

# Legal:

Featuring insights from **Matt Gorson**, Co-Chair, Greenberg Traurig, shared exclusively with **Invest: Miami**





# 21<sup>st</sup>-Century city:

## Increased sophistication in Miami-Dade's legal industry mirrors dynamics of the broadening economy

Miami-Dade's dynamic growth and post-recession economic recovery has had tremendous spillover effects on the professional services and in particular the legal industry. Traditional practice areas for this market – namely real estate – continue to see strong growth, while other areas, such as venture capital and technology, private equity and cross-border transactions are seeing increased activity and reaping the benefits of this diversifying economy.

### ■ Real estate

Real estate continues to be a pillar of Miami-Dade's economy and drives growth in the legal sector as well. Recent legal developments in real estate transactions, land use and environment provide for greater expediency in real estate development, while addressing important challenges, such as sustainability.

As Miami-Dade has urbanized, more mixed-use developments have been constructed to allow for greater density and promote the “live, work, play” lifestyle while minimizing commute times. This has resulted in more complex real estate transactions, as these developments involve several disparate parties whose interrelationships must be carefully managed and negotiated.

The existence of multiple components – residential, hotel, office, and retail, among others – in a mixed-use project makes structuring documents and establishing control more complicated. Whereas a typical condominium is controlled by unit owners, in a mixed-use development, the residential component is a small part of a larger, often a branded project. As such, it becomes difficult to manage multiple areas of control and set the terms of decision-making while delivering a consistent look and feel to the product.

One of the most significant regulatory changes for condominium transactions in recent time has been the exemption for condominiums added in 2014 to the federal Interstate Land Sales Full Disclosure Act (ILSA). Previously, real estate developers had to register large condominium projects with both state and federal government agencies as a measure of consumer protection. But as state laws governing the registration of condominium transactions became more comprehensive, it became unnecessary to duplicate the registration procedures. Provisions like these will facilitate more transactions in the future, a great boon for Miami-Dade's real estate-reliant economy.

### ■ Land use

Permits in Miami-Dade County are administered at the municipality level, with the exception of unincorporated areas, which are under the direct jurisdiction of county government. In recent years, a number of initiatives have been launched to promote real estate development through streamlining procedures. One is Miami 21, a zoning ordinance adopted by the City of Miami in 2010 that has transformed development. This code heavily regulates the look, shape and overall design of buildings and their interactions with external surroundings. The intent is to allow more light into the street, which enhances both the aesthetics and the pedestrian experience. Prioritizing the needs of pedestrians further contributes to a smarter urban design.

Miami 21 made the permitting process more expeditious. Previously, developers had to obtain a major use special permit (MUSP), which required that any project with over 200 units be subject to approval through a series of public hearings. Under Miami 21, a developer can be approved for a building permit if they comply with requirements of the code. The new streamlined process has reduced the average wait time for obtaining a permit from eight months to six months.

Phased permitting, which allows developers to begin certain aspects of construction while their building permit is being processed, has been another game-changer. Section 105.13 of the Florida Building Code allows for the use of phased permitting at the discretion of city planning departments. The City of Miami was one of the first cities in Florida to utilize this provision, with Miami Beach following suit.

A key benefit of phased permitting is the allowance of private providers to conduct certain reviews in place of the city. For instance, private providers are allowed to review and certify certain plans – like electrical and plumbing – although fire, zoning and water reviews must still be conducted by city agencies.

### ■ Environment

Miami-Dade's unique environmental conditions have been both an asset and a liability for development. Regulations have evolved to protect assets like water supply, clean air and wetlands, while mitigating against potential liabilities, such as climate change, sea level rise and dwindling water supply.

For example, Miami-Dade County's code includes comprehensive regulations that protect the county's drinking water supply and coastal areas, and impose additional drainage requirements in certain basins. To protect aquifers that provide drinking water to residents, the county has established wellfield protection areas, which impose use-type limitations within the protection areas, similar to zoning regulations. In ad-



Miami-Dade's environment is an asset and liability for development.

dition, special permits and project design features are required to develop along coastal areas. The county reviews the design of drainage systems for their potential impact on both ecosystems and the county's stormwater and sewage infrastructure.

