

# Strategies for the emerging trans-Pacific legal market

The next ten years will see the greatest increase in foreign trade and direct investment in history, and most of this growth will come from fast-emerging economies in Asia and the Pacific. Law firms in Latin America may discover that their most important relationships will no longer be in North America and Europe, but across the Pacific. Norman K Clark and Gerald J Kirkpatrick, of Walker Clark LLC, assess strategies for developing these relationships.



**L**atin American law firms have traditionally looked to North America and Europe for their international clients and legal work. In the future, however, their best new opportunities may arise in the west, from across the Pacific Ocean, as investment and participation in Latin American business from Asia, Australia, and New Zealand continue to grow. Latin American firms are also increasingly being asked to facilitate the entry of Latin American businesses into the growing markets across the Pacific.

This article outlines strategies and business development models observed in Latin American law firms that have already enjoyed success in the emerging trans-Pacific legal market. Any high quality Latin American law firm can participate in this new market; but long-term success will require a systematic, disciplined business development strategy, sound management, and a different set of strategic skills.

## Looking west

If the recent pace of growth is a reliable indicator, the countries of the western Pacific region, as a group, may surpass Europe and challenge North America as Latin America's most important business partner by the end of this decade.

Since the late 1990s, Japanese and Australian banks have become frequent participants in corporate finance and project finance in Latin America. Companies from the western Pacific Rim have also become more

prominent in mergers, acquisitions, and privatisations.

A sampling of recently reported transactions illustrate the breadth of this trend:

- China National Oil and Gas Exploration and Development Company's acquisition of Pluspetrol Norte SA, which operates one of Peru's leading oil fields
- Acquisition by Singapore's Petra Foods Pte, Ltd, of Nestlé subsidiaries in Mexico and Brazil
- Australian packaging company Amcor Limited's purchase of Latin American assets of Schmalbach-Lubeca AG for US\$2.875 billion
- Joint venture between Shanghai Baosteel Group Corporation and Brazilian iron ore producer Cia Vale do Rio Doce, worth US\$ 2.1 billion
- Japanese loans of US\$210 million to Mexico's Electricidad Sol de Tuxpan S de RL de CV
- Japanese financing of US\$200 million to Brasil Telecom SA
- Funding of the São Paulo subway concession by the Japan Bank for International Cooperation
- Purchase by Toyota Motor Corporation and Mitsui & Co Ltd of substantial holdings in Colombian conglomerate Valores Bavaria SA.

Not all of the trans-Pacific investments are inbound to Latin America. Latin American businesses are becoming increasingly interested in investing in the trans-Pacific

markets, which means even more opportunities for Latin American law firms. A few Latin American firms have begun to establish a presence across the Pacific in order to serve their clients.

For example, Argentina's Allende & Brea recently formed a strategic association with the Chinese firm of King & Wood, with more than 80 lawyers, principally in Beijing and Shanghai. In 2001, Brazil's Naronha Advogados was the first Latin American firm to open an office in Shanghai, in part to facilitate service to Brazilian clients doing business in China.

## Who are the players?

The large global law firms, with their ability to deliver legal services almost anywhere, are already well positioned to take advantage of these opportunities. Not surprisingly, they frequently serve as lead counsel for the major participants in reported trans-Pacific deals. However, national law firms from Latin American countries—including some relatively small ones with limited reputations outside their own jurisdictions—are also enjoying a substantial share of the trans-Pacific legal market.

Our review of reported trans-Pacific transactions in Latin America over the past five years suggests that Latin American firms, large and small, have competed very well against international firms. Within Latin America itself, smaller local firms are more likely to serve as local counsel, rather than Latin American offices

of international firms. This is good news for the smaller and mid-size firms.

Among firms within a country, size does not appear to create a significant competitive advantage. In Brazil, for example, the largest and arguably best-known law firms—such as Pinheiro Neto and Demarest e Almeida—are among the names most frequently reported as lead counsel for financing and acquisitions. However, a very substantial number of counsel come from mid-size firms with solid national reputations, such as Levy & Salomão; Barbosa, Müssnich & Aragão; and Felsberg e Associados, to name but a few.

