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Foreign Law Firms in Brazil: Opportunities in 2010 and Beyond

"For emerging markets, the current crisis is likely to be no more than a temporary interruption in their financial market development, because the underlying sources of growth remain strong. For investors and financial intermediaries alike, emerging markets will become more important as their share of global capital markets continues to expand." — ***Global capital markets: Entering a new era***, McKinsey Global Institute, September 2009.[1]

We have advised our clients and other friends with a presence in significant emerging economies, particularly the BRIC (Brazil, Russia, India, and China) countries, to consider adding new emphasis to their practices in those markets. In this *ZG Alert*, we offer an overview of the Brazilian economy, with an eye toward the opportunities available for U.S.-, British-, and Canadian-based law firms serving clients in that market. To bring you these insights, we spoke in September 2009 with four partners based in São Paulo, all of them seasoned in the practice of law in Brazil and other Latin American markets: Stephen Hood of Mayer Brown LLP; Andrew Jánszky of Shearman & Sterling LLP; Anthony Oldfield of Clifford Chance; and Antonio Piccirillo of Proskauer Rose LLP.

The partners we spoke with were confident that, for foreign law firms with strong client connections, there will be a substantial amount of work flowing from the growth of Brazil's domestic market, demand for its exports, the inflow and outflow of capital, and the country's growing ties to other emerging powerhouses, such as China.

Our goal with this *ZG Alert* is not to suggest that all leading law firms should create or strengthen an existing Brazil practice by growing their North American- or European-based practice groups, or by opening an office on the ground in Brazil. These are firm-specific decisions that should turn on each firm's strategic growth plan. Our aim is instead to inform law firm leaders about the ongoing growth in importance of emerging markets.

In preparing this *ZG Alert*, we have gathered data available through January 15, 2010, from government agencies and industry groups in Brazil, as well as data and analysis from media reports in reputable local publications, including *Exame* magazine and the newspaper *Valor Econômico*.

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The Growing Importance of Emerging Markets and Brazil in Particular

The world has taken notice that global financial assets are becoming increasingly interdependent and dispersed from New York and London into the BRIC countries and other emerging markets[2], evidenced, for example, by the recent replacement of the G-8 with the G-20 as the core global economic forum. The move, which recognized the important role of emerging economies such as China, India, and Brazil in the new global order, is aligned with the forecast that emerging markets will account for 51 percent of global GDP in 2014, compared with their 37 percent share in 2000.[3]

Although emerging markets by no means came through the current global economic crisis unscathed (the total value of emerging market financial assets fell by US$5.2 trillion in 2008, and capital flows to developing countries fell 39 percent), many emerging economies have shown earlier and more significant signs of recovery than their developed counterparts.[4] As McKinsey economists and many others have noted, the long-term trend is toward robust growth in developing economies, many of which are holding large sources of capital to invest and are inspiring increasing confidence on the part of foreign investors. [5]

The 10th largest economy in the world in 2008,[6] and projected to be the world's fifth most populous country in 2010 (with approximately 195 million people[7]), Brazil is widely regarded as having survived the worldwide credit crunch and global reduction in demand and investments better than many other countries, and to be emerging from the recession quickly and strongly. Brazil's stock market suffered the least of any BRIC country's in 2008,[8] signaling in part that foreign investors increasingly are "unbundling" the emerging markets from one another and singling out Brazil as a robust economy in which to invest. Foreign direct investment in Brazil came to approximately US$38.1 billion from January through October 2009.[9] (That figure was approximately US$45.1 billion in 2008, up from US$34.6 billion in 2007.[10]) By October 2009, Brazil accounted for 29 percent of the US$42 billion raised in IPOs worldwide during the year, second only to China.[11]

U.S., British, and Canadian Law Firms in Brazil

Regulations in Brazil prohibit mergers between local and foreign law firms. Most foreign law firms in Brazil have a license to practice foreign law, and some have an association with a Brazilian law firm (and some have both). The majority of these foreign firms have their office in São Paulo, but some have an office in Rio de Janeiro and other cities including the country's capital, Brasilia.

Allen & Overy LLP

Baker & McKenzie *

Clifford Chance LLP

Linklaters LLP *

Mayer Brown LLP *

Macleod Dixon LLP *

Proskauer Rose LLP

Shearman & Sterling LLP

Skadden, Arps, Slate, Meagher & Flom LLP

White & Case LLP

Simpson Thacher & Bartlett LLP

Squire, Sanders & Dempsey L.L.P *

Gibson, Dunn & Crutcher LLP

* Denotes firms that have an association with a Brazilian law firm.

