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Editors
Paola Lozano and Daniel Hernández

The Guide to Mergers and Acquisitions

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Publisher's Note

Latin Lawyer and LACCA are delighted to publish this second edition of *The Guide to Mergers and Acquisitions*.

Edited by Paola Lozano and Daniel Hernández of Skadden, Arps, Slate, Meagher & Flom LLP, this guide brings together the knowledge and experience of leading experts from a variety of disciplines and provides guidance that will benefit all practitioners.

We are delighted to have worked with so many leading individuals to produce *The Guide to Mergers and Acquisitions.* If you find it useful, you may also like the other books in the Latin Lawyer series, including *The Guide to Infrastructure and Energy Investment* and *The Guide to Corporate Crisis Management*, as well as our jurisdictional references and our new tool providing overviews of regulators in Latin America.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

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The Impact of Political Instability and Social Unrest on Dealmaking in Latin America

CHAPTER 1

Roundtable: The Impact of Political Instability and Social Unrest on Dealmaking in Latin America

Despite some countries in Latin America experiencing a surge in social unrest and political instability over the past year, the region's M&A market has been left relatively unscathed and deal volumes have remained high.

Latin Lawyer brought together a panel of leading M&A practitioners to discuss the political situation in some of Latin America's largest markets, as well as the impact of uncertainty on dealmaking in the region. The roundtable was moderated by Paola Lozano of Skadden, Arps, Slate, Meagher & Flom LLP and features contributions from Jaime Robledo of Brigard Urrutia, Pablo Guerrero Valenzuela of Barros & Errázuriz Abogados, Iván Delgado González of Pérez-Llorca, Ignacio Pesqueira Taunton of Galicia Abogados, Estanislao Olmos of Bruchou, Fernández Madero & Lombardi, Luciana Cossermelli Tornovsky from Demarest Advogados and Jean Paul Chabaneix of Rodrigo, Elías & Medrano Abogados.

The following is an edited transcript. Since the roundtable, significant events may have occurred.

Paola Lozano: Various countries across Latin America seem to be experiencing increased polarisation, severe social unrest and some political instability. This roundtable gives us an opportunity to have a conversation about dealmaking in the current environment in the region.

Of course, each country in Latin America is unique. They each have their own issues, and their own paths to finding solutions, or to evolution. Let's start by describing the current situation in each of the large markets in Latin America. We will then move onto how that environment actually impacts M&A dealmaking. Afterwards, we'll get into the specifics of some regulatory changes that derive from the current environment, and then we will attempt to look into the future.

Let's start with Peru. Jean-Paul, can you give us a sense of the potentially dramatic changes occurring in terms of the political situation and social environment?

Jean Paul Chabaneix: Clearly the last year and a half has been full of surprises The government decided to shut down the economy completely for three months, which didn't help control the pandemic. Our economy suffered significantly as a result of that shutdown. Following that, we elected a radical left-wing president, which has created a lot of uncertainty as to the future of private activity in Peru – and in particular, M&A-related activity, which is one of the areas where we are already seeing an impact.

This is a government that has had links with terrorist movements in Peru back in the 1980s and 1990s, which basically aims to change the whole economic structure of the country by amending the Constitution. Their proposal is that the state should have a much larger role than it has had so far, which of course, in the case of Peru, is a road that we already went down in the 1960s and 1970s, with terrible results. The economy suffered precisely as a consequence of the government not managing things properly back then, so there is once again a lot of uncertainty, and a lot of fear too.

How far can the new government go in terms of impacting an environment for business? Clearly, as a result of the level of uncertainty, we have already seen a number of scenarios which we thought we had left in the past. We have been downgraded by at least one of the main risk-rating agencies, the exchange rate has surged significantly in the last two months – basically from 3.7 soles for a dollar to 4.2. There is no clarity as to where this is going to take us. In addition to that, the government is not showing any signs of rectifying the situation. It's keeping silent, and there is a party behind President Castillo that seems to be running the show. The outlook at this point is not the best one, to say the least, and this is going to adversely impact our activity.

Lozano: Let's switch to Mexico. A few years ago, with the election of Andrés Manuel López Obrador (AMLO), the markets were preparing to see something somewhat similar, but it doesn't appear to have gotten to the same dramatic results as people are seeing in Peru.

Ignacio Pesqueira Taunton: Unfortunately, Mexico has not been spared from the polarisation trend. We are three years into this new government, with many concerns. I would say that there's a huge, unprecedented lack of trust, in particular by Mexican investors. People in Mexico are really not willing to invest in the country at this stage and there is a significantly negative sentiment in that respect. Despite this, we are seeing a number of Mexican companies and high net worth individuals capitalising on efforts by private equity funds, and large corporations trying to buy into the market, so there's a lot of activity. As a general rule, it's predominantly Mexicans selling.

Lozano: We're curious to understand if there is an expectation of change in the political environment in the near future. Is AMLO continuing to have the support he needs to stay in control, and is that going to perpetuate the polarisation? Or is there any foreseeable change?

Pesqueira: I don't think there is any foreseeable change. We had a recent election – AMLO's party lost some power in Congress. He doesn't have the ability to change laws any more, and that's a big plus. He doesn't have the ability to change the Constitution – he was eight votes shy in his prior term. There is another vote early next year, but I think that he will continue to stay in power, and everybody is thinking about what's going to happen in three years. A lot of people are seeing this as a countdown – we just want to wait and see. Until then, it's most likely going to be business as usual – that's at least the positive expectation. As you know the currency exchange has been stable, which is very relevant, in Mexico at least. This government has been austere, and they have not engaged in much debt, which is what you would typically see in politically like-minded governments. So that's positive if you look at things in the long run.

Lozano: Clearly some challenges. But I think the perception from the outside is that the financial impact could have been a lot worse given the political environment, while realising the country is still deeply polarised. There seems to be some status quo for most of the industries (other than energy), and some understanding that at least some basic rules of a market economy are being kept.

Pesqueira: Yes, and people from the outside have a better perspective, I think. People inside Mexico are very disappointed, very negative, and what we're seeing is people from the outside taking advantage of opportunities inside.

Let me just share very three very specific points with respect to social unrest and political instability in Mexico. One is, there is no social unrest in Mexico right now. People who usually would be the centrepiece of social unrest currently feel represented by the existing government, so there is a big division in the country, but no social unrest. It would have been different, of course, if another party had won the last election.

Number two, federal courts have mostly proven to have done their jobs, in terms of being able to generate the checks and balances that a government like Mexico requires. And that is very relevant because a number of changes in laws were held back by the courts, and that is very positive because we were sceptical about that when this ordeal started.

The last thing is that, strangely, after the election, the process to appoint the new president started very early. There is a lot going on, and that shifts a lot of the attention to the political scene, which is one of the reasons we think there will not be that many changes just yet.

Lozano: Let's switch to Chile. I think Chile is now at a little bit of a crossroads. We have to see what's going to happen and which of the potential two paths it might take – or maybe a better path altogether. Pablo, tell us your view of the political environment and social situation in the country.

Pablo Guerrero Valenzuela: As you know we've experienced some tough times in Chile since October 2019. We had a country that we thought was very stable – the exception in the region – and we woke up from this dream to something we have not seen in 30 years. Social unrest and political violence. This was all ignited by an increase in the metro fare of 30 Chilean pesos – in US dollars that's less than five cents.

