



DISPUTES

A debt to settle

In July 2012, CIESA and its lawyers finally drew an end to years of litigation and settled with the energy company's creditors

It all started during Argentina's financial crisis of 2002, when Compañía de Inversiones de Energía (CIESA) – the parent of natural gas company Transportadora de Gas del Sur – defaulted on US\$316 million of bonds due to the adverse effects of the financial crisis on public utility companies. CIESA started work on a possible debt-for-equity restructuring with its shareholders and creditors, and by 2005 was set to restructure its debt worth US\$220 million with financial creditors led by Ashmore, now known as AEI. But the agreement failed to obtain the necessary approvals before the

December 2008 deadline set by the parties. With no deal on the horizon, AEI – by then the sole bondholder – pulled out of the agreement.

CIESA took to the New York courts, prompting AEI to file counterclaims and file a bankruptcy petition in Argentina. In 2010, the matter escalated further when AEI added CIESA shareholder Petrobras Argentina to the New York litigation.

Throughout the process, CIESA was represented by Marval, O'Farrell & Mairal and Estudio Alegria, Buey Fernández, Fissore & Montemerlo in Argentina, and Wilk Auslander LLP in the US, while AEI was represented by Skadden, Arps, Slate, Meagher & Flom LLP in the US and Errecondo, Salaverri, Dellatorre, González & Burgio in Argentina. (The firm has since split, with AEI and Pampa Energía's lawyers in this matter now at Salaverri, Dellatorre, Burgio & Wetzler Malbran.)

After the litigation began in 2009, things started going downhill for AEI. In October that year, an Argentine court of appeals rejected AEI's bankruptcy petition that had initially been granted in February, which meant that the New York court no longer had to take the Argentine court's rulings into account in its decisions. Further defeats in the New York courts followed in early 2011, and AEI decided to exit the case entirely by selling its CIESA debt and claims to Pampa Energía. While AEI's counsel continued to work on the case for Pampa, the change in claimant opened up opportunities for the parties to revisit the idea of a settlement through a restructuring agreement. Aware that it could stand to lose all of its claims as a creditor, Pampa entered into a settlement with CIESA, which was able to cancel all of its outstanding debt – drawing an end to the decade-long dispute and making its financial woes a thing of the past.

THE WINNERS

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Counsel to CIESA

- In-house counsel to Petrobras
– Daniel Casal and Claudio Vazquez
- In-house counsel to CIESA –
Nicolás Mordegia and Adrian Hubert

Argentina

- Marval, O'Farrell & Mairal
Partners Ricardo Beller and
Martin Campbell
- Estudio Alegria, Buey
Fernandez, Fissore &
Montemerlo
Partners Pablo A Buey
Fernández, Héctor Alegria,
Rodrigo Alegria, Gabriel
Fissore, H Miguel A Montemerlo

US

- Wilk Auslander LLP
Partners Jay Auslander and
Natalie Shkolnik

Counsel to AEI and Pampa Energía

Argentina

- Salaverri, Dellatorre, Burgio &
Wetzler Malbran*
Partners Diego Salaverri and
Germán Wetzler Malbrán
* At the time at Errecondo,
Salaverri, Dellatorre, Gonzalez &
Burgio

US

- Skadden Arps, Slate Meagher
and Flom LLP
Partners Timothy Nelson, John
Gardiner, Marco Schnabl and
Julie Bedard

Counsel to the Royal Bank of Scotland

- In-house counsel – Luciana
Calia
- Marval, O'Farrell & Mairal
Partners Roberto Silva Jr and
Fermín O Castro Madero

DEAL OF THE YEAR 2012

Marieke Breijer profiles the winners of *Latin Lawyer's Deal of The Year Awards*, celebrating the lawyers working on the cream of the crop of transactions coming out of Latin America in 2012

The times they are a-changin'. No longer do Brazilian deals dominate the Latin American business pages and no longer is it only Brazil that investors look to for opportunities. While for years it was the one country monopolising the spotlight, business

dynamics in the region are shifting, allowing for a number of other countries to take their spot on the world stage.

The shortlist for *Latin Lawyer's Deal of the Year Awards 2012* reflected these developments. Despite the economic slowdown, Brazil's continued relevance was highlighted by the high number of deals involving lawyers from the region's largest economy; but we received over 200 nominations from a notable mix of jurisdictions. Chile, Peru, Colombia and

Mexico are among the star performers in a region that sees many economies flourish. In Mexico, following Enrique Peña Nieto's success in last year's eagerly awaited presidential elections, optimism has soared with expectation that he will initiate reforms to drive economic growth. Panama, too, sees extraordinary growth levels, not only because of its geographic position and its canal, but also through a dedicated effort to attract more companies to the country and the billions spent on infrastructure developments.

Despite certain preeminent players, Latin America remains a region of stark contrasts and the countries' business environments are no exception. Doing business in Argentina, Ecuador or Bolivia remains tricky as investors grapple with the administrations there. In Venezuela, the death of Hugo Chávez prompted a new vote that saw the Chavista Nicolás Maduro beat the more business-friendly opposition leader Henrique Capriles by only a narrow margin.