The Brazilian Economy: A Brief Introduction

In their 2009 year-end analyses and predictions for 2010, economists, financial analysts, and industry groups voiced optimism about the future of the Brazilian economy, affirming that the country has entered a new cycle of growth.[12] In a country whose primary exports include sugar, coffee, beef, poultry, ethanol, tobacco, corn, soy, and orange juice,[13] the companies that suffered most at the outset of the recession were those that export manufactured products and ore.[14] Yet the country did not suffer anywhere near the number of individual or institutional bankruptcies seen elsewhere. In 2009, Brazilian companies enjoyed the lowest bankruptcy level since 2005[15]. Moreover, several sectors flourished throughout the recession, most notably the domestic markets for consumer goods and automobiles, which were fueled by increased household income and consumer confidence, growing employment rates, and a flow of credit that was less tarnished than in many other countries.[16] Industrial production grew 5.1 percent in the third quarter of 2009.[17] Domestic sales of automobiles increased 8 percent in 2009 due in part to fiscal policies that helped consumers.[18] The widely held consensus is that 2010 will bring significant growth in consumer spending and in investments in civil construction and machinery, sectors that have been principal drivers of the country's GDP growth since the second quarter of 2009.[19]

Brazil's GDP grew by approximately 0.2 percent in 2009 (GDP totaled US$1.2 trillion in 2008,[20] having suffered a decrease late that year and in early 2009[21]), but the forecast is for 5.8 percent expansion in 2010.[22] Employment grew by 2.9 percent from January through September 2009[23], and the Ibovespa (the benchmark index of the country's—and the continent's—largest stock exchange, which itself went public in October 2007) grew 82.66 percent in 2009 after fluctuating in 2008.[24] Inflation for 2009 was around 4.3 percent, and the country's Central Bank has projected an inflation rate of 4.6 percent for 2010 and 2011 alike.[25]

While Brazil's GPD grew more in the third quarter of 2009 than that of the United States, the Eurozone, and most Latin American countries, it lagged behind growth in countries such as China, India, and South Korea.[26] The Brazilian government announced in December a 13-prong economic stimulus package that will include a federal loan of approximately US$45.7 billion to Brazil's development bank (BNDES), and tax breaks valued at about US$1.86 billion.[27]

Brazil's economic policies are not without critics, however, and there are those who predict trouble ahead. Princeton University economist Paul Krugman, speaking in São Paulo in December 2009, warned that euphoria toward Brazil is leading to a troubling overvaluing of the country's currency, and recalled several countries that plunged into crisis after going through a phase of favoritism among investors.[28] The Brazilian Real appreciated an aggregate 32.7 percent vis-à-vis the U.S. dollar in 2009.[29] Krugman is not alone in his observations. Brazilian experts also have voiced concerns that the overvalued currency will boost imports over exports, possibly curbing the economic growth that could be attained from growing employment, increased household income, and strong internal demand.[30] In addition, the GDP expansion that has been forecast for 2010 inevitably will come to a halt, according to a former Central Bank president, Gustavo Loyola, who credits the current administration with extreme overspending.[31] Domestic government spending in 2009 approached US$529.8 billion, an increase of almost 27 percent over 2004 expenditures.[32]

Snapshot: Key Economic Indicators

- *Net public debt* for 2009 was approximately 43 percent of GDP, according to Central Bank estimates at year-end. This is 4.2 percent higher than in 2008.[33] (Net public debt in the U.S. was 39 percent of GDP in fiscal year 2009[34], while that of Japan is projected at 100 percent of GDP for 2010[35].)
- *Unemployment* in the third quarter of 2009 reached 7.8 percent, compared with 7.6 percent in the same period of 2008.[36]
- Brazil's *foreign reserves* reached approximately US$240 billion at year-end 2009 (through mid-December), after an increase of US$38.3 billion during the year. Growth of US$30 million is forecast for 2010.[37] In October 2009, when foreign reserves reached a record high of US$230 billion, the administration announced its first loan to the International Monetary Fund in the amount of US$10 billion, almost twice as much as it had paid to the IMF in 2005 to liquidate its previous borrowings.[38]
- Brazil's exports totaled US$152.2 billion in 2009 (22.2 percent less than in 2008), while imports added up to US$127.6 billion, about 25.3 percent below 2008's figure[39] (after having increased 44 percent over 2007[40]). The resulting *commercial surplus* of approximately US$24.6 billion for 2009 was 1.4 percent lower than in 2008.[41]
- For the first year since 2000, Brazil closed 2009 with a *trade deficit* with the *United States* (amounting to US$4.1 billion through November). This was attributed to decreases in the price of oil, and lower demand for manufactured goods. Meanwhile, Brazil's previous trade deficit with *China* flipped into a *surplus* of US$4.38 billion (through November 2009), in part as a result of strong commodities exports to China, particularly soy (US$ 6.3 billion) and iron ore (US$ 5.7 billion).[42]

