

# Latin American Legal Market

**Whitepaper**

*Adam Smith, Esq. 2017*



*Adam Smith, Esq.*  
...an inquiry into the economics of law firms

# From the author

Dear Readers,

The Latin American legal market is in flux. International law firms have expanded their footprint in the region. Local firms have formed alliances with foreign peers and mergers have become more frequent. As the Latin American economies grow and mature, global companies have entered key regional markets. Local clients have become more sophisticated and demanding. Law firms across the region have the challenge of responding and adapting to these new market realities.

Mindful of the transformation of this key legal market, Adam Smith, Esq. sponsored a study to better understand what is going on in the region. Here are the results.

**Adam Smith, Esq.** provides high-end consulting services to law firms and legal vendors<sup>1</sup>. Based in New York, it works with firms of all sizes in all parts of the globe to help them better prepare for tomorrow. Adam Smith, Esq. has an office in Bogotá, focusing on Latin America's Spanish-speaking countries and maintains an alliance in Brazil with Andover Consultores. Every engagement is: bespoke; driven by data; and informed by the decades of hands-on

insight of our principals – the only people you’ll work with. Adam Smith, Esq. focuses on: strategic clarity; aligning compensation with long-run profitability; selecting targeted practices and industries—and helping you use the power of “No.” We would love to hear your thoughts about the contents of this whitepaper. Email us or give us a call!

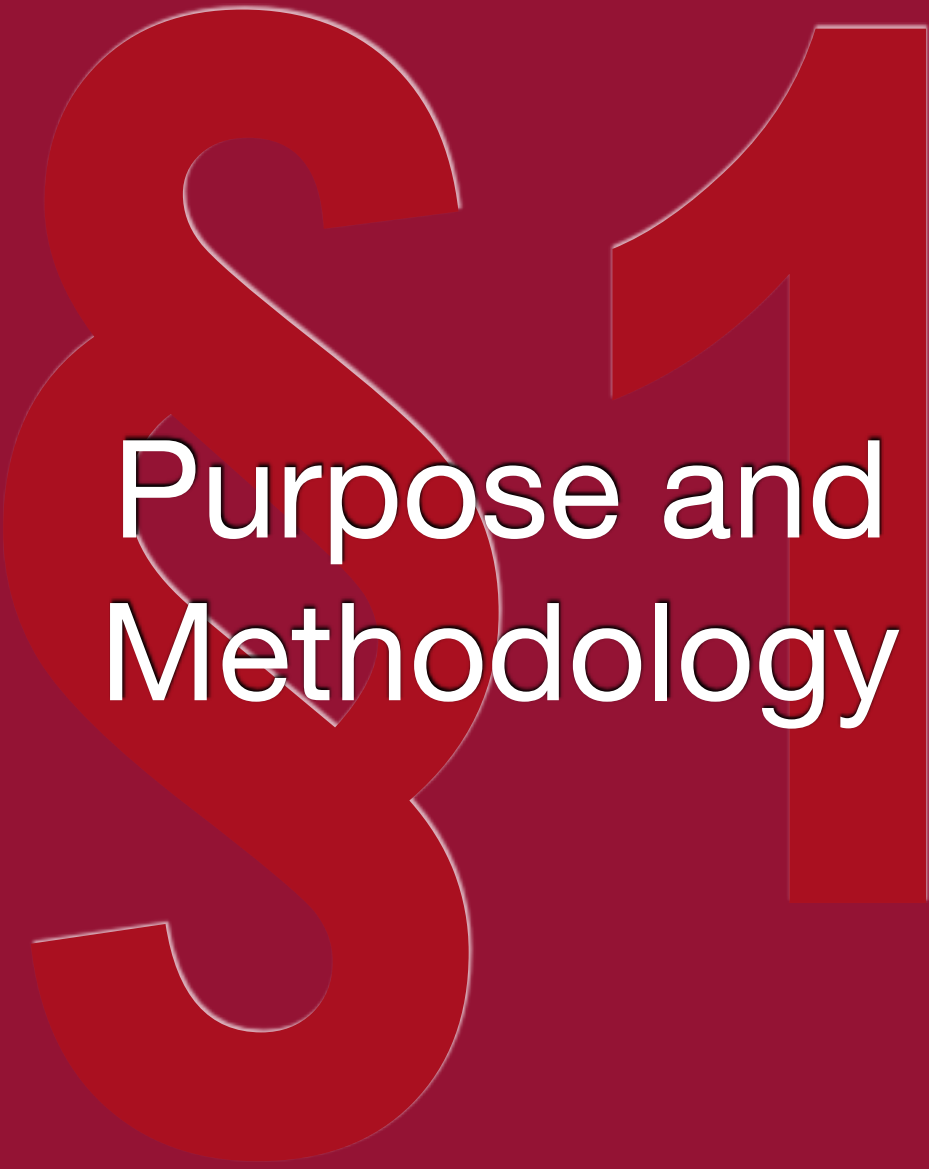
By Antonio Leal Holguín

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# Purpose and Methodology

The purpose of this research is to provide insights into the Latin American legal market, which may inspire idea-driven change in the business of law firms in the region<sup>2</sup>. It is divided in three sections: first, an overview of how large Latin American companies hire outside counsel. Then, a look at what law firm leaders in the region are thinking. And last, an overview of the Colombian legal market as a vibrant, “open” (as in everyone competes freely) legal market.

We conducted 20 in-depth interviews. For the first section, we interviewed in-house counsel at large Latin American companies. In most cases, we interviewed the general counsel (“GC”) and sometimes we interviewed other members of the legal department. In all instances, respondents had substantial experience in selecting and working with outside counsel. Target companies included “Multilatinas,” companies whose operations are based in Latin America and are now global players, and American companies operating in the region. Among the respondent companies are banks, airlines, energy companies, tech companies, and large industrial conglomerates. For the second section, we interviewed law firm leaders, including several managing partners (“MP”,) from sophisticated law firms in Latin America. Some of these law firms have been at the center of recent developments in the region. For the Colombian market section, we interviewed law firm leaders, GCs of large companies, heads of legal divisions of the Big Four and New Law entrepreneurs. Respondents are located in

the main economies of the region: Mexico, Colombia, Argentina, Peru and Chile.

We conducted all interviews in Spanish and collected data between September and December of 2016. All respondent quotes are free translations from Spanish by the author. The sample of respondents does not seek to be representative and, therefore, the report is not statistical in nature. Rather, the study provides insights on the subjective experience of market leaders in Latin America and ideas for further discussion and research.

This document is organized as follows: first, the research's conclusions for each section described above (II.) Our indicated actions based on the conclusions (III.) And a discussion of our findings for each section (IV.)

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<sup>2</sup> The study included only Spanish-speaking Latin American countries and, thus, excluded Brazil.



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# Research Conclusions

## **a. Purchasing Behavior of Latin American Corporate Counsel**

### **Where Are the People that I Know? Finding Law Firms**

- Companies tend to work with law firms with whom they've worked in the past.
- To find outside counsel, corporate counsel rely on personal knowledge of the market for law firms, on personal relationships and word of mouth recommendations.
- Trade guides, such as Chambers & Partners', are only of secondary importance to corporate counsel. They use them to confirm recommendations, but not as the starting point for their search for outside counsel.
- Generally, companies don't have formal panels or preferred providers' lists.

*See more on page 30*

### **Let's Keep It Casual: Selection Policies and Processes**

- The selection of outside counsel remains informal and subjective. Formal selection policies and processes are the exception.
- Companies usually exclude the purchase of legal services from the application of their procurement manuals.
- Respondents see the purchase of legal services as a long-term decision.
- Companies that have formal selection policies and processes mainly use them for routine matters, but have begun using them

for strategic matters, too. The main driver behind the adoption of the competitive processes is cost reduction.

*See more on page 32*

### **C'est Moi. Decision-makers**

- GCs usually make the decision to hire outside counsel. Only occasionally do they consult the decision with VPs to whom they report or with their CEOs.
- Sporadically, a committee makes the decision to hire outside counsel.

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### **Selection Criteria**

- Subject-matter expertise and experience is the most important criteria for clients when selecting outside counsel, followed by law firm reputation.
  - Clients value not only prior relevant experience, but also prior relevant experience with them.
  - Companies not only look at the reputation of the firm, but also of individual lawyers that will take care of their matters.
- Staffing, responsiveness and trust are also significant selection criteria.
  - Teams matter. Clients want to know who will take care of their matters, that they have the right credentials, and that the members of the team work well together.

- Trust is built on two pillars: subject-matter expertise and responsiveness. Clients want their lawyers both to be adept in handling their matters and to have the right service attitude. Clients are constantly measuring these two elements.

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### **Two Vaporous Words: “Quality” and “Value”**

- For clients, quality means work product that is: (1) complete; (2) practical; (3) executive (brief, understandable); and (4) timely.
- The notion of complete work product has a lot to do with clients’ idea of value. Clients must perceive that lawyers’ work reflects their subject-matter expertise and experience. This shows them that what they’re paying for is worth it.

*See more on page 41*

### **Clients Only Care about Price. Or Do They?**

- Clients are not exclusively focused on price, but price is always important. How important is a matter of degree:
  - Price is of little importance when clients hire lawyers for strategic matters.
  - Price is very important when there are several providers, with similar credentials and reputation, who can provide the service.
- Because they are facing internal budget pressures, corporate counsel expect price to be negotiable. They are not price takers.

*See more on page 45*

## **Law Firm Tiers**

- Corporate counsel see law firms in tiers. They match the matter for which they need legal services to the appropriate law firm tier. They go to top tier law firms for strategic matters and to lower tiers for routine, non-strategic matters.

*See more on page 48*

## **Cross-selling: No Italian at a Sushi Place**

- Clients don't want to eat Italian at a sushi place. They seek subject-matter experts and either look for firms that have excellent lawyers in the practice areas that they need or hire boutiques.

*See more on page 50*

## **Convergence?**

- Large Latin American companies, in contrast to their American peers, tend to work with a small number of law firms. Because they already work with a small number of providers, they are not interested in convergence.

*See more on page 51*

## **Assessing Consolidation and Internationalization**

- We heard four types of answers regarding mergers and strategic alliances:
  - Clients see no value in them (they seek the best, not the law firm's ally, and they don't see standardized quality across network members or merged law firms);

- They see only limited value (i.e. only for American or European multinationals (not them,) or only for very specific multi-jurisdiction transactions);
  - They see them as a “nice-to-have” (their operations are not local anymore, so they’re good for their operations abroad);
  - They see them as a must for law firms (if they want to be their law firm, they must have a network.)
- A good relationship with a local firm does not mean that clients will go to its allies abroad.

*See more on page 51*

### **Don’t Get Comfy and, again, Please Pick Up the Phone. Firing Law Firms.**

- Aside from a serious misstep, bad client service and more economical deals are the two main reasons why companies change law firms.
- Institutional knowledge of a client, built over time, is a protective barrier for law firms. It’s expensive to fire them and train a new law firm. But the barrier offers only limited protection. Clients get deals that compensate the costs of firing their old firm.
- Aging founding partners at small boutiques are another reason why clients change law firms.
- Although clients’ approaches vary, they seem to prefer not to tell law firms that they’re being fired. They will just stop sending them work.

