

US clients looking for acquisitions in Latin America

A crucial task for law firms is creating agreements that safeguard clients' interests by complying with local law while not being governed by it

Latin American markets such as Brazil, Panama, Colombia and Peru are providing law firms with significant opportunities for cross-border work, particularly in energy, oil and gas exploration, infrastructure, financial services and consumer products, according to Hunton & Williams' Fernando C. Alonso, chairman of the firm's Latin American Practice Group.

He adds that one of the key challenges facing firms handling cross-border deals is ensuring that agreements are governed by the laws of a jurisdiction that is respected and can be relied upon by all parties. Meanwhile, from a strategic perspective, Alonso argues that law firms do not necessarily need an office in Latin America to represent clients operating in the region. However, they do need good relationships or alliances with local firms.

What opportunities currently exist for legal work in Latin America? Alonso says international law firms are picking up numerous instructions in Brazil, where US corporate clients have been very acquisitive despite talk of a pause in growth. Meanwhile, in Colombia and Peru, there has been an explosion in energy, infrastructure and oil and gas exploration, which is also generating considerable work for lawyers. In addition, international clients are also investing in infrastructure projects in Panama. Alonso adds that US and European clients in Panama have sought legal advice on all aspects of construction projects as well as the resolution of claims.

Creating agreements that effectively safeguard clients' interests by ensuring they comply with local law, while not being governed by it, is one of the most important tasks facing firms working on cross-border deals. "Our goal with any cross-border deal is to provide the optimum structure so as to protect our client's investment," Alonso explains. "We usually prepare agreements that are not governed by local law but by a jurisdiction that respects local law and is grounded on common law principles where contractual rights are paramount – frequently this will be New York law

with arbitration in New York or Miami."

Alonso says that, on the whole, Latin American countries have been very receptive and comfortable with this approach, with the possible exception of Brazil, where some hesitation remains. "We are often working opposite large local firms, which are well versed in standard US commercial and financing agreements."

Deal flow ranges from acquisitions to joint ventures, and often includes elaborate shareholder agreements. In a recent case, a client sought to purchase a minority stake in a company but still required significant investor protections and a say in the company's management. Recent major deals include the acquisition by Promerica Financial Corporation of a 56 per cent stake in Banco de la Producción S.A., now Ecuador's second largest financial institution.

No need for Latin American office

Alonso adds that it is not essential for a law firm to have an office in Latin America in order to successfully serve clients in the region. "We don't foresee a need to be based in any single Latin American jurisdiction – we are bringing an international standard into play on these transactions, and Miami is a very comfortable jurisdiction from which to do business in Latin America, and for Latin Americans generally."

Alonso says that it is often beneficial to use local firms in Latin America to carry out due diligence in relation to deals. He adds: "There is often interplay with local firms in the relevant jurisdiction to deal with due diligence of local entities where necessary – we have several 'close friends' relationships with firms in the region to aid this process".

Alonso predicts further investment of all types in the region; and in particular in those countries considered 'safe' for investment, such as Mexico, Chile, Colombia, Brazil and Peru. Which legal market players are best-placed to benefit from this increase in investment? In addition to the Magic Circle firms, Alonso believes that New York and Miami firms will continue to play a central role in the region.



Fernando C Alonso