Adarve Abogados, particularly in the fi nance, services and software sectors. For inbound distressed asset investors Spain seems to be one of the places to be now, adds Fernando Quicios, a Corporate Partner at Pérez- Llorca. But while this is good news, theeconomic situation is still very difficult.

On a macro level, things are improving, say lawyers, but the same cannot be said at micro level. Unemployment is the highest in the Eurozone, says Diego Lozano, Partner responsible for the international issues at Ramón y Cajal Abogados, and credit is still very scarce, with countless companies going into bankruptcy. This means that there are still no IPOs and very few big deals – if any at all, says Julio Veloso, Corporate Partner in charge of international relations at Broseta. "And the number of transactions is still very low, as is the average price, implying fi erce and I would say unfair competition among law fi rms."



Internal issues

In Portugal, economic activity is stagnant, with no real signs of recovery in the short to medium term. It is not in a good state – fi nancially, politically and socially – and the austerity measures have signifi cantly hampered investment and growth, which has impacted on business, says Pedro Guimarães, a Partner at F. Castelo Branco & Associados. Recent political events have also dramatically aff ected the chances of recovery in the short-term. “This creates a very frustrating environment for all members of society, with lawyers suff ering too,” he adds.

After fi ve years in crisis, the outlook is still very negative and will remain so for the foreseeable future. The austerity program imposed as part of the country’s bailout agreement is clearly not achieving its objectives, explains Rui Amendoeira, Managing Partner of Miranda, Correia, Amendoeira & Associados. “The Eurozone economy will not grow unless the austerity policies are replaced by a Europe-wide strategy to stimulate the economy and promote employment.”

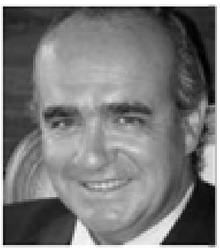
Portugal’s internal market activity has been dramatically decreasing yearon- year and 2013 has been one of the worst years since 2008, say lawyers. The defi cit has been reduced and the country now runs a small trade surplus, but at the cost of a massive contraction in investment and consumption.

Meanwhile, very litt le has been achieved in terms of a structural reform of the State and xpectations are running low as the 2015 general election approaches, says Ricardo Oliveira, an EU and Competition Partner at PLMJ. “Ideally the increasing consensus around the failure of the policies implemented should in due course lead to open discussions on the restructuring of the country’s debt, which in our view is unavoidable.”

The Government has thankfully taken steps to promote investment in Portugal and domestic investment abroad, as a way of generating tax revenue, but also, and more importantly, as a way of creating jobs and revitalising the economy. “We have seen new legislation providing for extraordinary tax credits and exemptions applicable to qualifying investments aimed at creating a more att ractive environment for investors in Portugal,”

explains Rogério M. Fernandes Ferreira, Founding Partner of tax boutique RFF & Associados. While not a standalone solution, if applied and managed correctly, it could prove to be a great help to the economy.

And while Portugal’s aggressive adjustment programme has had a tremendous impact on the legal market, it has in fact created important opportunities for legal fi rms, with a signifi cant surge in volume of counter-cyclical work, says António Payan Martins, a Partner at CMS Rui Pena & Arnaut. “Privatisations, restructurings, either out of court or by way of insolvency proceedings, are just some examples of this.”And the hope among lawyers is that this is only the beginning.



“Latin America has proven to be an expanding market eager to welcome new actors in order to vitalise their economies.”
Jesús Vélez Martínez,
Managing Partner,
Kennedys.

International attractions

With the crisis at home, ‘internationalisation’ is the only way to go, with the ‘hot’ regions for company investments and opportunities continuing to be “everywhere but Europe”, according to Clifford Hendel, a Partner at Araoz y Rueda.

The current preferred destinations for Spanish investors are Asia-Pacifi c, Africa, Latin America and the Middle East. All these include countries that expect high to moderate growth, an abundance of natural resources and national and public projects to be developed, says Ignacio Paz, a Partner at

Herbert Smith Freehills Spain. “Accordingly, the most active sectors are infrastructure, energy and mining. “

Engineering, and the construction of transport and energy infrastructures, as well as the development of renewable energies, are hugely important for these emerging countries, and Spanish companies are very well regarded, adds Gerard Pérez Olmo, a Partner at GOLD Abogados, as they possess important knowhow and expertise in these areas.

“Our clients are still very active in seeking business opportunities in Latin America, where the infrastructure sector is king,” says Javier Villasante, Head of International Practice at Cuatrecasas, Gonçalves Pereira. “However, there are also big Spanish multinationals that are more interested in investing in diff erent OECD countries, particularly in Europe, the US and Canada, where the concession-related type of business off er att ractive investment opportunities.”

With a two-digit 2013 growth forecast in construction projects for the residential, retail and commercial sectors, says Hugo Écija, Managing Partner at Ecija, the Middle East countries are still a thriving market for clients specialising in these areas. And although very hard markets for law firms, according to Tomás Dagá, Managing Partner of Osborne Clarke in Spain, and with many obstacles for foreign Law fi rms, one cannot ignore the growing legal market for inbound and outbound work in the BRICS.