*See more on page 54*

## **b. What Law Firm Leaders are Thinking**

### **Recent Developments and Current Trends**

Most law firm leaders in Latin America agree that the dominant trends in the region are consolidation (both nationally and regionally) and internationalization.

*See more on page 58*

### **Arrival of Global Players and of Foreign Law Firms: No Welcome Party, but no Protest Outside their Offices**

- Law firm leaders in the region see the arrival of global players and foreign law firms as something natural.
- They predict an increase in competition in the market, but see small and mid-size firms as the main victims. Global players and foreign firms will not, at least initially, challenge the status of national champions.

*See more on page 58*

### **Everyone Else is Doing it. Should I?**

- Law firm leaders don't think that their firms need to jump on the internationalization/ strategic alliance wagon to survive in their markets.
  - The volume of local clients doing business abroad is not significant enough to warrant opening offices in other Latin American capitals or merging with other firms in the region.

- Networks and referrals, most of which are non-exclusive and which are based primarily on personal relationships, seem to work well for Latin American law firms. Law firm leaders claim they just need to pick up the phone to get the best lawyers in any country in the region.
- Leaders see different drivers behind the internationalization strategies of local firms and of international firms entering their markets:
  - For local firms, the main driver is the need or desire to grow (and, in some cases, survive.)
  - For global players and foreign firms, the main driver is following their clients.

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### **The Big Four**

- While some law firm leaders recognize that competition from the Big Four firms is heating up the legal market, there still is a pervasive view of them as accounting firms that do commoditized legal work only. Thus, most law firm leaders don't see the Big Four as players in the market for sophisticated legal work.
- Most leaders don't perceive competition from the Big Four as a threat to sophisticated law firms. They see it as a problem for second-tier or mid-size firms.

*See more on page 64*



### **Innovation (or Lack Thereof...)**

- There seems to be little innovation in how law firms in Latin America work or interact with clients.
- Some leaders believe that innovation is useless for the type of sophisticated legal work that they do.

*See more on page 66*

### **Why Do Clients Pick You?**

- Most law firm leaders (rightly, as we saw above) believe that what clients care about most when selecting outside counsel is lawyer credentials and law firm reputation.
- Most law firm leaders believe (rightly, again) that the relevance of price for clients depends on the type of matter that the client is hiring outside counsel for.

*See more on page 67*

## **c. The Colombian Legal Market**

### **Evolution of the Legal Market**

- To their credit, law firms in Colombia have used distinctive strategies to approach the internationalization trend and face new market realities.
- Remarkably, the transformation of the legal market has begun with some of the top law firms in the country.
- One of the main challenges for international firms entering the market is adapting to local fees.
- The transformation of the legal market has intensified the battle for talent.

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### **We're only Getting Started**

- Market leaders agree that this is only the beginning of a tectonic shift in the Colombian legal market. We will see much activity in the next five years.
- Most market leaders believe that the needs of both law firms and clients drive mergers and strategic alliances. On the one hand, law firms seek more business or fear falling behind the market. On the other, Colombia has become a more attractive destination for foreign capital (so there's more foreign business) and Colombian companies have begun to look abroad to expand their businesses.
- It's easy to overreact. Mergers and alliances are not for everyone. They may be bad for big law firms, because of the costs they carry

in terms of conflicts of interest and loss of referrals, but they may be great for small or medium-size law firms.

*See more on page 72*

### **The Big Threat**

- In contrast to their Latin American colleagues, law firm leaders in Colombia see competition from Big Four firms as a big threat.
- Big Four firms don't want to be perceived as law firms but as business advisors who provide integral services. In contrast to what several Latin American law firm leaders told us, they are not exclusively focused on commodity, routine legal work. Part of their business is providing specialized counseling in complex business transactions, from their conception to their implementation.
- Big Four leaders see a tripartite division of the market: a segment where law firms will continue to be better positioned, a segment where the Big Four will continue to be better positioned and a segment where they will compete against each other.
- Integration across business service lines and across jurisdictions, coupled with their management of shared institutional knowledge, may be key competitive advantages of Big Four firms.
- Other advantages include greater ease in working on a team with other providers of their client, their constant measurement of the quality of their services, and their ability to speak "client language." When setting expectations about quality and measuring performance, Big Four firms talk to clients (the ones who hire and pay for the service.).

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## **The Innovation Gap**

- There seems to be a gap between awareness of the need to innovate in how legal services are delivered and the implementation of innovative solutions.
- Reasons for the gap may include: (1) that clients aren't demanding innovation yet; (2) that providers see no need to change because everything is working fine as it is; (3) that providers don't know how to innovate; and (4) that local fees are too low to invest in innovation.
- There is, however, some innovation in the Colombian legal market. Alternative Services Providers have begun to appear, law firms are advanced in working under Alternative Fee Arrangements ("AFAs"), and others use software solutions to deliver greater value to clients.

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## **Regulation of the Legal Market**

- Law firm leaders believe that there should be better rules regulating the exercise of the legal profession in the country, including topics such as law firm practice, conflicts of interest, and foreign lawyer practice.
- None of the law firm leaders we spoke with think that the market should be closed, in the sense that restrictions to the practice of law by Big Four firms or foreign law firms should be imposed. Some leaders do favor the creation of a bar association, but others fiercely oppose it.

*See more on page 80*

### **Selection Criteria**

- Some Colombian law firm leaders believe that price is clients' determinant selection criteria and that they have gotten used to huge discounts.
- Others think that for value-added work what matters most to clients is “chemistry,” while for commodity-type work what they most care about is price.

*See more on page 81*

### **Warning Sign for Big Colombian Law Firms**

- Corporate counsel in Colombia complained about excessive delegation by big law firm partners to junior associates and lack of responsiveness by big law firm lawyers.

*See more on page 82*



# Indicated Actions

Here are our recommendations for legal services providers based on the research's conclusions:

### **Know Thyself and Specialize**

- No need to go to Delphi. Adam Smith, Esq. has been saying it for quite some time and we'll repeat it here: firms should know who they are, what their business is and what their place in the market is. Like never before, the market requires Latin American firms to be clear about their strategic vision for the future. As in North America (and, presumably, everywhere,) the time for the one-size-fits-all model of law firm business is over. Bruce McEwen <sup>3</sup>, President of Adam Smith, Esq., has said it over and over: firms that have a clear, compelling and distinctive strategy and stick to it will be more successful than those who don't.
- Specialization is key to get hired and to build trust. So, focus! Clients seek depth rather than breadth. It's better to have a few solid practice areas than lots of mediocre ones (i.e. being the go-to-firm for nothing.) Select targeted practices and industries in which you want to compete. As Adam Smith, Esq. has called for, use the power of "No."
- As a consequence of the prior point and as Bruce concluded in "A New Taxonomy: The seven law firm business models," firms that are in the "hollow-middle" (generic, not a special destination for

anything in particular) are “endangered species.” They better have a plan or face extinction.

- If you want to cross-sell your firm’s services, make sure you have the best lawyers in each specialty field. Clients don’t care that you have a tax team if it’s a mediocre one.
- Lawyers, too, should be clear about who they are and what their place in the market is. The times of the Latin American factotum lawyer seem to be coming to an end. Pick the areas in which you want to specialize and commit to them.

### **Don’t Just Jump on the Train. It May Take You Nowhere**

- With all the noise about international firms arriving in key markets and local firms seeking mergers and strategic alliances, it’s easy to get carried away, overreact and make foolish mistakes. Take three deep breaths. Don’t, Dear Law Firm Leaders, just jump on the train because you “feel” that everyone else is doing it. First, they’re not. There are plenty of solid, independent firms out there who know what they’re doing. And second, what’s important is that you know who you are and that

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<sup>3</sup> Bruce MacEwen is a lawyer and consultant to law firms on strategic and economic issues and is recognized as a leader in the industry. He has published over 1,500 articles on the Adam Smith, Esq. website on topics such as globalization, leadership, finance, mergers and acquisitions, and partnership structures (<http://adamsmithesq.com/articles/>.) Bruce is also the author of *Growth Is Dead: Now What?* (2013) and *A New Taxonomy: The seven law firm business models* (2014.) His third book, *Tomorrowland: Scenarios for law firms beyond the horizon*, is forthcoming in 2017 and will also be published in Spanish.



you have a clear, compelling and distinctive strategic vision for the future.

If this vision includes an internationalization strategy, pursue it. But don't confuse mergers and alliances with having a strategy.

### **Know Your Shoe Size**

- It's no good to have big shoes if you trip and fall. So, don't confuse growth per se with a strategy. It may be nice to grow. It may be cool to say you're the largest law firm. But being Colombia's, Mexico's or Latin America's largest law firm should be no one's strategy. Those who seek growth at all costs, sacrificing profitability, will soon find themselves in a tough spot.

### **Pick Up the Phone**

- We cannot stress the importance of responsiveness enough. Responsiveness is key to building trust and to remain hired. Maybe you're an expert in your field. Maybe that gets you hired the first time. But if you're an expert who doesn't pick up the phone, don't expect to be hired again. Clients see trust and responsiveness inseparably because a lawyer's timely and complete response sends a message of competence and commitment to the client.
- Instead of relying on your lofty views of yourself, you should regularly ask clients what they think about your service and whether you are meeting their expectations.

## **Price and the Magic Formula for Delivering Quality Services and Adding Value**

- No, clients don't only care about price. Clients care about value-for-money balance. If you think that clients only care about price, this may be a sign that you haven't thought hard enough about your firm's business and its place in the market or that you're not being completely honest about it. Are you, Dear Friend, in the hollow-middle? Reread "Know Thyself and Specialize" above.
- Clients do expect price to be negotiable, so make sure you have good reasons (i.e. data analysis, not your hunch of what the price should be) to back up your quote.
- Want to deliver quality work and add value? Here's the magic formula: deliver complete and practical work product and deliver it on time. Say what you need to say briefly and in a simple manner. Complete work product means you put your subject-matter expertise and experience to good use.

## **Teaming and Collaboration**

- You should pay attention to your teams because clients care about them. Who are the lawyers who compose them and how well do they work together? Specialization is key, but your experts also need to know how to work together to create solutions for clients. Thus, your law firm's compensation strategy should reward collaboration.

### **Take Care of Your Current Clients**

- You should nurture and take care of your current clients. You enjoy a big advantage over competitors who are trying to woo them. It's far easier to keep current clients than to find new ones and, as Adam Smith, Esq.'s MacEwen reminded us in "Growth is Dead: Now What?" current clients are more profitable than new ones. Commit to providing excellent client service to your clients (see the prior two sections above.)