In the coming years, as changes are made to the Clean Water Act to broaden the jurisdiction of federal agencies like the U.S. Environmental Protection Agency (EPA) and the Army Corp. of Engineers to the management of wetlands, there will be greater oversight over projects that might impact the quantity and quality of the water supply coming from the Everglades.

### ■ Technology and venture capital

South Florida has recently experienced an explosion of innovative startups completing successful capital raises, including the recent \$542 million Series B mega-venture capital raise by Magic Leap, an augmented reality firm. At the same time, the region has witnessed the success of more seasoned South Florida startups, including the billion-dollar-plus sales of Terremark Worldwide, Inc. and MAKO Surgical Corp.

This combination of forces has resulted in South Florida witnessing an influx of sophisticated, institutional investors looking for opportunities in the region's budding technology industry. As the local tech scene evolves, entrepreneurs, investors and attorneys alike have become proficient at navigating through the various stages of a startup company, and the investment vehicles most appropriate for each.

As increased activity in the sector continues, proc-



South Florida has seen a recent influx in tech startups and VC funds.

dures have become more streamlined and term sheets more standardized. Many investors and entrepreneurs utilize publicly available forms like the National Venture Capital Association term sheet or the Series Seed term sheet, while others opt for more exotic investment instruments such as Y Combinator's SAFE (Simple Agreement for Future Equity).

But while term sheets have become more simplified, negotiating and closing deals has become increasingly complex. Most of the terms of a venture capital (VC) deal are negotiable, requiring a seasoned expert to properly execute. Once the valuation of the company and the amount being invested is determined, the focus will be on terms surrounding the rights of the investor and entrepreneur to control the company. Other key terms that are heavily negotiated include relationships amongst founders, early-stage investors and later-stage investors, "senior" rights to the assets of the company upon liquidation or sale, and the establishment of dividend rights.

Crucial to a startup company's success is the prevention of early mistakes, which can be made in setting up the terms of early capitalization tables, dilution and option pools. The equity, or options, offered to employees as part of compensation, are strategically important for technology companies. If an early stage company lacks the funds to hire the requisite talent, stock options can provide a powerful incentive for key talent. But determining the optimal terms of the stock options is necessary for long-term success and profitability. The optimal structuring of stock options helps

to ensure the company is both able to retain good talent, but also remains attractive to investors.

Attorneys representing operating companies will seek to protect founders through all stages, including incorporation, negotiating rights with investors and protecting intellectual property. On the other side, attorneys provide VC investors with guidance on the risks associated with particular investments and ways to mitigate those risks. For companies, experienced attorneys can advise on what "market" terms are for investments and what areas investors may have flexibility. For investors, attorneys can provide expertise regarding common terms and customary key points for companies in particular industries.

#### ■ Private equity

Attracted by a favorable tax environment, a talented workforce and community of professionals and advisors, and, of course, warm weather, South Florida has witnessed a growing influx of private equity (PE) funds, hedge funds and VCs. Leading industries attracting funds to South Florida include health care, technology and software. The growth of funds in South Florida has bolstered growth in the PE legal practice area.

As additional funds move to South Florida, some key trends have emerged. One is the growth in spin-off funds founded by individuals who have left larger, more established funds; a trend indicative of how large the market has grown locally and how much room exists for continued expansion. Some notable South Florida-based "second-generation" funds that have been successful in raising investment pools include Pine Tree, Blue Sea, Millpond and New Water.

Another trend is the growth in minority investments. Historically, PE funds mostly sought only majority-control of companies, but in recent years, as it has become more difficult to find such opportunities, investors are pursuing minority investments with the opportunity to provide further capital, if needed for growth, and potentially evolve into a majority-control position. There has also been an increase in fund-to-fund transactions in South Florida, wherein PE funds sell portfolio companies to other funds. Frequently, as part of those transactions, the selling funds keep a percentage of the companies and they and/or their limited partners (LPs) become minority investors in the company going forward, with the new fund as a majority owner.

