

# US REPORT 2014: ONE-WAY TRAFFIC

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## **US law firms are benefiting from Iberian infrastructure and capital markets investment in both North America and Latin America, but there are doubts about whether such firms will pick up work related to Latin American investment in Spain, Portugal and Lusophone Africa**

The US has been an attractive destination for Iberian investors looking to generate new capital for almost a decade now. Spanish firms such as BBVA, Banco Santander, Repsol YPF and Telefónica have listed on the New York exchange while Abengoa and Grifols are on NASDAQ. These include initial public offerings (IPOs) and secondary offerings, such as 144a offerings.

A number of US firms have benefited from this, especially the New York capital markets teams. Davis Polk & Wardwell, for instance, says it has represented every Spanish company listed on the New York Stock Exchange. The deal flow remains robust too, with recent examples including Abengoa Yield's \$828 million offering, Banco Popular Español's €2.5 billion listing and Amadeus' €1.4 billion IPO.

However, when it comes to investment flowing out of Latin America and into Iberia and Lusophone Africa, opinions differ as to whether US firms will pick up much of the associated legal work.

Spanish companies are currently chasing American, and subsequently Latin American, assets. Due to domestic economic troubles, Spanish companies are expanding abroad and the likes of ACS, FCC and Iberdrola have bought major assets in the US and Latin America.

### **Renewables and infrastructure booming**

"We have seen work increase in the last two years," says María Luisa Cánovas, corporate partner in Jones Day's New York office, with regard to Iberian investors. "In our experience there has been quite a boom in investment by Spanish companies in renewables and infrastructure in the US given the lack of activity in Spain during the crisis years. Given Spanish companies infrastructure expertise, it's not surprising they are targeting the US, which needs renewed infrastructure."

Xavier Ruiz, corporate partner in Holland & Knight's New York office, says most of his firm's work for Iberian clients relates to infrastructure projects, such as roads, tunnels, bridges and power plants. While the US is a vast country – with Spanish renewable energy investments in California, Arizona, New Mexico and Texas and transport projects in Florida, Texas, Virginia, Illinois, Ohio and Puerto Rico – Spanish clients continue to flock to New York for finance.

"The work has been mostly infrastructure finance, both in the US and Latin America, work connected with Spanish debt restructuring and M&A transactions, and corporate/tax structuring for new investments in the US," explains Fernando Rodriguez-Marin, of counsel at DLA Piper in New York.

"Most financings require a strong connection with New York as New York law is used in most bank financings and in capital market transactions – this requires New York lawyers and financial advisors," he adds. "In addition, the most active multilateral institutions use New York law in their standard financing documentation for Latin American transactions." Rodriguez-Marin says infrastructure financings have been focused on capital markets via project bonds, known as 144a/Reg S bonds, with possible bank financing such as bridge loans or revolving facilities too. Experts say if Latin American M&A and infrastructure transactions require New York banking or capital markets financing, clients need law firms with credible US capacity to handle Latin American work. "Many transactions in Latin America, whether finance or M&A, are governed by New York law," Ruiz confirms. "In addition, construction, including EPC [engineering, procurement and construction] contracts are increasingly governed by US laws, especially New York law."

Iberian companies doing business in the Americas tend to use US firms for their Latin American corporate and tax structures and to ensure their Latin American transactions comply with US rules with an extraterritorial reach, such as the Federal Corrupt Practices Act.

### **Favoured by Latin American, not Iberian, clients**

Fernando Alonso, chairman of Hunton & Williams' Latin American practice group, says: "While we are involved in M&A and dispute resolution matters for Spanish and Portuguese clients in Latin America, US clients are far more likely to involve us for international support. We are more attractive to US and Latin American clients, rather than Spanish and Portuguese ones because our international work is largely based on either New York or English law. On significant M&A and financing matters, New York or English law tend to be preferred, and the acceptance of such applicable law by Spanish and Portuguese investors has been more gradual."

New York is the financial centre for Latin America but lawyers say Miami acts as a bridge between the two because of its connections with the region, the availability of bicultural lawyers and advisers, and the fact many other Latin American-oriented companies have bases there. Yosbel Ibarra, co-chair of Greenberg Traurig's Latin American and Iberian practice, says both Miami and New York are destinations for Latin American work but Miami is "the gateway city for work that Spanish companies are doing throughout the US".

Canovas points out that, as major Latin American energy and infrastructure projects are often financed under New York law, Jones Day has New York-licensed projects lawyers in Miami, led by Richard Puttre, to advise on financing. "Large-scale projects in Mexico and Brazil can often be financed locally, and we handle these deals through Mexico City and Sao Paulo," she adds. "We see

large, cross-border transactions serviced in New York, particularly in capital markets, financing and M&A. International arbitration and litigation is also subject to New York law, generally, and US firms run those cases."

Puttre says: "If a client contacts an attorney in our US offices, the matter will be referred internally to the attorney that is best-suited to address the issues confronting the client. We are present in the major US financial centres and our client service is provided from all of our offices."

If major Spanish companies are coming into the US and Latin America, how do US law firms secure them as clients? Only a handful of US firms - including Jones Day, Davis Polk, DLA Piper, White & Case and Baker & McKenzie - are in Madrid. Puttre believes that, as Jones Day is an international firm with a well-established Madrid office, it does not depend on Spanish firms for referrals. "Our long-standing relationships with Spanish clients result in direct contact from these clients," he says. Other US firms report a combination of work coming directly from Iberian clients and referrals from Spanish and Portuguese firms, whether from personal contacts, introductions or joint pitches with Spanish firms. "We have long-term relationships with certain Spanish companies and financial institutions that provide recurring work," says Alonso. "We also have excellent professional relationships with leading Spanish and Portuguese law firms and continue to collaborate with them." While Spanish firms do not have large US practices - and Spanish law aspects on some transactions are minor - some US lawyers expect that existing collaborations may provide more outbound work. "Our Latin American clients appear to be actively searching for opportunities outside Latin America, and Spain and Portugal are attractive markets," Alonso says.

Rodriguez-Marin says: "I expect a good part of the outbound work to come to US firms, especially those with offices here and in Europe, as many large corporates investing in Iberian markets already have relationships with US firms for international tax, securities, M&A and international financing work and many Latin American companies use US firms for their first forays into other jurisdictions, which commonly start in other Latin American countries."

### **Little Spanish inbound work for US firms**

In contrast, Ruiz - whose firm does not have a Spanish base - expects limited involvement of US law firms in Spanish inbound transactions undertaken by Latin American companies. "Those transactions are not commonly governed by New York or any other US law unless the transaction is funded by a US bank or structured by a US investment bank which would be rare if the parties are based in Latin America and Spain only," he says. "If anything, it would be funded or managed from the UK, in which case English law may govern the transaction. The reverse, specifically Spanish outbound work into Latin America, would not be true as Latin American companies tend to accept New York law to govern the deal they participate in."

However, new opportunities are continuing to open up for law firms. "We see quite a bit of M&A activity, both purchases and sales," Alonso says. "We recently represented a Spanish infrastructure company in the sale of an industrial services business they had in the US. We are also representing the same company in connection with an expansion planned in a different business sector. Meanwhile, we are also advising some smaller Spanish companies entering the US for the first time."