

# 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  
Carrera 8, no. 16-79, of. 402  
Bogotá  
Colombia  
Tel: +57 1 284 2959  
Fax: +57 1 282 0258

## The regulation of trust agreements

Martín Acero and Juan Fernando Gaviria  
Prieto & Carrizosa  
Bogotá

Trusts are a vehicle often used in structured finance. Colombian law regulates trust agreements in detail, both from the contractual and insolvency perspective. Some of these regulations aim to protect the rights of the settlor's creditors and so they may eventually affect the transfer or the preference granted to a secured creditor under a structured finance transaction. It is therefore crucial for international practitioners to be aware of these treatments if they enter into a transaction concerning a Colombian debtor or asset.

The Colombian Code of Commerce expressly regulates trust agreements. According to the code, trust agreements to be governed by Colombian law may only be entered into with trust companies that are under the surveillance of the Finance Superintendence. The code also provides that, as a consequence of a trust agreement, a trust estate is created. The assets transferred by the settlor to the trust company under the terms of the contract are isolated from the assets of both the settlor and the trust company.

This principle has certain exceptions that affect the concept of a true sale as it is understood in the US. In effect, the Code of Commerce provides that creditors of the settlor that: (i) have credits that were accrued before the execution date of the trust agreement; and (ii) consider that the transfer of assets pursuant to the agreement affects their interest, may request the termination of the trust agreement in order to transfer the assets back to the settlor.

### Insolvency and bankruptcy

The new insolvency and bankruptcy law passed by Congress in December 2006 confirms certain provisions of past regulations which could affect trust agreements. Most importantly, it enhances the treatment given to trust arrange-

ments in insolvency proceedings. The new regulations reiterate that, in certain circumstances, a contract or an agreement entered into during the previous 18 months may be terminated if it creates certain effects for the bankruptcy estate or its creditors. In particular, the new law allows any creditor to ask the bankruptcy court to terminate any such agreement if: (i) it affects the right of any creditor (as opposed to a group of creditors, as was the case previously) or the preference order; and (ii) the assets of the debtor are insufficient to cover its recognized debts.

In addition, the new insolvency regulations elaborate on the treatment given to trust agreements in prior legislation. For example, all trust agreements must now be registered with local chambers of commerce, by means of a private document, to be granted publicity. This gives settlors' creditors the right to request the early termination of a trust agreement pursuant to the regulations of the Code of Commerce. The new law also clearly states that, should the creditors and the debtor in possession fail to reach an agreement on a restructuring formula, or the bankruptcy court does not adopt it, all guaranty trust agreements shall be immediately terminated by operation of law. As a consequence, the assets transferred to the trust estate shall be immediately transferred back to the bankruptcy estate.

### Exceptions

The new bankruptcy law states that this treatment shall not apply to trust agreements designed to make public offerings of securities or other negotiable instruments in Colombia or abroad, or to serve as a mechanism to securitize assets. The treatment of securities offerings in Colombia had also been included in the securities law passed by Congress in 2005. The new law also grants the president the right to further develop other cases in which assets transferred by virtue of trust agreements shall not be deemed to be part of the bankruptcy estate. This prerogative had not yet been used at the time of writing.

Financial structures based on trust agreements have to be reviewed in detail. Under

Colombian law they do not provide true sale protection *per se* unless in certain instances they are accompanied by other mechanisms such as the so-called double transfer, in which the ultimate settlor is a newly formed special purpose company. This is especially true given the Colombian regulatory authorities' tradition of looking to the substance of the agreement to determine whether or not the trust is, in fact, a guaranty trust which could qualify for the treatment described above.

