



Unraveling the Role of Local Lawyers and Law Firms in Chinese Investments in Brazil

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Key Points:

- Over the past two decades, Anglo-American law firms have acted as the go-to advisors for Chinese investments in Brazil. These firms remain an important nexus for Chinese capital; however, local and Chinese law firms are stepping up their role in professional exchanges.
- A bottom-up view of Chinese outbound capital in Brazil unveils an active environment of legal exchanges that have had impacts on cross-border deals and the meaning of local law practice.
- Looking ahead, we can expect to see more interactions between both countries' law firms.

Introduction

The economic rise of China has generated new dynamics in a vast number of personal and professional networks, including increasing exchanges in the legal field. This process can be illustrated by the fact that Chinese law firms have grown in number and size in the past decades, establishing more than 150 offices worldwide, which provide advice and representation to Chinese companies investing overseas.¹ In recent years, Brazil has been a significant destination for Chinese outbound capital, registering more than 170 deals that accounted for approximately US\$66 billion in greenfield and brownfield investments.² However, PRC law firms' footprint in the country is still barely noticeable.

So, who has been advising Chinese companies in

¹ 中华人民共和国司法部 (Zhonghua renmin gongheguo sifa bu) [Ministry of Justice of the PRC], 截至 2020 年底全国共有律师事务所 3.4 万多家, 执业律师共 52.2 万多人 (Jie zhi 2020 niandi quanguo gongyou lushi shiwu suo 3.4 Wan duo jia, zhiye lushi gong 52.2 Wan duo ren) [As of the end of 2020, there are more than 34,000 law firms nationwide, with more than 522,000 practicing lawyers]

(June 14, 2021), <https://www.scxs.com/knowledge/detail?id=157596>.

² CEBC, *Investimentos Chineses no Brasil – Histórico, Tendências e Desafios Globais (2007-2020)*, (Aug. 5, 2021), https://www.cebc.org.br/2021/08/05/investimentos-chineses-no-brasil-historico-tendencias-e-desafios-globais-2007-2020/?_cf_chl_jschl_tk__=pmd_2YHGgYRuhRHn4Q8NOy.BtYwM8ehph7WLhiaiEK071Bc-1635192907-0-gqNtZGzNArucnBsZQ.

Brazil? In this Research Brief (RB), I put forward some observations on the legal relations at the client-firm level involving Chinese parties in the country. While I leave a more thorough unpacking of the work of local and foreign law firms to later writings, in this piece, I draw attention to the role of corporate lawyers in shaping Chinese inward capital in Brazil. To this end, I first introduce readers to the group of firms advising Chinese companies in the country. Second, I provide examples of how these firms have adapted in the face of increased interactions with Chinese actors. Third, I look ahead with some concluding thoughts and further research questions.

As a methodological caveat, it is important to note that Chinese companies do not necessarily use law firm services in a linear fashion. Different variables impact how Chinese clients relate to the Brazilian and foreign legal professions. These include, among other things, companies' corporate structure (state-owned or private enterprises), size, and business sector. A broad analysis on this topic might miss specific characteristics of each company's legal strategies. However, there are discernible trends that can be underscored due to the characteristics of China's inward capital in Brazil, largely represented by SOEs investing in regulated activities, and recent private incursions in more diverse sectors.³

A new ecology of legal expertise for Chinese investment in Brazil?

Since the beginning of this century, Brazil and China have experienced an exponential increase in bilateral relations. Fueled by growing trade and investment flows, legal links have grown at many

professional levels. These exchanges have happened through different venues, including universities, high-level meetings, and, most strikingly, ordinary law practitioners. This 'common place' of legal practice (i.e., lawyers and law firms)⁴ is actually rich in economic and professional networks that have played a remarkable role in securing Chinese investment in Brazil and bringing cross-border deals to life.

To understand the characteristics of this ecology and its impacts on international contracts,⁵ it is relevant to consider the actors of this process and how their participation has evolved. First, a great number of Chinese companies emerged in Brazil acquiring operating businesses which, in many cases, were already owned by non-Chinese foreign entities.⁶ As first-time investors, these companies overcame severe information asymmetry in the Brazilian market by relying on advice from Anglo-American law firms with experience in local practice. These firms remain an important link playing a linchpin role in many cross-border matters or serving new investors entering the country. In many cases, foreign attorneys advise Chinese clients in tandem with local colleagues based in São Paulo, Rio de Janeiro, or Brasília.

