

Colombia

Chamber of commerce:

Cámara de Comercio de Bogotá
Avenida El Dorado 68D-35
Bogotá
Colombia
Tel: +57 1 383 0300
Web: camara.ccb.org.co

Professional body:

Colegio de abogados de Bogotá
Av. 19 No. 109-40
Bogotá
Colombia
Tel: +57 1 620 3100
+57 1 213 5277
Fax: +57 1 215 7355

Reform of Colombia's financial system

Cristina Rueda
Baker & McKenzie
Bogotá

On June 17 2009 the Colombian Congress approved a bill that reforms Colombia's financial system, which in turn was made into Law 1328 on July 15 2009. The reform focuses primarily on three topics: the protection of financial consumers; the rules of investment of pension funds to account for the contributor's different ages and ability to take on risk; and how foreign entities can offer financial products and services in Colombia.

However, Law 1328 includes reforms for other aspects of regulatory system that needed to be modified.

Consumer protection

Recognising that most operations between financial institutions and the users of their products and services are not negotiated, the Law requires that financial institutions properly disclose the costs (including taxes) involved in the operations they carry out and that they adequately inform consumers of what is involved.

With respect to adhesion contracts, Law 1328 imposes restrictions on what financial institutions can do under these contracts. Accordingly, it does not allow agreements where consumers waive their rights; it also establishes that provisions shifting the burden of proof to consumers are not permitted, and that documents with blank spaces executed by consumers to be filled in by financial entities require that consumers leave specific instructions.

Law 1328 further regulates the so-called Advocate for Financial Consumers. The Advocate is an officer that every financial institution must have and who is responsible for ensuring that financial institutions do not violate consumers' rights. Under the Law, the advocate must have had previous experience in the financial sector, be a certified concilia-

tor, as well as independent and autonomous from the financial institution. The institution must ensure that consumers throughout Colombia have access to the officer.

Pension funds

Experts have recognised that while the changes introduced to the pension scheme in the 1990s were a step in the right direction, the system did not yet guarantee that Colombians reaching retiring age would have sufficient savings in their pension plans to allow them to retire comfortably.

The main reform in this aspect results in pension fund managers being able to hold several pension funds with different investment strategies and minimum returns to account for the risk the contributors are willing and/or capable of doing so.

Under Law 1328, pension fund managers will not only have a compensation attached to the pension fund's value, but now will also have one attached to the success of the pension fund. This change is aimed at encouraging the growth of these funds. Both topics will require further regulation by the government.

As a result of the reform, the government also has the power to introduce hedging mechanisms that allow insurance companies to cover the risk of pension payments tied to the minimum monthly salary increasing at a rate greater than inflation in a given year.

Cross-border services

Foreign banks and foreign insurance companies will be able to operate locally without having to incorporate a Colombian entity. These banks and insurance companies will be required to set up a branch in Colombia, which will actually have the same capitalisation requirements as Colombian banks and insurance companies.

The government may allow foreign entities that offer products and services in the securities market to operate in similar ways. The implementation of these new possibilities for foreign entities would be subject to further regulation by the government.

The government can also permit that Colombian stock markets and systems where securities are negotiated to allow the trade of securities issued outside Colombia, even when they are not registered with the National Registry of Securities and Issuers.

Other relevant changes

Microfinance

Law 1328 provides some incentives for microfinance. It allows co-operative financial institutions to lend and provide some financial services to small business owned by legal entities located in places in Colombia where there are no banks. Currently, these co-operative entities are generally only allowed to lend to their own individual members.

The government also received authorisation to allow rediscounting of loans to small business.

Securitisations

Law 1328 allows the securitisation not only of existing mortgage backed loans, but of loans that have not yet been made and housing leases of projects that have not been built.

In addition, Law 1328 clarifies that the group of assets to back a securitisation process will constitute a separate and autonomous estate (*patrimonio autónomo*) and which will not be commingled with the assets of the trust company managing the securitisation.

Capital markets

The appeal of decisions of self-regulating bodies can only be made before such bodies, and judges will not have jurisdiction over said decisions. Officers of self-regulating bodies will only be personally liable for their decisions and actions in the event of wilful misconduct or gross negligence.

Finally, Law 1328 allows for early termination of operations that are netted; liquidated; conducted where payment goes through special systems; registered as instructed by the government, where one of the parties is a Colombian financial institution or an authorised foreign agent (generally entities that trade in derivatives for more than \$1 billion per year); and in which one of the parties

enters into an insolvency, bankruptcy or similar process.

