

Costa Rica

Chamber of commerce:

Cámara de Comercio de Costa Rica
PO Box 1114-1000
San José
Costa Rica
Tel: +506 221 0005
Fax: +506 233 7091
Web: www.camara-comercio.com

Professional body:

Colegio de Abogados de Costa Rica
PO Box 3161-1000
San José
Costa Rica
Tel: +506 202 3600
Fax: +506 224 0314
Web: www.abogados.or.cr

Regulation of M&A in the financial services industry

Vicente Lines, Rodrigo Cordero and Roy Herrera
Arias & Muñoz
San José

Our forecasts for 2007 have been proven. GE Money, Citibank, HSBC and Scotiabank all acquired stakes in several leading Central American financial institutions, including BAC, Grupo Financiero Uno, UBC (Banco Cuscatlán), Primer Banco del Istmo and Costa Rica's wholly-owned national private banking bastion, Banco Interfin.

Banks and other financial intermediation institutions' (FIs') mergers are governed by diverse legislation, including corporate and regulatory Laws and regulations.

M&A regulatory implications

Although the Costa Rican regulator, the General Superintendent of Financial Institutions (SUGEF), does not have express statutory authority to either approve or reject an FI's acquisition (it only requires that it is sent notice of the transaction) regardless of whether it involves a stock purchase, a merger or an asset sale, in practice a bank already in operation does have to comply with SUGEF's provisions and obtain a favourable decision from it before carrying out certain acts. These include assigning or selling its shares totally or partially, modifying its capital stock, changing its corporate domicile or any other similar transaction.

The entity must also inform SUGEF of its ownership, so that SUGEF can determine who will be the ultimate beneficiary or direct owner after the acquisition. Also, the Financial Services Regulatory Council (Conassif) must approve true statutory mergers.

Approval by SUGEF

In cases where the transaction involves an ownership transfer of more than 10% of the FI's total equity, SUGEF must request information on the acquirer. It may exonerate acquirers such as public entities or international multilateral

institutions, or if they are well-known entities whose stock is traded, from filing information.

Approval by Conassif

Conassif must give prior approval for the planned merger of any FI. On acquiring this approval, the FI must comply with the necessary corporate resolutions for completing the merger.

M&A from the corporate law perspective

Statutory procedures

Specific regulations apply to M&A activities, depending on the form these take. The procedure involves steps similar to merger regulations in other jurisdictions: (i) an agreement by each of the merging entities' shareholders; (ii) a merger agreement; (iii) the publication of the merger; and (iv) the issuance of the resulting entity's articles of incorporation.

M&A by acquiring a company's shares of stock is not expressly regulated, except through certain protections to minority shareholders and limitations to the transfer of share ownership interests.

Finally, bulk transfers of assets are regulated by a procedure whereby there is: (i) an agreement between seller and purchaser under statutory requirements; (ii) the transaction's documentation in a public deed; (iii) the transaction's publication, for the creditors' benefit; and (iv) a statutory escrow procedure for payment whereby the purchase price is deposited with an independent party (such as a notary) who holds funds and disburses them first to pay off any accredited creditors and then to the seller.

Minority shareholders' rights

Apart from the foregoing procedures, M&A activity requires parties to focus on minority shareholders' rights. Although Costa Rican law contains few protective provisions, it allows parties to create substantial minority shareholder protection. There are no special corporate minority shareholders' rights within the financial market-related laws and regulations.

For minority shareholders, Costa Rican corporate law provides basic information and par-

ticipation rights that include: (i) a request for an inspection of corporate and financial records at any time, by giving notice in advance of or to prepare for a general shareholders' meeting; (ii) owners of at least 20% of the share capital may, at their own expense, demand an audit of the company's financial statements and operation; (iii) holders of a 25% stake may demand that the competent company directors or management convene a general shareholders' meeting; (iv) holders of a 20% stake may also demand a maximum 72-hour suspension of the general shareholders' meeting and also demand further information and clarification of any management issues to be decided at that meeting; and (v) a single shareholder may demand, if no annual meetings have been held for two consecutive periods, that a general shareholders' meeting be convened.

Also, to protect minorities, Costa Rican corporate law allows special restrictions to share transfer rights, including rights of first refusal, tag-along rights, drag-along rights and preemptive rights on stock issues. These provisions are not mandatory, but shareholders and partners may build them in to their corresponding corporate structures. At the moment, courts offer little case law in relation to these provisions, but as M&A activity continues to expand, enforcing these provisions and discussing them in judicial and arbitration proceedings will be a key source of law and regulation in the future.

The diversity of laws and regulations that apply to M&A in the financial sector - together with lack of practice in the areas of both corporate and financial regulation - will present market agents, regulatory authorities and practitioners in Costa Rica with significant challenges in the near future. So far, the Costa Rican regulatory authorities have followed a permissive stance, the result of a policy decision to welcome the entry of global financial participants into the market. The regulators' approach remains to be confirmed.