## Banking and finance

### Recommended firms

#### Tier 1

Baker & McKenzie  
Brigard & Urrutia  
Gómez-Pinzón Linares Samper Suárez Villamil

#### Tier 2

Cárdenas & Cárdenas  
Posse Herrera & Ruiz  
Prieto & Carrizosa  
Zuleta & Partners

#### Tier 3

José Lloreda Camacho & Co  
Parra Rodríguez & Cavalier

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Baker & McKenzie  
Brigard & Urrutia  
Gómez-Pinzón Linares Samper Suárez Villamil

#### Tier 2

Cárdenas & Cárdenas  
José Lloreda Camacho & Co  
Parra Rodríguez & Cavalier  
Posse Herrera & Ruiz  
Prieto & Carrizosa  
Zuleta & Partners

Colombia has experienced a renaissance that has made it an attractive option for foreign investors. Increased security around the country has reduced the physical risk of being in the country, while a stable government that encourages foreign investors has meant more capital flowing into its markets. Factor in an economy that is one of the strongest in Latin America, and it is easy to see how Colombia has managed this turnaround.

Low interest rates have led companies to turn to the banks for more and larger loans. This suits the banks well, since they prefer the more stable corporate clients rather than consumer borrowers or microlending. Although loan sizes are relatively small – they typically range from \$50 million to \$200 million – bigger loans are beginning to emerge as borrowers and lenders become more confident.

The debt capital markets are humming, in part because they have attracted institutional investors, forced by those low interest rates to accept a little more risk in order to boost returns. Debentures and other corporate bonds compete with government obligations for institutional – and international – buyers.

While initial public offerings (IPOs) have some way to go, local companies are beginning to consider going public as a way to raise capital. It will be another year still before some really big IPOs are expected to come to market, but market specialists are excited about the possibilities.

In the M&A world, meanwhile, things are really booming. While only a few years ago activity was limited to selected industries, today there are M&A deals in all sectors. And while project finance has not been particularly active, the El Dorado Airport renovation has finally been awarded and is expected to drive a lot of business.

Lastly, geopolitics rears its head – Colombia has become the safe haven for quite a few multinational corporations moving from neighbouring Venezuela, opening up a new source of clients for corporate law firms.

### **Baker & McKenzie**

The Colombian legal community has become extremely competitive, and standing out takes some doing. One corporate executive with experience selecting law firms in Colombia highlighted the work of Baker McKenzie: “They are one of the best, with strong financial experience; [partners] Jaime Trujillo and Jorge Lara are two of the best names in the market and are widely respected.”

While it helps that Baker & McKenzie is one of the most prominent international firms, having that pedigree is no guarantee for success. Partner Jaime Trujillo orchestrated a restructuring initiative in the local office to

meet the firm’s worldwide profitability benchmarks. This meant, among other things, not participating in deals that might be too expensive to the bottom line, even if they had a high profile.

The result was that rival firms have reported seeing much less of the firm in some deals – yet the firm still reported record revenues, thanks to the new measures. Considering Trujillo’s reputation among his rivals, it’s hardly surprising. A prominent rival reported: “It is great to work across the table from Jaime; he has a good sense of humour. The restructuring will be good for them in the long term.”

And despite the restraint placed on deals the firm jumped into, Baker & McKenzie was still involved in many – if not all – of the big M&A transactions. When Colombia’s largest natural gas transporter Ecogas was acquired by a consortium of pension funds, the utility sought the firm to be its general counsel.

In the electrical power industry, the firm advised both Valórem and Invernac in their combined acquisition of a 49% stake in Compañía Eléctrica de Sochagota.

In a deal that closed in December 2006, Baker & McKenzie was the Colombian counsel to Pfizer in the pharmaceutical company’s \$16.6 billion worldwide sale of its consumer healthcare division to Johnson & Johnson. The firm was also local counsel in another worldwide sale, representing Abbott Labs when the company sold its laboratory diagnostics business to GE in an \$8.13 billion divestiture.

Baker & McKenzie also advised multinational Corporación Andina de Fomento in several transactions, including several bio-energy projects and a \$50 million multipurpose financing for the municipality of Bogota.

#### **Leading lawyers**

Don Baker  
Jorge Lara  
Andrés Williamson

### **Brigard & Urrutia**

As a testament to Brigard & Urrutia’s reputation in the Colombian legal community, one rival called the firm “the Coca-Cola of the market”. Companies needing assistance with billion-dollar placements, or borrowing several hundred millions of dollars, frequently turn to the firm for guidance.

