

5 February 2010

Bearing the load

Pre-salt oil, the World Cup, the Olympics, not to mention the march of its corporates across the globe - Brazil will need a lot of lawyering over the next decade. How will São Paulo's finest meet the demand, asks Clare Bolton

"It's a nightmare already," says the general counsel of one of Brazil's new, multi-billion dollar, globally present companies. "Whatever deal you're doing - capital markets, project finance - the top guys are completely full with work, so you have to look around. I'm already working with almost all of the top-tier firms, and basically anyone that knocks on my door, that I've heard of, gets hired."

So what if Brazil - as many are forecasting - has two, three or five good years at 6 per cent growth or more? "They won't cope - it is simple. Something will have to change - I don't know what, or how that demand will be met, but we need more good people, and fast."

Clifford Chance LLP's Alejandro Camacho notes his clients are also concerned about how everything that needs to be done in Brazil actually will be. "The global general counsel of a major bank told us that Brazil is a priority next year and he was concerned about the volume of legal work that implied, and how the need could be met in a sufficiently rigorous way."

Those US lawyers who have had more time on their hands than they are used to this year - or indeed have been looking for a new job - might be slightly envious of this situation. For while law firms in the US and UK are bruised with all the "right-sizing" and the cold hard realisation that their industry is far more cyclical than they had imagined, Brazil's firms are positively humming with confidence. **"This year has been great so far - better than any forecast we could have made - and everything points to more excellent years to come," says Pinheiro Neto Advogados's managing partner, Alexandre Bertoldi.**

On a comparative scale for 2009, Brazil's downturn was incredibly mild - the country held its breath for a while, but by July it was clear that the signs of recovery were genuine and durable. Deal-wise, it has led the charge back to

health, with the world's biggest IPO of the year - that of Santander - and one of the first real hostile M&As, with Vivendi beating Telefónica in the race for GVT.

More and more, that hackneyed phrase about Brazil always being the country of the future is looking outdated. Petrobras, Vale, AmBev, CSN, Odebrecht, EBX and others are increasingly important players on the global stage, seemingly anything can grow in its fertile lands, and its burgeoning middle class are fuelling strong domestic growth to match its international importance.

On the energy front the country, already a significant global player, is set to become one of the world's top 10 oil producers once the estimated 80 or 100 billion barrels lying under miles of ocean and salt off the country's coast come online. The fields are already attracting interest globally, but getting the oil out will be far from easy - and with the mandatory requirement to use local companies and workers, whole industries will need to be built on the ground to create the infrastructure necessary to turn finds into profits.

There is plenty of other building work to be done too - and the country now has deadlines, with football's World Cup coming in 2014 and the Olympics in 2016. Constructing the stadia needed to put these events on will be a major task - not to mention the power plants to light the developments, the roads and train lines to link them, the hotels to room the hordes of tourists, the ports to bring in the materials, and every other project and industry which will contribute to these huge endeavours.

Moreover, the money required for all of these projects reaches astronomical heights. No one knows yet quite how much getting the oil out from those miles of salt and ocean will cost, but US\$1 trillion has been suggested; Petrobras is currently expanding its US\$175 billion investment programme. The Olympics is slated to cost about US\$14.4 billion and the World Cup US\$11 billion. State development bank BNDES, for years at the heart of Brazil's energy and infrastructure funding, simply cannot meet these needs, opening the field further for local and international banks and for innovative financing structures.

All of which will need lawyers. And while Brazil's top law firms are more optimistic about their own chances of meeting that demand than some clients

might be, they know there is plenty of management work and recruitment to be done to build capacity.

Brazil's firms have kept growing at a steady if sensibly unspectacular rate through 2009 - according to the latest figures submitted for the 2010 edition of the LATINLAWYER 250, the five largest firms have grown by 3 per cent this year, on top of a 2 per cent growth in 2008. They are focused on bringing top talent in the partnership ranks also - for example, Machado, Meyer, Sendacz e Opice Advogados has made 15 new partners in the last two years, including eight in the middle of the crisis. "We have been growing and we plan on continuing to do so," says partner JJosé Virgílio Lopes Enei. "The number of promotions shows our commitment to growth and to our people."

Of the 2010 partnership round, at the time of going to press only TozziniFreire Advogados had publicly announced their promotions - but there too signs are positive, with 10 new partners across the firm. Senior partner José Luis de Salles Freire is unconvinced that the time is right for a significant hiring spree, however: "We will expand for sure, but we will wait for these projects to mature a bit more," he says. "At this point, we have the bulk we need in the key practices to be able to deliver, and we do not need to add more."