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- Brazil's *budget surplus* for the 12-month period ending in November 2009 equaled 1.41 percent of GDP, compared with 0.97 percent for the 12-month period ending in October.[43]
- *Brazilian direct investment abroad* from January through November 2009 totaled US$5.8 billion.[44] The figure was US$7 billion in 2007, and nearly US$21 billion in 2008.[45]
- *Private foreign debt issuance* out of Brazil in 2008 was US$10.7 billion.[46]
- *Foreign direct investment* in Brazil was approximately US$38.1 billion from January through October 2009, broken down as follows: 51.7 percent into industry; 14.5 percent into agriculture, cattle raising, and mineral extraction; and 33.8 percent into services. The industry sectors that received the most investment were those that were thriving because of increased domestic demand, such as the automotive, ore processing, and food industries.[47] In 2008, FDI in Brazil increased by 30 percent over 2007, in contrast to a drop of 14 percent in FDI inflows to the rest of the world.[48]
- In the first four market-trading days in January 2010, *net foreign investment* into the Brazilian stock market added up to almost US$515 million, which is higher than customary for this time of year.[49]
- The *stock market index* (Ibovespa) is projected to grow by approximately 20 percent in 2010, only a fraction of its exponential growth in 2009.[50] The stock that gained most value in 2009 was that of mining company MMX, which grew by 345.85 percent, though its share price at year-end was approximately half the price it was in mid-2008.[51]
- The tally of the number of *Brazilian companies acquired by foreigners* in 2009 likely will number 88, according to a KPMG estimate in mid-December 2009. That is lower than the 110 such transactions in 2008, and 143 in 2007, but the increase in transactions in the second half of 2009 over the first indicates a return to prior years' levels, according to a KPMG partner.[52]
- The *number of mergers & acquisitions* in 2009 in Brazil totaled 640 (virtually identical to the 643 in 2008), according to an estimate by PricewaterhouseCoopers. More than 50 percent of the 2009 transactions (which occurred at much higher rates in the second semester over the first) involved companies dealing with consumer goods and services targeting the domestic market, according to a PricewaterhouseCoopers partner. The average number of mergers & acquisitions from July through October (63) exceeded the monthly average for 2007, which was the country's record year for such transactions.[53]
- On average, banks have returned to pre-crisis *lending levels*. While the volume of credit to the retail sector increased by about 20 percent over 2008, the volume of loans to companies is still 10 percent lower.[54] A re-tightening of Central Bank regulations that had been loosened somewhat during the recession is scheduled to take effect in April, which means that the country's banks will have approximately R$100 billion less in funds that can be loaned.[55]

Snapshot: Key Sectors

The domestic market continued to grow in 2009, with several industrial sectors faring exceptionally well, particularly the automobile industry. While the agricultural sector saw a decline in productivity and revenue, projections call for improvement in 2010. As for exports, it was manufactured goods that suffered the steepest decline through the recession. The numbers below offer a more detailed picture.

- In the third quarter of 2009, the GDP of the agriculture and cattle-raising sector dropped 2.5 percent over the previous quarter, while that of industry grew 2.9 percent, and that of the services sector grew 1.6 percent.[56] The decrease in agricultural and cattle production was attributed in part to a reduction in domestic yield as well as to the global reduction in commodity prices.[57]
- The 2010 gross production value for the 20 largest agricultural sectors in the country is projected to be 2.3 percent larger than the 2009 figure, which was approximately US$87.5 billion, according to Brazil's department of agriculture.[58]
- Brazilian exports that declined the most in 2009 were manufactured goods, where the value of exports declined 27.3 percent, to approximately US$66.6 billion. This drop was attributed to a recession-induced drop in international demand for goods such as automobiles, autoparts, ethanol, and aircraft from the United States and European and Latin American countries. Meanwhile, exports of refined sugar and plastic polymers grew by 32.4 and 10 percent, respectively. Sales to Asia grew, and particularly to China, which showed increased interest in Brazil's iron ore and soy, for example.[59]
- Brazil became the world's fifth largest market for automobiles in 2009 (China and the United States hold first and second place, respectively.[60]). Domestic sales increased 8 percent, due in part to fiscal policies that favored consumers. But with incentives scheduled to expire by April 2010, it remains to be seen how the market will behave. Nonetheless, an association of automotive manufacturers has predicted growth in sales of 9.3 percent in 2010 over 2009.[61]

