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Latin America On The Global Stage: The Pace Picks Up

The Editor interviews Carlos E. Martinez, Proskauer Rose LLP, New York.

Editor: Mr. Martinez, would you tell our readers something about your professional background?

Martinez: I graduated from Harvard Law School in 1987 and have been involved in transactions related to Latin America throughout my eighteen-year career. I began as a banking lawyer at Milbank Tweed, but my practice has since evolved with the region. I would define myself today as a cross-border finance lawyer, with substantial experience in securities offerings, M&A and restructurings.

Editor: How did you come to Proskauer Rose? What were the things that attracted you to the firm?

Martinez: In early 2000, I was presented with the opportunity to head the Latin American practice at Proskauer. I knew the firm had a stellar reputation nationally, so the challenge of building a practice virtually from scratch, but within an excellent infrastructure, was very attractive to me. After I joined I confirmed that the firm's reputation was well deserved. The firm's culture places a high premium on quality of service and teamwork. Partners do help each other out in servicing or pitching clients, which is not always the case elsewhere.

It has worked out quite well so far. In the few years I have been at Proskauer, we have already been called upon to do some of the largest and most interesting transactions in the region.

Editor: Please tell us about your practice. How has it developed over your career?

Martinez: When I was a first-year associate, Latin American work mostly meant doing

sovereign debt restructurings and onlendings. That work came to an end around 1990, as the different sovereigns were able to finally restructure their debts and began to sell many of their assets through privatizations. This process resulted in considerable M&A work. The newly privatized enterprises, many of which are today's Latin American blue chips, were able to access the international capital markets, and there was an explosion of securities transactions. As the markets grew more sophisticated in the mid-90s, we began to see project finance deals and securitizations.

In the last four years or so, we have seen a wave of corporate restructurings but with new players and under changed rules. Unlike the restructurings of the 1980s, which involved mainly straight bank lending, debtors now have to negotiate also with bondholders and various layers of creditors. This all adds to a much greater level of complexity. In addition, several jurisdictions have adopted new bankruptcy laws, which introduces a significant level of uncertainty given that there is little local jurisprudence behind these new laws.

More recently, there has been renewed activity in securities offerings, and we are seeing an increased volume of M&A transactions, including intraregional acquisitions, where a Latin American company acquires another Latin American company. Interestingly, these intraregional transactions tend to be governed by New York law because of its predictability and because of the sophistication of the judges who might be called upon to rule on some aspect of the transaction.

Editor: Would you share with us some of



**Carlos E.
Martinez**

the highlights of your career?

Martinez: When you work with emerging markets, you find yourself breaking new ground much more frequently than in a domestic practice. That is one of the most rewarding aspects of my practice. One transaction exemplifies this: the \$1.2 billion acquisition of Pepsi Gemex, S.A., the largest bottler of Pepsi products in the world outside the U.S., by our client The Pepsi Bottling Group, Inc. This transaction, aside from being the largest acquisition in Latin America in 2002, represented the first time that a public U.S. company was acquiring a company that was public both in Mexico and the United States. At the time Mexico had just adopted a new tax regime and – halfway through the transaction – its first tender offer rules. To make the transaction happen we had to forge a regulatory compromise between two legal regimes that had differences in areas as fundamental as the length and extension of the tender offer period, withdrawal rights, control premiums, best price rules and disclosure requirements. This process required countless meetings and calls with securities regulators in the U.S. and Mexico, which concluded in the adoption of certain exemptions in the U.S. and interpretative guidelines in Mexico. I recall that the Mexican regulators were very pleased with the outcome because it constituted for them the first real test of their new tender offer rules. It was a terrific experience.

Another transaction that I remember fondly was the 1996 IPO by CANTV, the state-owned telecommunications company in Venezuela, where I represented the Republic of Venezuela. There were many interesting aspects to that transaction, but one worth highlighting was having to help the Venezuelan government convince powerful union leaders that represented CANTV employees to go along with the proposed deal. Venezuelan law provided CANTV employees with a

Please email the interviewee at cmartinez@proskauer.com with questions about this interview.

right to acquire up to 20 percent of the shares offered. However, most employees did not have the money to exercise this right, so we helped the Government craft an arrangement that ultimately gave the employees a meaningful economic right, but that did not negatively impact the IPO. That was a fascinating undertaking.

Editor: Your practice spans a considerable number of legal disciplines and practice groups. I gather you are able to draw upon all of the resources of the firm in staffing your projects.

Martinez: Absolutely. I simply could not do the work that I do if I didn't have access to the skills and efforts of my colleagues at Proskauer. By way of example, to do a cross-border securities offering, a firm must bring to the table expertise in very precise areas such as securities laws as they relate to foreign issuers, international taxation, corporate finance and environmental law, among others. Also, if the issuer is engaged in a business that is regulated, the firm would need to provide expertise in that area too.