Financial and corporate

Recommended firms	
Tier 1	Baker & McKenzie Brigard & Urrutia Gómez-Pinzón Zuleta Prieto & Carrizosa
Tier 2	Cárdenas & Cárdenas Posse Herrera & Ruiz
Tier 3	Holguín Neira & Pompo José Lloreda Camacho & Co Rodríguez & Caveller

Having suffered its own financial crisis in 2000, Colombia's banking system was better prepared to cope with the global meltdown than many of its neighbours. Still, this is little consolation to a corporate sector that depends heavily on foreign investment and credit markets (both seriously constricted in the wake of the credit crisis) to finance operations. The aggregate effect on Colombia will be close to 0% GDP growth for 2009. In the words of one lawyer: "The economy is not shrinking, but it is going through a bit of a rainy day."

Colombian companies are hungry for financing and, in lieu of private banks, multilateral agencies like the IIC (Inter-American Investment Corporation) and CAF (the Andean Development Corporation) have increased their investments into the country. The Venezuelan CAF recently announced \$6 billion to fund projects in Colombia through to 2011 – a step up from commitments of \$5.7 billion over the past five years.

Projects earmarked for CAF funding include the construction of public transportation systems in four of Colombia's medium-sized cities, and the expansion of Bogotá's bus operations. Last March the IIC joined with Spanish bank BBVA in an agreement targeting the development of small and medium-sized businesses in Colombia.

In the continual ebb and flow of privatisation/nationalisation movements in Latin America, Colombia is currently mid-tide. The state was anticipated to be offering its utility provider Interconexión Eléctrica to the market in the latter half of 2009, but is expected to table the offer if it does not find competitive interest. The 2007 sale of a 10% interest in state-owned energy company Ecopetrol

raised \$2.8 billion, the biggest IPO in Colombia's history. The public/private hybrid model is the second in the region following Brazil's Petrobras.

One area of industry that may see growth in the coming years is Colombia's burgeoning film industry. Spotting an opportunity, the culture ministry is keen to develop Colombia's reputation not just as an exotic movie backdrop but also as a centre for film production akin to Mumbai, India and Nairobi, Kenya. A 2003 law that established tax incentives and a \$3 million annual film development fund is beginning to show results, with private investment doubling between 2007 and 2008. Local lawyers are already seeing an upswing in mergers, affiliations and partnerships between local companies and major film producers, and they expect the trend to continue.

Baker & McKenzie

Bucking the trend of other local offices of international firms, Baker & McKenzie has a leading presence in Colombia. There is a consensus among Colombian lawyers that its partners have developed a significant practice independent of their corporate referrals from the hub. Still, with local markets constricted, it is nice to have a flow of clients from the main office, and of course an international support group is a major advantage for international investors. In the experience of one client, "it made for a seamless process to have our lead guy in Colombia and all the paperwork done in New York".

Of late, Baker & McKenzie has been particularly busy with CAF's (the Andean Development Corporation's) recently-expanded financing programme in Colombia. In December of 2008 the firm represented the multilateral lender regarding a bond placement in Colombia, the first of several offerings in the past year. The bond programme, one of the largest in the most active market in South America, raised an estimated \$112 million – 2.4 times the amount originally offered.

Baker also counselled CAF in the granting of a \$100 million loan to state-owned power company Empresa de Energía de Bogotá to complete the financing to acquire the recently-privatised Colombian gas pipeline operator Ecogas.

Jaime Trujillo also led a team of Colombian and American lawyers that represented Enbridge International in the divestment of an indirect stake in Oleoducto Central, or Ocesa. It was purchased by Ecopetrol for \$418 million.

Leading lawyers

Jorge Lara-Urbaneja
Jaime Trujillo Caicedo

Brigard & Urrutia

At the end of the day, reaching a favourable agreement with the other side of the table is the goal of any negotiation, and senior partner Carlos Urrutia has earned a reputation for being a results-driven negotiator. As one competitor says: "Carlos gets to the point and always looks for solutions to getting the transaction done."

In the area of aircraft financing, Brigard & Urrutia had a productive year on the lender side of several important transactions. The firm advised Barclays Capital and the Aviation Capital Group in the financing of aircraft leases to Colombian carrier Avianca. The loans, each for \$230 million, are for the expansion of Avianca's services in Colombia and throughout the region. Carlos Fradique-Méndez also led the team successfully advising the IFC (International Finance Corporation) in a \$50 million loan to Avianca to renew its fleet and improve efficiency and safety standards.

As corporate advisors, Brigard & Urrutia represented Colombian paper and package manufacturer Carvajal in a high-profile cross-border loan. The loan involved a consortium of lenders in four different countries and represents a rare showing of a Colombian company in the international finance markets. The \$200 million financing will be used to expand Carvajal's operations throughout the region.