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- The construction material industry is projected to grow 15 percent in 2010, with November 2009 marking the first month of the year when growth exceeded that in the same period the year before. Even so, the industry estimates that overall 2009 billings will come in 12 percent lower than in 2008.[62] In 2007, the civil construction sector grew 10.9 percent, the largest increase since 1996.[63] The president of a national construction material association has predicted that in 2010 his sector will resume levels of growth seen in 2007.[64]
- Beef exports are projected to increase by 20 percent in 2010, from approximately US$4.1 billion in 2009 (which is 22.6 percent lower than in 2008). The most certain area of growth remains the domestic market, although exports to countries such as China and Chile are expected to increase.[65]
- Retail sales increased 5.1 percent from January through October 2009, which is lower than comparable figures for 2008 but holds promise for further increases in 2010, given the particularly strong growth observed in the latter months of 2009.[66]
- Brazil's information technology industry billed approximately US$31.5 billion in 2009. Brazil is the third-largest market for computers (behind the United States and China), and the fifth-largest exporter of IT services. The export industry received an added boost recently with the launch of a joint venture between an IT industry group and the Brazilian agency for the promotion of exports, which will spend about US$17.4 billion to encourage participation by Brazilian IT companies in international events and related marketing.[67]
- Brazil's investment funds rebounded in 2009, bringing in a net US$48.5 billion through early December (compared with US$34.2 billion in 2008), according to an industry group. Part of what was injected into the funds in 2009 was a refueling of what had been withdrawn in 2008.[68]

Snapshot: Leading Sectors and Companies in 2008

The data below was reported in the July 2009 issue of Exame magazine, which ranked the country's top 1,000 companies.

- Sectors with the greatest growth in sales in 2008 over 2007 include construction, mining, and the livestock industry.[69]
- Sectors with the greatest growth in profits in 2008 over 2007 include digital technology, energy, services, and telecommunications.[70]
- Construction was the sector that had the greatest growth in sales in 2008.[71] The 50 percent growth in civil construction was attributed partly to the availability of credit.[72]
- The top 500 companies in the country (measured by dollar volume of sales) amassed total sales of US$846 billion, a 5 percent increase from 2007, but a simultaneous 31.5 percent decrease in profits.[73]
- Bunge Alimentos (active in the agriculture and food industries, including the industrialization of soy and wheat), whose 2008 sales reached US$10 billion, was the company that had the largest growth in sales. Bunge's yearly production of 24 million tons included grains, vegetable oils, and margarines.[74]
- Trop, a subsidiary of Comexport, which specializes in importing heavy machinery for construction, was the top-500 company whose billings (at US$473.5 million for 2008) grew the most.[75]
- Mining was the industry showing the highest return on assets, at 32.5 percent. The sector has held that position since 2002, and in 2008 it also logged the largest sales margin, at 21.8 percent, and contributed 5.8 percent of the country's GDP. Recently, mining companies pledged to invest US$57 billion in the sector through 2012.[76]
- The international operations of Brazilian mining company Vale (ranked the third-largest business group in the country in 2008), which operates in more than 30 countries, accounted for 20 percent of its 2008 sales of US$32.3 billion.[77]

Snapshot: Examples of Global Ties

- Germany's Volkswagen, the United States' General Motors, Spain's Telefonica, France's Carrefour, the Netherland's Bunge Alimentos, and Italy's Fiat are among the largest multinational companies in Brazil, measured by gross operating revenue.[78]
- French telecommunications company Vivendi acquired a controlling interest in Brazil's GVT, a leader in the domestic telecom and Internet markets. The acquisition (which is currently under review by the Brazilian securities commission) cost over US$7 billion and has taken place in stages between November 2009 and January 2010.[79]
- The South Africa–based multinational media company Naspers acquired Brazilian online price search engine Buscapé for US$342 million, in September 2009.[80]
- Walmart has announced plans to invest about US$1.13 billion in Brazil in 2010. This will be its largest annual investment in the country since it started operating in Brazil in 1995, and is 40 percent more than its 2009 investment.[81]
- French automaker Renault plans to invest, in the next three years, almost US$600 million in financing from the Brazilian development bank to launch new models and increase its share in the Brazilian market.[82]

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- An investment fund managed by the Inter-American Development Bank is investing US$5 million into the Burrill Brazil Fund, which hopes to raise in the neighborhood of US$100 million to invest in biotechnology in Brazil.[83]
- BNDES, Brazil's development bank, has announced plans to increase substantially its financing for Brazilian companies doing business abroad. In the last four years, the bank disbursed about US$2.5 billion to such companies. The development bank has opened offices in Montevideo, Uruguay, and in London, and is reportedly looking to hire consultants to advise it in its global outreach.[84]

Brazil's Nexus With China

Brazil's growing economic prowess derives in no small part from its ties to China, which was the top destination for Brazilian exports in 2009, totaling US$19.9 billion (the United States came in second at US$15.7 billion, and Argentina third at US$12 billion).[85] In particular, China's demand for agribusiness exports, one of Brazil's most important sectors, helped ensure the health of Brazil's economy during the recession.[86] Brazil provided 22 percent of China's agriculture imports in 2008—a substantial slice, with room for growth.[87]

