

# IFLR1000



## Behind The Deal - Carter Brod - Morgan Lewis & Bockius

*In the first of a regular series, the IFLR1000 speaks with a lawyer who led a recent notable transaction about their work and their view of the current market. This month Sam Duke speaks with **Carter Brod** of **Morgan Lewis & Bockius** in London, a debt capital markets partner with a focus on sovereign bond issues who has acted for the Governments of Kazakhstan, Grenada, Albania, Belarus and most recently Suriname.*

### **Let's start with the Suriname sovereign bond issue, how did the firm win that mandate?**

It's interesting, it says something about Morgan Lewis in terms of the way that we're positioned globally, the way that this deal came to us. We have a leading sovereign debt restructurings practice, which is led from our New York office and actually came from the legacy Bingham McCutchen part of the firm, and at the same time I personally have represented a number of sovereigns on bond offerings as issuer's counsel.

When the Bingham combination occurred the firm naturally focussed on generating synergies between the legacy Morgan Lewis and legacy Bingham practices and one of those opportunities was presented in the Grenada sovereign bond restructuring. It was a really interesting transaction that received attention in the sovereign debt field, mainly because there were several innovative features in the new bonds issued as part of that restructuring. We represented the bondholders, which has been the traditional role for our sovereign debt restructurings practice.

Being London-based, I haven't traditionally focused on the Caribbean and Latin America region, instead tending to focus more on EMEA, but on the back of the success of the Grenada transaction we were invited to pitch for the issuer's counsel role for Suriname and we were selected.

Our invitation to pitch for the role stemmed from our role in the Grenada transaction, but it was also recognised that we have a track record of successfully advising issuers in sovereign bonds, including developing countries on their debut offerings.

Suriname's economy is focused on gold, oil and aluminium and with the collapse of international commodity prices their economy got into trouble. As a prelude to the Eurobond, we first did a debt private placement for Suriname which completed in April (2016). Then, after a negotiating process, in May the IMF put in place a funding arrangement for them, which was coupled with a big economic reform programme in the country.

Following the establishment of the IMF arrangement, we proceeded with the Eurobond offering, which was a major transaction - \$550 million – Rule 144A/Reg S – a substantial sovereign bond.

### **Did you have to do much 'hand holding' in the early stages of the deal or was the client clear on the route ahead?**

There's inevitably a lot of hand holding in any debut sovereign offering. You're generally dealing with an issuer which has never been through a process of this type, and you are dealing with a governmental entity, so part of the challenge is educating the issuer, guiding them through the process and working with them efficiently to get the deal done.

The guidance you provide to the issuer is even more important for a debut sovereign in the emerging markets, just because their legal systems are less developed and that throws up legal issues and practical challenges in addition to those that would otherwise exist.

We worked closely over a number of months with the Suriname team, including attending due diligence meetings in Suriname, meeting with all the main ministries, with representatives of Parliament, the whole exercise.

### **What's the biggest challenge when dealing with a new sovereign issuer?**

There isn't really one feature that stands out, but the fact that the issuer is a country that has never gone through a process like this before means that putting together all the disclosure for the prospectus is a challenge.

A key part of our role as issuer's counsel is drafting the country disclosure, working closely with the issuer. In Suriname's particular case the country was going through a very dynamic phase at the time, they implemented an extensive economic reform programme beginning at the end of 2015.

Their economy was going through major changes in terms of what had been effectively an economic crisis and what began to be a recovery during the time that we were advising them on the transaction and that does create challenges in terms of the disclosure.

How much can you draw upon previous sovereign deals when working with a new client? Are there enough parallels between issues to make that experience valuable or is each very much a unique case?

It's definitely transferable, sovereign bond disclosure is different from corporate bond disclosure. In sovereign bond prospectuses there are no financial statements, there are no accountants involved, it is not a business. You're dealing with things like economics, foreign trade, political issues, budgets etc. and in order to be able to do that effectively one benefits from experience.

With regard to translating sovereign bond experience from one region of the world to another, there are more similarities than differences, as there are international standards, for example when it comes to how budgets and financial statistics are presented, the IMF has standards, definitions and methodology that many countries follow, and there are a lot of common disclosure issues and common problems with legislation particularly in emerging markets.

### **What are the key differences between representing a corporate on a debut debt issue and a Government of an emerging jurisdiction on a debut issue?**

There tend to be differences regarding the level of their knowledge about the process. Generally for corporations at the time they want to do an international securities offering they've usually done other international finance transactions so there is generally more experience with the concepts.

With a debut sovereign, especially in an emerging market, your principal client contacts are going to be at the Ministry of Finance, although in many cases they are not going to have any experience at all with deals of this type, including the tasks, documents, and disclosures that a debut issuer has to face for the first time.

Disclosure is the biggest work stream in a transaction like this. You're telling the story of a country to the investor community for the first time and the disclosure has to be accurate, complete and not misleading. Telling the story of a country is quite different from telling the story of a corporate.

### **Was there much involvement from local counsel on this offering?**

There is often less local counsel involvement in a sovereign Eurobond offering than there is in a corporate Eurobond. In this particular case we didn't work with local counsel on the issuer's counsel side, instead we worked with the Office of the Procurator General, which is similar to an attorney general, as the local legal counsel, and they had to provide the Suriname legal opinions to the underwriters. This is a model that is not uncommon in sovereign bond transactions, where the issuer uses what is effectively its 'in-house' legal function as the local counsel to the issuer.