Our research and analysis show that there is clearly an opportunity for any high-quality Latin American law firm—large, midsize or small—in the trans-Pacific legal market. The challenge is how to take advantage of this opportunity.

### Management foundations of a trans-Pacific business strategy

While there are great opportunities in the trans-Pacific legal market, law firms cannot rely on improvised opportunistic responses. Success in this market will require a disciplined, systematic business development strategy.

Although there may be exceptions, the Latin American firms that appear to have been most successful are the institutional law firms. These are law firms that either never were traditional family firms', or that have begun to make the transition from the family firm to a firm whose management and market presence are led by partners other than members of the founding family. As a general rule, they are usually best capitalised to make long-term strategic investments. They also are most likely to have reliable and efficient decision-making processes. They usually have management structures and systems in place to assure consistent delivery of the highest level of professional excellence and client service.

There are three factors that are especially reliable indicators of the extent to which a law firm has made the transition to an institutional firm:

**Does the firm have a documented governance structure and management system?** This is usually necessary for law firms to develop and execute well-informed business development strategies.

**Does the firm engage in formal business and marketing planning for the firm and in each practice group?** In our experience, business and marketing plans are the most important factors in a firm's ability to achieve long-term sustained financial growth. Moreover, they are absolutely critical to success in new markets and with new clients.

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### *Does the firm have career management policies and succession planning in place?*

These protect and develop the firm's intellectual capital for the future. They also ensure continuity in client relationships.

### A disciplined approach

Where are the best opportunities for each law firm? Development of a strategy for the trans-Pacific market must be based on more than visions and aspirations. The process should involve a degree of intellectual rigour and self-examination that is missing in strategic planning methodologies used in many law firms in North America and the United Kingdom. The disciplined approach requires:

- A strategy that is aimed specifically at the firm's participation in the trans-Pacific legal market
- A deep and thorough understanding of the business objectives of the firm's best clients
- An honest and detailed appraisal of the firm's competitive advantages and disadvantages with respect to its principal competitors, supported by reliable external research such as in-depth client interviews and surveys
- An analysis of the current profitability and future growth potential of the firm's practice areas and service lines
- Business goals that are specific, measurable,

and realistic, and that are based on objective financial data

- Identification of internal obstacles to the achievement of these goals, and specific actions to respond to each one
- This cannot be achieved in a day or a weekend. Instead, it requires the commitment and ongoing attention of a core group of senior leaders in the firm. The strategic process will also require ongoing monitoring of performance measurements and adjustments to the strategy in response to the firm's level of success. A law firm's long-term success in the trans-Pacific legal market will be directly proportional to its willingness to make these substantial short-term investments.

### Establishing a trans-Pacific presence

How can a small or mid-size law firm get noticed in this huge legal market? The evolution of the trans-Pacific market to date offers at least four suggestions.

Latin American law firms should develop strong non-exclusive strategic relationships with law firms in the western Pacific. Although they may be competitors for some types of work, they can also be important referral sources, especially when their clients want local counsel from a local firm.

Global networks of law firms and other professional services providers will continue to be important tools to becoming better known. However, the greatest business development opportunities will probably be found in the regional subgroups of the worldwide networks. An increasing number of the trans-Pacific deals involve multiple jurisdictions in Latin America. The Latin American members of a network could be well positioned to offer well integrated, efficient services in regional transactions.

Trans-Pacific associations of law firms, such as the Pacific Rim Advisory Council, will become increasingly important in the development of a trans-Pacific approach to multijurisdictional legal services.

Regional professional and educational organisations will become very important business development activities, especially in view of the strong academic traditions that are imbedded in the professional culture of most Latin American law firms. For example, the projects of the Institutos Jurídicos del MERCOSUR (IJM) in areas such as harmonisation of law, structural consolidation of international legal practice, and the development of foreign trade and banking law can build

further confidence in MERCOSUR economies as opportunities for investment from Asia, Australia, and New Zealand. The Centro de Estudios de Derecho, Economía y Política (CEDEP), is helping one of Latin America's smallest capital cities, Asunción, to emerge as a major centre for the development of international legal practice in Latin America. Participation and support of organisations like IJM and CEDEP also provide smaller firms with the opportunity to establish themselves as leading thinkers and shapers of the direction of international commercial law through Latin America.