Perhaps the most crucial trend and one that has made deal-making more efficacious, is the growth in representations and warranties insurance. When a seller sells a business it makes several representations and warranties (factual confirmations) about that business to the buyer – e.g. that their financial statements are accurate, they have no pending litigation,

and all liabilities have been disclosed. Today insurers offer coverage to ensure that representations and warranties made by the seller to the buyer are accurate. Having an insurer assume risk that the buyer and seller traditionally had to allocate between them has significantly cut the time, cost and risk of a transaction, and has changed the dynamics of deal-making.

#### ■ Litigation and arbitration

Litigation is typically most active during times of economic change and upheaval. During and following the recent recession, there was an explosion of litigation in South Florida involving construction defects, property foreclosures, and lawsuits against developers by unit owners who did not want to close. During the boom years as mergers and acquisitions rise, so do the shareholder lawsuits to stop or alter the terms of a transaction. Because South Florida's economy in the last two years has been characterized by slow, steady growth – rather than sudden boom or bust – new litigation has been necessitated less often because there is enough money available for parties to resolve their disputes outside the context of litigation.

In recent years, Miami-Dade has continued its rise to prominence as a regional and global hub for international dispute resolution – both in litigation and arbitration. This growth has been dominated by disputes involving Latin American parties.

Considered the commercial capital of Latin America, Miami and its surrounding areas often serve as the negotiation nerve-center for large international business transactions involving Latin America. This growth is fueled by a combination of factors: Miami's proximity to Latin America, availability of multilingual attorneys experienced in international dispute resolution and a corruption-free judicial system. In order to continue fueling activity in this space, leaders in South Florida's legal community have taken meaningful steps to make the region an even more attractive destination for the resolution of international disputes.

In December 2013, the chief judge of the Eleventh Judicial Circuit in Miami-Dade County announced the establishment of an International Commercial Arbitration Court, which will be a subsection of the Complex Business Litigation Section of the Circuit Civil Division. This entity is designed to exclusively handle litigation emanating from international commercial arbitration matters. In 2014, Miami served as the first U.S. city since the 1980s to host the Interna-

tional Council for Commercial Arbitration Congress, a bi-annual gathering of scholars and legal professionals focused on international dispute resolution.

#### ■ Cross-border transactions

Historically, Miami-Dade County has maintained close ties – culturally and financially – to Central America, a region with strong agricultural, finance and transportation sectors. Especially during turbulent economic and political periods, Miami-Dade became home to many Central American families, and businesses in Miami-Dade developed an ever-growing expertise in addressing the challenges faced by clients doing business in developing nations.

In addition to a strong nexus with Central America, many Mexican and South American companies are increasingly looking to Miami-Dade as their hub for cross-border business. While many of these Mexican and South American companies may have looked to the traditional capital markets for financing, the growth of PE and availability of capital coming from

Latin America have made Miami-Dade – with its proximity to Latin America, regional expertise and cultural and language affinity – an ever more important business center for these companies. Recent changes by the U.S. administration regarding commercial activity in Cuba mean the potential opportunities for American and

international companies to do business in the country will be significant. Geography may have initially attracted businesses to Miami-Dade, but cultural affinity, ease of doing business, the sophistication of legal and financial advisors, and decades-long expertise in addressing the issues that are important to cross-border transactions continue to drive Miami-Dade's reputation as an important hub for transnational deal-making throughout Latin America, Europe and, increasingly, Asia, Africa and the Middle East. ■

“Miami-Dade has continued its rise to prominence as a regional and global hub for international dispute resolution.”

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# Forward-thinking

**Greenberg Traurig Co-Chair Matt Gorson discusses growth trends and the evolution of Miami-Dade's legal industry**

## Matt Gorson

*Co-Chair – Greenberg Traurig*

### Which industries have been the drivers of growth for Miami-Dade's legal industry?

When Greenberg Traurig was founded in 1967, real estate and tourism were the primary industries in Miami-Dade. Today our practice has diversified significantly, mirroring developments in the broader economy. As the concentration of wealth and investments in South Florida has grown, the market has seen a boom in corporate mergers and acquisitions (M&A) and private equity investment, as well as related business litigation. In the near future, we expect to see accelerated growth in intellectual property (IP) – due to the growth of both the local tech industry and cross-border transactions, particularly those involving Latin America. The most significant growth driver – beyond any single industry – is the incredible potential of the Miami market with its diverse population.