### **Challenges for Alliances and Mergers: Show Standard Quality and Expertise**

- If you're a firm who has sought mergers or alliances, to be successful, you should focus on convincing clients of two things: 1) that you truly operate as one firm and offer standardized quality; and 2) that you have the best practices in the areas that the client is looking for (once again, clients look for subject-matter expertise above everything else.)
- If you think that your prestige is transferable to your allies or partners in other countries, you're wrong. Your partners and allies must have solid credentials of their own.

### **International Firms: Build Great Teams**

- If you're an international firm opening your posts in the region and looking to expand your local clientele, the challenge is not so much showing that you offer standardized quality, but that you have the best practitioners. You should focus, then, on building great teams.

## **Boutiques Should Focus on Succession Planning**

- If you're a boutique who relies on the expertise and prestige of your founding partners, you should be thinking hard about succession planning. You should also consider joining global or semi-global networks that put you on the map for international clients.

## **A Word for Sophisticated Colombian Law Firms**

- If you're a sophisticated Colombian law firm, you should:
  - Pay attention to everything we've said so far in this section. (e.g. You must, **MUST**, have a clear, compelling, and **DISTINCTIVE** strategy for the future.)
  - Focus on improving responsiveness. Failure to do so could result in a systematic deterioration of your business (loss of current clients and damage to your reputation, resulting in loss of potential clients.)
  - Tell your partners they should make the "Magic Formula for Delivering Quality Services and Adding Value" their mantra. Focus on making sure that your lawyers deliver complete work product; that is, work in which they put their subject-matter expertise and experience to good use. The client does not hire you and does not want to pay for your young associates' work.
  - Not waste time in adopting best project and knowledge management practices. Enthusiasm must become commitment here. Enough with the results-free committees and useless talk. The future will punish you if you dismiss "innovation" in these areas as irrelevant.

# Discussion of Findings

Below you will find a detailed discussion of our findings for each of the sections of the research. First up is our discussion of how corporate counsel in Latin America select outside counsel.

## **a. Purchasing Behavior of Latin American Corporate Counsel**

### **Where Are the People That I Know? Finding Law Firms**

First, how do companies find their law firms? Well, you're lucky if you've worked with them in the past. Companies work with law firms with whom they've had a long-standing relationship. Many of these relationships pre-date current legal department staff. A long-standing relationship means the law firm has institutional knowledge of the company and the client values that. "It has to do with legacy," explained a GC, "for us, the knowledge that [law firms] have had of the company for a long time is a plus."

Choosing the law firm with whom they've worked in the past may also have a lot do with habit. As A.G. Lafley and Roger L. Martin recently wrote in the Harvard Business Review, "customers don't want to spend the mental energy needed to choose between products."

If their research is applicable to the purchase of legal services, maybe choosing the law firm with whom they've worked in the past is just the easy choice for clients.

Additionally, respondents claim to know whom to hire based on their knowledge of and experience in the market for legal services. They have clear ideas about who the market leaders are and whom to hire for specific matters. When they don't know, they rely primarily on personal relationships and word of mouth. As a GC put it, "[I ask]: where are the people that I know, with whom I've worked in the past?" They also seek recommendations from business executives and board members in their companies, from colleagues in their industry and from other outside counsel.

Trade guides such as Chambers & Partners' and The Legal 500's are only of secondary importance for respondents. Companies only rarely use them as the starting point for their search for outside counsel. "I don't go to the [Legal] 500 guide or to Chambers' to see which are the top firms," explained a GC. Rather, companies use them to confirm recommendations:

"Recommendations [from other outside counsel] are the first step to find [potential providers] and then we use Chambers to confirm the recommendation. But not the other way around. We don't look at Chambers and see who's tier one and talk to them without knowing them." They also use them to validate their own choices. It's reassuring for them if the law firm they've chosen appears as a tier one on Chambers.

Most companies we spoke with don't have formal panels or preferred providers' lists. Corporate counsel claim that the top law firm market in their countries is relatively small, so they have a

good sense of it and know whom to choose. Other companies only put lists together for a specific matter, but have no ex ante list of preferred providers. That companies tend to work with a small number of providers (see “Convergence?” below) probably also explains why they don’t need to have panels or formal lists.

Exceptionally, companies do have these lists. One GC said that putting it together was the first thing that he did when he arrived at the company. He evaluated each law firm that the company worked with when he got there and made the list of the firms with which he wanted to work to achieve his strategic plan for the legal department. Some companies even have preferred providers’ lists divided by specialty and geography.

### **Let’s Keep It Casual: Selection Policies and Processes**

When it comes to policies and processes for selecting law firms, companies like to keep it casual. As one GC aptly put it, “here, the policy is that the legal department makes the decisions.” As you would expect for companies of their size, most of them have procurement manuals. But in most cases, these manuals specifically exclude the purchase of legal services from their application.

In contrast to purchasing computers or cars for their executives, respondents see the purchase of legal services as a long-term decision. “Any service is complex because it entails long-term relationships,” explained a GC, “it’s not like going to buy a car,



where you quickly forget about the seller.” Trust, confidentiality and responsibility are other reasons GCs point to for keeping legal services out of the reach of procurement manuals.

Some companies have only basic policies and processes regarding outside counsel selection. For example, they have policies regarding which type of matters they’ll outsource (e.g. tax matters, high-stakes litigation, complex transactions, bond offerings) and what type of law firms they’ll work with. Others follow board directives requiring them, for example, to ask for three proposals and exclude large law firms (seek the advice of boutique, specialized law firms instead.)

Some companies follow a semi-formal selection process. They’ll send emails to three law firms, meet with them individually, ask for their proposals and then compare them. Some companies will follow these processes only sporadically, mostly for infrequent matters. For frequent ones (as we saw above,) they already know whom to hire.

Only a few companies have formal selection policies and processes. Procurement departments have helped legal departments design these processes to make them, one GC explained, more professional, more regulated and more structured. As a rule, these companies use these processes for massive, routine matters. However, they’ve begun using them for more strategic transactions.

To put it in Richard Susskind’s terminology, these companies are “unbundling” their legal matters and sourcing them to different providers<sup>4</sup>. For example, they will conduct selection processes for different types of litigation, based on their level of complexity.

Cost reductions seem to be the main driver behind these processes: “Our objective,” a GC told us, “is always to achieve . . . and this is the drama for outside counsel, savings and significant savings.” He added:

*Not that I choose the lawyer that I know, that I think is nicest, with whom I have [a closer] relationship . . . Today, cost control is very important. And every day more there’s a trend towards professionalization and structuring with regards to the control of a company’s general expenses, including its ancillary services . . . So, I must begin to have a more ordered and global vision of the different legal services . . . and I must have control of my performance with regards to expenses and that’s why the selection process is important.*

For GCs that use formal processes to select their law firms doing so does not mean that they’ll sacrifice quality. One of them pointed

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<sup>4</sup> Richard Susskind is a professor, author and advisor to professional firms and governments. His work focuses on the future of professional services and the way in which IT is changing the legal market. His books include *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University press, 2008), where he discusses “unbundling.”

out that the successful implementation of a series of bids for the company's legal services "...shows that without sacrificing legal quality or relationships (because I obviously must have a very good relationship with my outside counsel in these matters) I was capable of choosing very good lawyers at a price with significant savings with respect to what I was spending before."

*"I was capable of choosing very good lawyers at a price with significant savings with respect to what I was spending before."*

-The General Counsel of a large Latin American company-

Some respondents pointed out that law firms don't like so-called "beauty contests" (since cost savings is the main driver behind them, it's no wonder they don't.)

"There are law firms that consider this to be ... not very elegant, not very dignified," one GC told us. But even those who find it demeaning to participate in competitive tendering processes end up doing so.

### ***C'est Moi.* Decision Makers.**

The power to select outside law firms rests with GCs. Only occasionally, for high-stakes matters, they consult the decision with VPs to whom they report or with their CEOs. Even though they make the decision, GCs must be ready to justify it to management (VPs, CEO, the board, or headquarters.) Companies

that have formal selection policies and processes usually make the hiring decision collegiately, in committees in which the internal client participates alongside the GC.

### **Selection Criteria**

We asked respondents to identify the main criteria they use in selecting outside counsel. Subject-matter expertise and experience is the most important factor, followed by law firm reputation. Respondents also brought up staffing, responsiveness, and trust as key selection criteria. Other factors they consider include absence of conflicts of interest, quality (more on this later,) efficiency, use of prior experience in helping them reduce costs, and, for hiring firms in the U.S., Spanish language proficiency. Corporate counsel don't usually formally identify and write these criteria somewhere. They apply them informally.

Let's take a closer look at some of these criteria:

#### **1) Proven Track-Record**

Knowledge of and experience in the subject matter are of paramount importance for clients. "Obviously, [we look for] experience in the practice area for which we're hiring [services.] . . . For us, it's a plus if they can tell us what transactions they've closed . . .," explained one GC. "Credentials," another GC told us, "means real and effective experience in the type of transaction in which we're involved." Experience, as one respondent explained, means "proven mastery of the subject matter." To assess this, some companies go beyond looking at recent cases or transactions and

consider matters that the firm worked on several years ago and that have had no issues in their implementation.

In addition to prior experience, companies value prior experience with them. Again, you're lucky if you've worked with them in the past because that carries a lot of weight in getting the call and in getting hired. "We already have many relationships with many lawyers..." a respondent explained, "that has weight. I try, as a policy, to reward good work with more work."

## **2) Cola vs. Coca-Cola**

Companies also look for firms with an excellent reputation. A big name, corporate counsel believe, is generally not empty. It is usually backed-up by a good track record and by successes that the market recognizes. "Name and prestige are relevant," a GC told us, "but it's a prestige built based on experience, successes, accomplishments, quality . . . ."

When we dug deeper into why corporate counsel prefer going to firms with a big name, we found some interesting nuances. For many in-house lawyers, going to a well-known firm is a self-protecting measure: "It's my insurance as the company's lawyer," a respondent pointed out, "I can say: 'hey, I didn't go for my friend, I didn't go for the one I thought [was best,] but I went for the market brand. I went for this one because not only I consider that they're good, but the market does too.'" A GC assimilated the situation to choosing a locally produced cola over a Coke. If you

choose the local cola and it tastes bad, it's on you for not having gone with Coke.

Others don't go to recognized firms to protect themselves: "No. We don't get any points for that here. We must always be capable of defending why we chose a certain firm or why we changed it," explained a GC. Rather, they go to well-known firms because they believe the risk is lower. "I think," one respondent told us, "one sometimes looks for that name, that brand, that prestige, because one knows or believes that they will not defraud you."

Big names give clients more confidence. And, even if things go wrong (as they inevitably go, sometimes) they trust that these big brands will help them get out of the mess.

*Teams matter. Corporate counsel  
want to know who's on their team and  
how well they work together.*

Another aspect of hiring a big name is that other players in a transaction (e.g. buyers, sellers, sponsors, lenders, underwriters, etc.) and opposing parties will recognize them. A GC put it this way: "[I don't want to] go to a bank, let's say, to Morgan Stanley and have them say: 'Who are these people?'"