Similarly, Antonio de Souza Corrêa Meyer of Machado Meyer notes that 2010 is an election year, in which "things do not move as fast as one might desire" - and thus while the firm is on a path of growth, speeding up or changing that strategy is not immediately necessary.

Elsewhere, firms are beginning to pick up the pace on recruitment. **Pinheiro Neto's Bertoldi says that planning to meet the kind of demand predicted over the next few years is a key goal for him - "We're hiring anyone good that we see at the moment, irrespective of whether we have work for them right now or not," he says. That has an impact on profitability, surely? "In the short-term, but while our average billing hours are slightly reduced, we're still in a very, very comfortable zone. Moreover having extra unused capacity now will help avoid burning our associates out when things do get very busy."**



José Luis de Salles Freire



Alexandre Bertoldi

At Veirano Advogados, a similar path is being followed. “We’re hiring a number of people, because we think that we’ll have a very busy few years and we anticipate the competition for legal talent will be very strong, so we want to get in early,” says Ricardo C Veirano. “We’re also increasing our focus on retention, making sure the senior guys are in constant touch with their associates, and that the balancing act between giving enough interesting work while avoiding overworking is right.”

How difficult is it to hire right now? “Not too difficult, although not too easy - we’re still getting very good resumes, and while of course you have to move fast when you get them, there are people available,” he says. At the more junior levels that certainly seems to be the case across the board, but at more senior levels, and to land those with particular skills to sell, recruitment is getting tough.

The greater competition is causing some firms to spread the net wider. “We are broadening our search geographically - which will help create a more diverse firm as well,” says Bertoldi. “We’re lucky that we have such a strong brand we can attract the best from the regions, although sometimes there’s a longer lead-in to ensure they are up to date with training and so on.”

In fact, some think that one result of the higher demand will be that Brazil’s regional cities would become more important over coming years, and not just for recruitment reasons. It is also led by the work, as for example the World Cup is being held over eight cities, and José Luis Freire thinks “excluding us and one or two others, Brazilian firms have been too focused on São Paulo and Rio. That will change over the coming years.”

Unsurprisingly, oil and gas lawyers are very much in demand. As Antonio Meyer explains, as a practice area pre-salt work has emerged out of the blue, without the organic development one would normally be able to expect. “We are contemplating hiring laterally in this field because a new and large demand has appeared in a very short period of time, meaning we would have to go after people who work in the area,” he says.

Meyer's firm is one that prefers organic growth, and so that if even they are pondering the need to hire laterally the demand must be significant; indeed, the signs are that a too-heavy dependence on the ability to grow one's own lawyers is fading across the market. **Pinheiro Neto is another firm which has seen organic growth as central to its culture, and there too, the oil and gas need in particular is compelling a move away from that (and even then, it is "almost impossible to hire" good lawyers in the field, says Bertoldi).**

Are there risks associated with diluting one's culture in this way? "Certainly, but we are very aware of them and are being very careful to avoid them," says Bertoldi. "We're going to stick to our niche - we have already said no to top work, rather than grow in the wrong way."

Selectivity is a tool also being employed by his peers. "It will be impossible for us to do everything - we will have to cherry-pick the projects which are both interesting and profitable," says Freire. He believes, however, that the Brazilian firms will be able to ramp up capacity very quickly if and when demand picks up significantly: "All the major Brazilian firms have been through this process in the 1990s, when a number of large transactions needed to be done at once, and [as a group] we not only have the size and depth to cope, but have learnt how to hire and train people quickly."

That is certainly so, but the legal profession can only move so quickly - training and qualifying a lawyer takes years, and is jurisdictionally specific in a way other professions simply aren't, so hiring from elsewhere in the world is more complicated. There will come a point, as these lawyers recognise, that feeding off each other is the only option - an expensive option, however.

"The first wave in the war for talent is hitting Brazil," says Berta Papp, who leads the São Paulo office of legal recruiters Hudson. "We've been extremely busy recently, and it has picked up particularly in December. Law firms are mainly looking for associates with four or five years' experience, who have worked abroad and are on their way home." Is there interest in laterally hiring partners? "I would say we will see more of that in 2010, as that requires more investment. However firms are interested in talking about it, and that in itself is a big change - in the summer, firms took a much more protective and opportunistic approach."