However, after establishing a foothold, Chinese companies began expanding their operations in the local market through new greenfield investments or contracts with the public sector. In both cases, investors faced remarkably challenging scenarios as Brazil regulates critical sectors through complex legal frameworks and dynamic institutions. Therefore, Chinese companies started increasingly demanding local law firms' services,

³ *Id.*

⁴ Sida Liu, *The Legal Profession as a Social Process: A Theory on Lawyers and Globalization*, 38 LAW AND SOCIAL INQUIRY 670, 683 (2013).

⁵ Matthew S. Erie & Sida Liu, *The Forms and Architects of China's International Legal Order*, 46 YALE J. INT'L L. 47 (2021).

⁶ CEBC, *supra* note 2, at 11 (between 2007 and 2020, merger and acquisitions accounted for 70% of Chinese FDI inflows in Brazil; a great part included foreign selling parties).

in many cases removing the need for an external intermediary.⁷ This change is due to various reasons and required adaptations by both Brazilian and Chinese actors.

Examples of this process are State Grid's and China Three Gorges' activities in Brazil's electricity sector. These companies entered the country through large mergers and acquisitions (M&As) with foreign parties, and were assisted by multinational law firms in joint representations with local firms.⁸ As both players built awareness of the country's legal and economic system, they started expanding their operations and taking part in public biddings, facing intricate regulatory, environmental, and corporate requirements. Thus, these companies began consulting with local firms to reduce transaction costs due to an unfamiliar legal environment, eliminating as well intermediary fees from the previous triangulation between Chinese clients, Anglo-American firms and local advisors.

As Chinese companies demanded specialized know-how, Brazilian law firms started adapting to better attract Chinese clientele. The sophistication of the legal profession has been twofold. On the one hand, Brazilian law firms began investing in professionalizing their service. Examples are the

creation of specific divisions focused on advising Chinese clients (commonly known as "China Desks") as well as hiring associates fluent in Chinese or with hands-on experience in China.⁹ The Brazilian bar also created a specific department for Brazil-China legal exchanges.¹⁰

On the other hand, the sophistication has built on growing exchanges fostered by the Chinese government and private actors. Besides client relations, Brazilian law firms started engaging in bilateral activities meant to increase local awareness of China's legal system and promote Chinese agents' institutional guidance. Chinese state agencies, in particular, have been remarkably active in promoting these types of initiatives. Examples include programs led by the China Law Society, the Supreme People's Court, Chinese universities, and the China Council for the Promotion of International Trade (CCPIT).¹¹

Building on these state-driven efforts, PRC law firms seem to be following the same path and are increasingly investing in professional exchanges with local firms. For example, since the outbreak of the Covid-19 pandemic, webinars that bring together local and Chinese lawyers have started to pop up on several topics.¹² Overall, these exchanges have equipped local professionals with

⁷ Interview with a Brazilian partner at a top-tier Brazilian law firm, São Paulo (Oct. 7, 2020).

⁸ See Milbank LLP, alongside local firms Pinheiro Neto and Machado Meyer, helped State Grid seal its first acquisition of an electricity grid in Brazil in 2010; Sullivan & Cromwell, alongside Veirano Advogados, assisted State Grid to buy a controlling stake in Brazilian power distributor CPFL Energia in 2016; Skadden, White & Case and TozziniFreire were behind CTG's 2017 agreement to purchase all of the equity interests in a subsidiary of Duke Energy Corporation (Duke Energy Brazil).

⁹ See, e.g., China Desks at Veirano Advogados, Pinheiro Neto, Tauil & Chequer Advogados, BMA Advogados, TozziniFreire Advogados, BNZ Advogados, L.O. Baptista, and Mattos Engelberg Advogados.

¹⁰ Conselho Federal da OAB, Santa Cruz anuncia que será instituída na OAB a coordenação Brasil-China (Feb. 4, 2020),

<https://oab.jusbrasil.com.br/noticias/805263572/santa-cruz-anuncia-que-sera-instituida-na-oab-a-coordenacao-brasil-china>.