For others, particularly those with headquarters outside of the country where they are located, going to a big name is necessary to

reassure those higher up in the food chain. “This is where boutique firms are at a disadvantage,” a GC explained, “maybe they are the best, but when a multinational is evaluating [firms], a firm that belongs to a global network or a top Colombian firm has more prestige [than the boutique.]”

For corporate counsel, hiring a well-known law firm is not enough. They also seek good lawyers. One GC pointed out that “great law firms usually go hand in hand with great lawyers . . . But I must always be careful that [in fact] the big name of the law firm be accompanied by the great name of the lawyers that will take care of me.”

### **1) Staffing**

Great law firms go hand in hand with great lawyers and great lawyers go hand in hand with great teams. Or so clients expect. “Beyond the money that we invest,” a GC told us, “there’s the team.” Corporate counsel want to know who will take care of their matters and that they have the right credentials. Did she go to such and such school? Does she have an LL.M. from an American school? Team size and that team members work well together also matters. As a GC explained: “Without question, we put a lot on weight on who will be the partner that will take care of our matter. And if he will have a senior associate who will be involved in the transaction. We don’t like to work with large teams . . .” Corporate counsel work closely with their lawyers, so many hire outside counsel as they would in-house counsel.

## 2) Pick Up the Phone. Trust and Responsiveness

Trust is built on the two pillars of subject-matter expertise and responsiveness. Law firms should pay attention: clients are permanently measuring (albeit informally, in most cases) these two elements. Don't take our word for it: "You generate and build [trust] during the relationship," a GC explained, "you measure how the [law firms] provide their counseling . . . You see their writings, their conversations, the conference calls that we have almost daily for different matters . . ."

As we saw above, clients highly value subject-matter expertise and experience. Their lawyers' knowledge of the subject matter generates trust. It gives them confidence that the lawyers are not only competent, but excellent at handling their matters. Corporate counsel trust a lawyer who knows his stuff.

But that is not enough, Dear Reader. Responsiveness is the second pillar of trust. Clients see trust and responsiveness inseparably because a lawyer's timely and complete response sends a message of competence and commitment to the client. When a client receives a quick and complete response, it senses that the lawyer is part of its team. (Conversely, as we'll see below, lack of responsiveness is the number one factor that damages an attorney-client relationship.) This is why corporate counsel want firms to work at the same pace that they do. Their companies move quickly and their legal departments get permanent requests. "This is a complex industry . . . It gives us no time," one GC explained, "we



can't just wait to see if our advisors will respond." GCs want their outside counsel to have the same commitment that they have with their internal clients: to respond quickly. "I get requests every day and I try to resolve them in the shortest time possible. I want providers to have the same dynamic with us," one GC said. In sum, clients trust a lawyer who picks up the phone.

### **Two Vaporous Words: "Quality" and "Value"**

Peter Drucker pointed out and Adam Smith, Esq.'s MacEwen reminded us in "Growth is Dead: Now What?" that "[q]uality" in a product or service is not what the supplier puts in. It is what the customer gets out and is willing to pay for." So, what is it that large Latin American companies seek to get out of their lawyers and are willing to pay for?

Complete work product: your work product must fully respond to client requests and make evident your subject-matter expertise and experience. Corporate counsel don't want to sense that they could've done the work, but see that they are getting something out of the lawyer they're paying for. They want the lawyer to "add value," which means, for example, that she uses her subject-matter expertise and experience to come up with a solution the client hadn't thought of or to warn about risks the client hadn't realized.

Practical work product: your work product must be concise and easily understood by corporate counsel and by business executives. Moreover, your work product must be actionable; it must offer

practical solutions to the client's problem. Dear Lawyers, as much as you may love theoretical dissertations and extensive discussions of Supreme Court decisions, they're not useful for clients.

Timely work product: clients expect quick answers and answers that match their companies' timeframes.

Look at what this GC had to say, which mirrored what we heard from others:

*[Quality is] that [the law firms] answer my question, that they respond to my needs, that [their answer] be completely clear so that executives at every level can understand it, and that it be practical . . . Maybe I [as a GC] must read a 40-page legal opinion, but I think that's not what a company needs. A company needs a solution to its problems and a response to its needs. This is why [the law firm's answer] must be quite executive...*

*In talking about transactional matters, what we need is a lot of speed and a lot of depth in the matters. That there be attorneys who are capable of raising the flags when they see a risk or when you're missing something in negotiating an acquisition or a financing agreement. So, that's the support that we need and that is what quality is made of: that it be fast, that it be quick, that it be complete, and that it respond to our needs and to the expectations of the company.*

Another GC put it succinctly: *“I think [there is quality] when the work responds [in a] timely and satisfactory [way] to my expectations . . . that they give value.”*

So, let’s move on to the related topic of value, the buzz word of the decade. For some respondents, the measure of value (or lack thereof) is whether they could have done the work themselves. “I sometimes say: “Come on, man! I could’ve done this myself. This adds no value,” explained a GC.

This shows that value has a lot to do with clients’ notion of complete work product, as described above. Lawyers’ work product must not only satisfactorily respond to client’s requests (answer their question,) but also show that lawyers have put their subject-matter expertise and experience to good use. This is after all, the main reason why clients hire lawyers, remember?

So, for example, corporate counsel expect their M&A expert to point out that the earnout, as drafted by the seller, will probably create a dispute and likely result in the client receiving less money for the company. Or pointing out that representations 3, 5 and 7 should not be tied to the Material Adverse Effect (MAE) standard, as interpreted by local courts. And, going back to quality, corporate counsel don’t want a 40-page memo explaining the pros and cons of the earnout metrics proposed by the seller or containing a dissertation on the courts’ interpretation of the MAE standard. A quick email or phone call may do it.

In sum, timely, useful, real-world, business savvy advice given in a 10-minute phone call may have greater quality and can provide more "value" than a 40-page memo discussing points of law. The lawyer may think that spending 22.5 hours on the memo, explaining every single alternative under the applicable law, is the best way to go (she's focused on what she puts in.) But the client sees no value in this "academic" exercise. He's focused on what he gets out. He needs practical (useful, business savvy,) executive (short, simple,) and skillful advice.

*Timely, useful, real-world, business savvy advice given in a 10-minute phone call may have greater quality and can provide more "value" than a 40-page memo discussing points of law.*

Another way in which clients perceive value is that the law firm they hire help them reduce costs or uses its prior experience with them as a client to increase efficiency.

According to one GC, "the question is: how is outside counsel capable of generating value for the company mainly by improving processes and savings costs?" As an example, this GC pointed to how one of its law firms offered to create templates of its contracts so that the company didn't have to spend resources (i.e. lawyer billable hours, time of its in-house lawyers and executives) negotiating a new contract every time.

## **Clients Only Care About Price. Or Do They?**

Many law firm leaders (in Latin America and elsewhere) claim that clients nowadays only care about price. Quality has become a given, they say, and corporate counsel make hiring decisions based exclusively on price.

So, we asked clients. Is quality a given? Is price the determinant criteria when hiring outside counsel?

Here's our best shot at a straight-forward answer, based on what we heard: price is very important. How important is a matter of degree, depending on the following factors: (a) the nature of the matter (i.e. whether strategic or not); and (b) that old friend of ours, supply and demand (i.e. are there many/several providers with similar credentials and reputation who could provide the service?) So, based on these factors, we have:

- Price is of little importance when clients are hiring law firms to take care of strategic matters:
  - “When you need advice for a very important matter, for a matter that is strategic for the organization, you know that that is at all cost.”
  - “[Price is] very important. Except for very large transactions . . . in which you say: ‘I’d rather pay a little more,’ price generally plays a very important role.”
  - “The answer is this: price is very important save for cases that are exceptional in which, even though there is a difference in price, you go for the best.”

- Price is very important when clients are not hiring law firms for strategic matters and when there are several providers capable of providing the service. See for yourself:
  - “For us, it’s very difficult to go with a law firm of similar qualities [than the rest] that is notoriously more expensive [than them].”
  - “When there are . . . matters for which there is much supply . . . or when several [law firms] have the elements that I’ve mentioned [subject matter experience and credentials] you say, well, I will not pay much.”

It’s probably safe to assume that strategic matters are less frequent than non-strategic ones, which means that price is almost always very important. So, Dear Law Firm Leader, if you’re going against your peers (who have similar credentials and track record) for a generic, everyday transaction, you bet that the determining factor will be price.

Some legal departments have adopted standardized fees. If law firms want to work with them, they must accommodate to those fees or, at least, use them as the basis for price negotiations. These legal departments do this precisely to take price out of the decision equation and make the hiring decision based on what they believe is most important: subject-matter expertise and experience.

“When you’re talking about legal services,” one GC told us, “the matter goes much further [than price] and it cannot be just a matter of money, but a matter of what is more convenient for us.”

Corporate counsel expect price to be negotiable. As elsewhere in the world, legal departments in Latin America are facing greater scrutiny of their budgets and increased demands (what Richard Susskind has called the more-for-less challenge.) Thus, they've become more sensitive to price and are placing greater emphasis on cost reductions.

As one GC put it:

*We, as a legal department, have a budget for outside counsel. If I go beyond that, that's my inefficiency and I will not get paid the bonus . . . We can't work with hourly fees . . . We always try that it be a fixed [fee] plus a premium [success fee.] We try to transfer the risk [to the law firms] so that they properly calculate their hours. There are firms who don't want to do it. We don't work with them. But at the end, almost all of them accept.*

Clients expect law firms not only to lower their fees, but also to help them reduce costs:

*Every day more the matter of costs is more relevant . . . Except for one-off transactions – the bond offering, etc. – in more recurrent services, the contribution of the law firm precisely to achieve efficiency is important . . . In modern times, what I ask for is this: work with me and help me to reduce outside counsel spend.*

As many observers of the legal industry have pointed out in recent years, it's a buyers' market now. "We don't like to feel," said one GC, "that we're at the provider's mercy . . . We expect that the provider be willing to hear what our needs are and say up front that he's willing to discuss fees if there's something that doesn't work for us."

### **Law Firm Tiers**

As legal procurement expert Silvia Hodges Silverstein has pointed out in her work, clients see law firms in tiers. Clients first match the type of legal matter to the type of law firm that they'd like to take care of it. For strategic matters, they seek top tiers firms.

*"We always look for the best lawyer possible. Even in routine matters . . . you can have serious problems with lawyers of poor quality."*

-The General Counsel of a large Latin American company-

For non-strategic, routine matters, they seek lower tier firms. Once companies determine the tier of the firm they'd like to hire, they adjust their expectations about fees accordingly. Hiring a lower tier firm doesn't mean, however, that they're willing to compromise on quality. As we'll see below, even for routine matter, companies seek the best possible provider.



For strategic matters, clients will always look for top tier lawyers. One GC put it best: “Yes, for routine matters we look for lawyers of a good level, but that have the capacity to absorb more massive or routine processes and for matters that are more delicate, complex or of greater relevance, such as a bond offering . . . or an M&A matter or something serious that has happened, yes, I will look for top level lawyers.”