Brazil and China's financial markets also are interwoven. After the recession commenced, one of the early bond issuances in the private sector was the March 2009 US$300 million loan facility arranged by China Development Bank (CDB) for Telemar Norte Leste S.A., Brazil's largest telecommunications company. And in November 2009, CDB closed on a US$10 billion loan to Petrobras S.A., which expects to export 150,000 barrels of oil a day (increasing to 200,000 starting in the second year of the loan) to UNIPEC Asia Co. Ltd., a subsidiary of China's Sinopec.[88]

Brazil's own development bank (BNDES) recently was negotiating a US$800 million loan from CDB (the countries reportedly reached an impasse concerning the terms of the loan in September[89]), as well as additional credit from other sources including the Export-Import Bank of China. Brazil has voiced plans to open a BNDES office in China,[90] and likewise, CDB has announced its desire to establish an office in Brazil, to support its plan to invest in local infrastructure contemplated for the 2014 World Cup, for instance.[91]

Pillars of Strength: Why Brazil Averted Disaster

A confluence of factors has helped Brazil buffer the effects of the recession. First, the domestic banking system was, and has remained, adequately liquid. As one of the partners with whom we spoke pointed out, many of the country's influential banks had not taken risks with the vulnerable investment vehicles that proliferated elsewhere. Moreover, the Brazilian Central Bank tends toward heightened regulation. For example, it imposes a capital requirement of 11 percent of assets, which is higher than the Basel Committee on Banking Supervision, of which Brazil is a member, contemplates (8 percent).[92] Some mid-size and small banks felt the liquidity crunch at the end of 2008, but government intervention, including the imposition of reserve requirements, helped prevent bank failings.[93]

Second, as noted above in the discussion about Brazil's ties to China, Brazil is well woven into other emerging economies, and therefore was not singularly dependent on the United States and European markets. And third, a booming domestic economy helped prevent the country from crumbling despite a decline in exports in some sectors. The robustness of the local economy in the last decade, generally attributed to both the monetary policies of the former president and the social welfare policies of the current one, ensured that sectors such as energy, retail, consumer goods, and telecommunications remained strong throughout the recession.[94] Credit-dependent sectors such as the automotive and construction markets also avoided potential fallouts, because the government intervened with reduced taxes and incentive programs.[95] Moreover, at year-end 2008, for the first time in recent history, Brazil carried a foreign debt surplus of 11.1 percent of GDP. (By July 2009, that surplus had fallen to 9.2 percent of GDP.)[96]

> "For Krugman, Brazil fared well through the crisis because it was in better financial shape than in prior crises, besides not being very dependent on exports. At the outset of the crisis, the country had little short-term debt in foreign currency, its banks were fairly healthy, and inflation was under control. The government was able to adopt countercyclical policies, lowering interest rates and loosening fiscal policies. That enabled Brazil to emerge from the global crisis better off than most of the world, something Krugman says he has never before seen in 'his entire professional life'."
>
> – Translated from Sergio Lamucci, "Krugman adverte para excesso de euphoria com Brasil," *Valor Online* (Dec. 3, 2009).[97]

What It Takes for Foreign Law Firms to Succeed in the Market for Brazil Work

The growing local economy may become a double-edged sword for foreign law firms vying for Brazil-related work. As the domestic capital market grows in depth and sophistication, and the country becomes increasingly self-sufficient, the heightened demand for legal services might benefit lawyers practicing local law most. Even so, the São Paulo-based partners we spoke with were optimistic that Brazil's international ties will continue to boost the amount of capital flowing in and out of the country, with a corresponding increase in the amount of work for foreign law firms that are positioned strategically to compete for clients. That strategy, we learned, includes having the right practice group mix, having a strong presence on the ground, and developing a base of thriving corporate clients across a spectrum of promising industries.

Practice Group Mix: Following the Work in Brazil

According to the São Paulo partners, the long-term success of a foreign law firm in the Brazilian market turns largely on whether it has bench strength in capital markets, M&A, private equity, and project finance so that it can keep up with the ebb and flow of the local economy and be positioned to pick up the work that is available at any given time. They all agreed that maintaining a singular focus and chasing a fad to a foreign market—such as the booming IPO market in Brazil in 2007 that did not outlive 2008—is generally a recipe for short-lived success.

As they entered the last quarter of 2009, the partners in São Paulo said they were at that time busiest with debt issuance and renegotiation, syndicated loans, and export financing, as well as with some bank finance, project finance, and M&A. In addition, the IPO market already had started to show signs of recovery.

