Machado Meyer

PRESS

THE DOORWAY TO CHINA

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With the United States' and Europe's influence on the wane, everyone's eyes are on the next global economic superpower: China. Latin America's legal community is no exception as recent years have seen tens of billions of dollars flood into the region from the red dragon. Emiliano Mellino talks to lawyers on both sides of the Pacific Ocean to find out what strategies are being used to secure work in the next economic power In 2009 the largest Chinese acquisition in Latin America was valued at US$100 million. One year later Chinese oil company Sinopec closed its purchase of Repsol YPF's Brazilian assets for US$7.1 billion. Not only was this the largest Chinese investment in the region to date, but it was also the third-largest M&A in the region for the year, behind Heineken's acquisition of FEMSA and Telefónica's takeover of Vivo. The figures are explicit in what they reveal about Asian, and particularly Chinese investment in the region. It is not just a matter of an increase but of exponential growth. Latin American think tank CEPAL estimates that by 2015 China will become the second-biggest investor in Latin America, overtaking Europe. China is not the only Asian country to be betting on the region (investments from Korea, Japan and India are also making headlines), but it is certainly attracting the most interest. This has opened up opportunities for lawyers on both sides of the Pacific. For now it seems the US and European firms wield the most power; in terms of what they stand to gain and by acting as middlemen for Latin American firms and their counterparts in the east. A law firm that is clear about this shift in the global investment flows is Spain's Uría Menéndez. Juan Martín Perrotto, an Argentine who heads the firm's recently opened office in Beijing, says the firm's expansion to the east came about as it started to notice that many of its Spanish clients were divesting from the region, in many cases selling their assets to Asian companies. 'The crisis created a necessity for liquidity among Spanish companies and the Chinese have the cash and want to set up there,' says Perrotto, who adds that Spanish companies had very mature investments, which are of interest to the Chinese who have less of a history operating in the region. So as 2010 came to a close the firm advised Spanish companies Isolux, Elecnor, ACS Cobra and Abengoa on their sale of seven Brazilian electricity transmission concessions to China State Grid International for US$1.8 billion, a clear example of how Latin American assets are changing hands. Perrotto's office does not do local law and 80 per cent of its work is centred around Latin America. He says his firm's strategy is to act like a middleman, between lawyers in Latin America – Uría has a strong network of best friends – and Chinese firms and in-house counsel. The obvious question of why a middleman is needed is quickly answered by Perrotto who explains that a Chinese client has a very small window in the day to talk to lawyers in Latin America – there is an 11 hour time difference between Beijing and São Paulo, for example. But the regional structure that Uría provides is probably of greater importance. 'Here it is important to sell yourself as a group. China is not interested in Argentina, Brazil or Colombia, it is interested in gold, silver, oil, soya or sunflowers,' he says. A tri-cultural bond Miguel Zaldivar, co-head of Hogan Lovells' project and public finance practice and a key member of the Latin American practice in Miami sees how being part of a large group is the key to getting work in Asia, especially China. Following the merger of US firm Hogan & Hartson LLP and the UK's Lovells in 2010, Zaldivar (who was at the US firm) says that relations between Asia and Latin America became a key priority for the firm. This is evidenced by the number of high value deals the firm has been involved in: a US$20 billion loan from the China Development Bank to its Venezuelan counterpart and oil company PDVSA and a US$2 billion loan from the China Development Bank to the government of Ecuador, among others. Hogan Lovells's Asian coverage, that largely came via the UK firm, is a clear advantage; it has a presence in Beijing, Shanghai, Hong Kong, Tokyo, Singapore, Hanoi and Ulaanbaatar. Zaldivar, who travels to Beijing at least once a month, says that it is not just a matter of having an attractive middle ground between China and Latin America, but to actively build bridges between those two regions. To that end, his firm is moving a Latin American associate who has spent the last six years working in Beijing to the Miami office. 'One of the key strategies is having this tri-cultural nature [US, Latin American and Chinese],' he says. Zaldivar sees Miami as the logical launch pad (or landing pad) for Asian investment into Latin America, regardless of whether the investment is in Ecuador, Venezuela or Costa Rica. 'Why are Latin Americans coming to us in Miami [to do deals in China]? Because the cultural barrier is so difficult to overcome that they come to us because we have experience working in China,' says Zaldivar. 'We even have European companies that are closing deals with their Chinese counterparts in Latin America and all the work is being done through Miami.' José Astigarraga, founding partner of Miami-based Astigarraga Davis, says that while there are other hubs for this kind of work such as São Paulo and New York, Miami has advantages over other jurisdictions when it comes to Latin America-Asia work. The city, he says, has long been a meeting point of the Americas and has developed many sophisticated law firms because of the region's booming economies. Astigarraga points to the China Sourcing Center, a subsidiary of Globelink China Logistics located at the Miami free zone, as one of the many entities that are trying to promote South Florida as the bridge between Latin American and Chinese trade. But he also singles out his own experience. His firm, which specialises in arbitration and litigation, has already been called in for advice on drafting arbitration provisions in China 'so as all these China-Latin business deals get done and unfortunately some go awry, I expect that our clients will turn to us for help,' he says. While everyone agrees that having people with knowledge of Asia is an asset when doing business in the region, it is unclear if the 'Miami as hub' concept will take off. Sergio Michelsen, from Colombia's Brigard & Urrutia Abogados, says that when he worked in Miami he was convinced that it would end up taking off as a hub