After that, we had two months of political violence, and social unrest. Nobody saw that coming, both from the political spectrum as well as the private sector. The country realised at some point that even though all data showed Chile was one of the less unequal countries in the region – it had reduced poverty substantially in the last 30 years, it had a stable economy and rule of law – this was not enough. Not only for low-income sectors of the country, but especially for the middle class. There was a big section of the middle class that had substantially improved its living standards in the last few decades, but the country was not growing any more and there was a lot of debt. There was much more inequality and segregation than was acknowledged. Added to this, there was a heightened perception of corruption across the country, even though we tend to think that Chile is not a corrupt country. There is a great mistrust in all kinds of institutions – private and public institutions, political parties – and in the last years there have been a number of big scandals in the public sector, illegal financing of political campaigns, cartels, insider trading scandals, etc, which the people felt were not sanctioned the way they should be. This created an environment for change.

What came out of it? A big social agenda in terms of governmental spending – we'll see how it ends up – and more importantly, an agreement to draft a new Constitution, which has created significant uncertainty. We had a referendum: 80 per cent of the country approved the proposal to draft a new Constitution. In addition to this, we have had the election of the Constitutional convention that leans to the left in a way nobody expected. The radical left, in some way, took control of this convention, and we'll see what will come out of it. I think that's one of the greatest concerns that we currently have. On top of that, we have a presidential election in November and December. Fortunately, I think the primaries showed an electorate moving more towards the centre, calling for more moderation, but we're still waiting to see what the results will be.

Lozano: The case of Chile is a very interesting case study, in particular for Colombia, where we recently started to see a very strong return of political and social unrest in the big cities. Some of us outside were immediately reminded of Chile, and what had happened with the metro price hike. Some of us were a bit disappointed that Colombian institutions were not more prepared, having seen what had happened in Chile: the violent protests in the street, and how they led to some very dangerous activity against the respect of institutions and the rule of law. Jaime, tell us how that has evolved in Colombia.

Jaime Robledo: I think there are a lot of common points we share both with Mexico and Chile, and I think that is true throughout Latin America. I was looking at a survey on the Ipsos Broken System index,[1] where they ask the general public certain questions like: 'Is my country deteriorating? Am I poorer than before? Is there a perception of corruption?' And when you take a look at that, you see that in most cases you find Chile, Mexico, Colombia and Peru score the lowest in the region.

The perception that exists in our countries is, therefore, one of the things making it so difficult to change the trend. Colombia was experiencing very good rebounding economic activity in January 2020. The markets were very happy with the economic performance, but covid-19 came and our economy went down in terms of GDP by around 6 per cent.

1 Ipsos, 'Broken system' sentiment, populist and nativist views still prevail in Australia, in line with global views', available at https://www.ipsos.com/en-au/broken-system-sentiment-populist-and-nativist-views-still-prevail-australia-line-global-views.

Then during the beginning of this year, around March or April, we started seeing another recovery, which was impressive. We saw months of growth – of 8 per cent, 9 per cent – but then came this social unrest. The social unrest was originally sparked by the proposal of a tax reform – very poorly managed by the government when it was presented, and very opportunistically taken advantage of by the opposition.

When you look at the tax reform, it proposed three things. The first was to broaden the taxpayer base to make the tax system more redistributive. It was not a regressive tax reform – for the first time in a long time, we had a structural tax reform. Even the people that were being affected in the base, middle class people, had relatively high income, from a Colombian perspective. The second thing that was outlined in the reform was the higher taxation on high net worth individuals. The third was ultimately taxation on dividends. Therefore, when you take a look at those three changes presented by the government in that tax reform, they were all in favour of redistributing wealth and creating more equality.

The opposition used the reform to fuel the poorer classes, however, and they went out to the streets motivated by the sentiment that there is a lot of corruption and a lot of inequality. When you look at the numbers from 20 years ago to today, Colombia is substantially better off than it was was then, but there is significant dissatisfaction with the fact that although the lower-income and middle-income people are better off, the high net worth individuals are much better off. There's a lot of indignation about that.

This point of contention was being used by the candidates of the opposition, to rally support for the presidential elections next year. However, while the social unrest was terrible during May and June, paradoxically, it created a boomerang effect on the opposition. People started seeing that left-wing candidates were supporting blockages, shortages in supply and the slow-down of economic activity. People that earn their living on a day-to-day basis started saying, 'This is not the guy that's really helping me, I'm not getting any food on my table.' What we're seeing in the latest surveys of voting intent, and the polls, is that candidates that came from the left – particularly one of them – are losing support. The problem now is that we don't have a candidate that is sufficiently robust or strong.

In economic terms, what we have seen in the last two months is another rebound. We've seen growth, and we see a lot of activity. I think we're going to continue to see a yo-yo effect from now until the elections, in the sense that the left is going to try to destabilise the country with blockages, riots and strikes. The industrial class and the entrepreneurial class – which is surprisingly being seen in a much more positive light– are trying to make everybody see that if we keep on working, we're going to get out of this.

Lozano: I agree that there is polarisation, fuelled by inequality. We have to work on that, but also the disinformation that comes with it is extremely dangerous. When I think about polarisation with disinformation, in addition to thinking about the US elections, I immediately go to Brazil. It makes me think about how politics has become a media war in terms of who can best handle social media, and how many use the anger of the lower classes to fuel what in some places – including the US – becomes a real force of destabilisation and sadly, in some cases, could lead to breakages in democratic institutions. Luciana, tell us how you're seeing things in Brazil in this regard.

Luciana Cossermelli Tornovsky: Current alignment among Brazilian government branches, public administration bodies and representatives of the Brazilian Supreme Court is considered to be in the most fragile state since the beginning of President Bolsonaro's mandate. We have been facing a huge dispute between our President and members of the Supreme Court that can put the Brazilian democracy at risk.

On 7 September, a date on which we celebrate Independence Day, Bolsonaro's supporters organised several protests in a number of Brazilian states claiming the removal of certain members of the Supreme Court from office. Bolsonaro was present at two of these protests and gave speeches that were heavily condemned by several key members of the political establishment, including the Presidents of the Supreme Court, the Senate and the House of Representatives, which all highlighted Brazil's strong commitment to democracy and respect to democratic institutions.

The backlash was definitely felt by the Bolsonaro administration, which faces its lowest popularity rates since the beginning of his mandate in view of a poorly effective policy adopted for fighting the covid-19 pandemic and its impact on the Brazilian economy, which already shows signs of high unemployment, inflation and indebtedness. Given that the heavy criticism highlighted the instability of the current administration and even chances for the setting up of an impeachment process, President Bolsonaro released an official letter to the Brazilian people ensuring his commitment to democracy and demonstrating signs of regret on some statements made on 7 September.

As Presidential elections approach in 2022 and the polarisation of society increases, the Brazilian political climate seems to be on the edge, which certainly reflects in several pushbacks for the current administration's liberal economic agenda, including the privatisation of large state-owned companies and the de-bureaucratisation of the Brazilian tax system.

Lozano: We have to say, some of it looks like a borrowed playbook from the Trump administration, including some of the claims that were made and the dangers of attacking democracy as a way to win elections.

Estanislao, Argentina might be, for the first time in a while, a little bit of a shining star, in the sense that it appears that the democratic process is working, and the discontent with the populist government has grown at least enough to make an impact on the polls. Tell us about Argentina.