Not surprisingly, how busy different practice areas have been over time has tracked developments in the local and global economies. In the late 1990s, as the Brazilian economy stabilized and grew as a result of former President Fernando Henrique Cardoso's monetary policies, the busiest areas for foreign law firms included project finance and debt capital markets, prompted partly, we were told, by the numerous privatizations that followed suit. By 2000, the amount of M&A activity was growing, first inbound with Brazilian companies as targets (the Spanish telecommunications giant Telefonica made major headway in the country, for example), and later outbound. In 2007, for instance, the Brazilian steel company Companhia Siderurgica Nacional offered US$9.6 billion to acquire Corus, a leading steel producer in Europe, but lost to India's Tata Steel (which paid approximately US$12 billion[98]). CSN is now raising US$5 billion in an effort to acquire Portuguese cement company Cimpor.[99]

By the mid 2000s, the number of IPOs originating in Brazil was climbing. It peaked in 2007, when the country accounted for 10 percent of the funds raised in IPOs worldwide,[100] with foreign investors purchasing approximately 75 percent of the offerings.[101] According to the lawyers with whom we spoke, the recession's chilling effect on the IPO market was offset—for those firms positioned to handle it—by continued, and even growing, activity in areas such as project finance and debt renegotiation.

The partners noted that as the practice of foreign law in Brazil broadens from capital markets and M&A practice—and becomes more full-service to address the corporate and financial needs of an increasingly sophisticated clientele—it has become more and more important to be able to draw on their firms' strengths in related areas, such as antitrust law and arbitration.

Brazilian IPOs

Even as the IPO market in Brazil heats up again, the partners with whom we spoke agreed that the 2007 IPO boom (with 75 primary and secondary offerings) is unlikely to recur, and they underscored the importance of maintaining a diversified practice and having the capacity to develop expertise in a variety of industries and new investment vehicles.

The largest IPO to date in Brazil was the October 2009 offering by the Brazilian unit of the Spanish bank Santander, which raised approximately US$8.1 billion. Until then, the largest offering had been the June 2009 IPO by VisaNet, the leading company in credit- and debit-card transaction processing in the country, which raised approximately US$4.3 billion. Trailing only China, Brazil accounted for 29 percent of the US$42 billion raised in IPOs worldwide from January through October 2009.[102]

In recent years, Brazilian IPOs have been most prevalent in the real estate, financial banks, agribusiness, logistics, and healthcare industries. Most offerings have ranged between US$250 and US$400 million.[103] Several companies have announced public offerings for 2010, including M. Dias Branco (food industry), Banco Cruzeiro do Sul (financial services), and Metalfrio Solutions (commercial refrigeration). The estimated aggregate volume of these three companies' public offerings is just over US$700 million.[104]

In most Brazilian IPOs, the offering is registered with the Brazilian securities commission, with an offshore tranche sold under exemptions from registration in the United States and the European Union (including exemptions under the U.S. Securities and Exchange

Commission's Rule 144A and Regulation S).[105] We were told that the prospectus is prepared in Portuguese first, giving the foreign law firms with solid Portuguese-language capacity a competitive advantage.

Year	Number of public offerings[106] (includes primary and secondary offerings)	% of financial value accounted for by foreign investment
2005	20	60.2%
2006	39	67.06%
2007	75	75.4%
2008	16	48.1%
2009	21	66.7%

The steep increase in IPO activity from 2005 through 2007 has been attributed to a combination of factors including regulations passed in late 2003 that, among other things, established more oversight over the disclosure of information; the liquidity in international capital markets in 2006 and 2007; and the strong demand by Brazilian companies to raise equity capital, all of which coalesced at a time when the Brazilian economy was strong.[107]

Some of the lawyers we interviewed predicted that more Brazilian IPOs will be registered with the SEC going forward, because of the agency's new rules accepting financials prepared under the International Financing Reporting Standards, and facilitating termination of foreign private issuers' registration of securities under Section 12(g).[108]

The Advantages of Having a Brazil Office

Having an office in Brazil is not a prerequisite for having a successful Brazil practice, and some important players do not have a local presence. Yet the advantages of being local are manifold, ranging from the obvious (greater access to clients; more market intelligence; the showing of a firm's dedication and commitment to the market) to the more nuanced. For example, one partner with whom we spoke commented that in contrast to clients in Mexico, who are typically comfortable conducting business in English, some Brazilian clients prefer to handle their matters in Portuguese, despite being fluent in English. He added that this preference accentuates the importance of having lawyers who are perfectly fluent in the language and culture, referring to a pendulum swing among Brazilian clients towards the Portuguese language and local customs. Another partner indicated that firms are better positioned to build full-service corporate practices if they have a local office. All of the partners with whom we spoke emphasized that their firms had strong Brazilian clients before their opened their local offices.

Finding the right people to staff an office in Brazil—lawyers who not only are qualified but also are willing to adapt to a foreign environment with a multitude of day-to-day challenges—is key to the office's success, the partners said. Another key part of the equation is having strong ties to practice groups back home to support the Brazil-based lawyers in their work. Several of the partners told us that their Brazil team also includes lawyers in the United States and Europe.

