

Guatemala

Chamber of commerce:

Cámara de Comercio de Guatemala
10a Street 3-80
Zone 1
Guatemala City
Guatemala
Tel: +502 253 5353
Fax: +502 220 9393
Email: info@camaradecomercio.org.gt
Web: www.negociosenguatemala.com

Professional body:

The School of Lawyers and Notaries
0 Street 15-46
Zone 15 01015
Guatemala City
Guatemala
Tel: +502 369 7936
Fax: +502 369 3714
Email: cang@infovia.com.gt
Web: www.infovia.com.gt/cang

Corporate finance legislation in Guatemala

José Augusto Toledo Cruz
Arias & