



# HERE TO STAY

**As Latin America's pick of trading partners widens, at a round table in Houston partners of Texas-based Latin American practices make the case for why there will always be a place for US law firms in the region**

**LATINLAWYER:** How are you seeing the region at the moment?

**WOOD:** I think we are seeing it the same way that the rest of the world is seeing it, as a very attractive region for investment. Africa is as well, but Latin America has a very big uptake in optimism and ultimately in activity – for all kinds of activity, energy transactions for sure, the M&A transactions, and of course dispute resolution will follow and so will litigation in the US as a result of occurrences in the region.

**PASCAL:** It is a bit ironic that what's historically been thought of as Latin America's Achilles heel, which is the lack of really deep financial markets, proved to be its strong point. The lack of over-reliance on the financial sector has helped it, coupled with a strong energy sector.

**TREISTMAN:** Prudent economic decisions over the last two decades in countries like Peru, Brazil, Colombia and Chile have made a true difference in the region. These countries have all seen some growth as a result.

**VALERA:** What we are seeing is pretty uneven in some cases. What goes on in countries like Peru, Colombia, Brazil and Chile is very substantial investment, very important, very long-term. Whereas other countries are seeing a slow down and even an exodus of investment, such as in oil and gas, where there is no new investment in exploration, no incentive to risk putting capital in exploration. We see long-term infrastructure projects in certain countries. Investors are learning to discern, they are not putting all of Latin America in one bag any more.

**CRESPO:** I would agree with Jose that there are some countries that are more attractive than others. Not all of Latin America is seen the same way by foreign investors and the political and regulatory risk is not spread evenly across the region. I think one interesting point to note is that there is new interest that is not solely US or European based. We are seeing interest from Middle Eastern and Asian clients, which is something that I had not seen 10 or 15 years ago. That is a new element to the region and the fact these investors are looking for US-based legal representation.

**RAJUNOV:** I agree in needing to differentiate among countries the region. I would say there are different levels of maturity when it comes to [foreign direct investment] FDI in the region. I focus primarily on Mexico and obviously Mexico has seen the opening of foreign investment since the late 1980s, culminating with the free trade agreements, NAFTA in the early 1990s and EFTA, and so on. FDI flooded into Mexico in the mid-1990s and early 2000s and then it just kind of levelled off. The big challenge for Mexico today is maintaining itself as an attractive investment destination.

**PASCAL:** In some ways you could look at Mexico's biggest challenge as an energy one or as a fiscal one. From an energy perspective, you



could look at its over-reliance over the years on Pemex for funding general governmental expenditures as the reason for its ongoing underinvestment in Pemex, particularly in advanced E&P technologies. Mexico gets over a third of its public revenue from Pemex, and it is simply not a viable ongoing model for the country. From a fiscal perspective, you can look at the situation and ask how the country returns to a system where the state can collect enough money to pay for both its social needs, as well as the infrastructure projects that it needs, while at the same times not overtaxing itself and thereby loosing its competitiveness in the market in terms of attracting both FDI and national investment.

**TREISTMAN:** Let's face it, these last couple of years have been extremely tough on a lot of countries, particularly Mexico. However, there are still so many opportunities there.

**WOOD:** It's still a major trading partner.

**PASCAL:** Mexico's biggest strength is its greatest weakness: its largest trading partner is the US. If the US economy is down, then there is no way mathematically that Mexico can be booming. They will have to diversify their trading partners and open up their infrastructure sector, particularly in energy, to move the needle.

**TREISTMAN:** Which Mexico is trying to do, particularly with the Asian markets.

**WOOD:** Which we are also trying to do. We are trying to reinvent our economy to be an export economy rather than a consumption economy driven by consumer spending.

**RAJUNOV:** Mexico is the largest trading partner of the US, the US is no longer Mexico's largest trading partner. It's the European Union. One of the greatest things that Carlos Salinas did, and Ernesto Zedillo followed up on, was that they recognised the need to create a differentiator for Mexico within Latin America. What they did was create this free trade treaty network. Mexico has free trade agreements with the EU, North America, most countries in South America, it has a negotiated a free trade agreement with Japan that has not been ratified yet. What that means is that the amount of heavy industry investment that has come into Mexico is significant. In the peak of the last economic cycle, 2006/2007, there was more investment coming into Mexico, units of investment, not dollars, from Spain than from the US.