The interviewees also told us that while São Paulo is the country's economic nucleus, having an office in Rio de Janeiro could be strategic for foreign law firms with large oil and gas practices. Many of Brazil's energy giants, including Petrobras, are headquartered in Rio. Rio is also home to several important state-owned companies, large telecommunications conglomerates, and the Brazilian development bank, but the partners noted that the ease of flying from São Paulo to Rio in under an hour generally offsets the need for offices in both cities. It bears noting, however, that several of the leading Brazilian law firms, whose presence until now has been larger in São Paulo, reportedly are growing their presence in Rio de Janeiro in anticipation of increased energy work stemming from the pre-salt oil discoveries, as well as a growth in project finance and other work related to the 2014 World Cup and 2016 Olympics.[109]

The partners with whom we spoke explained also that they serve their other Latin American clients well from São Paulo, or in some cases, from the United States. While other South American markets, such as Peru, Colombia, and Venezuela generate a fair amount of work for some of the partners with whom we spoke, those markets are not nearly as large as Brazil's and do not, for the moment, justify opening additional local offices.

Where the Work Likely Will Come From

In a growing economy, legal work is bound to arise from a variety of sectors, from consumer goods to financial services and everything in between, according to the São Paulo partners, who pointed out a few industries they believe hold particular promise for foreign law firms.

Infrastructure: Brazil still lacks much of the infrastructure necessary to keep pace with its increasingly industrialized and sophisticated economy. Some of the country's primary industries, such as iron production, still face logistical transportation barriers and need improved rail and port access, for example.[110] As the country prepares to host the 2014 World Cup and the 2016 Olympics, the expectation is that it will expand its network of toll roads, railways, and container seaports, for instance. In addition, the subway systems in both São Paulo and Rio de Janeiro currently are being expanded, and planning is underway for a high-speed train between the two cities. Infrastructure development in preparation for these events could require investments of at least US$30 billion, by one estimate.[111]

While some multi-million dollar projects now are being wholly financed domestically, something we were told that would have been rare as recently as five years ago, this is a sector that retains substantial foreign involvement. For example, the Inter-American Development Bank, together with seven private banks, is helping finance the expansion of the São Paulo subway under the first public-private partnership in that state to retain long-term credit from international sources.[112] In August 2009, global marine terminal operator DP World joined with a Brazilian company to invest in the construction of the Embraport terminal, which will be the largest private, multi-purpose port in Brazil. The first phase of development is expected to cost about US$500 million, and when completed the port will hold more than 1.5 million 20-foot equivalent units a year and 2 billion liters of ethanol.[113]

Brazil's development bank increased its infrastructure spending by about US$10 billion to almost US$32 billion in 2009, and expects to increase funding for transportation, energy, telecomm, and sanitation by 20 percent in 2010. A federal government program designed to promote infrastructure and energy projects nationwide, launched in 2007, did not meet its goal for 2009, however. An industry group found that only about half of the approximately US$360 billion committed for the period 2007 through 2010 had been disbursed through August 2009.[114]

Financial services: In a country where the 10 largest banks control about 85 percent of the financial services market,[115] approximately one-third of the mergers that took place in 2008 were in the financial sector. The largest such merger, valued at US$46 billion, was between the Brazilian banks Itaú and Unibanco, neither of which needed the consolidation to survive, according to local analysts.[116] By 2008 figures, the largest banks in the country, by volume of assets, are the Spanish Santander, with US$20.9 billion, and the recently created Itaú Unibanco, with US$18.6 billion.[117] Going into 2010, Britain's HSBC injected approximately US$500.7 million of additional capital into its Brazilian operations (for a total of approximately US$8.8 billion), and intends to use the new funds to extend credit, according to HSBC Brazil's president.[118] One of the partners we spoke with predicted that the growing fund business in Brazil will become partly devoted to financing in other countries in the region, leading to a Brazil-led Latin American equity and debt market and rendering São Paulo analogous to London in Europe.

Agribusiness: As the world leader in the export of oranges, soy, and poultry,[119] Brazil relies heavily on the agribusiness sector, which saw softened prices in 2008 and reduced demand into 2009, but not as much as in other sectors.[120] One of the country's largest producers of soy, Amaggi, billed US$1.6 billion in 2008, a 64 percent increase over 2007.[121] In the aggregate, the 400 largest agribusiness companies billed US$167 billion in 2008.[122] In September 2009, Brazil's Marfrig Alimentos SA, which exports beef to more than 140 countries, announced that it would acquire the Brazilian unit of U.S. Cargill Inc. (including infrastructure in the UK, Japan, and Singapore related to distribution of Brazilian exports) for US$706.2 million plus a US$193.8 million assumption of debt.[123] The Brazilian company JBS SA, the world's biggest beef producer, which in December 2009 acquired 64 percent of Pilgrim Pride's capital for US$800 million,[124] announced the same month that it is raising funds to finance acquisitions, and expects that Brazil's development bank will buy as much as US$2 billion of JBS's convertible bonds.[125]

