

USA REPORT 2012: REACHING INTO AND BEYOND THE US

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Domestic pressures are pushing Spanish and Portuguese companies to seek growth opportunities well beyond the Iberian Peninsula and, for many, the size, scale and stability of the US is a major draw; with businesses increasingly gravitating to Miami to take advantage also of its deep connections to Latin America.

The US has long been an attractive market for Iberian companies offering access to a single market of over 300 million people, with companies as diverse as Inditex, ACS and Santander all now well established.

But, as the economic downturn becomes more evident in Spain and Portugal, access to international markets has become a vital survival strategy. For many, the US has become even more attractive, not only for the domestic opportunities on offer but also as a conduit to Latin America.

Lawyers across the US caution, however, that despite recent good economic news, challenges still exist. Nonetheless, businesses can utilise a US-base not only to extend their reach across the country itself, but also across the wider region. The key issue therefore is where to locate.

"New York and Miami have grown to be major centres of commerce for Iberian companies as gateways to the US market, Latin America and, to a lesser degree, Africa," says Luis Perez, Partner with Hogan Lovells in Miami. "Whether in the financial sector, hospitality, energy, or infrastructure development, Iberian companies are finding that Miami particularly is a relatively easy market to penetrate and to use as a springboard within and outside the US."

Iberian companies, and most notably Spanish businesses, view south Florida as a very comfortable

location, agrees Fernando Alonso, Partner with Hunton & Williams in Miami.

As a result of its large Spanish and Portuguese-speaking population, Miami affords the opportunity to operate with relative ease as regards language capabilities when doing business in Latin America and the US. "In many cases," explains Alonso, "this is coupled with the cultural advantages of a professional class that, in large part, has roots in Hispanic culture. As a result, companies may find extra comfort in relying on Miami-based professionals when operating in the US or across Latin America."

Travelling around the city, most high profile are the financial institutions Banco Espírito Santo, Banco Santander, Sabadell, and Banco Popular while BBVA recently re-entered the market targeting wealthy individuals. But also present are all the leading Iberian telecoms, infrastructure, real estate and technology players.

Some now say that the city has emerged as the favoured US entry point for Iberian businesses, albeit New York also has specific attractions, emphasise lawyers there.

"The choice of New York is mostly driven by the proximity to the prominent local industries, such as banking, finance, media, advertising or legal," says Xavier Ruiz, Partner with K&L Gates in New York. "In terms of New York as a headquarters for companies' Latin American operations, it is probably only true for the financial and perhaps legal industries. It is not however usually chosen as a base for pan-US business due to its operational and tax cost." He joined the US firm from the local office of Garrigues in 2011 to help develop business from Spanish entities and divides his time between Spain and Manhattan.

International benefits

The benefits however of using the US as a regional base to enable companies to extend their reach into Central and Latin America are clear, agree lawyers across the country.

"A frequent comment is that Miami is the northernmost city in Latin America," says Pedro A Freyre, Chair of the International Practice at Akerman Senterfitt, a leading M&A firm with a Latin American practice, "and this holds true not only in how well-connected the city is – the city's airport is the regional hub – but also in the number of Latin American companies and the quality of professionals that have a base here."

Alongside the large number of law firms that have focused their Latin American practices out of the city, a very large number of Fortune 500 companies utilise Miami in the same way, and where most now locate their regional General Counsel.

The feeling is obviously mutual. "The short cultural and geographic distances the city has with Latin America, and the increasingly strong relationships between businesses and attorneys in both regions, have steered it into a global hub for a company's business and legal strategy," adds Mariano Batalla, Founding Partner at Costa Rica's Batalla Abogados, "especially when deals are negotiated or ruled by American regulations such as New York Law."

Besides a common culture and language, and Miami's perception as an attractive location for assets, it has also emerged as a convenient place for the transfer of ideas and regional knowledge. "For many businesses, the city has emerged as a point of centralised control for human resources activities such as recruiting," says Philip Berkowitz, Partner with national labour and employment firm Littler Mendelson.

Nevertheless, he believes that New York, as the centre for international commerce in North America, remains the first choice for Iberian firms wishing to establish themselves in the Americas. From there, they may choose to expand into Miami or even Houston, which, he points out, is also an important market for Latin America.

In the eyes of many Iberian businesses, the city may therefore win out in terms of quality of life and the ease of attracting a Spanish and Portuguese-speaking labour force, and offers lower employment and tax costs, but New York remains the financial capital of the Americas.

"For certain industries, such as banking, finance and insurance, New York is the place to be.

Manhattan has unbeatable brand recognition, which surely carries intangible benefits to companies

choosing to locate their US or Latin American headquarters there," insists Ruiz at K&L Gates. With the US Presidential elections now decided, Barack Obama's second term will in any event likely reinforce the opportunities presented to Spanish and Portuguese companies, say lawyers. "There will be an ongoing focus towards making the US energy independent and on rebuilding the country's ageing infrastructure," explains Perez at Hogan Lovells. "Iberian companies are uniquely positioned to take advantage of this continued focus as a result of their invaluable experience and knowledge in both areas."

Nonetheless, given the ongoing challenges faced by many domestic businesses, there will not likely be any specific incentives to attract foreign companies. "President Obama's policies are not designed to benefit Iberian businesses, but certain incentives, especially for renewable energy and transportation projects will clearly play to their strengths, among them construction and energy companies and financial institutions," says Ruiz at K&L Gates.



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Marco Schnabl, Skadden Arps Slate Meagher & Flom

Regional interaction

More subtle changes may, however, prove positive. The Hispanic vote was a key factor in the Democratic win, and some suggest this may encourage a move towards immigration reform, which will allow a more ready exchange of

executives both from and to the US and Latin America.

"This may prove attractive for Iberian companies and executives who expect to move their families to the US," says Berkowitz at Littler Mendelson. "And, as a key state in the election and as a centre for immigration reform, Florida in general and Miami in particular are in a unique position to benefit from all of these political and economic reforms, adding to the city's attractions."

There is already an increasing flow of trade between Latin America and the US, the importance of which was emphasised by both sides during the Presidential campaign. And there is an increasing integration of regional economies and industries, as businesses seek new market opportunities.

"As well as the flow of investment out of and through the US, we also see an increased flow inwards of Latin American and Iberian capital," says Marco Schnabl, Arbitration Partner with Skadden Arps Slate Meagher & Flom. "Many large Mexican companies now view the south west US as a natural extension of their operational sphere, targeting the established large Hispanic populations."

Indeed, Schnabl observes that Latin American interests have been behind the recent acquisitions of some of the most iconic US brands, including Burger King and Budweiser. "And this trend is likely to continue if domestic economic policies in the US continue to depress asset values in what foreigners may well regard as a huge and ultimately stable and profitable market".

Meanwhile, US companies continue to look at Iberia, and with the establishment of Spain's 'banco malo' there is a clear rise in interest in distressed investment opportunities, says Alfredo Anzola, Partner with Squire Sanders in Miami.

"We see a growing interest in the real estate market by funds and other investors, but we also see new investment models emerging across other sectors. US distributors are working with medium-sized and smaller companies to package and promote Spanish products to the US markets, and especially towards the Hispanic and Spanish-speaking communities."

Every crisis brings a certain degree of opportunity and those companies, across Iberia and in the US, able to take a wider view will undoubtedly benefit in the long run.