**LATINLAWYER:** Is that a threat for you as US lawyers, working in Latin America?

## PARTICIPANTS

**William Wood, Fulbright & Jaworski LLP**

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**Jose Valera, Mayer Brown LLP**

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**WOOD:** Your point is that if Mexico is starting to trade with other parts of the world more heavily than it is trading with the US it will hurt us? The good news is that we have offices in all the major trading capitals of the world. I think all of us will benefit from anything that happens out of the Latin America region, whether it is inbound investment or outbound investment. It is not just about having a geographical presence in a different part of the world, if you have the client relationships you can follow those client relationships to where they are headed. That is the strategy we have.

**CRESPO:** I would agree. At least personally we haven't seen any reservations from clients that are not US based that are willing to hire us. The only exception has been Spanish investment, which from a cultural and linguistic perspective is in less need of our type of representation. Given the wave of Spanish investment in the region during the last decade and the current economic challenges Spain now faces, I don't expect Spanish investment to feature so prominently in Latin America in the short to medium term.

**PASCAL:** I think Spanish clients are learning to speak with a Texan accent. I see a lot of Spanish companies which are looking at Texas. They see that growth is not going to occur in the foreseeable future in their domestic market, and they have got to be exporting. Texas is a strong renewables market.

**RAJUNOV:** What we are seeing in our practice is this: Even though Mexico has diversified its trading partners, all these Mexican-based companies now see the world as their playground, and they need capital. And still because of some regulatory issues or some tax-driven issues, the US is the country where that they come to seek capital or this is the country that they use as a springboard to come and get capital. For us, that is still a big opportunity.

**WOOD:** I ask this question when I go to different law firms around the region. Do you ever think that you won't need US lawyers ever again? And they say absolutely we will always need US lawyers. For one, we will always need access to the Statue of Liberty, I mean you have got to have capital and you have to be able to develop it. And a lot of the companies we are interested in want New York law to apply. We are still a fairly good source of capital, but becoming less relevant because they have access to different sources of investment from different countries.

**VALERA:** We are seeing it in Brazil. From our office in São Paulo we handle capital markets matters. Brazilian companies and local

subsidiaries of foreign companies can get their capital right there at home. And some of the biggest IPOs this year have been in Brazil.

**LATINLAWYER:** I talk to New York lawyers that are São Paulo-based, or even New York-based. They know they are retained for the New York law part of the deals and they know they will make a great deal of money, but they will happily admit the guys running the deal are Brazilian lawyers.

**WOOD:** I am not talking about there being one law firm handling the whole deal. You might have the US firm and the Brazilian firm and you might need the energy expertise that comes from Houston, Texas, and you might have a consortium of lawyers that are learning how to work together better than they used to, perhaps.

**VALERA:** The energy expertise in Texas is tremendous. We have Latin American clients with projects in Latin America, with no connection whatsoever with the US. But what we sell as lawyers here is knowledge of the energy industry and expertise in contracts unique to the energy industry.

**RAJUNOV:** In some of the cases in the Mexican market you talked about the law firms represented in the table, we are all international law firms. But for some reason most foreign law firms will not go into Mexico. If you look into it you can count on one hand the number of foreign law firms with a presence in Mexico, which is arguably one of the largest financial centres in Latin America. So they are always relying on local counsel.

So the opportunity for people like Larry, myself or others, that have truly transborder firms, is that we have integrated services. If you are able to sell Mexico, Texas, New York, then you can vertically integrate that service, and as long as you can go to a company in Mexico and say okay, so you need capital, you are going to a project overseas or somewhere else in Latin America. Well we have the capabilities to be a one-stop shop. In Mexico you don't see that and that is a competitive advantage that some of us have, and you guys have in other countries in Latin America.

**LATINLAWYER:** I agree it is certainly not going to be the case that in five years time no one will need a US law firm, but is the relationship between you and the local counsel changing? Is the balance of power becoming more complex, if not shifting?

**PASCAL:** There are more actors. We are even seeing deals in the hemisphere where English law is used. It is definitely more of a multipolar market rather than a bipolar market.