This possible shift towards more lateral hiring would be a logical development for a market which has long been using the US and UK model as an aspirational one. But while competition for talent is heating up, and may yet get fierce, it is unlikely that this period of high demand will overwhelm Brazil's firms. Salaries and recruiting costs will go up - but if clients are competing for top lawyers, rather than the other way round, so will fees: hence the vigorous concern of some clients in the field. "The local legal industry is remarkably large and strong for a country of Brazil's size - they will be fine," says one US lawyer who lives in São Paulo. "They will be working extremely hard, and making a great deal of money, but I don't think anyone is concerned - nor should they be."

Time to move to São Paulo...

Can the same be said for the international firms which cater for Brazil? Although the locally-based US and UK legal community has ballooned over recent years, it is still not large: Russia's GDP is not too dissimilar, and 14 US law firms and 15 from the UK, plus five other Europeans and Canadians, have bases there; in Brazil, just 15 international firms do. (Of course, there are multiple factors - geographic, cultural, political, regulatory, and energy-related - behind the difference; nonetheless, Brazil could be seen as under-catered for).

Those 15 firms, and the other international firms with significant Latin American practices, hardly need to be convinced of the opportunities Brazil presents: Skadden, Arps, Slate, Meagher & Flom LLP's head of practice, Paul Schnell, described Latin America "as the firm's brightest region at the moment". Chadbourne & Parke LLP's co-head of practice, Allen Miller, said that "Latin America comprised a sizeable proportion of the firm's closed deals last year" - but wouldn't be drawn on what kind of proportion that meant.

Brazil is now getting the kind of senior-level management and strategy attention in US firms that senior Latin American practitioners have said it deserves for years. No firm serious about being global can ignore it; with five good years predicted, no firm concerned about low domestic demand, and profitability, wants to be left behind. Brazilian clients have become used to having their New York lawyers in their building, and there is plenty of work for them. Moreover, while fee competition rose sharply early 2009 as US and European problems hit

at the same time as an increase in supply in Brazil, all indications are that they have now stabilised and are at a level US firms are more comfortable with.

So it would make sense to invest, and on a macro level few doubt the international firms can find the resources: cash may be tight, but the work is picking up at home, and more to the point, at no other time in recent years has the US and UK legal industry been so awash with available, and cheap, talent. There are worse career plays at the moment for canny but underemployed associates with the requisite corporate, if not cultural, skills, than to rapidly learn Portuguese and begin to focus on this area of the world.

But while making sure the resources are available in New York or elsewhere is necessary, is that enough? Taking the long view, it is clear that Brazilian work is shifting south. Experienced New York-based Latin America practitioners agree that while 10 or 15 years ago the banker running your Brazil deal was all but certainly across town at the furthest, now they are far more likely to be in São Paulo. “The credit crisis has accelerated a change in the manner in which US commercial and investment banks cover Brazilian clients, resulting in increased coverage. At the same time, there has been an increase in the availability of debt financing in a number of Latin American countries, especially Brazil,” says Mayer Brown LLP’s Peter V Darrow. “The banks have experienced, senior decision-makers on the ground, and there’s less need to go through New York.”



Paul Schnell



Kevin Kelley

There's a received wisdom that says what financial services are doing today, legal services will do tomorrow. "There's some logic in that," says Clifford Chance's Alejandro Camacho. "Our clients are demanding more and more quality on the ground - 10 years ago the due diligence on a Brazilian deal would have been done by New York associates, and now it is São Paulo doing it."

Clifford Chance was an early opener in Brazil - arguably the first - and now has one of the bigger teams, with two-and-a-half partners (Anthony Oldfield and Isabel Carvalho are permanent São Paulo residents, while Americas energy head David Evans spends half his time in Washington, DC) and 10 associates - hitting what Camacho calls "critical mass". During the financial crisis, one of the main issues for firms in bulking up the Brazilian offices was persuading lawyers that Portuguese was a good language to learn and São Paulo a good place to live - but that has all changed now, says Camacho: "The mood is so positive, we could get a 'yes' tomorrow if we wanted to move people down."

Shearman & Sterling LLP's Andrew Jánosky agrees, pointing to his partner Robert Ellison, now a São Paulo resident of a year's standing, as an example of "someone who has given up a big European city to 'bet' on Brazil". He also agrees that an established practice on the ground is key - "you can't be flying guys in anymore, and more importantly, the difference is becoming the breadth of capacity you have on the ground, between power, infrastructure, oil and gas, private equity and capital markets."

Of course, one might expect Shearman and Clifford Chance to advocate the benefits of an office, but even Davis Polk & Wardwell, one of the few remaining 'holdouts' on the necessity of a São Paulo office, acknowledge that "you get sourced and hired by local teams, and your relationships with local banks and companies is essential", in the words of Nick Kronfeld. "We have found thus far that we do not need a local office to achieve that, but we are always considering it."