Australia has also become a’ hot’ market, and is seen as a gateway to the Asia-Pacifi c market. “Four of the top six Australian fi rms have linked with international fi rms and more activity is expected,” says Javier Fernández- Samaniego, Managing Partner of Bird & Bird (Spain).

“And Singapore is conducting a second round of foreign law fi rm licences, and positioning itself as the ASEAN (Association of Southeast Asian Nations) hub and as a route into India.” For the Portuguese, the majority of clients still fl ock to Portuguese-speaking markets, namely Angola, Brazil and Mozambique. Domestic companies in general are looking for fast growing markets, with increasing economic activity and consumer pressure, to which they can export goods and products, says Nuno Castelão, Head of International Relations at Vieira de Almeida. Also,

companies with technological experience or those that can provide highlevel services are targeting countries that need to create and develop infrastructure or that lack a skilled workforce. In addition, says Pedro Raposo, Managing Partner at Pedro Raposo & Associados, they have a large group of clients investing in the energy market in India, South Africa and US.

To a lesser degree, opportunities appear within the EU and the US as Portuguese companies gradually internationalise, says Pedro Rebelo de Sousa, Managing Partner of SRS Advogados. And domestic businesses are also looking for investment opportunities in countries such as Turkey and Mexico and in regions like Eastern Europe, adds Victor de Castro Nunes at Baião, Managing Partner at Castro & Associados. “Basically, they are quite understandably looking for higher growth rates and expectations.”

A huge eff ort is being made by Portuguese companies to fi nd new markets, say lawyers, and at present, emerging economies are the preferred targets. “And due to the internal downturn, we believe that there isn’t a single sector that is not looking for opportunities abroad,” says Manuel Esteves de Albuquerque, Senior Associate at Raposo Bernardo.

From IT to agriculture and from larger companies to SMEs – everyone wanting to survive is actively looking abroad.

Methods and tactics

Exactly how Iberian companies are making these global moves largely depends on the countries involved and their relative experience, say lawyers. The mechanisms used by our clients to expand abroad depend on the size of the investment to be made, as well as the sector of investment or undertaking and also of the tax frame applicable, explains Vítor Marques da Cruz, Founding Partner of Marques da Cruz e Associados(MC&A). And these involve the entire range of investment instruments, from foreign direct investment, joint venture, concession or licensing agreement to M&A, adds Alberto Echarri, Managing Partner at EY Abogados.

Companies are increasingly seeking strategic alliances with local clients, helping them to understand the peculiarities of the target country and facilitating their start-up, with a view to achieving greater assurances in the process, says Luis Fernando Guerra, Managing Partner at Deloitt e Abogados. "In addition to enhancing effi ciency, agreements with local partners seek to leverage their knowledge and experience in the target market. At other times, in certain sectors, investments are considered into local companies as a means of gaining the experience required to subsequently operate directly in the target country."

But one cannot easily defi ne a patt ern as there is no fundamental model that is carved in stone. The choice of the appropriate format will depend on a series of factors – for example, the strength of the client's balance sheet, the maturity of the target market, the features of the products and/or services to be marketed, explains to Tomás Pessanha, a Partner at PLMJ. "The perfect solution in one case may simply be totally inadequate in another."

For telecommunications, for example, it depends on the strategic development of the target country. In more developed countries, the trend is for joint ventures or other forms of joint development of common projects, says Teresa Anselmo Vaz, Managing Partner of Anselmo Vaz, Afra & Associados. In other cases, more typical in African countries, states may impose a partnership including the local national telecommunication companies.

But it really depends on each individual market and most of all on the legal barriers to enter such markets, says Bernardo Reynolds de Carvalho, a Partner at CCA Advogados Ontier. "In China it is always advisable to reach some kind of an arrangement with a local partner." And most African countries have adopted local content policies that require foreign investors to form joint venture companies with local partners. "Finding a local partner and setting up a local company with such a partner is becoming a business requirement for foreign investors in most African jurisdictions," adds Amendoeira at Miranda.

Joint ventures are in fact widely used due to the advantages of having a local partner, and lawyers say that this continues to be an intelligent way to move into an unknown market. In Portugal, in particular, the Government, through its diplomatic and commercial bodies based abroad, has made a keen eff ort to establish these types of arrangements. "An interesting example is the 'dragging' eff ect by big companies that take smaller companies along," explains Lino

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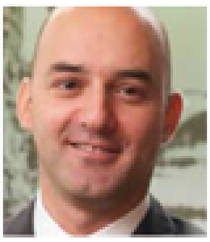


Torgal, Managing Partner at Sérvulo & Associados. "One such success story is that of EDP, the electrical company, which is organising road shows for smaller Portuguese partner companies in key markets."

In general, emerging countries have over-regulated markets that impose strict rules on foreign investment, especially in key sectors, such as energy and natural resources and the transport and communications sectors, says António Vicente Marques, Founding Partner at AVM Advogados. National legislation may drastically limit the range of corporate structures that may be chosen by foreign investors to invest directly.