### Understanding trans-Pacific business and professional cultures

Structure, disciplined planning, improved market presence—all of these are important. The decisive factor, however, might also be the most subtle. Successful lawyers in the trans-Pacific market understand and respect the importance of business and professional culture. They also understand that one cannot necessarily approach trans-Pacific clients, especially in Asia, in the same way that they have interacted with clients and referring law firms in North America and Europe.

Asia is a huge region, but it is not a monolith. Like Latin America, it consists of distinct business and professional cultures. These differences are often subtle, and are usually very important. It is always worthwhile to invest time and effort to learn about the history and culture of the region, the country, and the client's business.

Nonetheless, our experience suggests several very important guidelines for approaching a trans-Pacific business opportunity, especially in Asia.

Beware of assumptions. Directness, which is valued by many North Americans, can produce a negative reaction from some Asian clients, and even from Asian lawyers. In some cultures, there is a reluctance to say no; and the word yes can sometimes mean only 'I understand'.

Confidence-building is a prerequisite to a long term relationship. Foreign lawyers usually must earn confidence through successful performance of smaller engagements before they are entrusted with a major deal. The nature of most trans-Pacific transactions offers an opportunity to demonstrate superior capabilities not only to one's own client, but to other parties and their lawyers. Smaller Latin American law firms have reported to us that a significant amount of referrals come from lawyers who represented other parties in these deals.

Large law firms do not appear to have a particular advantage in confidence building. Large firms and small firms alike must earn

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client confidence. Good results delivered with a high degree of professional expertise and understanding of the client's business are what build confidence among sophisticated multinational clients, not size or ubiquity.

Personal relationships are prerequisites to long-term professional relationships. Most Asian business people, including lawyers, place a high value of trust, based on an underlying personal relationship. They also value a long-term professional relationship, based on common business interests.

During confidential interviews conducted by Walker Clark on behalf of law firms, in-house counsel and business leaders of Asian companies frequently described what they perceived as a 'short-sighted' orientation by North American and British law firms, which focuses too much on the immediate transaction and not enough on the long-term objectives of a professional relationship. Whether these comments are fair or accurate is not the point. Rather, the point is to take care to avoid an unnecessary negative perception. While efficiency and short-term results are important, many Asian business people place equal value on a level of trust that is first developed through a personal relationship and mutual respect.

Finally, be patient. The decision cycle in many Asian businesses can be substantially longer than with North American or European clients.

Decisions may require the consideration of issues and factors that might not always appear to outsiders to be relevant. Decisions may also require consensus, which usually takes time to achieve. Because building confidence and trust, establishing a personal relationship, and demonstrating capabilities are so important, do not expect overnight growth. The most beautiful plants in the forest are the ones most often nurtured slowly and steadily.

### A challenging opportunity

Success will not be easy for any law firm. A traditional family law firm that has not institutionalised its management structure and systems will be at a disadvantage. Development and execution of a business development strategy for the trans-Pacific market will require a degree of intellectual discipline and organisational effort that is not present in most traditional strategic planning exercises. Cultural values and patience will be more important to the development of a trans-Pacific practice than might traditionally be required with North American or European clients.

### The time is right

It is widely recognised that the global centre of gravity of economic and business activity is continuing to shift to Asia. What is perhaps less recognised, is that the old assumption that globalisation equals Americanisation is proving to be incorrect. Our research shows that globalisation is having an inclusive and thus levelling effect in most business sectors, such as high technology, high-value capital items, automotive products, and information-entertainment media.

The United States no longer dominates manufacturing; and even its entertainment products do not enjoy wide acceptance in many parts of the world, including large areas of East Asia, such as China, South Korea, Vietnam, Thailand, Malaysia, Indonesia and, to a lesser extent, even Japan. These countries are not only experiencing economic success, they undergoing revitalisations of their local cultures that to varying degrees encompass a turning away from things perceived as 'too American' (which usually means 'too US'). This opens doors for Latin American businesses and law firms to proceed thoughtfully and respectfully in establishing enduring business relationships throughout the region.

One lesson appears quite clear in the evolution of the trans-Pacific legal market: there is room in the market for any quality law firm, regardless of size, number and location of offices, or current market visibility.