Some companies only outsource strategic matters. Everything else they handle in-house. Thus, every time they hire outside counsel, they look for top law firms. “I believe,” a GC explained, “we always look for the best quality, thinking that we’ll be with the top firms, with the top lawyers . . . It’s not like we’re always looking for the super star . . . [but] we don’t leave the firms that have the bigger names.”

There are some instances that do not warrant hiring top tier law firms. “There are transactions,” a respondent explained, “that do not justify going to the highest exponent of the field.” But not going to tier one or paying less for the service doesn’t mean that clients are compromising on quality. No respondent confessed to be willing to have “bad lawyers” to save a few bucks just because the matter was routine. They do, however, adjust their value-for-money expectation. Clients have several good options in the appropriate tier and they look for the best in that tier. A GC summed it up like this:

*We always look for the best lawyer possible. Even in routine matters . . . you can have serious problems with lawyers of poor quality . . . I also have [the] challenge [to ensure] quality in routine services . . . The thing is that an M&A lawyer or a securities lawyer [is] more sophisticated . . . and that's why I pay much more, . . . [and it's also true that] the lawyers that review deeds to property . . . are less valued, that they get paid less, but that doesn't mean that I am willing to have lawyers advising poorly or [doing] less because I pay them less . . . Each works at its level, but they have to do a very good job.*

### **Cross-selling: No Italian at a Sushi Place**

Because clients look for subject-matter expertise in outside counsel they will not, as a GC aptly put it, “eat Italian at a sushi place, no matter how much pasta they offer [them.]” Clients seek specialization, so they will either look for a law firm that has everything they need or hire different specialized providers. “We choose,” a GC explained, “an M&A law firm and we have to make sure that that law firm could defend us in litigation or arbitration for them to have the M&A deal. But if it's litigation that has nothing to do with the M&A, we would go to the best litigation lawyers, regardless of the law firm.”

So, unless both your M&A and arbitration practices are excellent, they will not hire you for their matters in both areas. They will go to you for the M&A transaction and to the arbitration specialist for

their arbitration case. Several respondents told us, however, that they prefer hiring boutiques.

### **Convergence?**

Companies tend to work with a small number of law firms. Even though (as we cautioned above) this is not a statistical report, we will tell you that the average number of providers for the companies we talked to is 12 and that they tend to work with less than five law firms in each country.

Perhaps because they don't work with a large number of providers to start with, convergence is not a thing for them. Most respondents saw no need to reduce the number of providers that they work with. A few said that they would love to work with only a couple of firms. Others said that they were aware of the perils of extremes: you don't want to be at the mercy of one provider, but you also don't want to have so many providers that you spend your days as a GC managing them and are an important client to none.

### **Assessing Consolidation and Internationalization**

Convergence is a good segue into clients' take on the arrival of global and foreign law firms in the region and the wave of mergers and alliances in Latin American countries.

We're sorry to disappoint you, Dear Law Firm Leader, if you were looking for a straightforward answer from clients. Based on what we heard, we would divide the opinions of corporate counsel in four ways:

- They see no value in mergers and strategic alliances:
  - “In the company we’ve never found great value in [alliances and mergers] . . . particularly in Latin America. If the lawyer in Colombia now recommends a firm in Peru that belongs to his [law firm] alliance, well, that gives me no confidence. On the contrary, it gives me a little less [confidence] because maybe he wouldn’t have made that recommendation if he didn’t have [the alliance.] . . . What I want is for him to recommend the best lawyer that he knows.” (Again, clients care about subject-matter expertise, track record and law firm reputation. They’re looking for the best, not for your ally.)
  - “I think those alliances . . . are far from giving you standard quality in all countries.”
  
- They see only limited value in mergers and strategic alliances (i.e. only for American or European multinationals (not them) or only for very specific multi-jurisdiction transactions):
  - “It could happen that [there is] an acquisition in many countries at the same time, maybe then it could be beneficial to have a firm that is in several countries.”
  - “If I have a matter with [a law firm in Colombia] and I have a related matter . . . in [Peru], I will continue working with the [firm’s office in Peru] instead of going to [a local Peruvian law firm,] as I would’ve done before.”
  
- They see mergers and strategic alliances as a “nice-to-have”:

- “I think they offer us better opportunities because we no longer have . . . [ only local] operations . . . Before, we didn’t feel at ease with the partners that they [relied on] in other territories to do their work. Not today. Today they’re telling us in a clear way: ‘Look, I’m associated [with this law firm] there and there you have [access to] these services.’”
- They see mergers and strategic alliances as a must for law firms:
  - “If you don’t have a network . . . it’s impossible to be an attorney for [certain] clients, particularly global clients. I think what is happening is that every day there are more multinational [companies.] Companies are no longer local, so what law firms are trying to do is . . . to offer clients a network.”

Respondents also made clear that a relationship with a local firm does not mean they’ll automatically work with firms in its network or with its offices in other Latin American countries. This may be a sign, as one of the GCs quoted above pointed out, that they don’t see the same standard of quality across network members or across offices of regional firms. And, once again, Dear Reader, clients select law firms based primarily on their subject-matter expertise and reputation. Maybe you’re the best Italian restaurant in Colombia. The client goes to you for Italian in Colombia. But that doesn’t mean that when the client is looking for Italian in Peru, it will go to your Peruvian pal’s place, just because it’s your pal’s.

Your Peruvian friend's place may be a great place for ceviche, but if it's not the best Italian place in Lima, the client won't go for it.

It also seems that your law firm entering an alliance with an international firm does not make it more likely that local clients will hire you. It may be a nice-to-have if the client does business abroad, but the alliance says nothing about your subject-matter expertise and experience.

*Clients are ambivalent about the benefits of consolidation and internationalization of Latin American law firms.*

Clients also think that it will take time for the newly formed alliances to take hold. Except for companies in the latter two categories above, most of them said those alliances will not change the way they hire law firms today.

### **Don't Get Comfy and, again, Please Pick Up the Phone. Firing Law Firms**

Aside from a serious misstep, companies change law firms because of bad client service and better deals. Other reasons include lack of expertise, conflicts of interest, the clients' mergers and acquisitions, migration of lawyers from one firm to another, and aging partners.

As we mentioned above, clients are permanently measuring law firms' performance. Even in long-standing relationships, they are always watching lawyers' responsiveness and service attitude. "It's hard for the quality of work to drop. The matter is whether [the lawyers] are available. Because there are firms that oversell," one GC explained. Again, do you pick up the phone? Do clients have to email you twice and call you to get a response to last week's email? Are you ready to settle or do you want to drag the litigation along unnecessarily? Dear Law Firm Lawyer, your clients are watching you all the time. If you don't pick up the phone, the client must email you twice and call to get a response and you like to drag litigation unnecessarily, clients will show you the way out. Even if you've been working with this company for a long time, don't get comfy. Sometimes, respondents told us, law firms with whom they've worked for a long time tend to relax client service. They will not stand for that.

Fees are next among clients' reasons to fire firms. One GC explained: "[We changed law firms] mainly as a matter of costs; that is, [because of] better deals from the point of view of price and . . . contribution to the company in processes and operations precisely to achieve additional cost savings." To law firms' advantage, clients know that it's expensive to change them. Institutional knowledge of a client, built over time, and the costs of training a new law firm are a protective barrier for law firms. But this barrier offers only limited protection. Clients can get deals

that make it worth it for them to change law firms, even computing in the costs of the change.

Another reason why companies switch law firms is because of aging partners. This seems to apply particularly to boutiques who rely on the prestige of their founding partners for business. A GC explained it like this: “Usually the lawyers who own the firm [the founding partners] are the ones who represent the firm. Even if they have an important team . . . you feel that you hired [the law firm] because of that person who responds for her team, for the firm, for the firm’s name, for everything. And they are now very old . . . so we’ve had to change.”

Although clients’ approaches vary, they seem to prefer not to tell law firms that they’re being fired. They will just stop sending them work.

Some corporate counsel like this approach because it helps them measure how interested the law firm is in working with them and, again, their service attitude. So, Dear Law Firm Partner, what do you do if you stop getting work from your client? Do you just shrug your shoulders? Or do you call the GC and ask why? Take a look at what one GC had to say about this: “Sometimes it’s preferable that the provider read between the lines that if I haven’t assigned him new cases . . . it’s because something is going on. This is where I also evaluate [him] . . . and try to see what the provider’s attitude is. If the provider is interested [in what happened], if he seeks me.”



Other clients always communicate to law firms their decision to change them. “We make it explicit,” a GC told us. Another way in which clients inform law firms that they’re being replaced (or at least that their contracts are up for review) is opening a competitive tendering process. Lastly, other respondents think that when you reach the point when you must fire your lawyers it’s clear to both why that is.

## **b. What Law Firm Leaders Are Thinking**

After seeing what corporate counsel have to say about the way in which they select outside counsel, let's move on to what law firm leaders in the region are thinking about the regional market for legal services.

### **Recent Developments and Current Trends**

Most law firm leaders in Latin America agree that consolidation and internationalization are important trends in the region's legal market.

The main manifestations of these trends are: (1) global players and foreign firms arriving in key markets; and (2) mergers and strategic alliances between firms in the region and with European and North American law firms.

### **Arrival of Global Players and of Foreign Law Firms: No Welcome Party, but no Protest Outside their Offices**

As a rule, law firm leaders in the region see the arrival of global players and foreign law firms as something natural. One MP told us that there has been no welcome party, but also no protest outside their offices.

Some law firm leaders even see the arrival of these firms as something to be celebrated because it means that their countries are doing well.

The leaders predict an increase in competition in the market as a likely effect of the arrival of global players and foreign law firms. However, they don't see these firms challenging the status of the national champions in each country. At first, they said, they will not have top quality teams in many practice areas, so they will not be able to compete with the best national law firms. It will be medium-size and small firms that will suffer the consequences of their arrival. One MP put it this way:

*The dominant firms, in general, will not lose [market share] . . . because dominant firms already have relationships with clients who know that there they will find the best and most sophisticated legal service. In contrast, medium or small size domestic firms . . . are the ones who are suffering the greater competition. Because these multinationals don't do the most sophisticated work and they do – I don't want to undervalue them – more commodity work, which is the work that is typically done by firms of medium or small size. I imagine that it has cost them more to maintain their market share.*

Law firm leaders also predict that there will be a concentration of the top deals in their countries in the national champions. However, they know they will probably lose the occasional deal that comes from international clients. These clients will likely call the global player that they work with abroad and who now has a presence in the local market. Some leaders also expressed concern

about the use of predatory pricing tactics by these law firms to open market space for themselves.

Law firm leaders are split on whether the arrival of global players and foreign law firms will bring about the adoption of best practices in law firm management and in collaborating with clients. Many believe that the most sophisticated law firms in the region (like theirs) are already very well run. Not only is their legal advice excellent, they claim, but also they adhere to the top standards in law firm management. Others see no evidence (yet, at least) of improving practices because of the arrival of these firms. Some leaders and, not surprisingly, the ones who have joined forces with foreign or global firms, recognize that they were behind in the management of their firms and point to three areas where the alliance or merger has brought them benefits in this regard: 1) financial management of the firm (financial indicators, watch over leverage to ensure profitability); 2) the career plan for the firm's lawyers; and 3) technology.