A second aspect concerns timing and staffing. When I started out back in 1987, we marked document changes by hand and the latest technological innovation was the fax. Today, with Blackberries and similar tools, transactions are being executed at a torrid pace. What this means is that it is not enough for a firm to have the required expertise, but also it must have sufficient depth to service clients on a timely manner. On the Gemex transaction I talked about before, at one point we had over 20 lawyers busy at the same time.

Finally, language skills are not just helpful, but I think necessary if one is to provide top notch service in a cross-border transaction. For Latin American deals, I make sure my team includes U.S. lawyers who speak either Portuguese or Spanish. It makes the transaction run much more efficiently.

Editor: Would you tell us about Latin America as an investment destination and place to do business?

Martinez: I think in the U.S. we continue to see Latin America through time-worn stereotypes and fail to realize how large and vibrant a market it is. For example, Brazil's economy is larger than those of Canada and Russia. If you aggregate the economies of Brazil, Mexico, Colombia and Argentina, together they would constitute the fourth largest economic power in the world, after the U.S., China and Japan. But Latin America is still developing, and so it offers great opportunities for investment in a wide range of industries and ser-

vices. To name just a couple of examples, the region is rich in natural resources such as mining, oil and gas and agribusiness, and there continues to be a substantial need for infrastructure development. There is also a growing middle class in many of these markets and, as a consequence, an increase in the region's buying power. When compared to other developing regions in the world, Latin America presents a couple of advantages for U.S. investors: its proximity to the U.S. and a business culture that is relatively similar to that of the U.S. Many of the political and business leaders in Latin America, as well as top transactional lawyers there, studied or trained in the U.S.

Editor: Some destinations are better than others?

Martinez: Because of the size of their markets, Mexico and Brazil are such destinations. I believe Argentina will soon again be a favored destination, now that it has put its restructuring behind it. But the smaller markets also offer opportunities in the area of infrastructure, oil and gas, mining, textiles, agribusiness, telecommunications, etc.

Editor: How do you handle the inevitable disputes that arise in connection with your Latin American transactions? Recourse to local courts? ADR?

Martinez: The contracts governing commercial and financial arrangements between Latin American and U.S. parties, and even between Latin American parties, will often provide that the laws of New York will apply, and that the parties will agree to submit to the jurisdiction of the New York courts. This is because New York law on commercial and financial matters is the most developed in the world, and there is a high degree of comfort as to outcome, given that New York judges are relatively more experienced and sophisticated. Many contracts also provide for recourse to ADR, with New York law applying.

Editor: Can you share with us your thoughts about the progress of the free trade discussion in Latin America?

Martinez: I do not see a meaningful hemisphere-wide free trade pact any time soon. Within Latin America there has been an important movement, which has been led principally by Brazil, to reduce commercial dependence on the U.S. These countries wish to be treated as equals, and I do not see progress toward a meaningful free trade pact until the U.S. gives way on the protectionist measures currently in place with respect to the agricultural sector. At the same time,

China and Korea have expressed great interest in the region, and as a result the level of trade with Asia has increased significantly. What we have seen and I suspect we will continue to see is an increase in free trade among Latin American countries.

Editor: As you look to the future – say, the next five years – where do you see the greatest volume of work in your Latin America practice?

Martinez: I think we will continue to see an increase in direct foreign investment, whether from within or outside the region, which translates into more M&A activity for us lawyers. I also see the emergence of stronger and deeper capital markets within the region. There is still a significantly high risk premium attached to raising money in the international capital markets, and Latin American companies are finding that they can raise money locally in local currency at a much lower cost. So I see the capital markets activity continuing to develop in a way where securities offerings are essentially local, but with a U.S. or international tranche. From a purely transactional point of view, I also expect to see more sophisticated asset-based transactions as local laws relating to security interests and trusts become more tested.

Editor: And as globalization proceeds, how do you see the region integrating with the global economy?

Martinez: I see the region embracing globalization notwithstanding the political discourse we hear from time to time. Latin American political and business leaders recognize that their local markets are still limited in size and see substantial opportunities in the U.S., Asian and European markets. In order to expand, they must open up to the global economy. Mexico led the way with NAFTA, but since then virtually all other countries have taken substantive steps in that direction.

Editor: Is there anything you would like to add?

Martinez: I think Latin America has been largely underestimated and misunderstood, if not ignored, in the U.S. Even respected publications like *The New York Times* have a tendency to generalize and fall back on stereotypes to analyze events in a particular country. This is particularly astounding when we realize the size and diverse nature of the Latin America economy. I believe that this "one size fits all" approach sometimes clouds the ability of many potential investors, and even market analysts, to discern the substantial business opportunities that lie there.