but it never did. 'It needs a lot of work for it to actually happen and I don't see the Chinese talking about Miami as a natural hub,' he says. But one idea he does share with Zaldivar is that it is important for Latin American firms to work with international firms in order to attract Asian work. His firm recently worked on Japanese mining company Itochu's acquisition of a 20 per cent stake in Drummond's Colombian mining operations for US$1.52 billion, thanks to the recommendation of Milbank, Tweed, Hadley & McCloy LLP. Similar experiences can be found all over the region. For example, Machado, Meyer, Sendacz e Opice Advogados secured its role as counsel to Sinopec for its joint venture with Spanish energy company Repsol due to good relations with Sinopec's international counsel, Vinson & Elkins LLP. 'It is the most frequent approach in larger deals in the last few years,' says Machado Meyer partner José Virgílio Lopes Enei. 'Sometimes they [Chinese clients] are more familiar or have worked before with international firms such as Vinson & Elkins or Milbank Tweed and they prefer to rely on these international firms to recommend the local firms in Brazil.' But it is not just a matter of having good links, says Michelsen. Latin firms also have to be proactive and try different strategies in attracting this work. Last year, some of the firm's lawyers went on a tour of Asia, following an invitation by Milbank Tweed and Michelsen, and hopes to do something similar with Uría Menéndez. One thing that they haven't pursued is entering the Chinese market by the hand of a Chinese firm. 'From what we can see penetrating the market with the help of local Chinese firms is not that easy since most important relations are handled on a government-to-government level,' he says, adding that the firm also toured the region with a Colombian government delegation. Similarly, his Chinese counterparts are not yet looking to strengthen their bonds with Latin American firms. Jianwen Huang, a partner at China's King & Wood, one of the country's oldest and largest law firms, says that her team is mostly seeing outbound investment into the US, Australia, the Middle East and East Asia, with Latin America still far from their radar. Having recently opened offices in Hong Kong, New York, Silicon Valley and Tokyo, it makes sense that the firm is not looking to Latin America. While Chinese investment makes up an important part of capital flows into Latin America, it is a relatively small part of the country's total outbound investment. From her experience Chinese State Owned Companies (SOEs), which include China Petroleum & Chemical Corporation (Sinopec) or Aluminum Corporation of China (Chinalco), could choose to enter new markets by the hand of an international firm or by the hand of a Chinese firm and a local firm, with one of the key factors being price. 'I think it depends. Sometimes for the very big projects, they will go to an international firm. For a project that is not so big and if they already have experience they would prefer to go to a local firm and sometimes they ask [a Chinese firm] to introduce them to a local firm,' she says. 'If the Chinese firm teams up with the local firm the price will be more competitive.' Go your own way One of the oldest Asia practices in the region is that of TozziniFreire Advogados, which first launched its Japan practice in the 1980s followed by a Korean one a decade later. Korean-born Shin Jae Kim, who has been living in Brazil since she was nine years old, says that when she started working at the firm in 1995 it had no clients from her native country. A year later she went to Korea and organised a seminar together with a prominent local journalist on Brazil's investment opportunities. Soon after, she managed to secure work with Kia Motors, Hyundai and Samsung, all of which were interested in setting up manufacturing plants in the country. This experience was important, says Kim, but nowadays there is much more competition and it is necessary to differentiate yourself from the competition. 'If you only talk about the law you can't differentiate from competitors, you need to show you have experience in dealing with clients with a different culture,' she says. 