### **Everyone Else is Doing it. Should I?**

We asked law firm leaders whether they thought they needed to jump on board the internationalization/strategic alliance wagons to survive.

One MP told us that, with the arrival of international firms, you either ride the wave or you get out. He believes that firms that don't enter alliances or merge will lose market share. But most respondents see no need to jump on the wagon. Not now, anyway.

“It will be an option, for sure, but we will not be forced [to do it] . . . I don’t think that to survive in this market anyone needs to associate itself with a foreign firm. That’s for sure,” another MP told us. A law firm leader pointed out that the top law firms in his country have no rush to jump on the wagon. They, he told us, “are independent by nature . . . For now, independence pays.” Another MP said that his firm has been approached by many foreign suitors, but it has held fast to its independence: “we’ve stayed firm in our principle that we want to be an independent firm and that we see no objective, convincing or strong reasons to think that this business model and this vocation to be an independent firm should be questioned or put in doubt and embrace a merger or integration with a global or regional firm.”

*“I don’t think that to survive in this market anyone needs to associate itself with a foreign firm. That’s for sure!”*

-Managing partner of a Latin American law firm-

Networks and referrals, most of which are non-exclusive and which are based primarily on personal relationships, seem to work well for these law firms.

They get good business from them without much investment and everyone gets to keep its autonomy.

But what about clients? What about them for whom (presumably) law firms are in business? Do clients demand these mergers or alliances? Maybe their clients need cross-border services, but that, law firm leaders told us, doesn't mean that their firms need to merge with others or enter strategic alliances. "With the national champions of all Latin America," a leader told us, "we work as if we belonged to the same firm. We know each other very well . . . Maybe the market will force us, in three or four years, to take that decision [join an international firm, enter a strategic alliance,] but not for now." One MP explained that if they need something done for a client in another Latin American country, all they need to do is pick up the phone: "We don't see any need to open offices in any part of the region. Where we need lawyers . . . we pick up the phone and we have them." These leaders think that the volume of local clients doing business abroad is not significant enough to warrant opening offices in other Latin American capitals or to associate themselves with other firms in the region. If firms merged or entered into strategic alliances, they said, then they probably did it to expand their foreign clientele rather than to serve their local clients abroad: "If they did it, they've done it thinking more in the work that would come to them from abroad than in the work that they could do for their [local] clients going out to invest abroad."

So, is the consolidation and internationalization trend driven primarily by law firms' need or desire to grow? No clear answer here. Some leaders believe that it responds to both the firms' and

the clients' needs. For most, it depends on whose perspective you're considering. For global players and Spanish firms expanding their footprint in Latin America, leaders think, the main driver may have been the need to follow their clients. Global players saw that they lost business if they weren't in key regional markets. Spanish firms saw the importance of following their clients who were increasingly doing business in the region.

Law firm leaders have a variety of opinions on local firms' rationale for seeking mergers and strategic alliances. Some think that these firms are driven by the need to grow or, simply, to stay alive. One MP put it this way: "Looking at it from the perspective of the [local] firms that were acquired or that associated [themselves with foreign or international firms,] I think that they've seen it as a way, rather, of forestalling what they likely see as a difficult future for local firms and a more promissory one for firms of global reach or, at least, of semi-global or regional reach, more than for their clients."

Others think that local firms have entered mergers and alliances merely out of vanity, fear or overreaction (some variation of "everyone else is doing it, so I should, too.") As a MP pointed out: "You also find quite critical opinions that say that [law firms] did it [merged, entered into alliances] for fear and not for a solid reason and with the conviction that that was the best thing for the partners. There are some who say that it was done for vanity only; just to duplicate the number of lawyers that you have overnight."

## The Big Four

In contrast to what happens in the United States, in most Latin American countries, the Big Four accounting firms (Deloitte, EY, PwC and KPMG) provide legal services. In many countries in the region, they are significant players in the legal services market and increasingly so. We asked law firm leaders how they viewed the competition from these companies. Some of them recognize that competition from the Big Four firms is heating up the legal market. As one MP put it: “The auditing firms . . . have legal departments that are just as big or bigger than the most important firms . . . and they actively and bluntly compete against our firms. Therefore, we have two actors that are putting much pressure on the legal market. No only Spanish and British firms, but also auditing firms. And this creates a climate of fierce competition.”

*Most law firm leaders do not see the Big Four as players in the market for sophisticated legal work and they don't perceive competition from them as a threat to their law firms.*

Generally, however, market leaders view the Big Four firms as accounting firms that handle only commoditized legal matters. Thus, most law firm leaders do not see the Big Four as players in the market for sophisticated legal work and they don't perceive competition from them as a threat to their law firms. These law



firm leaders believe that the Big Four firms and their law firms do not compete because their business models are essentially different.

The Big Four firms' business model is based, they believe, on doing commoditized work. In contrast, their law firms' business model is based on doing sophisticated, complex legal work, which the Big Four are not capable of doing. An MP told us:

*This is why firms like ours have a certain advantage. Because I imagine that when a GC of a company wants commodity work taken care of I have no doubt that he will not come to firms like mine, but he will give it to an auditing firm, to the legal department of an auditing firm, or is going to give it to a mid-size firm because what that GC wants is to find the lowest possible cost. . . But if that same GC is confronted with a hostile takeover, believe me, he will not go to any of those firms and he will continue to come to mine.*

While these law firm leaders do not view competition from these companies as a threat to their law firms, they do see it as a problem for second-tier or mid-size firms.

As a corollary of the perception that the Big Four only do commoditized work, law firm leaders believe that the Big Four can't attract the type of talented professionals who want to work for big law firms. "The business model of our firm," one MP told

us, “as that of the top law firms, is one in which it counts a lot to be able to gather a group of professionals that is highly qualified, competitive, highly prepared, which by definition are ambitious, which by definition are very difficult to put in a repetitive and standardized work arrangement, which is what the business of the auditing firms requires . . .”

A minority of law firm leaders do recognize that the Big Four are moving up the value chain of legal services and, therefore, do represent a threat for them. Multinational companies have begun unbundling legal services and they have begun, they told us, to source high-end legal work to the Big Four.

### **Innovation (or Lack Thereof...)**

There seems to be very little innovation in the way that law firms in Latin America work or in the way they interact with their clients. When asked about innovation, some law firm leaders pointed to new practice areas (e.g. compliance) and AFAs. But there seems to be very little use of technology, project management or knowledge management to increase efficiency.

It’s difficult to establish the reasons behind the lack of innovation among Latin American law firms. For some, there seems to be a lot of talk about innovation but very little implementation of innovative solutions. But some law firm leaders just don’t believe that innovation is useful for the type of sophisticated legal work that their law firms do.

This is what one MP had to say about this:

*Obviously, all good firms have the tools that first-class firms all over the world have . . . The truth is that [technology] is very good but [only] for commodity type work . . . All those informatics tools may be very nice, all these new technologies may be fantastic, but in this [high-end legal work] they're useless. When you have a client . . . who is going to do a tremendously complex and sophisticated transaction . . . he's not interested in that you have an informatics platform that [produces] 500 thousand things per second but that are things that anyone can do.*

### **Why Do Clients Pick You?**

Most law firm leaders (rightly, as we saw above) believe that what clients care about most when selecting outside counsel is lawyer credentials and law firm reputation. “I believe,” explained one MP, “that the first great criteria is whether it is a person with a trajectory . . . And, in second place . . . whether the law firm has a good reputation.”

Regarding the relevance of price for clients, most law firm leaders believe (rightly, again) that it depends on the type of matter that the client is hiring outside counsel for; that is, whether it is routine work or sophisticated work.

For routine work, such as due diligence or labor litigation, they believe that all the client wants is that it be cheap and that it be

delivered fast. But for sophisticated work for high-end clients, such as M&A, project finance and high-stakes litigation, they believe clients do not care about price.

One MP explained that in those instances:

*What [the client] wants . . . is a lawyer with lots of experience, with very good judgment and criteria, with a very good delivery, that is available, and that has a team of lawyers – and this is the most important [thing] – who work with him and who make it so that each one of them is replaceable. Because a thing that a sophisticated client does not forgive is that his transaction be halted for even a second because a lawyer is missing, because he is on travel, because he had another closing. No. A client like that requires, demands, and knows that it has a team that is absolutely committed, well integrated, sophisticated, that responds quickly, that is trustworthy . . . that has very very good judgment and very good criteria . . . And we speak to that.*

Others think that while credentials always matter, price is generally the determinant selection factor, even for sophisticated matters. This seems to be the case, particularly, in markets where price pressures have been a reality for a long time.

## c. The Colombian Legal Market

On to the last section, our overview of the Colombian legal market. Of all the Latin American markets, save Mexico, this one has seen the greatest activity in recent years.

Global players, such as Dentons, DLA Piper, and Norton Rose Fullbright have established a presence in the country (Baker & McKenzie has been in Colombia for decades.) Spanish firms (many of whom are global players, too) Garrigues, Uría Menéndez, Cuatrecasas, Clarke Modet & Co, and Cremades have entered the market through diverse formulas. Holland & Knight opened its Bogotá office in 2012. Prietocarrizosa, the country's third largest

*Leaders pointed out as noteworthy that Colombian law firms have used diverse models to approach the internationalization trend and to face new market realities.*

firm, merged with Chile's Phillipi and Peru's Ferrero and Delmar Ugarte to form the first Multilatina law firm (Uría Menéndez has a stake in the firm.) CMS recently announced that a local firm had joined its global network.

Littler, the employment powerhouse, also entered a strategic alliance in the country and DAC Beachcroft acquired a Colombian firm. Local firms have also merged, creating, for the first time in Colombia's history, robust multicity law firms.

Unlike Brazil, Colombia does not restrict foreign law firms' operations in the country. There are no requirements regarding law firm organization (i.e. law firms can take any form, including the corporate one) and there are no restrictions to non-lawyer ownership of law firms. Big Four firms can provide legal services without restrictions.

### **Evolution of the Legal Market**

Several leaders pointed out as noteworthy that Colombian law firms have used diverse models to approach the internationalization trend and to face new market realities. Some opted for full-blown mergers with international firms, thus becoming part of large multinationals. Others chose single-purpose joint ventures, which allow them to stay independent while making an internationalization bet. Some foreign firms chose to open brand-new offices in the country, instead of seeking mergers, alliances or acquisitions of local firms. Other firms picked the regional firm model, betting on creating a Latin American law firm. Some firms went for loose alliances, which can be easily undone. Some opted for a multicity, but local, merger. Many others, of course, have chosen to stay independent. And many (we presume) are still trying to figure out how to respond to market changes.