Energy: The pre-salt discoveries in Brazil are generating a multitude of international collaborations pertaining to both infrastructure for drilling as well as oil exports. (The "pre-salt" oil discoveries from 2006 onwards are so named because the oil is lodged under deep waters and thick layers of sand, rock, and salt, making extraction difficult.) Petrobras reportedly plans to invest US$111.4 billion to develop production capacity in the pre-salt regions through 2020 and will need as many as 28 new drilling rigs.[126] In recent months, several cross-border dealings pertaining to the pre-salt oil have come to light, according to media reports. For example, the Japanese shipping company NYK Line has said Petrobras soon will be its biggest lessor of floating production vessels. Texas-based oil field services company Schlumberger Limited has struck an agreement with a local university to build a research center to study pre-salt reservoir technology; and DOF Subseas UK secured a contract for survey and positioning services in Brazil.[127]

In addition, the energy exchanges ICE Futures and the New York Mercantile Exchange obtained permission recently from the Brazilian securities commission to launch broker screens in Brazil in collaboration with the local stock exchange and local financial intermediaries.[128] And in the wind power arena, the first government-sponsored auction, held in December 2009, secured approximately US$4 to 5 billion in investments for the next three years.[129]

Real Estate: Twenty-one real estate-related companies went public in Brazil in the last four years,[130] where both the high-end and low-income real estate markets are vibrant, according to our interviewees. While one partner said the high-end sector (which includes a large shopping center industry) slowed down somewhat through the recession, the lower-income market got a significant boost from a new government program that promises to deliver 1 million new housing units by the end of 2010 for families earning up to 10 times the minimum wage. Even builders who historically had nothing to do with the low-income market now are trying to find their way in, the lawyer noted. In a recent stock offering by a domestic real estate company focused on the low-income market

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(Direcional Engenharia), 64.3 percent of the stock was acquired by foreigners.[131] (We note that through the end of November 2009, the government's housing program had reached only 44 percent of its goal for 2009.[132])

The Local Law Firms

Brazil has numerous large law firms with several hundred lawyers, many of them structured on the U.S. law firm model and established as early as the 1940s and 50s. The partners with whom we spoke agreed that about a dozen firms typically are considered the go-to corporate law firms in Brazil, and several specialty boutiques also have national prominence. Some of the best-known firms include Pinheiro Neto Advogados; Machado, Meyer, Sendacz e Opice Advogados; Mattos Filho Veiga Filho Marrey Jr. e Quiroga Advogados; Pinheiro Guimarães Advogados; TozziniFreire Advogados; and Barbosa, Münich & Aragão Advogados, though this list is by no means exhaustive.

A Brief Note on Arbitration and Litigation

Although the majority of foreign law firms' Brazil practices are transactional, some of the foreign lawyers with whom we spoke in São Paulo noted that their law firms are being called upon increasingly to handle litigation and arbitration proceedings in connection with business in Brazil. The majority of these proceedings take place outside Brazil; foreign lawyers cannot litigate locally, and while some arbitration proceedings that are governed by foreign law elect Brazil as the forum, most take place elsewhere.

Arbitration is becoming increasingly common in Brazil, according to a Brazilian partner who heads the civil litigation practice in one of São Paulo's large, most prestigious full-service law firms. We asked the partner for a brief snapshot of litigation practice locally, and according to him, his law firms' structure is typical of similar firms: of approximately 300 lawyers, about 40 percent are litigators, and they account for a corresponding 40 percent or so of the firm's revenues. Within his firm's litigation department, the tax group tends to handle the largest number of matters, because in Brazil, tax practice includes both judicial and administrative proceedings, while the other two litigation groups—civil and employment—have judicial recourse only, he said. The firm is involved in a significant amount of pre-litigation negotiation, the partner said, and added that when disputes do end up in lawsuits, only about 30 percent are settled prior to judgment. Juries are used in criminal matters only in Brazil, which most full-service law offices don't handle, according to the litigation partner with whom we spoke. Even white-collar crime tends to be handled by specialized boutiques, he said.

In Conclusion

While its expanding domestic market, growing foreign reserves, pre-salt oil discoveries, and contemplated investments associated with hosting the 2014 World Cup and the 2016 Olympics suggest continued economic growth for Brazil, it is impossible to predict the effect that governmental action and the evolving global financial climate—as well as the 2010 presidential election in Brazil—will have on the Brazilian economy in years ahead. However, the partners with whom we spoke in São Paulo noted that, because Brazil had not ridden the economic boom as aggressively as other countries, it has been less impacted by the recession, and is emerging from it quickly and strongly. The partners indicated that consequently, the foreign law firms with strong client relationships as well as strength in a variety of practice groups likely will remain vibrant in the Brazil market in the years ahead.

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