Estanislao Olmos: Argentina entered into the covid-19 crisis amid a change of government that couldn't manage to generate trust, so the economy continued to suffer. The economic crisis is more a political economic crisis and was not settled by the previous government – it is even less settled by the current administration. The results of the primary elections in August 2019 doomed the chances of President Macri's re-election amid a poor economic performance. That led to Kirchner's return to power. Their campaign speech showed more moderation – a more balanced intention. However, very rapidly, it became clear that they were not sticking to the campaign pledge. The change of direction spread pessimism, but with some level of overreaction.

Inflation continues to be very high, driven by, among other factors, the printing of money and a high tax deficit that essentially eroded all the relevant effort made by the previous administration at the end of its term.

Covid-19 made matters even worse for the current administration. They made serious mistakes in their vaccination strategy, resorting only to mandatory lockdowns, which lasted too long. Now the population is fed up, angry – and the economy got worse. It's showing signs of recovery, but there is still a long way to get back to early 2020 levels. On the other hand, although presidential elections are still far away – in 2023 – the results of the elections would certainly provide a context for a more rational debate and reduce the risk of a radical unorthodox agenda.

Also, it may be evidenced that the agenda push by President Macri to strengthen institutions, to make the state more efficient, was actually appreciated by the population. Note that 25 per cent of the votes in this last election were openly liberal, which is always bad marketing in political campaigns. So that's a new thing in Argentina, and certainly a by-product of this last election is that an attempt to amend the Constitution is now unlikely.

The only challenge is the IMF, and this has always been tied to a more structural reform agenda, which remains a pending matter in Argentina.

Lozano: In terms of the strength of democratic institutions and the rationality of the debate, Iván, you have a unique opportunity to view the region from the European perspective. Spain has also had its fair share of issues in the last year. How does that impact the principle of this current climate?

Iván Delgado González: Unfortunately, we see political instability with social unrest. We see a two-bloc world. I don't know if you can call this a new Cold War, but we certainly see something happening between the US and China. We see Latin America looking out of the region and a lot of companies, wealthy families, looking elsewhere, which is something that we didn't see in the previous five years. And then we see Europe looking for a role in this game.

Spain has played a key role in the region forever, and we've seen this as a great moment. Investors and companies, not only from Spain but also from Europe, invest in Latin America through Spain. Of course, Spain has strong companies in the energy and infrastructure sectors, so this is essential for the region in this moment of political instability with things changing and with all the problems and challenges that they have throughout Peru, Mexico, Chile, Colombia, Brazil and Argentina.

Lozano: Sometimes people ask us why we lawyers have to analyse politics, social environments. It's because it has a direct impact on economic growth and on corporate stability and sustainability. M&A sometimes travels in the opposite direction to what the naked eye would expect in times of crisis.

Let's get into the specifics of the level activity and volume of deals. I think we've all been crazy busy, which is great, and hopefully it does create some opportunities and wealth that trickles down. It has been somewhat unexpected and counter-intuitive – as was the case in the US during the beginning of the health crisis.

Luciana let's talk about activity in Brazil. What is fuelling it and what are the types of deals that are happening?

Tornovsky: Business transactions are booming in Brazil, in spite of the current fragility of the alignment of government bodies and representatives of the three spheres of power, high unemployment and inflation rates.

Recent reports show an increase in the number of M&A deals throughout the year of 2021, with an impressive increase in the number and value of deals when compared to 2020. The Brazilian M&A market registered approximately 1,200 transactions with a value of 300 billion Brazilian reais this year until July. These numbers represent a 50 per cent increase in the number of transactions and 185 per cent increase in value over the same period in 2020. The technology sector remains the most active, with a total of 449 transactions.

This heating up of the M&A market could be considered a result of several factors, including high liquidity due to low interest rates, the challenges that the covid-19 pandemic brought to the organic growth of corporations, and the absorption of suspended or postponed transactions in 2020.

The first semester of 2021 was very strong for the M&A sector. The main players were venture capital and private equity funds, especially North American funds. The attractive exchange rate facilitates the opportunities for investment options, and the uncertainty about the undefined scenario for 2022, which will be the year of Presidential elections in Brazil, was not yet felt. Health, agribusiness and technology sectors are among the busiest sectors in M&A activities. Consolidated corporations are buying innovative companies to add innovation to their businesses.

The Brazilian financial market, specifically the stock exchange (B3), has also been demonstrating signs of strength, despite a couple of retraction movements due to political instability. IPOs are being considered by a large number of corporations and predictions by Bank of America have indicated an all-time record of approximately US$30 billion in Brazilian IPOs for this year.

As the news, reports and predictions have demonstrated, political unrest does not seem to have a big impact on dealmaking in Brazil so far. The current exchange rates have also shown a positive impact on foreign investment.

However, it is important to be aware of the possible impacts caused by 'political noise', as defined by Paulo Guedes, Minister of Economy, on the growth currently experienced by the Brazilian economy. Inflation can certainly affect dealmaking as it has a direct impact on buying power, currency devaluation and a fall in foreign investment, as high inflation rates historically represent economic weakness.

Lozano: We've been following the positive developments in Brazil, and they are exciting for us M&A practitioners – and also, obviously, for capital markets. We hope that it's long-lasting. You do see a bit of a change in the players, with increasing opportunistic investors from larger markets, partly because the pricing is now extremely attractive – and, obviously, in some cases, strategies that have maximised growth in their own markets. With a market the size of Brazil, there's always an opportunity for growth.

Ignacio, you were saying something similar with respect to Mexico, in the sense that there was a lot of appetite from foreign investors, and a bit of a shift in the direction of the cash flow.

Pesqueira: In terms of dealmaking, activity is very high in Mexico. We've seen this situation before, where it's driven in terms of industries, in terms of players. Venture capital is starting to show early maturing levels. It's clearly not a mature market, but we are starting to see more and more transactions that are not your early-stage small deals. We're starting to see unicorns. We're starting to see more relevant transactions. More and more we're seeing transactions that fall within the venture capital arena, but that have private equity growth pricings. This is a weekly occurrence at the minute, and I don't think there are any signs of slowing down.

Now, when it comes to private equity – there are no Mexican investors doing anything really. It's an absolute exception if you find a Mexican investor and a Mexican company doing deals in Mexico – other than large corporations setting up their corporate venture capital funds. But that's really early-stage, little transactions that do not move the margin. In terms of industries, it's a little bit across the board: infrastructure, retail, technology. Investors are mainly private equities and some strategic investors going into the country.

The other thing that we're looking at more frequently, which was not something that we did three or five years ago, is carve-out deals. Large companies are, for the first time, willing to sell non-strategic assets, and funds have been pushing forward with creative ideas as to how to do that. So, there are a number of carve-outs – interesting, large transactions going on, which is really a change from what we used to see. Overall, it's a very active market. We have to understand this from the perspective that energy, and oil and gas, and power have been under constant attack.

Lozano: The increase in carve-out deals makes a lot of sense. As people focus on growth, and in some cases get competition from foreign investors, they need to prioritise where they're stronger, their core businesses, and monetise those areas where they cannot maximise profits, but a foreign or differently situated buyer can.

Jaime, what we're seeing in Colombia is a bit of a shift too, in the sense that the fear of radical changes has pushed some local capital to look at investments abroad more than internally. But that has been slower than what I've seen for Chile and Peru?

Robledo: In Colombia, M&A transactions are mainly being driven by an asymmetry of the perception of risk. Internally, there is a very high perception of risk, but externally, people still think Colombia is an attractive market. Across the board, we are seeing a number of transactions which are evidence of that statement.