'There are certain things that they are doing in their home country that they can't do in Brazil. Our role is to show them local best practice.' In that respect it is not enough to have a lawyer that simply speaks Chinese. Kim says that she knows of many firms that hired lawyers due to their language skills but were then disappointed by their output. Viviana García, a partner at Peru's Delmar Ugarte Abogados, agrees that the key is differentiating yourself from your competition. That is why some years ago, her firm bet on an Asian practice. 'At Delmar Ugarte we wanted to do things that the traditional firms weren't doing... and I focused on an Asian practice,' she says. Garcia was well equipped to do this having gone to work as a visiting attorney at China's King & Wood in 2005, at a time when there was still little Chinese investment in Latin America. This helped her to later develop good relations that were eventually reaped in the form of clients. For example, her firm's recent work advising the China Development Bank on loans to Peruvian banks and public institutions came as a result of a recommendation from the Chinese economic and commercial office in Lima. Ultimately, much will depend on how China's integration with Latin America develops. If the free trade agreements it has signed with Chile and Peru are anything to go by then the outlook is certainly optimistic for Latin American lawyers. That said, it will all depend on what China sees as a profitable investment. 'The scale of things and numbers that China handles are different [to what we handle]', says García. 'China is looking over here but it still has much to invest inside its own country and globally, including Africa which is closer to them than we are.... We shouldn't fall into the trap of thinking that we are the place where all investment will come.' A glimpse into the future? Although Chinese law firms are far from considering the creation of a Latin America practice area, could its neighbour Korea offer us a glimpse into what the Chinese legal market will look like in the future in relation to Latin America? Twenty years have passed between the first major Korean investments in Latin America and the creation of the first Latin American practice areas. One of Korea's biggest firms, Yulchon, has a 10-person Latin America practice within its global outbound projects team and from August the firm will have a Latin American visiting attorney working from their offices in Seoul. John Kim, senior foreign counsel in Yulchon's outbound investment team, says that the firm's foray into Latin America is a response to client's needs. 'The largest Korean business groups have achieved strong positions in the larger established economies, particularly the US and Europe. By comparison, Latin America is a blue ocean [an uncontested market] for them, and they have been significantly increasing their focus there... so the Latin American region has become a significant focus to us as it is to our clients,' he says. But in some cases the links between firms in the two regions are even deeper. That is the case of David Yang, a former lawyer at Argentina's Allende & Brea who now heads Shin & Kim's Latin American practice group. He is the first Latin lawyer to be hired by a major Korean law firm and is now using his experience from his previous role to improve Shin & Kim's links in Latin America. But one thing his firm is not yet prepared to do is send lawyers to intern in Latin America. 'A Colombian firm is asking us to send them interns and Shin & Kim says not now but maybe next year. It is a very big investment for us now,' says Yang, adding that in the future this could happen depending on how business between the two regions develops. In order for this internationalisation to happen the Korean legal community will also have to overcome its own challenges. Currently there are about 10,000 licensed lawyers in Korea, a relatively small number for the world's 14th largest economy. But reforms are taking place and next year will see the entry of the first UK law firms, which will be able to practice local law from 2015, says Yang. 'All future lawyers will look to specialise and distinguish themselves.