The underwriters will almost always have their own local counsel, in this case the underwriters did use a local Surinamese firm.

**How big is the pool of law firms working for sovereign issuers? Do you tend to come across the same competitors time and again or does it depend entirely on the issuer and the market they are issuing in?**

The group of firms that advise on sovereign bond deals is a fairly small one. I think sovereign offerings are considered some of the more prestigious capital markets deals in the market to be involved in, and the type of firms that you see acting on these regularly tend to be the elite capital markets firms.

**Let's look at the UK. How many queries have you personally had from clients about the impact of Brexit?**

We have had a lot of client enquiries both from clients in the US and in other jurisdictions around the world and that started pre-Brexit vote and accelerated after the vote. Like a number of other firms in the market, from the beginning we've made an effort to provide our clients with the best advice to prepare them for the possible consequences of Brexit, and we continue to hold client briefings on the subject.

The main challenge with Brexit advice is that people still don't know how it is going to turn out and there is a real limit in terms of what you can say about what the consequences will be and what you can advise clients to do. Lawyers are very eager to advise on the subject, they are very active and are there for their clients, but the fact is that currently there is not a lot they can say to give their clients specific advice with regards to the consequences.

**Has the political upheaval in the US, UK and around Europe had any impact on activity levels in the debt market?**

I haven't noticed any significant effects on the bond markets at least from the perspective of deal activity, and 2016 has been a strong year for bond issuances as issuers have taken advantage of low interest rates. I think one key point to make is that certain parts of the bond markets are effectively counter-cyclical, so for example interest rates have been very low for a number of years now and that reflects the negative outlook for the global economy, but when rates are low that provides impetus for activity in higher yielding bonds because investors are starving for yield and the place they are going to get that is in high-yield or in emerging markets bonds and the levels of activity in the market support that.

The fact that a small country like Suriname can go out and do a \$550 million Eurobond offering, that is oversubscribed, as a debut issuer in the current global climate is a sign that the emerging markets bonds

are not being negatively affected by recent global political developments. The Suriname bond had an interest rate of 9.25%, which you're not going to get in many other places.

**You spent several years in Russia, a legal market that seems to be going through a transitional phase. What is your take on the current situation with UK and US firms in particular?**

It depends on the firm. Our Moscow office team (which is the legacy Dewey & LeBoeuf Moscow office) has been in the market since the 1990s and we're not just a capital markets shop, so for us the changes affecting Russia have really not changed the composition of our office. For some other firms, including certain elite US firms and 'magic-circle' firms, a big part of their Moscow practice was capital markets work, and I think they were more directly impacted by the slowdown in capital markets work in Russia following the sanctions and the crash in the global oil price. Those firms have had to become more creative with their staffing, now frequently having lawyers split time between offices, such as between Moscow and London or other locations.

Russia has recently been picking up to a certain extent for capital markets work, there have been several Eurobond deals done this year, which reflects the fact that people may be getting more used to the new status quo, including the impact of the sanctions. Do you think Russian domestic law firms could gain more traction in the future?

There really haven't been many signs of the market changing in that way. There are some really good Russian domestic firms and there are certain ones that are active in Russia in purely domestic capital markets work. While some of the Russian law firms are developing a stronger international capability and compete with us directly in certain practice areas, the reason that those firms haven't ever really crossed over into international work thus far is that there have been a number of very strong international firms that have been active in Russia from the very beginning and have treated Russia as a strategic priority.

In some of the other Eastern European countries, if you look at who is actually on the ground there, you don't see the quantity of top international firms that you do in Moscow. Russia is really a more developed market in transactional legal services than any other CEE markets.

The features of the Russian legal system also play a part. I think there's a sharper line between international and domestic work in Russia because of how different the Russian legal system is from international laws and practices, like US law and English law, which tend to drive the legal standards on international transactions. In other markets there isn't such a stark difference so perhaps it's easier for domestic firms to play bigger roles on international matters.

**The firm seems to have put a lot of focus on emerging markets in the CEE and Central Asia, the Almaty and Astana offices being a case in point, how did that strategy initially come about?**

I think the market views Kazakhstan and Russia as part of one broader market, the CIS, and of all those countries, Russia and Kazakhstan have been the most active for international transactional work. Our offices there worked together as an integrated team as part of Dewey, and Morgan Lewis has taken that on, the focus is always on integrated teams across the region. I don't believe that Morgan Lewis's expansion in Kazakhstan was so much about cherry picking Kazakhstan but instead was about bringing over an integrated team from Dewey including partners and lawyers in Moscow and London.

**Looking at the London financial and corporate teams as a whole, are there any practice area or sector teams the firm is keen to strengthen through lateral hires or promotions?**

There's no specific area that I would highlight as a particular current focus, but if you look at the recent growth that we've had in London, the most significant change was the acquisition of our 6-partner structured finance team (Matthew Duncan, Julian Goodman, Paul Matthews, Theresa Kradjian and tax partner Paul Beausang from K&L Gates and Lisa Cargill from Sidley Austin) and they've been very successful.

**What is the main focus (product types, sectors or jurisdictions) for the London finance team going into 2017?**

In the area of sovereign bonds our plan is to build on our recent successes. In general we have an international focus, and we are always looking towards international opportunities, particularly working with other offices in the firm. For example, the fact that I've done a couple of recent significant Latin American transactions is an indication of our international approach, as London-based capital markets lawyers at other firms wouldn't tend to do that, instead they would tend to focus just on this region (EMEA).

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