Recently we saw the sale by the Gómez family of Grupo Familia. They were in a joint venture with Essity; they had been a joint venture for more than 20 or 30 years, and now they're saying, 'We don't want to keep our money in Colombia.' We see that in other families as well. But what's incredible is they are managing to find buyers at very interesting multiples who think Colombia is still an attractive market. From a Colombian perspective at least, people still want to think – especially external observers – that Colombia is a country where institutions will prevail over any type of president that will come into office. People think even if Gustavo Petro, the candidate on the left, wins next year, he will not be able to implement all of the very extreme reforms people think he wants to implement, and this will still be a market economy. Congress will still have to manage how to deal with any type of expropriatory efforts by Petro however.

From an internal perspective, the perception of risk can lead local capital, especially family-owned businesses, not necessarily to sell off their assets, but at least diversify offshore and relocate their fiscal residency. From an external perspective, we see people interested in the Colombian market. This is true across the board for assets like industrial assets. We also see that being true in infrastructure assets. Infrastructure is a very resilient sector, and we have recent transactions in energy, in roads. We also see residual transactions in mining and oil and gas – in which, to a certain extent, I think these past years have become relatively toxic. However, Colombia cannot survive without a commoditised economy, at least for the next 10 to 15 years, so transactions in oil and gas and mining are still going to be important in the country.

In the same vein as in Brazil and other countries, we see a lot of interest in ventures in Colombia. We're seeing a mix, and we'll have to deal with a mix of transactions. Both really large infrastructure transactions, and smaller venture capital transactions. Transactions in financial services and health. M&A activity is very active right now. We're seeing all types of investors coming in and going out.

Lozano: We like it that way and we hope it is sustained. We hope, as we approach elections, that sentiment continues. I tend to agree with you, I think from the outside, people still believe in the democratic strength of the Colombian institutions.

Pablo, some of the things that Jaime said are so resonant for Chile, in terms of Chileans having been, in the past, a very inward-focused investment crowd.

Guerrero: It's very similar to what I hear from Jaime in Colombia. Firstly, there is a completely different perception of risk between insiders and people from abroad. Chilean entrepreneurs traditionally have had a great part of their net worth invested in Chile. I think that is changing, and that definitely has an impact on M&A. We see traditional companies selling non-core assets. Important transactions have an explanation in that phenomenon. We have also seen Chilean companies distributing high amounts of dividends this last season. That will translate into a lot of investment abroad, not only in financial assets but probably some cross-border M&A activity because there are a lot of funds being distributed to shareholders. We've had a very active M&A market in the last six to nine months. Compared with 2020, it's substantially higher.

We continue to see transactions in strategic assets in infrastructure and energy, but also in the financial sector, technology infrastructure, datacentres and fibre optic sectors. In terms of players, private equities are very active, I think taking advantage of less pressure on prices from the seller side. We've seen a lot of venture capital fintech transactions as well as a lot of Chinese companies acquiring infrastructure, energy infrastructure in particular. So far, a very active market.

Lozano: We were very excited seeing those Chilean entrepreneurs get busier and busier in other countries, including in the US, and with global platforms.

That's also what we can say about Argentina, although it started much earlier than in Chile. The quality of the businessmen, the entrepreneurs, the technocrats, the dealmakers in Argentina is very high. So, as the country shifts a bit, we continue to see the Argentine entrepreneurs doing this same thing: being extremely active in the foreign markets with their investments.

Olmos: The M&A level this year and last year was quite high, especially considering the context of a downturn in the economy. Of course, a significant number of transactions are driven by global or regional deals, but this has always been the case in Argentina – differently to what I'm hearing from Jaime in Colombia, and local private groups trying to seize opportunities. They really take the opportunity of bargaining in deep-distress scenarios. On the other hand, some foreign groups really appreciate already having local partners, or they are looking for local partners – in some cases to avoid consolidation and keep the asset for a better scenario because they realise that in the mid-term the environment may change.

The technology sector is booming, with unicorns continuing to come out from Argentina – Mercado Pago, Globant, Ualá and others. I think Argentina already has 11 unicorns, six of which reached that level during 2021. These players that operate regionally are an example to the rest of the business community. There is a lot of interest from Chinese companies into the mining sector, especially lithium and copper. Agribusiness, one of the niche sectors of Argentina, continues to attract talent and investment.

Indeed, we are seeing a change in the mindset of the business community that is now seriously contemplating seeking opportunities abroad, regionally and also in Europe and the US. They are looking to diversify their portfolio and become regional players. This happened in Brazil long ago, but now it seems that Argentine family-owned businesses – probably because of generational transition and younger managers more willing to go abroad – are looking for those opportunities. When it comes to transactions, we continue to see these being structured to avoid entering interim periods, sometimes even pushing the reorganisation of a business, or the carve-out of the asset as a post-closing matter that the buyer will have to do for the seller. Sellers are accepting a reduced price, but short and very limited indemnity exposure post-closing. In some instances, sellers are even offering financing to the purchasers and/or accepting earnouts or a deferred purchase price mechanism.

Arbitration and US law continue to be the most frequent options when it comes to jurisdiction and applicable law. Argentina already has a very long-term tradition in the US-style of doing M&A; we follow that procedure, and we see people coming and going from US practice.

Lozano: Jean-Paul, this is the first year in a long time where Peru is in this lowest spot, in terms of level of cross-border activity. We were extremely busy in Peru until the press intensified coverage of the election going the way it went. Fortunately, there seems to be some activity from mature family offices that continue to expand into different markets.

Chabaneix: As soon as there was some possibility that the currently elected government had a chance to be elected, things went stale in the market in general, not only in terms of M&A but in other activities as well. What happened in the past, where there was some divorce between politics and the economy – we saw part of that during the Humala term for instance, even though it was a socialist government – both the perception of the market locally and abroad was that it was still business as usual. That has not been the case this time.

The business community is debating whether Peru is going to take the Venezuela route, or whether it's going to be more of what we saw in the past, with Humala. Hopefully, before year end we will see a clearer picture.

Most activity these days is with local investors trying to relocate the ownership of their business elsewhere as a mechanism to try to preserve those assets and access certain protections in connection to those investments. I think what we will see is a lot of appetite from local investors trying to sell assets, and certainly not at the prices that they would have expected in a different scenario. They will probably be more willing to take big cuts. If the worst-case scenario does materialise, the impact on private investment can be significant. The government has already sent certain signals that they wish to recover, for instance, the oil and gas activity 'for the people'. Which means expropriation, one way or the other. Whether that is going to materialise is still uncertain, and a question mark remains on whether that's going to impact other areas in the country.

Before this situation started, we were seeing a lot of activity in agribusiness. Energy was recovering and the mining activity has traditionally been an area where a lot of deals happened. I would say we are still in wait-and-see mode at this point. We've seen a number of transactions that were either put on standby or abandoned completely. At least for the remainder of the year, we are not expecting an active market. We are certainly not expecting the level of activity that we were used to in the past.

Lozano: Iván, it's interesting hearing that American investors get excited about depressed pricing of assets with high growth opportunities even in challenging political and social environments. Latin America continues to be attractive in that sense. Is that a statement that we can safely make these days with respect to Spain and Europe, looking into Latin America?