### How does diversity factor into growth?

Since its inception, Greenberg Traurig has emphasized the value of diversity in its workforce. We were one of the first firms to hire Jews, Hispanics, African-Americans, women, and other minorities who were excluded by other law firms in the market. This has proven to be a prudent business strategy in a highly diverse community like Miami-Dade County. As Hispanic immigrants started to assume prominent positions in government and industry, it became apparent just how much of a mistake it was for big law firms not to hire Hispanics. It helped us to have attorneys who reflected the heritage of the broader community and allowed us to become even more connected to our community. As the globalization of the Miami market reaches new heights, our diverse and multilingual workforce continues to remain a key asset.

### How have the firm's local attorneys been able to compete in an increasingly globalized market, where clients can retain the services of Chicago or New York attorneys even after relocating to Miami-Dade?

Greenberg Traurig's clients can take advantage of the firm's large U.S. platform that provides high-quality legal

services at competitively lower prices, when appropriate, without losing the sophistication required for global transactions. South Florida attracts talented attorneys lured by the warm weather, tax-friendly climate and cultural offerings. The proximity to Latin America and the deepening business ties with key markets like Europe, Russia and increasingly Asia, mean our local attorneys have strong international networks. Miami-Dade's position as a global hub also benefits local attorneys, as many clients pursuing international transactions choose to conduct business in Miami-Dade because of its location at the crossroads between the Americas and Europe. As a result of these factors, we are increasingly seeing clients retain the services of Miami-Dade attorneys for work that does not take place in Florida.

### What lessons did the legal industry learn from the Great Recession, and how has Miami-Dade adapted to a post-recession legal market?

The Great Recession exposed the excesses of the economy and forced law firms to pursue more cost-effective measures. One result has been the growth of alternative fee structures – fee arrangements not based on the billable hour. There are various permutations of alternative fees. A flat fee may be charged for a transaction. There are also outcome-based fee structures, where attorneys are incentivized with a bonus if a deal closes or litigation settles within a certain timeline or budget. Our firm has been a leader in this arena and we see no signs of this trend slowing.

### What are some cost-effective ways to address hiring and retention in the legal sector?

Many law firms today are experimenting with different models to address the challenge of retaining top talent while also reducing costs. Many clients don't like to have first-year associates on their work, yet firms need to train these young attorneys. Greenberg Traurig's solution is our resident program – similar to a medical residency – where we hire lawyers straight out of law school for a period of one year. They receive lower compensation than associates, but are required to work less and train more. Initial results are very promising; we have hired most of our residents.

We have also worked to create a more flexible workforce. In the old model, everyone was either an associate or a partner. Now we also have different levels of share-

holders, of counsel attorneys and practice group lawyers, who can bring key knowledge to certain practice groups.

### When it comes to civil litigation what have been the predominant trends in this market?

Litigation trends are often counter-cyclical with a booming economy. With the economic growth in Miami, the pace of litigation has slowed, but we are seeing more class-action lawsuits – a nationwide trend – and cases settling more quickly. As the real estate market peaks, we expect to see more construction defect litigation, as well as suits against developers by unit owners who don't want to close. Nonetheless, litigation will continue to be a strong element of our practice.

### While both the economy and the legal industry in Miami-Dade have diversified significantly, real estate continues to anchor both. What have been some notable trends in real estate?

In 1973, Florida passed its initial Condominium Act, which opened the market for high-rise residential development. This completely changed the South Florida real estate market. Condos drove the skyline development in Miami-Dade; even today, the number of office buildings pales in comparison to the number of high-rise condos.

Since then, this real estate market has been through a number of boom and bust cycles, but what is unique today is that we are seeing developers behave more prudently – they were forced to because banks would not lend to them. In the past, developers were able to presell an

entire building with only 20 percent deposits from buyers and 80 percent bank loans. Today, buyers are obliged to post far more significant deposits (as high as 50 percent) on a preconstruction condo, minimizing overall risk.