While differences in the region's politics remain pronounced, Latin America's businesses have forged stronger links between countries as their regional expansion continues apace – with some of the finest law firms in Latin America accompanying them on their path.

The winning deal in the M&A category was the groundbreaking merger of Chile's LAN and Brazil's TAM airlines, which occupied competition commissions in two countries, a consumer group complaint and national restrictions on ownership of airline carriers to produce LATAM Airlines. Other nominees in the category included the agreement between Anglo American, Codelco, Mitsubishi and Mitsui over a prized copper mine in Chile that saw the parties overcome their differences and draw an end to a bitter legal battle; and Cosan's acquisition of BG Group's stake in Comgás, the company's largest acquisition since its 2005 IPO and a move to diversify its business alongside sugar and ethanol production.

The private equity category – one of two new categories this year – reflects the importance of the sector for the development of Latin American companies. The influence of private equity is felt throughout the region, as is illustrated by the three shortlisted deals. The winning deal saw Peruvian appliance retailer Tiendas Efe call in the help of the private equity funds of Linzor Capital Partners, Grupo Wiese and PQ Investments, and a bank to acquire homeware retail chain Total Artefactos and become Peru's largest home appliance retail chain. One of the runners-up was private equity firm Bain Capital's acquisition of Telefónica's global call centre business, which required the involvement of counsel across eight Latin American jurisdictions. The second runner-up saw Mexican investment firm Axis, Singapore's sovereign-

owned investment company Temasek and Ares Management join forces to form the first Mexican oil and gas joint venture, with the purpose of investing in the local energy sector.

In disputes, the litigation between Pampa Energía and CIESA to resolve a debt restructuring stemming from Argentina's 2002 financial crisis won thanks to an out-of-court settlement after a decade-long dispute fought out in Buenos Aires and New York. The arbitration between Occidental and Ecuador – where Occidental won the biggest public ICSID award under a bilateral investment treaty – and cigarette manufacturer Philip Morris' victory in a 12-year litigation against Compañía Chilena de Tabacos over anti-competitive behaviour before Chile's Supreme Court were also shortlisted.

In the restructuring category, few could compete with the deal where Brazilian and US law firms wove together bankruptcy, capital markets and M&A law to help energy company Celpa keep the lights on in Pará, Brazil's second largest state. Other shortlisted deals included Mexico's Cemex's dollar, euro, yen and Mexican peso-denominated debt totalling US\$7.3 billion in a private cross-border exchange and Uruguay's "most complex bankruptcy" since the enactment of the new bankruptcy law – the restructuring of fibre wood company Urupanel.

In the winning corporate finance deal, the future of two Colombian phone providers was at stake as lawyers organised a bridge loan, a merger of the two companies, and an international bond placement to safeguard the combined company's future and improve its position in the market. The two other nominated deals were both first-of-its-kind transactions – BTG Pactual raised US\$1.96 billion in the first-ever IPO by a Brazilian investment bank, while Panama's Global Bank raised US\$200 million in the first ever covered bond placement to come out of Latin America.

In the outbound investment category we recognise the increased relevance of Latin American players outside of the region, and this year top honours went to the lawyers responsible for helping Cervecería Costa Rica put itself on the global map by acquiring North American Breweries, the largest independent brewery in the US. Other recognised deals include Camargo

Corrêa's tender offer and an asset swap with industrial conglomerate Votorantim to gain control over Portugal's Cimpor. Mexican pharmaceutical company Genomma's foray into the US through its US\$834 million buy of US-based personal care and home-cleaning products company Prestige Brands was also listed.

In the project finance category, again, the quality of the submitted deals was exceptionally high. In securing US\$3.2 billion from a range of seven governmental agencies and 10 commercial banks from all over the world, the lawyers acting for Braskem Idesa organised the largest petrochemical project finance in Latin America. That deal trumped competition from a first-of-its-kind project bond financing for the construction and operation of health-care facilities in Peru, and Sete Brasil's multi-billion financing for the construction of drill ships, as part of the largest exploration expenditure programme currently under development by Petrobras.

The regulatory deal of the year category was another new addition to our awards, recognising the skills of lawyers in deals where interaction with a regulator is fundamental to their successful conclusion. Here, the lawyers assisting in a last-minute consortium formation to successfully win the bid for São Paulo's Guarulhos international airport – the most important in Brazil – were crowned the winners for their help in tackling the country's infrastructure deficit. Runners-up in this category included the deals where lawyers helped pension fund administrator Habitat win authorisation to operate in Peru following a recent reform of the country's pension fund system, and those that helped Televisa's and Iusacell's merger get competition approval in Mexico.

Over the next few pages we highlight this year's winning deals and the lawyers that ensured their completion.

METHODOLOGY

Submissions for *Latin Lawyer's Deal of the Year 2012* were accepted from any law firm or company wishing to nominate a transaction that closed between 1 January 2012 and 31 December 2012. *Latin Lawyer's* editorial team selected the winners taking into account information in submissions and our daily reporting throughout the year.