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Facing a more challenging 2014 – M&A Conference

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Deal flow in Brazil in 2013 may have been weaker, but there is still some activity, as well as opportunities in Spanish-speaking Latin America - provided increasingly tight government regulations around the region are taken into account, said panellists at yesterday's Latin Lawyer Fourth M&A Conference.

Although 2013 was tougher than 2012, there are still areas of growth in the Brazilian market, and prospects are reasonably good for 2014, agreed the panel of bankers that kicked off the conference. Of late foreign investors have shied away from a tougher local market, with more local transactions being common. Although Latin America has previously been seen as sheltered from the world economic slowdown, this past year has confirmed that Brazil is fully integrated into the global market and will benefit and suffer from capital flows.

Challenges for 2014 include a late carnival, the World Cup - both of which will disrupt deal flow - and the presidential elections in November. Conversely, opportunities include businesses servicing Brazil's growing middle class, in particular the education sector. Meanwhile, this year, the bankers said they have been kept busy with a particularly diverse set of deals, from multi-billion dollar IPOs to restructurings.

In spite of less auspicious economic headwinds, general counsel for BTG Pactual Jon Bisgaier said in the second panel of the day that he has seen a lot of M&A activity lately. "The trend has been for a large number of internal deals, Brazil-Brazil deals, and a lot of Latin Americans looking at Brazil, or Brazilians looking at Latin American companies," he said. Bisgaier added that he has seen a more buyer-friendly market of late, which he expects will continue into 2014.

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Veirano Advogados partner Alberto Bragança added that the more competitive circumstances have also meant that transactions are becoming more sophisticated, in part thanks to more rigorous demands from clients. He also referred to KPMG data that in the first six months of the year oil, food and IT companies had seen the highest volume of deals, with half of those local and the other half foreign investments.

The tougher environment has translated into increasing pressure on lawyers - including when it comes to fees. According to Pedro Mariani, general counsel at Ambev, there is a balance to strike between not overpaying and getting what you pay for. "It's not always easy to strike this balance but if you require a sophisticated level of service from a law firm, and you see that the firm will engage and add value, then I don't mind paying reasonable fees," he said. "That's what M&A deals require, they do need added value."

Focusing on Spanish-speaking Latin America, the third panel addressed more positive trends. Moderator Michael McGuiness, a partner at Shearman & Sterling LLP, said he viewed the biggest change in M&A in Latin America as the rise of pan-regional Latin American transactions, which are becoming more important than foreign direct investment flows from Europe or Asia.

Andrés Hoyo, a partner at Colombia's Gómez-Pinzón Zuleta Abogados, agreed that he thought Latin American companies were increasingly consolidating. "This is just the consequence of having a region that is developing, and markets that are there for it to conquer," he said, adding that the increasing sophistication of local legal services has meant that companies feel more confident in investing elsewhere.

As well as strong local activity, China is another increasingly important source of investment, said the panel. José Manuel Abastos of Peru's Hernández & Cía Abogados pointed particularly to natural resources, as well as oil and gas, and to a lesser extent fisheries. In Peru, a large-scale copper project currently up for sale, Las Bambas, has seen considerable Chinese interest. "Latin America is one of the richest copper areas in the world," he pointed out.

In the panel looking at governance issues in M&A, countries across Latin America are increasingly seeing companies without defined controlling shareholders. Galicia Abogados partner Christian Lippert confirmed this is the case in Mexico, where there are a number of

companies in the stock market with no controlling interest. "In many Latin American countries, including Mexico, members of the board are used to receiving instructions from shareholders, so this is a new trend, and it's requiring members of the board to become more sophisticated," he said.

Cleary Gottlieb Steen & Hamilton's Francisco Cestero said that this system is so entrenched in the US that its corporate laws are entirely built around the idea that companies won't have a controlling shareholder, and management are the principal decision-makers. "It's the board of directors that really controls the company," he said.

Over in Brazil, Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados partner João Ribeiro said he has observed increasing numbers of companies with dispersed capital in Brazil. "Companies are moving from controlled status to dispersed or minority control," he said, adding this can pose challenges given that many board members are inexperienced in negotiating deals involving these kinds of companies.

The fifth panel of the day painted a sombre picture of the private equity market in Brazil, in which buyers and investors have become more demanding and deals have got tougher, while valuation continues to be an issue and taxes pose hurdles for successful investors.

From a technical standpoint, the panel discussed how transaction structures have changed, with FIPs invariably used instead of foreign investment vehicles given they facilitate co-investment. Similarly, Brazilian law has become the first choice of law for most transactions, rather than foreign law, as investors have grown increasingly comfortable with it. Furthermore, the Brazilian environment has become more favourable to investors than previously, with good arbitration chambers protecting investments.

The final panel examined the increasing government role in M&A, looking at perspectives from Argentina, Chile, Brazil, Mexico and Venezuela. Sullivan & Cromwell LLP partner Sergio Galvis explained that, from a US perspective, in discussions with clients interested in investing in Latin America, the single biggest consideration is the role of the government in economic activity. "As practitioners, we can't close our eyes to this reality," he said.

In Argentina, Zang, Bergel & Viñes Abogados partner Carolina Zang

said that while the role of the government was of course a critical consideration, the past few weeks had seen good news for investors, with a settlement with Repsol on the cards and a change in the secretary of commerce. "It seems to me the trend is a return to predictability," she said. Indeed, broadly speaking, the regulations in place are similar to other countries in Latin America, she said, pointing to labour and land the two potential challenges.

After Francisco Ugarte, a partner at Chile's Carey, discussed the country's stable and investor-friendly climate, Patricio Trad, of Mexico's Mijares, Angoitia, Cortés y Fuentes SC, said he considered Mexico as lying in the middle of Chile and Argentina. "Some areas are still restricted for foreigners," he said. "But mostly all sectors are open."

Fulvio Italiani of Venezuela's D'Empaire Reyna Abogados, meanwhile, described a country effectively split into two different economies. While in the general economy investors face a number of risks, the legal framework for the oil & gas sector is structured in a way foreign investors find attractive. "I'm optimistic about the oil & gas sector and I think there will be huge opportunities," he said.