"Notwithstanding this, and depending on the sector and investment timeframe, we have seen foreign investors opening plants and businesses, or as a result of M&A, acquiring local companies or engaging in joint ventures, as means to establish themselves in such countries."

And M&A hasn't totally disappeared off company radars. In Africa, Asia and Latin America, where international clients have less exposure to the credit crisis, they continue to use the M&A route to buy existing businesses, says António Soares, Head of Corporate Finance at Linklaters in Lisbon.

And many also prefer direct investment through the creation of subsidiaries or branches – a low-cost alternative that gives them full control of their investment.

So while there is no 'one-size-fi ts-all' model, what is essential is to tailor the investment strategy to the specifi cities of each market, summarises Vives at Garrigues.

Making your own puzzle

While some law fi rms are still establishing their own offi ces around the globe, the trend appears to be in favour of cementing current 'best friends' relationships and joining or forming strong international networks or alliances. A most recent example is Spain's Broseta, which is in the process of forming a LatAm alliance to further its presence in the region.

For many, opening their own offi ces is just not on their radar, largely due to fi nancial constraints, but also because for some of the more domestic, independent or boutique fi rms, it would be less advantageous in the long run than being part of a network. "We do not plan on opening offi ces abroad," says Pedro Pinto, Senior Partner at pbbr, "but would rather act as a platform for multijurisdictional projects in cooperation with our 'best friends' and legal networks."

In certain jurisdictions, due to their sheer size and tradition as centres for outbound work (London and New York, for example), a small representative offi ce does not confl ict with local law fi rms, says Carlos Valls, IP and Dispute Resolution Partner at Iuris Valls Abogados. They do not see this physical presence as real competition and it can actually be helpful to keep and increase contact. "But as an independent fi rm, it makes litt le sense to open in a jurisdiction where work could fl ow from local correspondents or 'best friends' law fi rms."

The cost of starting up and maintaining an offi ce can often outweighs the revenue it generates, and the whole process can prove an ordeal rather than an advantage.

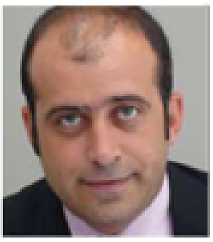
"We believe in reliable networks," says Ignacio Legido, Managing Partner at BDO Abogados, "as by the time a law fi rm understands all the needs in a country, starting new offi ces abroad can be a nightmare."

Also the risks involved in opening may be too substantial to even consider doing so, according to

José Alves Pereira, Senior Partner at Alves Pereira & Teixeira de Sousa. “We are therefore working mostly on a ‘best friends’ and networking basis, occasionally establishing a writt en bilateral cooperation arrangement when ongoing projects require.”

Law fi rms are therefore using networks, alliances and associations to achieve what they cannot do alone – pursue a worldwide strategy and tackle global markets without having to invest the substantial resources necessary to do so. Many have already picked this route: Consulegis, Euroadvocaten, Interlaw, Legal Network International, Legalink, Lex Mundi, Meritas, Multilaw, Ontier, TAGLaw and Terralex, to name but a few. But that is not to say that law fi rms are forgoing the route of opening offi ces. Garrigues decision to leave its Affi nitas Alliance earlier this year and open its own offi ces in Mexico, Peru and Colombia, is the most signifi cant example of going against the ‘network trend’. And they are not alone.

Bird & Bird recently opened in Denmark, F. Castelo Branco & Associados in Mozambique Gómez-Acebo y Pombo in New York office, Kennedy’s in Belgium, Lisbon and Miami, and Linklaters in Seoul, Korea, While AVM Advogados is currently expanding its offices to Houston, US, and Macao, and Osborne Clarke is soon to open in Paris and New York.



“Chinese investments made sense as many European assets are undervalued. We will see more Chinese investment to come and Spain should be no exception.”
Josep Herrero,
Co-Managing Partner of the Asian Desk,
Roca Junyent.

The complete picture

While the short-term prospects for the Iberian Peninsula continue to be less than favourable, in the medium and long-term, lawyers are less pessimistic about the Eurozone. There is no doubt among lawyers that, from an economic standpoint, 2013 will continue to be a hard year. However, there are some indications that, at the end of this year, the European economy is going to show a small, but important, recovery, according to Roberto Pomares, a Partner at SJ Berwin in Spain.

“We’re talking about mature and consolidated economies that off er investors important advantages – good infrastructures, cutt ing-edge technology, access to broad high-end consumer demand, legal certainty – and good assets at fair prices,” says Martín at Gómez-Acebo & Pombo. “Many companies have been substantially restructured and have implemented effi cient cost structures and have become fi nancially sound and more competitive.”

When it comes to internationalisation, however, there are still many pieces left to complete the global puzzle. Companies and law fi rms alike have done their homework and continue to demonstrate their ability to innovate, improve their productivity and successfully address the challenge posed by internationalisation.

Law fi rms are also expanding their operations as part of very calculated international strategies, whether that be by own offi ces, networks or alliances. The most important thing is to ensure that, at the very least and one way or another, you are a part of as many pieces of the global puzzle as possible.