Delgado: You are absolutely right. We see a lot of interest in Latin America, not only from Spain but also from Europe. It is time to look into opportunities there. Of course, investors are concerned about the exit strategy, which is something they will look into before an investment, overall, the energy and infrastructure sectors are very interesting for European investors in general.

We are also seeing two trends on the other side. We see a lot of Mexicans, some Chileans, Peruvians, family businesses and multinationals, looking more into the European market. We are also seeing a lot of investors from Latin America, more than in the last three years, looking into the real estate and hospitality sectors.

Lozano: I think we focused on some of the country interventions on the inflow of capital, private equity and some institutional investors going in on that attractive pricing and the expectation of growth, but we've also definitely seen exits. I think that was part of what was creating some of the carve-out transactions, and some of those pan-Latin American deals that provide activity to each of the countries that are represented in this roundtable. At some point, companies must cut their losses or maximise on the monetisation opportunities. So, we will likely see some significant exits too.

Let's talk about regulatory changes. Ignacio, we'll go to you first as we know there have been some changes that may have impacted activity in certain markets within Mexico.

Pesqueira: Since the last election, where the current government lost the ability to easily make changes to laws, we are not expecting much more protectionist new regulation. There has been an open-hunt season against the energy sector. If anyone had said that renewable energy would be under attack the way it has been under attack in Mexico, nobody would believe it, but it's as if doing clean energy is the worst thing you can ever do. It's really a commercial issue because the government has very dirty, expensive energy, and they want to sell that first.

We just went through a very significant labour reform that prevented the subcontracting of employees. That forced essentially every Mexican company to restructure internally the way they engage their employees. This situation has a backdrop effect on increasing the cost of profit-sharing of employees, which was never a cost for Mexican companies. I think there's a question of how big the impact will be going forward. I think most companies are assuming there will be some cost, and that in the long run they will be able to cover it with other items. This move was not received with a strong opposition by the business community. We all know that we need to end the tax abuse that was the origin of this, so everybody is restructuring. It has been a very active process, and it creates some challenges and some risks that nobody understands because of the way it's implemented. People are nervous that there are no safe harbours. That's kind of a problem, but generally I don't expect much change in the next few years, other than this subcontracting reform.

Lozano: Seeing it from the outside, there are two clear examples in Mexico of the extremes in regulatory action stemming from the fuel provided by disatisfaction and social unrest. On the one hand, the shift in policies regarding the energy sector. It's the only country in the region where we cannot say that we see healthy activity in energy.

On the other hand, the profit-sharing of employees is something that, if you think about the social unrest and the dissatisfaction that we're discussing, makes a lot of sense to many of us. What's interesting about the profit-sharing of employees is that it wasn't really a new law in Mexico, it was just never enforced. While all of us are pro-market, when you hear the basis of the dissatisfaction, the concept of well-implemented profit-sharing policy for employees has its appeal.

Pesqueira: You're absolutely right that Mexico, and I think most countries in the region, need to work towards more equality in the distribution of wealth. Companies need to focus on that. Unfortunately, I don't think profit-sharing is the way to do that. If you look at the generation of wealth 80 years ago, which was supported based on the work of people, it made some sense. Today the generation of wealth is based on capital, so you can generate a billion-dollar investment and operate it with 10 people. The companies that are most capitalised generate greater revenues, and in this new economy it's not necessarily tied to the work. Having said that, I am absolutely convinced that we need to look into more equality in the distribution of wealth. Otherwise, we're going to pay a bigger price later on.

Tornovsky: It's interesting to hear that because in Brazil we had exactly this, the opposite way. Outsourcing was forbidden, but very recently a law was introduced that allowed outsourcing for companies.

Pesqueira: It's just preventing tax abuse. There was a huge amount of tax abuse that was generated through outsourcing.

Lozano: This takes me very quickly to Jaime in Colombia. It's hard to agree on the appropriate measures to promote the access of workers to wealth they help create that we could all get behind and support, and that does not hinder corporate strength, M&A activity or the appetite of foreign investment. We all are aware that our countries require foreign investment to continue to grow, yet we are painfully aware that if we don't change the dynamics of economic opportunity then we may end up like Venezuela, facing a very drastic change, or with the social unrest that we saw in Chile and Colombia.

Jaime, the other way to do this is tax regulation that is redistributive. But as you said, that attempt created an even bigger issue in Colombia. Tell us a little bit about the new reform that appears to have passed.

Robledo: The original reform, which was more of a structural – and I would say much more thought-through – reform, did not go through. People protested for about a month and a half, and the government, now doing a much better job of political lobbying of how to present the tax reform, managed to present the new reform which is actually passing pretty rapidly in Congress right now. It only addresses a couple of issues. It basically increases the income tax rate for companies from 30 per cent to 35 per cent. Obviously, that's going to have an impact on M&A, both in expected internal rate of return of investments in Colombia, and on prices for Colombian sellers. The capital gains rate is still at 10 per cent. So, you can still at least have a capital gains tax of 10 per cent when you sell shares that you've had for more than two years. If you have them for less than two years, it's a 35 per cent impact.

There are a couple of proposals that will also impact asset deals. Your inventories and movable assets are now going to be at 35 per cent. The same is going to happen for fixed assets: you're going to see a shift moving from asset deals to shared use. There are a couple of things that are positive from the reform: certain carry-forwards that have to deal with concession agreements; and private-public partnerships may be carried forward 10 years instead of five, which was the previous rule. From a Colombian perspective, the redistributive idea has always been shifted as a burden that the government has to assume through taxation. However, what we see from the private sector is renewed sentiment, in that they have to be much more conscious environmentally, socially and governance-wise. We see Colombian companies doing a lot of publicity and marketing and implementing a lot of measures in this vein. Although it has not yet been widely embedded into M&A transactions and we don't see clients necessarily discarding a company because of environmental, social and governance (ESG) factors, we do see Colombian financial institutions starting to look at their borrowers with special indicators of ESG. We have certain loans in which there is a bracket of interest rates depending on whether you have certain environmental indicators. Recently a loan by Grupo Argos, which is public and was taken in the US, had a preferential interest rate based on the level of diversity on their board, as well as environmental indicators.

The other thing we saw at the beginning of this year was an attempt at activism in one of the most important groups in Colombia. The government moved very rapidly to hire proxy advisers, and to implement a number of policies in order to be ready for any activist intent. It didn't materialise, but it was sort of a *scaramuzza*, as we call it in our countries. The tax reform will definitely have an impact on M&A. ESG is also going to be looked at.

Our courts have recently issued, both arbitrarily and in the courts, awards and judgments that are starting to build a path towards a system in which you have some certainty of good legal precedent that we could work with. We're still closely following the way contracts are drafted in the US. We basically work with the New York-style SPA, but we sometimes put in Colombian law, so people are getting more comfortable with Colombian law.

Lozano: Luciana, when I hear Jaime talk about ESG developments in Colombia, I think about the shift in Brazil. I wonder if a lot of it is because there has been so much venture capital, and that is one category of investors where ESG is already more ingrained in businesses' minds. In that first or second round of capital raising, when they get the foreign venture capital, start-ups and SMEs are forced to focus on ESG.

Tornovsky: Discussions about environment, social responsibility and good governance practices are gaining relevance every year, as governments, civil society and corporations become aware that socioeconomic development and the protection of the planet's natural resources are joining forces, and not mutually exclusive. ESG factors in investment decisions have become a global trend among investors. In Brazil, we have been experiencing an increase in regulations requiring publicly held corporations to adjust their governance and information disclosure, mainly to adopt international standards to guarantee transparency and accuracy for investors.