It is also remarkable that, in contrast to what some law firm leaders in other Latin American countries described, the transformation of the legal market has begun with some of the top

law firms in the country. For example, Cárdenas & Cárdenas, the country's oldest law firm and one of its largest, merged with Dentons. Posse Herrera Ruiz, one of Colombia's top law firms, entered a joint venture with Cuatrecasas. Prietocarrizosa, another top law firm, entered into the regional merger mentioned above.

Market leaders see the arrival of international and foreign law firms as a (mostly) good thing. They believe it shows that the country is doing well and that it has become a more relevant economy on the world stage. Like their peers elsewhere, law firm leaders expressed concern about the predatory pricing practices that some of the recently established firms have adopted to gain market share. They believe that these practices are not sustainable.

On the other hand, they recognize that international firms have a pricing challenge in Colombia. Like in most of Latin America, fees in Colombia are relatively low, thus making the profitability of operations in the country a challenge. "The great challenge that [international firms] have," a law firm leader told us, "is to adjust to Colombian fees because [if they don't] they [will] lose local business here. So, they [may have] a series of captive international business, but if they [would] like to grow, with national clientele, that [must be done] with national fees." We would add that even these "captive" international clients weren't born yesterday and, like they've done elsewhere, they will probably demand local fees for local services. They will not pay New York rates for Bogotá lawyers.

The transformation of the legal market has intensified the battle for talent. Legal services providers need lawyers that are competent to practice in the international business reality that these companies are facing. One law firm leader told us that the greatest challenge that they have is finding lawyers who are bilingual (Spanish and English.)

### **We're only Getting Started**

Market leaders agree that this is only the beginning of a tectonic shift in the Colombian legal market. Many agree that international firms will continue to arrive in the country. “We are going to see a lot of movement in the next five years,” a law firm leader told us.

As we did with Latin American law firm leaders, we asked Colombian market leaders whether they thought the mergers and alliances were driven by law firms' needs or by clients' needs or both. They mostly believe that it is the needs of both that drive them. On the one hand, they said, firms enter these mergers or alliances seeking more business or seeking not to fall behind the market. On the other, Colombia has become a more attractive destination for foreign capital, so foreign business has increased, and Colombian companies have begun to look abroad to expand their businesses. A leader at one Big Four firm put it this way:

*Colombia became an interesting market . . . because of the economic conditions of the country, [and] because of the expectations that we have of what can come with the peace*



*process. Colombia is definitely an interesting jurisdiction and, when you look at the neighborhood, well, Colombia becomes much more attractive. And for foreigners, it's a very interesting market and for locals it's a necessity to be able to serve their customers in all they need and for that [they] need global reach.*

A law firm leader pointed out that consolidation and internationalization are also driven by clients' interests because they lead to greater efficiency, he believes.

With the frenzy created by the news of alliances and mergers, it's easy to get carried away and overreact.

As one law firm leader pointed out, alliances and mergers may be bad for business because they carry a high cost in terms of conflicts of interest and loss of referrals. "We're not interested," he explained, "in a merger with . . . anyone because of the amount of international business that we get from referrals." His firm, like many other in Colombia and other Latin American countries, has invested in networks and relationships with best friends in the region and beyond, which have given great results. Like most of his Latin American colleagues, he believes that it is dangerous to reactively jump on the consolidation and internationalization wagon without a strategic reason for doing so. He also thinks that while mergers and alliances are probably bad business for large law firms, not so for small or mid-size firms, which have more to gain than to lose.

## The Big Threat

We asked market leaders, including Big Four partners, about the role that these firms are playing in the Colombian market for legal services. Unlike their Latin American peers, Colombian law firm leaders see the Big Four as the big threat. “They are the main threat,” one MP told us, “more so than international firms.” A law firm leader agreed: “Whether you like it or not, [the Big Four] have created law firms and are law firms . . . and they are much larger than one thinks . . . They are true competition. And they are growing at a [very high] speed.” Another market leader introduced some nuance: “The threat is not that they’re here, but the way they work.” He referred to their expertise in both the delivery of professional services and in processes.

The Big Four, however, do not want to be perceived as law firms. They want much more than that. They want to be perceived as integral business advisors. They provide legal services in conjunction with other business services. This doesn’t mean, however, that they don’t provide stand-alone legal services. Regarding competition with law firms, a Big Four leader told us:

*I think there will be a market that will continue to be exclusively of law firms. That there is a market that is exclusively ours or in which we’re better positioned . . . And that there will be a market in which we can compete . . . And I think that’s how the market is seeing us: like a player with different characteristics, with a different value proposition,*

*but that can have the same legal quality that you can find in a law firm.*

In contrast to what several Latin American law firm leaders believe, Big Four firms are not exclusively focused on commodity work. Part of their business is providing specialized counseling in business transactions, from their conception to their implementation. These services include investment banking, due diligence, structuring and implementation of the transaction.

Law firm leaders see size and process management as competitive advantages of Big Four firms. A leader from one of these firms told us that they are, in fact, the largest and best integrated legal services firm. They truly are, he said, one firm worldwide. This integration, both in terms of business services and jurisdictions, coupled with their management of shared institutional knowledge, may be their key competitive advantage. They can provide consistent services in many countries, but also use the knowledge and expertise that they've accumulated in those countries and over the years to the client's benefit. "The advantage that I think we may have," explained a Big Four leader, "is that we have global access, with a service that is consistent, and with an internal infrastructure that allows us to be flexible to work in the way in which the client wants us to work for him."

The Big Four may also be more supple in working on a team with other providers of their client. A Big Four leader suggested that

the attitude of a Big Four lawyer may be different to that of a law firm lawyer when working with other services providers in a joint client project. As some law firm leaders recognized, law firm lawyers tend to have a reputation as prima donnas.

*“I think there will be a market that will continue to be exclusively of law firms. That there is a market that is exclusively ours or in which we’re better positioned . . . And that there will be a market in which we can compete.”*

-A Big Four leader-

Based on what we heard from clients, Big Four firms may have two additional advantages over law firms. First, they constantly measure the quality of their services and, two, they can speak, let’s say, “client language.” In contrast to most big law firms, Big Four firms have internal processes to measure quality. Some of them have a two-step process. First, an initial process to define expectations (What does the client want? What does he expect from the team? How does he want the work delivered?) and then periodic performance reviews to see how well they’re meeting client expectations. One thing is key here (and we’re almost embarrassed to point it out): these firms ask *clients* what they think of their services! Not themselves in the mirror. Not their supervisors. Not other lawyers in the firm. *Clients*, remember? The ones who are buying and paying for the services.

On to “client-language.” As we saw above, clients value practical solutions that executives in their company can understand. Again, a 50-page legal opinion, with in-depth analysis of Roman Law and the Napoleonic codes, may be what the lawyer likes to write, but it’s not what the client needs. When we asked a Big Four leader about quality, look at what he had to say:

*For my client, [quality] means that I respond when he needs it, not when I think that I’ll be able [to respond.] . . . It’s a timely, quick response, that must be practical for the reality that the client is facing in that moment . . . We seek that our language be very business-like . . . This is something that maybe could differentiate us a little bit. In most cases, our client is not the GC of the company. Our client continues to be the finance department . . . the CFO, CEO and, yes, GC too, but to a lesser extent, so I need to speak in a language that he understands, that is practical for what he needs.*

Do clients value that, Dear Reader? You bet.

### **The Innovation Gap**

We also asked Colombian market leaders about innovation. Their responses were similar to those of other Latin American leaders: there’s a lot of talk about innovation but little implementation.

There is a gap between awareness of the need to innovate in how legal services are delivered and the implementation of innovative solutions. “In theory,” a law firm leader told us, “[Colombian law

firms] know it and they say it. But in practice there is little implementation.”

Market leaders suggested several reasons behind the gap: first, maybe clients aren't demanding innovation yet. “For us to evolve,” a market leader explained, “we need the client to evolve also. Because maybe if you go too fast and the client is left behind, the client tells you ‘I don't like it this way, let's do it old school.’” A law firm leader told us that he had approached clients with what, he thought, were value-generating, innovative proposals (e.g. let me help you reduce your legal spend by improving your legal processes,) but clients weren't interested. They asked to do things as they've always done it, but at a discount.

*There is a gap between awareness of the need to innovate in how legal services are delivered and the implementation of innovative solutions.*

An alternative explanation for the gap is that legal services providers see no need to change because everything is working fine as it is.

Other leaders suggested that the problem was ignorance. Providers don't know how to implement innovative solutions. And last, market leaders suggested that low local fees mean that providers cannot invest sufficient resources in innovation.

Still, there are some signs of innovation in the Colombian legal market. Alternative services providers (to use the British Legal Services Act terminology) have begun to appear. Some are providing web-based services and relying on automation. These providers, however, are still catering to individuals and start-ups or very small companies. They do not compete with big law firms because their clients wouldn't go there anyway. There are no Axioms or Riverview Laws in Colombia, yet. These providers not only seek to democratize access to legal services, but also to provide an alternative for talented lawyers who do not want the big law firm lifestyle. The founder of an alternative services provider told us that "traditional firms have not understood new generations," either as employees or as clients. Client retention, he said, is a big challenge for big law firms.

On the other hand, there are some signs of innovation at big law firms. A law firm leader told us that Colombian firms are much more advanced than American firms in implementing AFAs.

To do AFAs intelligently, you need to have lots of information and the ability to analyze it and derive insights from it. "To do [AFAs] in an intelligent way," he said, "I need information. And information means [having to] manage systems, [having] history, for when I get asked for a new quote, etc." Other firms are using innovative software to assess clients' degree of legal protection.

As we pointed out above, knowledge management seems to be an advantage for Big Four firms. A Big Four leader pointed out that

many laws and regulations enacted in Colombia have been previously adopted in other countries. This enables them to use information from other countries in advising clients in Colombia and, therefore, they can be one step ahead of local firms.

### **Regulation of the Legal Market**

The Colombian legal market is an “open” market, in the sense that everyone can compete without restrictions. As we mentioned above, there are no rules that limit law firm organization to certain structures and there’s no ban to non-lawyer ownership of law firms. There are also no restrictions to the provision of legal services by firms such as the Big Four and no prohibitions of foreign law firm activity in the country. We asked market leaders whether they thought this should change.

Most market leaders see free competition as a good thing for everyone. “For us,” a Big Four leader told us, “seeing that we have free competition, that we have an open market for all . . . is positive for everyone. For clients. For the players in the market.” None of the law firm leaders we spoke with think that the market should be closed, in the sense that restrictions to the practice of law by Big Four firms or foreign law firms should be imposed. Some do favor the creation of a bar association, which does not exist in Colombia. This would help, they claim, to organize continued education requirements for lawyers, pro bono work and disciplinary matters. And it would also help to implement best practices and quality standards. Other leaders are fiercely opposed to this initiative because they fear that corrupt, non-law firm lawyers, with an anachronistic view of the profession, will immediately take control



of the bar association and make law firms' and other services providers' lives more difficult.

Law firm leaders, however, do believe that there should be better rules regulating the exercise of the legal profession in the country. "This is," a MP told us, "a market that is open by neglect." In fact, professional rules barely even address the existence, much less the practice, of law firms. The conflict of interest regulations are primitive and insufficient.