[Then] everyone will be interested in going to places like Colombia or Peru...,' he says. Since China doesn't have this obstacle – a significant number of international firms already operate in the country – it may not be long before we see stronger links between both sides of the Pacific. (Latin Lawyer 22.08.2011) (Notícia na Íntegra)

With the United States' and Europe's influence on the wane, everyone's eyes are on the next global economic superpower: China. Latin America's legal community is no exception as recent years have seen tens of billions of dollars flood into the region from the red dragon. Emiliano Mellino talks to lawyers on both sides of the Pacific Ocean to find out what strategies are being used to secure work in the next economic power

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A law firm that is clear about this shift in the global investment flows is Spain's Uría Menéndez. Juan Martín Perrotto, an Argentine who heads the firm's recently opened office in Beijing, says the firm's expansion to the east came about as it started to notice that many of its Spanish clients were divesting from the region, in many cases selling their assets to Asian companies.

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So as 2010 came to a close the firm advised Spanish companies Isolux, Elecnor, ACS Cobra and Abengoa on their sale of seven Brazilian electricity transmission concessions to China State Grid International for US$1.8 billion, a clear example of how Latin American assets are changing hands.

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The obvious question of why a middleman is needed is quickly answered by Perrotto who explains that a Chinese client has a very small window in the day to talk to lawyers in Latin America – there is an 11 hour time difference between Beijing and São Paulo, for example.

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A tri-cultural bond

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many sophisticated law firms because of the region's booming economies.

Astigarraga points to the China Sourcing Center, a subsidiary of Globelink China Logistics located at the Miami free zone, as one of the many entities that are trying to promote South Florida as the bridge between Latin American and Chinese trade. But he also singles out his own experience.

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But it is not just a matter of having good links, says Michelsen. Latin firms also have to be proactive and try different strategies in attracting this work. Last year, some of the firm's lawyers went on a tour of Asia, following an invitation by Milbank Tweed and Michelsen, and hopes to do something similar with Uría Menéndez. One thing that they haven't pursued is entering the Chinese market by the hand of a Chinese firm.

'From what we can see penetrating the market with the help of local Chinese firms is not that easy since most important relations are handled on a government-to-government level,' he says, adding that the firm also toured the region with a Colombian government delegation.

Similarly, his Chinese counterparts are not yet looking to strengthen their bonds with Latin American firms.

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From her experience Chinese State Owned Companies (SOEs), which include China Petroleum & Chemical Corporation (Sinopec) or Aluminum Corporation of China (Chinalco), could choose to enter new markets by the hand of an international firm or by the hand of a Chinese firm and a local firm, with one of the key factors being price.

'I think it depends. Sometimes for the very big projects, they will go to an international firm. For a project that is not so big and if they already have experience they would prefer to go to a local firm and sometimes they ask [a Chinese firm] to introduce them to a local firm,' she says. 'If the Chinese firm teams up with the local firm the price will be more competitive.'

Go your own way

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A year later she went to Korea and organised a seminar together with a prominent local journalist on Brazil's investment opportunities. Soon after, she managed to secure work with Kia Motors, Hyundai and Samsung, all of which were interested in setting up manufacturing plants in the country.

This experience was important, says Kim, but nowadays there is much more competition and it is necessary to differentiate yourself from the competition.

'If you only talk about the law you can't differentiate from competitors, you need to show you have experience in dealing with clients with a different culture,' she says. 'There are certain things that they are doing in their home country that they can't do in Brazil. Our role is to show them local best practice.'

In that respect it is not enough to have a lawyer that simply speaks Chinese. Kim says that she knows of many firms that hired lawyers due to their language skills but were then disappointed by their output.

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Garcia was well equipped to do this having gone to work as a visiting attorney at China's King & Wood in 2005, at a time when there was still little Chinese investment in Latin America.

This helped her to later develop good relations that were eventually reaped in the form of clients. For example, her firm's recent work advising the China Development Bank on loans to Peruvian banks and public institutions came as a result of a recommendation from the Chinese economic and commercial office in Lima.

Ultimately, much will depend on how China's integration with Latin America develops. If the free trade agreements it has signed with Chile and Peru are anything to go by then the outlook is certainly optimistic for Latin American lawyers. That said, it will all depend on what China sees as a profitable investment.

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A glimpse into the future?

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In order for this internationalisation to happen the Korean legal community will also have to overcome its own challenges. Currently there are about 10,000 licensed lawyers in Korea, a relatively small number for the world's 14th largest economy. But reforms are taking place and next year will see the entry of the first UK law firms, which will be able to practice local law from 2015, says Yang.

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