The Brazilian Stock Exchange created the Corporate Sustainability Index to evaluate the performance of companies that commit to adopt sustainable policies.

We have seen many public authorities issuing rules requesting that state-owned companies and public entities prepare sustainability reports or integrated reports. Since Resolution No. 14 was enacted in 2020 by the Brazilian SEC, it became mandatory for publicly held companies that decide to prepare and publish an integrated report, that the report contains, among other matters, information regarding sustainability. Even without a legal requirement, many companies publish their sustainability reports annually.

Developing sustainability reports is a process that involves identifying, measuring and disclosing sustainable performance, and this information can be published periodically in the form of reports. These allow companies to develop a forward-looking management strategy, based on the positive and negative impacts of sustainability, caused by both the company and by external factors, such as climate change or human rights issues. They also help to improve the dialogue between shareholders, which helps companies to identify risks and opportunities related to sustainability. Finally, they help change corporate culture, seeking what makes sense for business in a dynamic world, where not only the financial sphere matters, but also the economic, social and environmental.

Financial institutions must disclose their social and environmental policies in accordance with the rules of the Brazilian National Monetary Council.

Executives of Brazilian corporations are aware of the importance to comply with ESG criteria for the business and to prepare integrated reports in accordance with the Global Reporting Initiative (GRI) and the International Integrated Reporting Council framework in order to attract investors. Some Brazilian associations, such as the Brazilian Financial and Capital Markets Association (Anbima), have prepared non-binding best practice codes recommending that ESG factors be taken into account.

Banks and foreign investors are increasingly putting pressure on sustainable goals. For instance, we have recently seen the three biggest private banks in Brazil stating that they will not fund companies that do not commit to the preservation of the Amazon rainforest.

Even though we still do not have any specific law on ESG-related factors approved in Brazil, we can say that we already have general rules that allow companies and funds to consider these factors in their investment decisions.

The search for compliance with ESG criteria is at the top of the global agenda. Sustainability and financial growth are expected to be increasingly linked in business strategies, serving as a reference to evaluate everything from reputation to the attractiveness and safety of a corporation's investments.

We have been observing the frequent inclusion of socio-environmental aspects as indicators for analysing the efficiency of corporations by investors, and the scrutiny in due diligence for verifying compliance with Brazilian environmental laws.

Another important point is the evolution of the voluntary carbon market in the country, parallel to the regulated market initially governed by the Kyoto Protocol. It basically works with Voluntary Emission Reductions (VERs). This enables any company, person, NGO or government to buy carbon credits voluntarily, that is, independently of a legal obligation or goal, reinforcing sustainability and climate governance strategies.

Several economic sectors in Brazil have sought to increase their adherence to environmental criteria and achieved good results, especially agribusiness, responsible for 26 per cent of Brazil's GDP in 2020. As Brazil stands as one of the most important players in the global market, the sector may expand the range of green investment opportunities for our agriculture and leverage sustainable initiatives in its production chain.

Lozano: Estanislao, we've seen some significant movement towards this kind of social responsibility agenda in Argentina.

Olmos: Certainly, there is an increased level of awareness, and the private sector is driving the ESG agenda. This will have an impact on due diligence, and also on choosing your bidders in competitive auction sales. Tied to that, luckily Argentina has the resources, but its boom and bust are always driven by regulation – so sticking to long-term policies, that's our challenge. Adding to that mix, we are heading to carbon-neutrality by 2050. That is not too far away and already affecting the entire energy sector. Hopefully Vaca Muerta will not become a stranded asset.

When it comes to challenges regarding regulations, we need to really think about foreign currency regulations. While reducing inequality is the intended purpose, most of the efforts in Argentina, when it comes to taxpayers, is lost in inefficiency and corruption. The levels of taxation in Argentina are at a record high. Nowadays we even see politicians discuss not increasing but removing taxes. We are on the other side of the spectrum, compared to the rest of the region. We also have a very complex system. This movement towards a more liberal approach, in the narrative of the politicians, will help us to have a more rational approach to the discussion of taxes.

Of course, we are not alone in Argentina – whatever happens at the Federal Reserve level in the US will have an impact. We already have an inflation challenge that is now spreading – not because of us, don't blame Argentina, but inflation is becoming an issue everywhere. We've been living with inflation for decades already, but whatever happens elsewhere, will also have an impact on us.

Lozano: Jean-Paul, we need to talk about the new antitrust regime in Peru, and whether its enforcement will change the landscape. Part of the dissatisfaction that results in social unrest comes from this sense that certain enterprises continue to grow without any benefit, and sometimes to the detriment of the consumer. While we're all pro-market, it was interesting to see that Peru was the last large country in Latin America to implement the antitrust pre-merger control system.

Chabaneix: A law was passed last year, and certain amendments and further regulations were approved earlier this year. The whole set of antitrust regulation is in place and has been effective for a couple of months. There have been no transactions so far cleared by the antitrust authorities, but this is going to be a new element to be considered in every M&A transaction. From a lawyer's perspective it's good, because it's going to increase the fees, but it's something that the market has not been used to and that will have to be looked at – not only in terms of direct deals in the country, but also indirect transactions where there is a Peruvian component. How is this going to develop and transform the market? I think the main factor is going to be a delay in closing deals. Whether this is going to become a political factor to block certain transactions, I don't see that as a major risk, even though there are certain industries which, politically speaking, have raised a number of eyebrows because the government usually tries to use those as the flag to show that there are industries that are growing without control. Even though we've had antimonopoly regulations for many years, clearly the easiest way to try to block any new deal is through antitrust. So, if activity goes back to normal, or semi-normal, as we are hoping it will, that's going to be a factor.

Lozano: Depending on the country, we've seen different levels of populism implemented through the antitrust regulations at the time of enforcement – some in a more intentioned manner than others. Some are very technical. Actually, I'm somewhat proud of the Colombian antitrust system. I find it to be fairly solid.

Let me move to Chile. When you have such widespread discussion in the press about constitutional amendments, lawyers get either excited or very nervous.

Guerrero: Regarding antitrust, I think that's one of the areas in which we have been very successful in terms of having a very serious technical authority. The Fiscalía Nacional Económica has done a great job in Chile, in terms of antitrust review and approval of M&A transactions, and I hope Indecopi in Peru does a similar job.

The regulations were changed in early September, which will hopefully speed up the process of approval. They've been very serious in abiding by the terms that establish the law. So far, we haven't had a big regulatory change affecting M&A, although we are rewriting the Constitution, and there's a lot of concern of how the rules might change, rules that have been very important in promoting our development in the last 30 years. One of the important rules in Chile has been the protection of private property and water rights, and also mining.

The other area where the current Constitution offers protection for the private sector is the fact that the state cannot develop any economic activity unless there is a law that authorises the state to participate in such industry. This will probably change and we will start seeing a greater involvement of the state and state-owned companies. I'm thinking about education, healthcare, pensions. The Chilean private pension system has been very important in developing the capital market. That's going to change. Part of the social unrest in 2019 had to do with the low level of pensions, for which the private system has been blamed. I don't think that's the reality, but that case has been made for the low pensions.