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**TREISTMAN:** I haven't seen any dramatic changes in the relationship with local counsel. Where I have seen change is in the increased investment by Latin American companies in the US over the last two to three years. The amount of investment I have seen into the US has changed dramatically. There is a lot of interest from Latin American companies in making acquisitions here now and all of us at this table can assist given our experience and multicultural backgrounds.

**RAJUNOV:** Historically the region has been an importer of capital, it's starting to become an exporter of capital. And as that paradigm shifts, as we become exporters of capital, so long as the US continues to be a financial hub of the world, there will be a need for US-based lawyers.

**WOOD:** We have been arming our colleagues in Latin America with a position to change the balance of power, because we have been delighted to host foreign associates from different parts of the region and they come and they get their LLMs at US law schools and learn to practise in the US sort of way, and that helps them.

**CRESPO:** The choice of law is always going to be US as long as the majority of the influx of capital is from the US. The one part of the practice that is changing, however, is the make-up of US-based law firms to meet the demands of the market. Now you can find foreign-trained lawyers who have not obtained a US JD climbing up into the partnership ranks. I anticipate this trend will continue, you are going to see more diversity in law firm that want to be players in the region. Clients are going to demand individuals who are locally trained and have US LLMs. This is the shift that US law firms will experience. Ten years ago it would have been unthinkable for anybody who came here with an LLM to rise to the partnership. I think that is changing and is going to continue to change.

**VALERA:** On your question about our relevance in Latin America as lawyers. The privatisations in Latin America only started 20 years ago in the early 1990s. Up until then, they were almost closed economies, remember the theories of import substitution, indigenous development. They were closed, most sectors of the economy were run by state monopolies, it was not legally permitted for the private sector to invest in those countries. Less than 20 years ago those things started changing. There was a wave of privatisations, deregulations, break-ups of monopolies. Consequently the local bar all of a sudden found itself having to deal with transactions where they had no professional experience and background whatsoever, through no fault of their own. But there were no arm's-length transactions in the oil and gas industry because it was all a state monopoly, or in mining or in telecoms. The

US lawyers had a lot to export when all that was starting out, which is the know-how and expertise in industry contracts at an arm's length basis and at a competitive basis. We exported regulatory frameworks, we were in some cases retained to help draft laws and then we started working on the development of new projects and local counsel was providing limited advice based on local law. Over time they were really coming up the curve, learning how to operate in this relatively new environment. The LLM wave only started 15 years ago, when you saw this influx of Latin lawyers coming into the US to study LLMs, the interest of becoming more proficient in English, learning more of the US system. They are really coming up the curve. Going back to what we export, it's really staying on the cutting edge of knowledge and expertise in the industry. That is what they are hiring us for. I practised law in Peru in 1982, and back then a purchase-and-sale agreement took three pages. Today, they have adopted the wholesale US model and you can't get a Peruvian to buy something for less than 20 pages.

**RAJUNOV:** I graduated from law school in 1994 and the Mexican economy crashed. I looked around and I had a lot of classmates that graduated with me and all of them were being told by their law firms: "We would love to keep you because you do good work, but we

cannot offer you associate positions, so we will keep paying you as a clerk." I looked at myself and said: "What distinguishes me from the rest of my classmates? I have proficiency in English, I understand the culture, I will just go to the States." I joke that I am a Mexican lawyer that never practised law in Mexico. Now there are many more like me. What a lot of those kids did is that they got their LLMs and internships here.

**PASCAL:** Building upon what was just said, the Texas Supreme Court has recently appointed a task force to evaluate the merits of updating its international practice rules, and in particular its rules for foreign lawyers to sit for the Texas Bar, so as to recognise the contribution of foreign talent which is coming to the state, and in order to capture more intellectual capital.

**RAJUNOV:** Larry and others have been working on this for six, seven years. Five years ago you could not hope to sit for the Texas bar without a JD. Now I know three or four cases off the top of my head of foreign lawyers with LLMs that have sat for the Texas bar.

**WOOD:** Are you saying you can actually elevate somebody to partner without having a US JD?

**CRESPO:** Yes, I have seen it in New York and I have seen it here in Texas, as well. We have one partner in our national offices who does not have a US JD.

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**WOOD**

**RAJUNOV:** I am not licensed in the US.

**VALERA:** They may have the licence in New York, but there are several firms in Houston that have partners with no US JD.