Financial and corporate**Recommended firms****Tier 1**

Arias & Muñoz
 Consortium - Laclé & Gutiérrez
 Facio & Cañas
 Zürcher Odio & Raven

Tier 2

BLP Abogados
 Pacheco Coto

Tier 3

Aguilar Castillo Love
 Feinzaig Scharf van der Putten
 Lara López Matamoros Rodríguez & Tinoco
 Nassar Abogados

Tier 4

André Tinoco Abogados
 Batalla & Asociados
 Oller Abogados
 Pacheco Odio & Alfaro

Costa Rica's economy remains vibrant thanks to a real-estate market that has been growing consistently for the past decade. As one lawyer puts it: "Everyone's a developer in Costa Rica." Despite the optimism, there are concerns whether the real-estate and tourism industries can buoy the economy. The US economy traditionally has an impact on Costa Rica, and the recent downturn has caused foreign investors some concern. But the consensus is that the wealthiest entrepreneurs from the US and Europe will not suspend investments in Costa Rica altogether.

Cafta (the Central America Free Trade Agreement) could offer a possible antidote to any sudden downturn in the property market - if it is ratified. Increased investments resulting from Cafta's approval are expected to be significant. Foreign investors are attracted to the low cost of labour in Costa Rica. They also appreciate the relative economic and political stability that the country provides.

Lawyers across Central America - and particularly in Costa Rica - are clearly enthusiastic about the number of cross-border transactions likely to emerge from Cafta's implementation. The agreement is expected to open up former state monopolies in telecoms and insurance, potentially leading to not only privatisation but secondary deals as well. But Cafta is going to be new territory for Costa Rica's lawyers: the regulatory bodies that would interpret these laws have not even been created yet.

Local bank consolidations by HSBC, Citibank and Scotiabank have mostly been successful, although the uncertainty created by the international subprime crisis has cur-

tailed some expansion activity. Lawyers are adapting to new levels of services that the international banks require. It's likely that non-traditional, and smaller, firms will begin to compete for work from these financial institutions. The firms that used to dominate the banking sector will have to get used to sharing the spoils of successful internationalisation.

Project finance may become an active practice soon. A new law has been proposed that would allow private companies to securitise the proceeds from infrastructure projects. These securitisations could then finance further development. Approval of this law is expected imminently.

The trend towards law firm regionalisation is likely to continue. Cafta will lead to further consolidations, in all industries, and across all markets. Many in the market claim that in order to be a player in any Central American market in the future, a firm will need a presence in all five jurisdictions.

Arias & Muñoz

Arias & Muñoz's foresight towards law firm regionalisation has afforded it a big advantage in Costa Rica. Its multi-jurisdictional approach across Central America is a recognised hallmark. "One of the benefits of Arias is that they have representation in all Central American countries and offer a consistent product in all regions," says a client. One competitor articulates a common view when he says: "Arias is the only true Central American firm."

The firm has been on a hiring binge recently, landing experienced associates like Sergio Arguedas, a former counsellor to the Costa Rican financial regulator. New associate Carmen Castro, another valued signing, specialised in finance and securities in Frankfurt with Linklaters before joining the firm. Arias & Muñoz is poised for more growth in the near future, particularly if Cafta is approved. The possible opening of the telecoms industry is likely to be a boon for the practice, particularly as Vicente Lines, one of its most respected partners, has experience in telecoms regulatory work. The firm also represents Telefónica España, which will likely be looking for legal advice in advance of its entry into the market.

Across the board, Lines is recognised as an integral part of the firm's success. One rival partner says: "Every time there is an important transaction, Lines is involved."

Leading lawyers

Carolina Flores
 Vicente Lines
 José Antonio Muñoz
 Pedro Muñoz

Consortium - Laclé & Gutiérrez

Laclé & Gutiérrez is the Costa Rican arm of the regional network Consortium Centroamerica Abogados, and has been described as the best banking and financial law firm in the country. "The personnel at the firm are very qualified, and when I need anything they help me very quickly," says a client. The firm is coming off a banner year according to peers. "It seems as though the members of the firm are in the loop with everything that happens here in Costa Rica," says one. Other clients and competitors note that Consortium is developing strength in other areas, such as real-estate acquisitions.

In the past year, the firm has been busy finalising a number of property and reorganisation deals. Last August, the firm advised Interbolsa and Kapital Group on a \$68 million multi-stage financing for real-estate developments in Guanacaste. The financing consisted of an \$18 million bond issuance, a \$30 million mezzanine loan and an equity contribution of \$20 million.

In addition, Laclé & Gutiérrez worked on several industry consolidations last year. In March 2008, the firm advised a subsidiary of Grupo Progreso, of Guatemala, on the acquisition of 100% of the stock of one of the main hardware stores and steel distributors in Central America.

The firm is advising Citigroup on the acquisition of Banco Cuzcatlán. The deal was intended to give Citigroup a stronger presence throughout Central America, and increase its corporate banking presence in the region. The subprime crisis caught Citibank in the middle of its integration efforts; Laclé & Gutiérrez now faces the challenge of unifying the different institutions under the Citibank umbrella.