It seems to be common for foreign lawyers who are not admitted in Colombia to practice at Colombian law firms and give legal opinions, even if they don't represent clients in litigation or other matters. "So I have a law firm where I have foreign lawyers," a law firm leader told us, "who do give advice on Colombian law but who don't sign [documents.] Is that enough? This is the type of things that need regulation." All these topics, law firm leaders told us, should be addressed by new regulations.

### **Selection Criteria**

The Colombian legal market has seen significant pressure on prices. Predatory pricing practices have deteriorated the market. Because of this, some law firm leaders believe that price is the determinant criteria for clients when selecting legal services providers and that clients have gotten used to huge discounts. Other market leaders make the value-added vs. commodity-type work distinction to assess the relevant selection criteria. For value-added work, they say, what matters most to clients is "chemistry."

For commodity-type work, such as routine litigation, what they most care about is price. Most market leaders agree that “quality” has become a given and that what makes clients favor one provider over another is “chemistry.” A market leader put it this way:

*I start with the assumption that technical quality and good services rather than a must are a given. If they didn't think you're good, they wouldn't even invite you to the [selection process.] Beyond that, [what clients look for] is someone who can adapt himself to the client's work style, to the client's culture and that can integrate himself well with the team. Because, at the end of the day, and I don't think this will ever change no matter technology or innovation, lawyers are trusted advisors.*

### **Warning Sign for Big Colombian Law Firms**

A prior study of the Colombian middle-market, conducted by the author, showed that Colombian mid-size and middle-market companies did not want to work with big law firms. “We give priority,” a CEO told us then, “to [the lawyer] understanding our needs and that partners dedicate their time directly, rather than having a big law firm send us a junior lawyer for the negotiation.” “There’s a costly bureaucracy,” pointed out another CEO. We thought that we wouldn’t hear this type of opinions from GCs of large Colombian corporations. Surely this perception would change once we got to the companies that *are* significant clients for

big law firms. Well, we were wrong. Several GCs pointed out their concern about big law firm client service and responsiveness.

*“Big law firms here have a tendency to do a lot of delegation.”*

-The General Counsel of a large Colombian corporation-

On the one hand, they complained about delegation. They think that big law firm partners delegate too much to their junior associates. GCs don't like the fact that partners sometimes don't even review the junior associates' work, but they still charge high fees. In the client's eyes, the value-for-money balance, which we discussed above, is destroyed. They are willing to pay the high price of your expertise (this is why they hire you, remember?). But if it's not your expertise they're getting but your young associates' work, then where does that leave them?

Because of this tendency towards delegation, GCs expressed their preference to work with boutiques or smaller firms, where the partners or very senior lawyers take care of their matters personally. This preserves the value-for-money balance. A GC put it this way:

*For certain matters, we prefer having independent lawyers or small firms because they take more personalized care of*

*the cases . . . because big law firms here have a tendency to do a lot of delegation . . . There's a lot of disenchantment with big law firms here because of that and because of fees. Fees are higher than those of small [firms] or [independent] lawyers and you'd think that that difference would be because of differences in quality or timeliness . . . but sadly, that's not the case.*

Of course, some GCs recognized that in some instances it's not practical to work with boutiques or small firms because their companies need the support that a big firm's resources can provide. In these cases, they said, they're very careful in choosing what law firm partners they work with.

In addition to excessive delegation of work in young associates, clients also complained about responsiveness. When working with large law firms, they often must chase after lawyers to get a response. "I do see the Colombian market," a GC told us, "as a market of firms that are very undisciplined in giving an agile and complete answer."

To be fair to Colombian law firms, we didn't only hear this from Colombian GCs. Other GCs in Latin America brought it up, but nowhere so frequently as in Colombia. This pattern should worry big law firms. But also, it should be seen as an opportunity for improvement and for developing a competitive advantage.

# §5

## Conclusions

This study confirmed that the forces that are shaping the legal industry worldwide are also shaping the Latin American legal market. Susskind’s “more-for-less challenge” (and the price pressures it creates,) globalization and speciation <sup>5</sup> are perhaps the winds that are blowing harder in the region. This study showed how different actors in the market are facing these forces.

### **Insights for Corporate Counsel and Their Legal Services Providers**

The section on the purchasing behavior of corporate counsel provides insights for them and for the legal services providers that serve them.

For corporate counsel, it shows that their peers are tackling similar challenges and recurring to similar solutions. Moreover, the study shows that corporate counsel across the region share concerns when it comes to their relationship with outside counsel.

Therefore, the study’s conclusions provide an opportunity for corporate counsel to reflect on how they’re handling that relationship.

For legal services providers, the responses of the in-house counsel we interviewed provide invaluable ideas on how to improve the way they serve them.

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<sup>5</sup> We use ‘speciation’ to mean the process of law firms’ segregating themselves into stronger and more cohesive examples of capital markets players, category killers, etc., following the “Taxonomy” structure of Bruce MacEwen’s second book.

For example, after reading this report, every legal services provider should make responsiveness a top priority. Progress in this area will make a big difference in their relationship with clients.

Moreover, respondents' answers about quality and value provide priceless advice on how legal services providers should work to satisfy their clients.

While subjective factors still seem to drive the relationship between corporate counsel and outside counsel, the study also shows that this relationship has evolved. As elsewhere, clients in Latin America are no longer price takers. And, every day more, business realities demand that good relationships be accompanied with great substance and more efficient processes. As one G.C. pointed out, a relationship with him may give you an entry pass, but only your credentials and work processes will get you hired at his company. It is true, however, that the region's companies still seem far from demanding the kind of work processes and technological support that their peers in North America are demanding from their law firms.

### **Times of Reckoning for Law Firms in Latin America**

The study also showed that these are times of reckoning for Latin American law firms. Because the more-for-less challenge and globalization are putting pressure on their business models like never before in the region, those law firms that fail to have and implement a clear, compelling and distinctive strategy for the future do so at their own peril. The market is undergoing a period

of intense speculation (as above.) The difference between those at the top and those at the bottom is getting bigger. Law firms must find their place in the market before competitors find it for them.

But finding one's place in the market will not be enough. Law firms in the region will have to work hard(er) to keep that place. Sooner or later, as their peers up north and across the Atlantic are beginning to realize, they will have to find new ways to work with their clients. **Adopting AFAs based on hourly estimates (i.e. disguising the billable hour in AFA costumes) will only take them so far.** Dismissing innovation as irrelevant and failing to pay attention to what competitors are doing (all types of competitors, not just other law firms) may result in loss of their market position.

Latin American law firms have the additional challenge of avoiding steps that may conform to easy magazine narratives, but that may be big mistakes. As we saw above, despite the frenzy created by news of law firm mergers, alliances and the arrival of global players, clients are ambivalent about the value of such moves. Additionally, pursuing a merger or a strategic alliance isn't the only response to the new market realities, nor is it necessarily the answer to a law firm's challenges. In our experience, there are more reasons not to pursue a merger than to do so. After the enthusiasm of the press announcement wears off, many partners of (formerly) local, independent and proud firms may find themselves with less money in their pockets and as disgruntled employees of a global behemoth. Of course, this need not be the



case. There are many instances in which a merger or alliance is a great decision, necessary to achieve strategic objectives. Through them, local partner may improve their business opportunities and be proud and active members of exceptional international institutions. In these instances, the success of the merger or alliance may largely depend on the terms of the agreement between the parties. In sum, the decision's alignment with the firm's strategy, the right timing, the right fit and the right agreement will make all the difference.

The study also provides insights for the firms that have pursued mergers and alliances and for global players who have arrived in the region. Based on the answers we heard from corporate counsel, it's clear that global players must focus on building great teams of specialists. Firms that have merged or entered alliances must focus on showing standard quality across offices and practice areas and demonstrating expertise. These are also important insights for firms that are looking for merging or strategic alliance partners and for global and foreign firms seeking to enter the Latin American market.

### **The Colombian Market**

The Colombian legal market is truly a case study of an open legal market. As we saw above, it's a market where the regulation for legal services has been liberalized by neglect and where the forces of globalization have been intense. This has created fierce competition, which, in turn, has resulted in sophisticated and

forward-looking players. But the challenges we discussed above are even more significant for Colombian law firms. The temptation to jump on the internationalization and consolidation wagon for the wrong reasons may be stronger for firms in this market. Colombian law firms should focus on finding their place in the market and developing clear strategies for the future.

The study contains a vital message for large Colombian law firms from their clients: you must improve responsiveness. Clients are unhappy with delegation and high fees for work that doesn't reflect the partner's input. Dear Colombian Law Firm Leader, if you are still looking for a New Year's resolution, look no more: commit to improve service to your clients. The contents of this whitepaper give you a great place to start.

### **Let's Keep Our Eyes Open**

Based on the research's findings, it seems worthwhile to monitor the evolution of the corporate counsel – outside counsel relationship in the region. Will it become more structured and less subjective? Will other corporate counsel follow some of our respondents' lead in creating competitive bidding processes to select their lawyers? Will corporate counsel continue moving the use of these processes to matters higher up the value chain?

It will also be interesting to see how the business of the Big Four evolves in the region. As we saw above, they are already big players (and perceived as such) in markets like Colombia. We

must pay attention to the type of business that the Big Four compete for and how they continue to use their multidisciplinary, knowledge and project management expertise to present the market with a compelling value proposition.

It will be important to pay attention to how the process of speciation continues to unfold in the region. The market for legal services providers will likely be very different in a couple of years. We must keep our eyes open to how law firms respond to market shifts. We must renounce lazy narratives.

The market is becoming more sophisticated and nuance will matter. We must carefully follow how the recently formed alliances and the newly-minted mergers play out. We must pay attention and keep an open mind to learn from the successes and the failures of the chosen formulas. We should also look out for who the champions of innovation in the region will be and monitor whether alternative services providers continue to develop.

In the Colombian legal market, in addition to these areas, it would be useful to further study the effects of a lenient regulation of the legal services industry. For example, regarding the effects of non-lawyer ownership of law firms, are there lessons to draw from Colombian law firms that may help market players in developing their strategy and that may inform the debate about this topic elsewhere?

\* \* \*

These are exciting times for the Latin American legal market. There are no easy, one-size-fits all strategies to face the new market realities. Successfully navigating these realities demands, paraphrasing FDR, bold, persistent experimentation. Market leaders must articulate and implement clear visions for the future and convince themselves and their partners of the need to innovate. As another American leader once said, “tomorrow belongs only to the people who prepare for it today.”

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## About the Author

**Antonio Leal Holguín** is a lawyer and law firm consultant with prior experience working in the corporate and project development teams for law firms in New York and Bogotá, as in-house counsel, and as a government consultant. He is also a Team Leader at the global, legal innovation think-tank LawWithoutWalls. Antonio obtained his law degree, cum laude, from the Universidad de los Andes, in Bogotá and a Master of Laws degree from Columbia University, where he was a Harlan Fiske Stone Scholar.



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