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What shaped Latin American deal activity in 2019?

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Lex Mundi's Jenny Karlsson – a former in-house and private practice attorney – and **Paulo Frank Coelho da Rocha of Brazilian member firm Demarest Advogados present the key findings from the law firm network's latest M&A trends report.**

M&A lawyers at members of law firm network Lex Mundi identified political instability and economic uncertainty as common themes that impacted M&A deal volume and value in Latin American during 2019.

Some countries are addressing these with macro reforms to improve investor confidence, especially that of investors from abroad, and to increase both deal volume and value over the next year and in the long-term. But lawyers say it will be up to governments in the region to push through the proposals, particularly in countries experiencing political and social unrest.

Surveyed on deal activity by market segment in 2019, 65% of Lex Mundi member firms in Latin America saw most private M&A fall below mid-market, while 29% of transactions took place in the mid-market and 6% in the top tier (the definition for mid-market are transactions valued between US$250 million and US$500 million). Compared with global trends, 61% of member firms saw most private M&A in the below mid-market segment, with 33% in the mid-market and 6% in the top-tier. The findings are published in Lex Mundi's Global M&A Trends Report.

In 2019 Lex Mundi member firms in the region saw most public and private M&A activity in the energy and power sector (40% and 33%, respectively), followed by the financial services sector (20% for both public and private M&As). Globally, the most active industries across both public and private M&A was also energy and power (20%), followed by financial services (17%), and the technology and manufacturing sectors (both at 11%).

In Brazil, the country that sees more than 50% of all M&A transactions in the region, the combined M&A deal value reached some US$68 billion, with technology, financial and insurance, real estate and distribution and retail as the leading industries. The first two months of 2020 saw a 32% decline in the number of transactions, although the value of the transactions remained the same as in the same period of 2019. There is a very good forecast for infrastructure projects and IPOs in 2020, but it remains to be seen how markets in Brazil and across the region will react to the development of the covid-19 and the (threatened) oil war.

Private M&A practitioners raised three key concerns that had to be considered during M&A processes in 2019. Due diligence was the most important one, backed by 21% of respondents, followed by antitrust considerations, with 15%, and the broader economic environment, pointed out by 14% of the lawyers surveyed.

Perhaps not surprisingly, practitioners in Latin America identified due diligence as a top priority in the M&A life cycle. This was similarly flagged across other regions outside North America. In parts of the Middle East and Latin America, such as Peru, publicly available information on corporate entities is limited, making it important to do a comprehensive exercise.

Lex Mundi's report suggests attention has shifted towards target company compliance to mitigate risk across various practice areas such as cyber, anti-corruption and data privacy. In Brazil, labour and tax diligence features prominently in M&A transactions. In addition to labour and tax, Daniel Del Río, partner at Basham, Ringe y Correa in Mexico, notes that anti-bribery and anti-money laundering due diligence are under increased scrutiny from Mexican authorities, due to further responsibilities imposed on shareholders, directors and managers as a result of fulfilling tax obligations. In Venezuela, extensive due diligence is required given anti-corruption compliance risk.

Antitrust considerations also ranked as a key concern for deal-making in the region. In Chile, antitrust clearance has recently become mandatory and a growing number of industries require governmental approval. With Costa Rica in the process of applying for OECD membership, the local antitrust authority, COPROCOM, has obtained broader authority to investigate filings and antitrust practices, with potentially substantial fines. Nicaraguan counterpart Procompetencia is very active and monitors all corporate transactions that take place. In Brazil, CADE and the Central Bank are expected to continue discussing fintechs, open banking and the adoption of regulatory sandbox measures to promote innovation in the financial system and foster competition in the banking market.

Tax reforms across the region have impacted the economic environment and deal activity. In July 2019, Costa Rica adopted a major tax reform – including the creation of capital gains and value-added tax – which has given sellers pause before executing transactions. In Brazil, proposed reforms to the complicated and restrictive tax system are already under discussion and, if passed, will create a positive environment for both domestic and cross-border deal activity, among other benefits.

2019 was a record year for M&A activity in Colombia. According to Dario Laguardo Giraldo, partner at Brigard Urrutia, the economic fundamentals remain unchanged, so there are good reasons to believe that M&A activity will continue to be vibrant in 2020. The country's recent tax reform has settled and the unease of its impact has diluted. Chinese buyers have become more active and they are expected to be serious bidders in most of the major transactions during the coming years. Colombian multilatinas like Interconexión Eléctrica (ISA) and Empresas Públicas de Medellín (EPM) are also very active around the region. There continue to be high stakes regarding venture capital, even though the tickets are still generally low and players are waiting to see, after Rappi, if another unicorn will arise.

Countries such as Uruguay and Nicaragua are expecting that a more stable political and economic environment in 2020 will help increase deal volume. In Brazil, macro reforms by the current administration in labour law and public pensions, along with ongoing major privatisations and new infrastructure projects, are expected to contribute to greater deal activity in 2020. New legislation such as the Economic Freedom Act reduces government involvement in business, paving the way for more investment in the country and, consequently, more deal activity.