Leading lawyers

David Arturo Campos
 Rolando Laclé Zúñiga

Facio & Cañas

Facio & Cañas, the largest firm in the country, has been a preeminent Costa Rican practice for many years. "Facio has amassed some of the best talent in the country," observes a competitor.

Still, the firm has suffered defections in the past year. Notably, Eduardo Calderón and Mauricio Salas have left for BLP Abogados. Some market commentators have voiced concern that the firm may not be adapting to changes in the Costa Rican legal market, and according to some, the rise of the regional firms seems to be leaving Facio & Cañas trying to catch up. The firm's prestige, built on goodwill and a solid reputation, has afforded it a reprieve for the moment. The years ahead

will demand a new show of force, which the firm seems to be in a good position to deliver.

Facio & Cañas commands respect as a firm that works extensively on foreign direct investment. But as an example of concerns mentioned by others in the market, the firm's real-estate practice has room to develop if it is to reap the rewards of the sector's astonishing growth.

Carlos Valverde and Tomás Guardia led the team that advised McDonald's in Costa Rican on the sale of its regional franchises to Arcos Dorados. The entire sale was valued at \$700 million, and the firm's participation demonstrated its ability to work in complex, multi-jurisdictional transactions.

Leading lawyers

Víctor Garita
Tomás Guardia
Roberto Leiva
Carlos Valverde

Zürcher Odio & Raven

The merger that resulted in Zürcher Odio & Raven was an easy transition that was necessary for the firm's evolution in the market, although the integration process is a long road.

The firm enjoys a strong relationship with international firm Baker & McKenzie, which does not have an office in Costa Rica. Zürcher Odio & Raven also has a lot of experience in the tourism industry which, like the real-estate market, is growing apace.

Several Zürcher partners have been singled out for their contributions to the legal community. One competitor says: "Francisco Chacón is the architect of trade policy in Costa Rica." The young Alberto Raven Odio is particularly praised by clients for his sharp legal opinions.

Some of the firm's representative clients include financial firms Citibank and Merrill Lynch, and corporations such as Starbucks, Abbott Laboratories, and GlaxoSmithKline.

Leading lawyers

Francisco Chacón
Claudio Donato
Alberto Raven
Edgar Zürcher
Harry Zürcher

BLP Abogados

BLP Abogados is recognised among its clients and peers as an ambitious and dynamic firm. The firm has been able to parlay this enthusiasm into a real recruiting edge, cultivating a well-known appeal for junior associates. As a result, BLP has made a name for itself in a

short time. "They are competing to win," says a rival, "and to be a dominant firm in Costa Rica."

The firm was involved in one of the most complex regional deals of the year. David Gutiérrez led the BLP team that led the syndicated lenders including Banco Santander, Scotiabank and Standard Chartered Bank, which financed a \$350 million bridge loan for the acquisition of McDonald's Latin American franchises. BLP Abogados shared duties as co-counsel with 14 other firms, including White & Case and Ritch Mueller in Mexico.

The firm was also involved in the largest-ever project-finance loan in Costa Rica. BLP acted as local counsel to lenders Caja Madrid and Cabej, which provided a \$261 million loan for the construction of a toll road linking San José to one of the country's main ports. This was the first financing to close since the new concessions law was enacted in Costa Rica, and the novelty of the situation meant that the lawyers were dealing with complex and original legal issues.

Leading lawyers

Luis Manuel Castro
David Gutiérrez

Pacheco Coto

Pacheco Coto is one of the oldest firms in Costa Rica, but has a reputation for dynamism and ambitiousness.

The firm remains small, but has good lawyers and a sturdy client list. Hernán Pacheco is well-respected in the market, and is present on nearly all the firm's key transactions.

In July of 2007, Pacheco Coto demonstrated its ability to advise on regional aspects of worldwide acquisitions. The firm represented a Connecticut investment fund in the acquisition of assets of electronic equipment manufacturer ITT Industries.

Pacheco Coto is looking to benefit from its new partnership with Cone & Co, a New Zealand trust company. In January 2008, the firm represented Cone on the Central American portion of the worldwide acquisition of Alcoa's packaging operations.

Leading lawyers

Hernán Pacheco

Batalla & Asociados

Clients commend Batalla & Asociados for its extensive knowledge of local laws in Costa Rica, and the laws of other Central American countries. The firm has had recent success advising private-equity funds, such as in the

formation of the Aureos Latin America Funds I and II. The firm advised the fund's managers on prospective investments throughout Central America, as well as Mexico, Colombia, Peru and the Dominican Republic. The firm also represents other private-equity investors including Actis Capital and Lafise Investment Management.

Batalla & Asociados also has a share of the ever-expanding Costa Rican real-estate market. In May 2008, the firm advised Emerge Central America Growth Fund on the acquisition of Horizontes Travel, an ecotourism operator. The expected activity in this sector should mean plenty of business for Batalla over the coming years.

Leading lawyers

Alejandro Batalla
Rodrigo Zelaya