There's a lot of things that can go wrong in this constitutional process, but so far there have not been substantial changes. There are important discussions about our tax systems, as always. Most of it is centred on getting rid of tax exemptions and tax breaks, for all sorts of industries, which I don't think is a bad thing, if you do it correctly. There are lot of exemptions created throughout the years that are probably no longer justified, and create this sense of inequality, particularly since certain sectors are favoured by those exceptions. There are some discussions on royalty to the mining industry especially. There's always been a sense in Chile that mining has not contributed, in terms of taxation, as it should have. On the other side, it's part of why mining has developed so strongly in Chile over the last 30 years, so there are two ways to see things.

The most important labour reform now has to do with profit-sharing. Unfortunately, it's not being done in a way that is very efficient; it's probably going to favour big companies to the detriment of smaller companies and start-ups.

Lozano: Iván, the 101 rule of foreign investment, especially into emerging markets like Latin America, used to be, your investors would ask, 'Tell me about the legal stability of the regime.' Now we're seeing each of these jurisdictions having to evolve in terms of regulation and enforcement. Tell us, from the eye of the European and Spanish investor into the region, how these changes are perceived.

Delgado: I think they are well received by investors. When investors go into Latin America, they like to see things they are very used to, like antitrust regulations. Deals are not going to be financed if they don't comply with ESG procedures.

If you take the pandemic, the crisis and political instability, social unrest in certain countries, changes in regulations, implementing new mechanisms like antitrust regulations – things get complicated. So even though the appetite is there, I think it's going to take more time than if we were not in this situation. I see a good future for the region; in the end, it is good to have the same kind of rules, regulations, and rule of law in all countries.

Lozano: I think the appetite grows as the systems get a little bit more standardised for ESG, antitrust, and even for tax. Tax impact can always get priced into the deal, but what you cannot have is uncertainty. We need to make sure as we push, as lawyers, through our associations and lobbying and the like, that it's not necessarily increased taxes that have an impact on foreign investment and dealmaking and cross-border M&A; it's lack of certainty.

We've all said that we've enjoyed at least one year, in most places, of phenomenal M&A activity. One thing we should say is transactions, at least the cross-border ones, are not cookie-cutter any more. We've had to get creative. We've changed the style of the deals, we've had to work closer than before with the bankers to address issues of risk in pricing, uncertainty of growth – even, in some places, uncertainty in pricing of services and goods, and in regulation. Are we going to be this busy and this excited for the for the next six, nine or 12 months? Let's start with Jean Paul.

Chabaneix: I'm optimistic. I think, as waters go back to the same level, we will see M&A activity coming back. We will see a lot of Peruvian investors trying to monetise their assets. We will see a lot of increased private equity activity in the market because of that. We might see some distressed asset activity as well, not necessarily because companies are in a bad situation, but because there might be certain investors willing to monetise at whatever price they can get in order to move elsewhere. We are hopeful that once things settle down a bit, activity will be back.

Lozano: Pablo, you're on the doorstep of potential significant change. What is your prediction for Chile's M&A activity?

Guerrero: We foresee a very active M&A market in the next six to nine months. We are seeing new processes, especially in the infrastructure sector, but also some family-owned businesses trying to cash out all or part of their investments in companies they have developed for years. We will continue to see that. We'll see private equities looking into those companies, so all the uncertainty that we have talked about – we don't see that it will translate into lower M&A activity in the coming months. I think any big changes that may come will definitely impact, for better or worse, the future for the following years, but not the immediate future.

Lozano: Chile's keeping us very busy, so we're embracing the current focus on the Chilean market. Estanislao, Argentina is keeping us very busy too.

Olmos: The outlook looks much better than before. The elections helped a lot. It looks like, in 2023, there might be an opportunity either for this government to continue, but with a more reasonable approach, or for there to be a complete change in administration. At a society level, there is more willingness to entertain much delayed structural reforms that Argentina needs to grow. I still think our judicial branch is lagging behind. They are still being speculative as to when and how to decide on key matters. The rule of law is what will settle the uncertainty. If we do not manage to have certainty as to the property rights, and freedom of movement of goods and persons, M&A will suffer.

We are optimistic about the near term. We have significant challenges, but the region is pushing all countries into a higher level of activity, so we are no longer isolated. Whatever debate occurs in our countries resonates in the neighbours', and conversely. So, I'm optimistic.

Lozano: Jaime, Colombia may be at the doorstep of radical change. What's your prediction in terms of our market?

Robledo: We're going to continue seeing transactions in the Colombian market from now until the end of the year, in a very active fashion. I believe we are going to continue to see all types of asset classes and all ranges of value. The trend will continue, or not, to the extent that the asymmetry in risk perception continues. That will mainly be determined by how the polls will look during January or February. If the polls are starting to favour the left-wing candidate, I would anticipate that, at least from the perspective of foreign investors, there's going to be a halt, they'll wait and see what's going to happen. So, we may have some slowdown in M&A activity during the first months of next year.

If the polls do not give a lot of clarity – and don't get me wrong, there's not going to be full clarity until the end of the elections – what will provide a comforting message for a potential foreign investor would be that the left-wing candidate does not increase his potential participation in the voter allocation. He has historically been between, I would say, 15 per cent and 34 per cent, but he has never surpassed those levels. Everybody would continue thinking he's going to go to a second round of voting, and in the second round he will be defeated. People are going to vote against him, and not in favour of another candidate. So, to the extent that this keeps going, we'll keep having good M&A activity.

Lozano: Ignacio, let's switch to Mexico. Levels of activity are unprecedented. Are we hopeful that that will remain the case?

Pesqueira: I think so. If not as high, very close. I think that in the end, if the M&A activities have been able to keep to this level despite the change of government and the pandemic, I don't know what's going to stop it.
We have not really spoken about the pandemic. We're still in the middle of it and when talking about the future we cannot disregard that, but there is some level of uncertainty associated with that still. Looking forward, we need to be grounded in terms of where we are standing when it comes to the health crisis that's still going on.

Lozano: You're absolutely right, it's not over. It may come back with variants that affect all our countries significantly. Even in the US, where vaccination is widely available by choice, it's not occurring, and that may extend the duration of the risk of an impact in business activity and dealmaking.

Guerrero: Let's not forget the impact that all the liquidity that's been pouring into the market has – I mean, there are threads of inflation now. Interest rates will probably rise, and that will certainly have an impact on M&A as well.

Lozano: That's right. We are in the other storm, and you're right, there are going to be macro changes that are going to result from whatever governments do, either because they do not need to pour so much into the economy to counteract the effects of the pandemic, or because they need to pour more if the risks are not adequately eliminated or reduced. There's a ton of macro implications when you have something as severe as this global pandemic happening.

Luciana, Brazil has felt a particularly tragic impact from the pandemic. Like the US, it seems to have dissociated that aspect from the dealmaking aspect. Unprecedented numbers, incredible activity, incredible levels of resilience in many industries and for many entrepreneurs. So, tell us how we can expect the evolution of the M&A market in Brazil to go in the next few months.

Tornovsky: I will start with a not-very-optimistic message. Election year historically represents a moment of reluctance for dealmaking, considering the lack of certainty obviously tied to this scenario and the usual vastly different political views of the most endorsed candidates. Brazil and other Latin American countries tend to create polarised environments especially in election years, being separated by two candidates who usually represent far right and far left political views.

The year 2022 should show no difference from prior election years in this sense. Although a large amount of Brazilians are calling for a 'third way', the current political scenario being drawn up by polls and general media represents a confrontation between the current President Bolsonaro and the former left-wing President Lula.