**LATINLAWYER:** Do you consider yourself in competition with New York, Miami, California for talent, in terms of the regulation?

**PASCAL:** Absolutely. But at the end of the day it is just an extension of the market and we definitely compete with those same firms for both the work and the talent.

**RAJUNOV:** Outside the energy expertise what we see is there is still the misconception, at least in Mexico, that if it's not in New York, it's not valid. We do have that New York office but there is still that misconception.

**WOOD:** That is why we have to capitalise on our energy bar, all of us, that is really what separates us from the rest of the country. And it is a pretty darn good opening space.

**PASCAL:** If you step back to look at this last economic crisis, we can say we were lucky in Texas. It would be wrong to say that we haven't felt any of the effects of the recession. We do have an unemployment rate two points below the national average. Moreover, the favourable business environment, the lack of land use regulation and the lack of state income tax have made Texas much more attractive, and the largest centre of Fortune 500 companies in the country. And I think as a result there is a growing international awareness that Texas should be higher in the hierarchy as a source of destination for their capital.

**RAJUNOV:** Houston is obviously the energy capital of the world, but if you look outside of Houston, if you look at Texas broadly, really what Larry is saying is true. We are based in Dallas, which is not even the energy capital of north Texas, and the economy is still moving along, it is not as brisk as it was two years ago but it is moving along. Texas has created the right environment for business. We see more California companies moving to Texas every week than any other state in the Union. A lot of Spanish companies, a lot of Israeli companies.

**CRESPO:** I believe Houston houses the most Fortune 500 company headquarters outside of Manhattan.

**TREISTMAN:** A lot of Latin American companies are opening up here too.

**RAJUNOV:** In my involvement in Dallas with the regional chamber, we list off the number of Mexican-based companies that have their headquarters in Dallas alone. We are talking about Vitro, the largest glass manufacturer in Latin America, Bimbo in Fort Worth, Gruma, the king of tortillas, Cemex is in Houston. So when you start adding it up, Texas is logistically perfectly located and also the business climate is great, so as Texas-based lawyers it works.

**LATINLAWYER:** And that is why we are seeing more law firms with Latin American practices working out of Texas?

**WOOD:** Not only that but more law firms from New York and other places are coming to work here.

**TREISTMAN:** Texas attracts this practice because of its sophisticated legal bar with experience in Latin America. From my perspective, this is largely due to the work of our energy clients in the region, which usually involves large, sophisticated transactions. The experience our lawyers have gained in this representation has morphed into something more – giving us an opportunity to work with companies beyond the energy sector.

**RAJUNOV:** Not only do we compete with New York and Florida for clients, we also have fierce competition for talent. When a lot of these young students, either JD graduates or LLM candidates, come out of law school, they are getting recruited by people all over the country. It takes some convincing. We have a lot of great talent coming out of Texas schools and a lot of places where we have offices but it also takes a lot of convincing to get people from Ivy League or west coast law school, to tell them not to go to work in New York or Los Angeles, come work in Texas.

**TREISTMAN:** But although all our firms have a need for lawyers in Texas with Latin American experience, we all rely on expertise of lawyers in other offices. For my practice, clients look for additional strength in New York, California and Miami to adequately represent their interests.

**WOOD:** On the issue of foreign associates, we have a programme, but not really in the last couple of years, simply because we didn't have the deal flow to give them good experience. We have not hosted anyone in the last couple of years and won't this year, unless things really pick up in the second quarter to where we feel that we can give someone from Chile or Brazil an attractive experience. But I fully intend to go back to that the next year, as soon as we get out of this change in the legal industry that we are in now.

**PASCAL:** We have a couple of components to our foreign associate programme. Within Haynes & Boone our Mexican associates will work in either our Dallas or Houston office. As to foreign associates from other countries in the region, we have both temporary and permanent foreign associates based with us in Texas. In particular, in recent years, there has been a greater emphasis on Brazilian foreign associates.