Davis Polk have had an undeniably great year in Brazil, landing Santander's IPO and a sufficient number of other key capital markets deals to start to irritate competitors, so his point is a fair one. But not only is the number of firms in the city growing, there is also a change of tone from those who have no definite plans to open. A recent, somewhat unscientific, straw poll of New York-based practice heads could not find one arguing against the benefits of an office, as would have been much easier to find just 18 months ago.

"We regularly ask our clients, 'do we need to be there?' - and they say, 'no'," says one head of practice. But surely they would find it more convenient if you had a more permanent presence? "Undoubtedly they would. At what point does convenience become necessity for a client - that's the tough call, but I think it is getting closer."

Cleary Gottlieb Steen & Hamilton LLP is another firm which has not yet seen the need to open in Brazil to defend an impressive market share - but even there perceptions might be beginning to shift. The firm has an office in Buenos Aires practising New York law, led by partner Andres de la Cruz, who made the move for family rather than business reasons. "The office is going well, and Andres feels as much part of the practice as he was based here [in New York] or in Frankfurt," says partner Francesca Odell. Does that affect how you think about Brazil? "We

are conscious of the fact that many firms have opened offices in São Paulo, and we of course evaluate that proposition from time to time. To date we have not seen a compelling need, but that could always change. We like the advantages that come from managing our Brazilian practice from New York, as it is easier to involve a broad range of partners and associates in a variety of practice areas, to best serve our clients. Besides, at any given time there are usually a few Cleary Gottlieb lawyers on the ground in Brazil, so we have a strong presence in the market.”

Persuading a senior partner to change from visiting São Paulo to moving there might be a factor, also. Gibson, Dunn & Crutcher LLP are relative newcomers to Brazil, but Kevin Kelley describes them as “incredibly fortunate” in office head Lisa Alfaro: she is fluent in Portuguese and has a demonstrable Brazil practice (not to mention at least one excellent client in Eike Batista’s group) and was willing and able to move down, meaning she fitted the bill well - “and more importantly, she is one of us; we did not have to go looking for her in the market”.

Other firms have had a more difficult time finding the right office head, as a spate of senior-level laterals in 2007 showed. One other New York practice head described the firm as “ready and waiting to open in São Paulo - we just need the right person to run it”. Is that person in the firm? “No - we will have to laterally hire, and we’re actively looking.”

For there is only a finite group of people across these firms with the linguistic and cultural skills, and the book of Brazilian business, to make an office really work. This could be a problem if work does pick up dramatically - could the gap be in part filled by a cross-jurisdictional team, putting Brazilian and US law together to create synergies? Mayer Brown LLP has taken a step in that direction, having recently formed an alliance with local firm Tauil & Chequer Advogados, the former Brazilian arm of Thompson & Knight, known particularly for its energy and infrastructure work. Of course a more integrated arrangement than that would technically be against Brazilian bar rules. “The rules against cross-jurisdictional practices don’t mean anything really,” says one Brazilian in-house lawyer. “Any US lawyer worth his salt would be able to know enough about local financing to put together the loan arrangement documents, and then get it signed off by a Brazilian firm to meet the rules - or at least to appear to.”

Some locals certainly expect a gentle slide around the rules to pick up pace. “There is no reason why a US firm could not pick up an excellent mid-level Brazilian partner and his team, particularly if that partner were US-qualified too, and provide very strong competition for the kind of high-end work we are known for doing,” said one Brazilian partner.

There are doubtless international firms considering this option, although none publicly - Clifford Chance is a firm which practises local law wherever it can and where it has an office in the world, but Alejandro Camacho says the firm neither feels nor is imposing any pressure to change the rules to allow a more open international practice - for more reasons than simply bar regulations. “For one thing, our competitors are different globally to those in São Paulo,” he says.

There are certainly examples in the marketplace of firms which have underestimated the rigorousness of the Brazilian bar when it comes to rules on foreign firms and international law, so any blended approach will be approached with extreme caution. However, it might be a solution for the recruitment challenges faced on both sides of the divide.

Even for firms with no interest in local law provision, however - and a good number of the US elite in the region have none - it would seem that a relatively heavy investment in their Brazilian practices can only be worthwhile. When asked what he thought of the trend of US and UK firms opening in São Paulo, the client who thought local firms would not cope grinned. “Great, of course,” he said.