Considering their different views on how to approach the economy, the expected broadening of society's polarisation and the uncertainty of the election result, it is fair to assume that a retraction on the increase of public offerings and M&A deals in 2022 will take place, and certainly be felt closer to the elections, scheduled to happen on 2 October.

The market also expects a significant increase in interest rates in 2022, as a result of higher inflation and higher volatility because of the presidential elections. It is likely that the combination of all these factors will trigger a lower volume of IPOs and M&A transactions in the second half of 2022.

With a scenario of high inflation and interest rates and the possibility of a water crisis, in addition to political instability, we will probably see the asset management funds trying to reduce their presence on the Brazilian Stock Exchange.

High rates of inflation are usually interpreted as a sign of economic fragility and tend to represent an impact on the valuation process or even a dealbreaker for buyers. The current economic scenario of a country is analysed, especially when it comes to cross-border deals, and inflation has a direct impact on this analysis.

In the present era of increasing globalisation, the volatility of exchange rates is no different, since changes in these rates have a substantial influence on companies' operations and profitability.

In M&A transactions, the parties can address any risk related to inflation or currency exchange under a specific MAE definition to be included in the SPA as a condition for the closing or adjustment of the price or even having part of the price paid as an earn-out.

There is also a positive side, however. While we continue to see vaccination rates of the population increasing at a fast pace, it is possible to glimpse a way out of a pandemic that has devastated many families and brought with it many challenges for citizens around the world.

Investments and deals retained in the last 18 months shall also return, as we should see an increase especially in tourism and retail business. With a return to normality, I am sure we will see many opportunities for new businesses and investments, especially those linked to technology, which is quickly adapting to the new post-pandemic world.

Lozano: When we saw the events in the US capital earlier this year, some of us feared that the economic and business boom was going to slow down. I hope Brazil does not experience anything close, but the rhetoric is getting somewhat similar in terms of not trusting the results of elections and the like. However, the positive message is that we saw something we thought could never be seen in the US and the markets continued to boom. That's not necessarily something we want to repeat, but at least it gives us some hope that some order can be preserved.

Iván, how do we see European activity in the coming months as it relates to receiving and sending investments to Latin America?

Delgado: Europe and of course the US are recovering from the pandemic ahead of Latin America, so we believe investors are in a good position for investing in the region. The region is very well known for certain European investors, private equities and large blue-chips and we are optimistic we're going to see more investments. Of course, changes in the political scenes in the region will help. Things like the change in the Constitution of Chile, or the political changes in Argentina. That will take time, but I think we are going to see more and more investments, at least from Europe.

Lozano: As we talk about political and social instability, and we discuss the impact it has on what we do, which is dealmaking M&A and helping move capital around the world, I think we all hope we actually contribute to growth.

An important note for me is always to clarify that we’re not political in the sense of trying to be activists, but when we talk about this topic and we’re fearful, it is because we’ve seen the impact of populism, the lack of discipline in the exercise of power, disregard for the rule of law, and lack of understanding of how legal stability translates into economic and social development.

When we make some of these judgement calls every now and again, I want to make sure our readers know we’re not generalising because we’re inclined to do politics through our work – we're just mindful of the impact politics and rhetoric have on the growth and prosperity of developing markets. From where we stand, what promotes foreign investment and growth and industry and generally progress in Latin America is dependent entirely on that regard and respect for the rule of law; legal clarity and legal stability; and treating power not as a populist exercise, but as a tool for improvement. It’s looking for regimes that use power for the best interests of the people, which in our mind includes corporations and industries and entrepreneurs.

And with that, thanks to each of you. This has been a phenomenal discussion.

APPENDIX 1

About the Authors

Paola Lozano

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Paola Lozano is a New York-based M&A partner at Skadden, Arps, Slate, Meagher & Flom LLP. She is the co-chair of Skadden's Latin America Group and the head of the firm's Spanish language corporate practice. She has also served as a member of Skadden's Policy Committee.

Paola has been repeatedly recognised by her clients and colleagues. Among others, she was Latin Lawyer's 2019 International Lawyer of the Year; a New York Law Journal 2019 Distinguished Leader and Crain's New York Business Notable Women in Law 2019. She has also been ranked by Chambers in Band 1 for Corporate M&A in Latin America (the first and only woman to achieve that ranking); and is also included as a top attorney in Lawdragon 500 Leading Lawyers in America (2014–2020); Latinvex Latin America's Top 100 Lawyers (2014–2020) and Latinvex Latin America Top 50 and Top 100 Female Lawyers (2013–2020).

Her M&A practice focuses on cross-border transactions throughout the Americas and globally, including mergers, acquisitions, dispositions, joint ventures, private equity and venture capital transactions, as well as other complex corporate matters. Her clients include Fortune 500 companies, multinationals, multilatinas, private equity and venture capital funds, family offices and other privately held companies.

She is admitted to practise in New York and Colombia.

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He has advised strategic investors and private equity funds in the acquisition and sale of companies and in the negotiation of shareholders' agreements in different areas of industry and services. He has advised government entities and buyers in privatisation processes under Law 226 of 1995.

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Iván Delgado joined Pérez-Llorca in 1999 and was made partner in January 2007.

In 2015, he established Pérez-Llorca's New York office and led it for five years. In 2021 he re-joined the Madrid office where he continues to advise on complex transactions and matters, which he combines with his responsibilities in Pérez-Llorca's international practice as head of the LatAm Desk.

Iván has more than 20 years' experience and specialises in mergers and acquisitions of listed and unlisted companies, venture capital operations and general corporate and commercial matters. He advises industrial groups such as funds on prominent cross-border transactions in diverse sectors. His focus on advising Latin American clients has provided him with the opportunity to be involved in some of the most significant transactions in the Spanish market. He has international experience working as a secondee in the London office of Slaughter and May.

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Ignacio attended the senior management programme at IPADE and obtained a Master of Laws at New York University. In addition, he was approved to practise law in the State of New York, an authorisation that he later relinquished. He is the only Mexican on the M&A Law Committee of the International Bar Association, and in his capacity as Special Projects Officer he participates in international forums focused on the practice of mergers and acquisitions and private equity.

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Ignacio also has affinity for academia and regularly participates as a guest professor in the Executive MBA at the Tec de Monterrey in Mexico City and the Catedra Galicia of the Universidad Panamericana Law School. He is committed to the professional development of the new generations in the firm and an active speaker on Galicia's professional development programmes. His native language is Spanish and he is fluent in English.

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He currently represents the firm before the International Bar Association (IBA), with Javier Rodriguez Galli.

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Jean Paul was an international lawyer for Shearman & Sterling (New York, 1995), and has been repeatedly recognised as one of the most outstanding lawyers in the Peruvian legal market in prestigious publications such as *Chambers & Partners*, *Latin Lawyer*, *The Legal 500*, *Who's Who Legal* and *International Financial Law Review*, among others.

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Published by Latin Lawyer and LACCA, edited by Paola Lozano and Daniel Hernández of Skadden, Arps, Slate, Meagher & Flom LLP, *The Guide to Mergers and Acquisitions* provides guidance that will benefit all practitioners acting in Latin American mergers and acquisitions.

M&A activity in Latin America has grown significantly in recent decades, and deals are increasingly complex. This guide draws on the expertise of highly sophisticated practitioners to provide an overview of the main elements of deal-making in a region shaped by its cyclical economies and often volatile political landscape. Its aim is to be a valuable resource for business people, investors and their advisers as they embark on an M&A transaction.

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