For example, when JPMorgan and UBS Securities placed a \$1 billion bond for the Colombian government last July, they selected Brigard & Urrutia as counsel. Two months later, Goldman Sachs and Merrill Lynch hired the firm for its services in yet another billion-dollar bond offering.

Citibank has also hired Brigard & Urrutia, to act as the bank’s Colombian advisers when

a \$480 million credit agreement was arranged for Argos USA and Cementos Argos in December. The deal was complicated because of the five separate entities that acted as guarantors for the agreement.

The common thread among these big-ticket deals was managing partner Carlos Urrutia, recognized as one of the leading lawyers in the country. Urrutia also headed the team that advised Standard Bank in a complicated security package that granted a \$50 million credit facility to Inversiones Sol del Sur in yet another December deal.

Often cited by rivals, partner Carlos Fradique-Mendez helped demonstrate the firm’s capacity for innovation. He led the team advising Estrategias Corporativas in the structuring of the country’s first real estate investment trust (Reit). The first tranche of the estimated \$250 million project was issued in February of 2007, valued at nearly \$50 million.

It should be no surprise, therefore, that quite a few international banks consider Brigard & Urrutia their Colombian counsel: Morgan Stanley, Deutsche Bank and Barclays Capital can be included besides the already-mentioned institutions.

Brigard & Urrutia is also a top firm for M&A transactions. Enhancing its reputation in the banking community, Brigard advised Banco Davivienda in one of Colombia’s largest acquisitions. The \$927 million takeover of Granbanco in another December 2006 deal resulted in the creation of the third-largest Colombian bank. The newly formed entity has deposits of more than \$8 billion.

When Almacenes Exito acquired a 77% stake in the shares of Carulla Vivero, the retailer turned to Brigard & Urrutia to guide it through the deal, worth \$700 million. Exito beat out other bidders, in part by creating a synthetic stock that helped push the deal through. This deal had significant ramifications for Colombia because international retail conglomerate Carrefour had been lurking, only to lose out to Brigard’s synthetic stock creation.

One client reported that despite the complexity of a deal, Brigard & Urrutia eased the process along: “I thought they did a good job keeping us informed as things progressed. They have had really good response times, and have done excellent research for us. They are also very nice and easy to work with, which is really important.”

#### **Leading lawyers**

Carlos Fradique-Mendez  
Sergio Michelsen  
Carlos Umaña Trujillo  
Carlos Urrutia

## Gómez-Pinzón Linares Samper Suárez Villamil

"There are two firms that have a clear edge in the Colombian legal world, and Gómez-Pinzón is one of them." That was the word from a rival attorney, recognizing the accomplishments of Gómez-Pinzón Linares Samper Suárez Villamil. If there is a big deal in Colombia, it is not unusual to find the firm on one side of the table.

One client, pleased with his decision to choose Gómez-Pinzón over other Colombian firms, gave an indication why: "The firm is very serious, and the quality of their work is consistent. José Luis Suárez Parra is an excellent lawyer."

It's no surprise, then, that when Banco Daviviendo acquired Granbanco, it was Gómez-Pinzón representing the interest of the selling group in the \$927 million deal that was the largest of the year.

A little smaller but perhaps more important was the Carullo-Exito deal. When Colombia's number-two retailer Carullo Vivero sent out offers to find an acquiring partner, Gómez-Pinzón wound up representing the seller's interest. Carullo sold off 77% of its shares – a stake worth \$700 million – to the country's largest retailer, Almacenes Exito. The impact of the deal was profound because of the regulatory hurdles that had to be addressed. After all, the combined companies control more than three-fifths of the retail market, and antitrust issues had to be negotiated.

The firm was also involved in a deal that demonstrated how far the country has turned itself around. Having left several years ago due to security concerns, GE Money returned to Colombia with its acquisition of a minority stake in Banco Colpatria. The deal is significant because it signals new interest in the Colombian consumer credit markets by the international financial company. Alejandro Linares, named by rivals as someone to watch, led the Gómez team that represented Colpatria.