Most recently, Sergio Michelsen and a team of lawyers conducted the due diligence for Sony Pictures Television International and advised in the eventual acquisition by merger of a 50% stake in Colombian television producer Teleset.

Leading lawyers

Carlos Fradique-Méndez
Carlos Urrutia

Gómez-Pinzón Zuleta

A reputation for navigating complex government regulations is a valuable commodity for a law firm, and Gómez-Pinzón Zuleta has just such a reputation. One client recalls: "They described the kinds of contracts the government can have with companies and how the contractual process can be delivered. For us, it is very important to know how to communicate with the government."

As corporate counsellors, Gómez-Pinzón Zuleta is engaged as local counsel to Gas Natural in the proposed acquisition of a 43% stake in Unión Fenosa, a lead-up to the Spanish energy producer's full takeover of the utility provider. Tied up in Spanish antitrust courts until recently, the transaction is expected to proceed in the second semester of 2009.

The firm hopes to boost its presence in the banking markets with the 2008 addition of Andrés Hoyos, previously a special counsel to Cooley Godward Kronish in New York.

Leading lawyers

Patricia Arrázola-Bustillo
Alejandro Linares-Cantillo
José Luis Suárez-Parra

Prieto & Carrizosa

Within the past several years Prieto & Carrizosa has been expanding its legal team and these efforts are finally bearing fruit. Characteristic of other competitors' comments, one lawyer says simply: "We are constantly running into them."

The firm played a crucial role in the capital reduction of the state-owned Financiera Energética Nacional, the first-ever capital reduction involving a financial institution in Colombia. The deal involved Prieto & Carrizosa's co-operation with the government in drafting innovative regulations to enable completion of the transaction.

On the financing side, the firm represented Bank of Tokyo-Mitsubishi UFJ and BBVA in the \$200 million financing of the community-owned Empresas Públicas de Medellín. The financing provided partial funding for the Porce III hydro scheme – the largest power generation project under development in Colombia. Finalising the deal in January 2009, the firm not only faced the difficulty of the global financial crisis but was able to secure support of the syndicated loan from the Japan Bank for International Co-operation, one of the first transactions guaranteed by the Tokyo-based multilateral fund in Colombia.

Martín Acero has a well-established reputation in corporate transactions as well as tax matters, and is a leading figure in both practice areas in Colombia. The combined expertise, as a competitor says, "has done quite a lot for the firm".

Leading lawyers

Martín Acero
Juan Fernando Gaviria
Juan Manuel Prieto

Cárdenas & Cárdenas

Traditionally representing foreign banks in Colombia, Cárdenas & Cárdenas is a powerful, if smaller-sized, player in domestic capital markets. At a time when the playing field is tightening, maintaining a compact structure can be a solid strategy for a firm with an established presence. As one competitor notes: "They have decided to maintain the size of the firm and the target area."

Bernardo Cárdenas led the local representation of German commercial bank WestLB as lender and arranger of a \$142 million secured facility to Sociedad Portuaria Terminal de Contenedores de Buenaventura. The port operator will use the funds to conduct expansion projects at the Buenaventura container facility, as well as upgrades to safety and efficiency standards.

Leading lawyers

Bernardo Cárdenas
Eduardo Cárdenas

Posse Herrera & Ruiz

Posse Herrera & Ruiz has established itself as an up-and-coming firm in the Colombian banking markets, attracting attention as the representative for international banks in some of the country's largest lending transactions. The financial team is led by well-regarded partner Mariana Posse, of whom a competitor comments: "Her capacity to keep top-notch clients is enviable."

Posse has been involved with ABN Amro on several loans, including the Dutch bank's role in the \$200 million syndicated loan to Colombian pulp and paper company Carvajal. The firm also advised ABN Amro locally in a \$125 million loan to mobile phone company Colombia Móvil.

Posse lawyers represented French bank BNP Paribas in a syndicated loan to oil and gas producer Pacific Rubiales. The \$180 million revolving loan will finance the company's infrastructure and boost the production of the Rubiales and Piriri fields by up to 100,000 gross barrels daily.

Leading lawyers

Mariana Posse

Other ranked firms

The smaller, more focused structure of **Rodríguez & Cavellier** attracts young associates looking for opportunities to advance their careers outside the restrictive atmosphere of Colombia's larger firms. Bernardo Rodríguez has consolidated the firm's presence in aircraft financing and mining, its most salient areas of practice.

Last year, the firm took part in Colombian airline Aires' fleet renewal programme and the launch of its services in the US, representing Britain's Standard Chartered Bank in the financing of the lease. The firm also advised Standard's subsidiary, the Pembroke Group, in the provision of two aircraft.

Leading lawyers: Bernardo Rodríguez Ossa