**RAJUNOV:** With us we have what I consider a good problem. When the NYU job fair comes around we stopped going. The reason we stopped going is because we felt it wasn't fair for us to go and interview people we weren't going to hire. And the reason we aren't going to hire them is not because we don't have the work but we already have the talent for that work. So what we do is we have our own LLM programme. So if the office in Mexico City or the office in Monterrey finds someone in their ranks they feels it is important to further educate, we help them going through the process of selecting a law school, applying, getting their LLM and when they come back they spend six months to a year in our New York or Texas office, and throughout the year as the transactions are occurring. These are all excellent, English-speaking lawyers. If you have a major US transaction that doesn't involve Latin America and we need US-trained lawyers to staff the due diligence document review, we can call them up. That

also gives them interaction with other associates and lawyers, and that is part of the training.

**PASCAL:** We won't staff our Latin American attorneys quite that way, but we do use them as a platform for projects throughout the region, particularly in Central America to complement the local firms in those markets in those instances where they have fewer resources than may be required.

**WOOD:** We know we are losing certain transactions by not having a physical presence in Brazil.

**LATINLAWYER:** We are seeing more and more people opening there. Is anyone making plans?

**TREISTMAN:** While we have a lot of activity there, we are not making plans to open an office.

**VALERA:** We are extremely pleased with Brazil. It was the right bet, the right business model. A full-service Brazilian law capability and we are not seeing it as a foreign law licence concept. That office keeps growing with lateral hires. We are getting partners from major Brazilian firms now interested in our office, very well placed. As to whether we are going to go to another country and have a similar establishment there, time will tell. But in theory yes. In theory everything that responds to a stable, growing economy and client demand is definitely worth taking a look.

**PASCAL:** The rates in Brazil will support an international firm, however, I am not certain that other than Mexico and Brazil, there is a third market in Latin America that will support our higher overheads. We are seeing more US clients are selecting Brazil as their first market and so our opportunity to work in that market will hopefully help our Mexico City office. From the Haynes and Boone perspective I think we have to look at Brazil, not only due to the six-year infrastructure boom, but as a long-term play. Analysts say that Brazil in the coming years is going to be the fifth-largest economy in the world. I think it is pushing many international law firms, as well as other service providers, to say we need to have some presence in Brazil, which is typically in São Paulo.

**RAJUNOV:** I think the challenge for any international law firm, when you go beyond your natural borders, is making sure that you make the right decisions about who you are partnered with and who you evolve with. When I joined Thompson & Knight, I was told by the managing partner at that time: "We feel like we've tapped out our growth potential domestically and we feel that for Thompson & Knight to get to the next level as a law firm, it needs to go outside the US, it needs to go international." And

that is the strategy that continues to motivate Thompson & Knight. The question is how you go about identifying the right partners in the different locations? And that is an ongoing challenge, but we are very committed to our international expansion. Would we go to every country in the world? No, for the same reason that Larry said, there are only so many markets that can absorb the type of rates and the type of transactions you want to be involved with. We feel we are well positioned and have a deep expertise in the international energy sector.

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PASCAL

**WOOD:** You have to respect the size of the Brazilian economy if you are a law firm who wants to work internationally, you have to respect these economies and how big they are and how important they could be to you and what your core strengths are, not everything, but your core strengths. What we were talking about is saturation in the US market, I think a lot of law firms are wondering if the US market is not saturated and where their next dollar is going to come from and you have to say Brazil is the number one idea for those that already do not have a presence there. For us we have disputes partners, tax partners, corporate partners, infrastructure partners, energy transaction partners who are wondering if we are going to open an office somewhere in Brazil

and I think it is growing to a fever pitch. We are an organisation that is moving quite conservatively and slowly with changing priorities depending on where we want to go next we haven't gotten it through yet.

**TREISTMAN:** I think a lot depends on the practices of the different firms. Our strategy right now is not to open up in any Latin American countries. You can't ignore Brazil, but for us it hasn't made sense to open an office and I don't see it happening in the foreseeable future. For the type of practice we have we prefer venturing with local counsel for the local expertise, like we do with our transactions in any other country in the region.

**CRESPO:** We are looking at Brazil, we are keeping our eye on it. We are looking for the right partner but are not going to get married for marriage's sake. From a foreign consultancy perspective there hasn't been a single client of ours that has asked us to open an office in Brazil, so that is not the strategy we want to pursue or feel the need to pursue. We see potential in having a local law practice in Brazil. For that we need to find the right match.

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