### What is the medium-term outlook for Miami-Dade?

We are bullish on Miami-Dade and South Florida. The cultural offerings available today – from Art Basel, to the Perez Art Museum Miami, to the Adrienne Arsht center – are world-class and show a maturing market. The growth potential of this economy – driven by real estate and trade, is a rising tide that will lift all industries and legal will stand to benefit. As more people come here, there will be growth in trusts and estates, increased litigation, more corporate transactions and growth in the tax practice. The challenge for the legal industry is evolving its business model to keep up with the changing times. ■

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# Joint solutions:

## More public-private partnerships will be sought to address Miami-Dade's infrastructure gaps

The success of the \$900-million PortMiami Tunnel project, which reached financial closing in 2009 during the Great Recession and opened in 2014, showcases how public-private partnerships (PPPs) can facilitate public infrastructure development. A PPP is shared stewardship of a public asset for a specified period of time – it is not a form of privatization, nor is it a sale of public assets.

In a PPP arrangement, the public entity is not merely contracting a private party to deliver services. Rather, a private party will typically function as a concessionaire that takes on project risk, procures financing, and employs its design, construction, operating and maintenance expertise to develop public works. Once the project has been successfully completed and maintained to the satisfaction of the sponsoring public agency, the concessionaire will have the right to obtain revenue from the project (e.g., tolls or other user fees) or, as in the case of the PortMiami Tunnel, from availability payments paid to the concessionaire by the sponsoring public agency, or a combination of such revenue sources.

Although PPPs are common in Europe and Canada, they are relatively nascent in the U.S. and typically face a number of unique challenges, among them funding availability, appropriation risk and taxation. In the U.S., public agencies are able to finance infrastructure projects on a tax-exempt basis through the issuance of tax-exempt bonds. Since a typical private party is not permitted to issue tax-exempt bonds, the financing available to a private party for a PPP project is, typically, less economically attractive than what is generally available to public agencies. To help address this challenge and promote PPPs, the U.S. Congress created an additional category of tax-exempt bonds for the financing of PPPs for certain surface transportation and intermodal facilities. President Barack Obama has also proposed expanding this category to include other projects with broad social value.

PPP projects may also be subject to appropriation risk, which is the risk that a future state legislature may decline to appropriate funds for payments due under a concession agreement. For example, the Florida Department of Transportation (FDOT) may not enter into contracts for the payment of moneys in excess of \$25,000 that last more than one year. A contract of longer duration is not



PPPs help build key infrastructure projects like the PortMiami Tunnel.

binding on FDOT unless the Florida Legislature annually appropriates funds for its payment. Since PPP contracts are typically long-term, multiyear arrangements, a concessionaire has to weigh the appropriation risk in light of the harm that a failure to appropriate would have on the credit profile of the defaulting public agency.

Moreover, a private party operating a public asset may be subject to taxes that would not otherwise be payable by a public agency. The Florida Legislature and sponsoring public agencies have been active in correcting these inconsistencies through legislation and private action.

Despite these challenges, more private sector participation will likely be required to develop public assets. In 2013, the Florida Legislature, which has been a leader in the enactment of “user-friendly” PPP legislation, expanded the PPP laws to authorize all counties, municipalities, school boards, and other local and regional governments, authorities and districts to pursue PPP projects. Additionally, the state legislature expanded the kinds of infrastructure development that may be undertaken with PPPs and is contemplating further modifications.

At the local level, Miami-Dade has established a PPP Task Force to work on crafting a comprehensive strategy for advancing PPP projects. Miami-Dade has also considered using a PPP approach for a proposed Miami-Dade consolidated justice facility, and to develop needed water and sewer projects. With government at all levels working together to promote PPPs, Miami-Dade likely will see more PPP arrangements in the medium term, benefitting both the community and private investors. ■

Capital Analytics would like to thank Greenberg Traurig for its contribution to the Legal chapter in Invest: Miami 2015. For help with your legal needs, contact Greenberg Traurig at [www.gtlaw.com](http://www.gtlaw.com) or [xxxxxxxxxxxxxxxxxxxx@gtlaw.com](mailto:xxxxxxxxxxxxxxxxxxxx@gtlaw.com).