Linares and Ricardo Fandiño have been singled out by one client as "fantastic lawyers", but it was yet another praised partner, José Luis Suárez Parra, who led the team that helped the country's largest power company go public.

State-operated Isagen relied on Gómez-Pinzón to launch an IPO in early 2007 in a two-round offering. The first round was only open to privately owned pension funds, labour unions and company workers; the second was a general sale to the public. All told, the deal raised more than \$300 million for the government, with a huge demand for this largest local IPO.

As Colombia's financial markets continue to mature, Gómez-Pinzón is viewed as a firm

ready to help its clients move to the next level as well.

### Leading lawyers

Ricardo Fandiño de la Calle  
Alejandro Linares Cantillo  
José Luis Suárez Parra

## Prieto & Carrizosa

Last year was a busy one for Prieto & Carrizosa. The firm's biggest coup is a deal still in the pipeline: advising the group of companies that have won the concession agreement to rebuild the infrastructure of Bogota's El Dorado airport. The estimated \$500 million project is expected to begin later in 2007, and is hoped to jump-start the country's project finance market.

But Prieto & Carrizosa has also been busy in transactional deals. The firm acted as local counsel to Mexico's chemical group Mexichem in its Latin American acquisition of Grupo Amanco (an entity called Pavco in Colombia). The \$600 million regional deal was one of the highlight transactions for the Americas.

The firm also participated in the placement of some big bank loans, helping to finance the Banco Davivienda-Granbanco takeover. Prieto's client, Credit Suisse, was involved in a two-part financing to help fuel the deal. The first was a \$75 million loan towards the capitalization of the acquisition of Davivienda. The second round was advice to Credit Suisse, in the lead role of a syndicate with JPMorgan and Wachovia, for a \$250 million credit facility to Davivienda. The combined \$325 million debt would partially fund the \$900-million-plus acquisition that resulted in the third-largest bank in Colombia.

In the capital markets, Prieto & Carrizosa advised Colombia Movil in its February 2007 IPO. The listing was expected to raise \$92 million, to help fund upgrades to the mobile company's infrastructure.

On the securitization side, a team including Martín Carrizosa, Martín Acero, Juan Fernando Gaviria, and Laura Vejarano advised Credit Suisse again. This time, it was for an \$80 million securitization of national airline Avianca's credit card receivables received as a consequence of international ticket sales.

Martín Acero is the partner singled out most often, with one client highly recommending Acero's work. Juan Carlos Rocha has also been mentioned by peers.

### Leading lawyers

Martin Acero  
Juan Fernando Gaviria  
Juan Carlos Rocha

## Zuleta & Partners

While Zuleta & Partners is still perceived by some its rivals to be a litigation boutique, there are others who see the promise of this up-and-coming firm in financial and corporate matters. From a four-partner boutique just a few years ago, the firm had doubled the number of partners by 2006, and is moving into transactional work with a relish for the big time. One competitor said: "They are now doing more corporate work, and Gustavo Suarez is putting a lot of effort into their oil-and-gas practice. I think they could be a tier-one firm in perhaps two years' time."

Indeed, Zuleta participated in several high-profile deals last year. The firm represented the Chinese oil and chemicals company Sinopec (with India's OVL) in its \$850 million joint-venture acquisition of Colombia's fifth-largest oil company, Ominex de Colombia.

Another highly visible deal was GE Money's acquisition of Banco Colpatria. Zuleta was lead counsel to GE in the \$228 million deal, sitting across the table from Gómez-Pinzón, representing the local bank. And when telecoms multinational Global Crossing purchased the Latin American communications network Impsat, Zuleta represented the buyer's interests in the Colombian part of the \$336 million worldwide deal.

Bancolombia turned to Zuleta to help place a 10-year notes offering worth \$400 million; considering that typical Colombian debt offerings are usually half to one-quarter the size of this placement, this was a substantial instruction for the firm.

Other notable clients of the firm include Morgan Stanley, Merrill Lynch, Royal Bank of Canada, Clorox, Cementos Argos, Alcatel España, Deutsche Bank and ABN Amro.

### Leading lawyers

Gustavo Suarez  
Eduardo Zuleta