¹¹ See, e.g., China-CELAC Forum, *The Opening Ceremony of "China-Latin America and Caribbean Region Legal Professionals Exchange Program" takes place in SUFE, Shanghai* (May 24, 2019), http://www.chinacelacforum.org/en/lttdt_1/t1666323.htm; IBRACH, *IBRACH-Tsinghua University Exchange Program* (2021), <http://www.ibrach.org/en/texto/7/program>; ICDPASO and CCPIT, *The 1st Legal Forum on Cross Border Trade in Services Was Successfully Held in Beijing* (Sept. 14, 2021), <http://en.icdpaso.org/content/2180>.

¹² E.g., Souto Correa Advogados and Fangda Partners, *Brazilian and Chinese experts discuss investments and arbitration between China and Brazil* (Aug. 31, 2020), <https://www.soutocorrea.com.br/en/newsletters/arbitragem>

a better understanding of China's legislation as well as increased resources to secure and serve Chinese clients in Brazil.

Looking ahead

A quick look at the ecology of legal expertise for Chinese investment in Brazil offers preliminary insights. This relational social space of growing interactions is not only of theoretical importance; it also has significant consequences for how China's inward capital in Brazil is shaped. As previous scholarly literature states, corporate lawyers are agents that play an important role in governing economic activity.¹³ Hence, this ecology could allow for the emergence of innovative practices and legal forms as Brazilian and Chinese actors increase their understanding of each other's legal system. For instance, one relevant aspect regards dispute settlement dispositions such as choice of law and venue. In recent years, China's practice in the field has attracted international attention as to whether the country will produce alternative methods of resolving disputes than those supported by traditional investment treaties.¹⁴

In this regard, the field of law and development requires constant realignment. At the intersection

of different academic theories and social practices, it urges law and development scholars to be in contact with reality to understand new trends and their implications for legal studies and practice.¹⁵ This process is especially interesting when shifting the research focus to emerging economies since transboundary legal services have been historically centered on the Anglo-American profession.¹⁶ As emergent countries and their law firms' rise to international prominence, a ripple effect follows in the evolution of the global legal services market.

In addition to contributing to the socio-legal scholarship focused on the legal profession's role in China's global expansion, this research seeks to understand how legal actors, particularly those from emergent nations, have reacted to growing exchanges with Chinese players.¹⁷ Understanding the complexity and richness of these processes, especially the links between micro-level interactions in lawyers' work and the macro-level contours of capital flows, demands further research.

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¹³ Luciana Gross Cunha, Daniela Monteiro Gabbay, José Garcez Ghirardi, David M. Trubek & David B. Wilkins (eds.), *The Brazilian Legal Profession in the Age of Globalization: The Rise of the Corporate Legal Sector and its Impact on Lawyers and Society* (2018), <https://repository.law.wisc.edu/s/uwlaw/item/27034>

¹⁴ Malik R. Dahlan, *Envisioning Foundations for the Law of the Belt and Road Initiative: Rule of Law and Dispute Resolution Challenges*, 62 HARV. INT'L L. J. ESSAY, 1-21 (2020).

¹⁵ David M. Trubek, Diogo R. Coutinho, & Mario G. Schapiro, *Towards a New Law and Development: New State Activism in Brazil and the Challenge for Legal Institutions*. Univ. of Wisconsin Legal Studies Research Paper No. 1207 (Sept. 11, 2012), https://media.law.wisc.edu/s/c_638/zhmj/towards-ssrn_version_ssrn-id2144939.pdf.

¹⁶ David M. Trubek, Yves Dezalay, Ruth Buchanan & John R. Davis, *Global Restructuring and the Law: Studies of the Internationalization of the Legal Fields and the Creation of Transnational Arenas*, 44 CASE WESTERN LAW REVIEW 407 (1994).

¹⁷ Li Ji, *Meeting Law's Demand: Chinese Multinationals as Consumers of U.S. Legal Services*, 46 YALE J. INT'L L. ONLINE 72, 72-99 (2021).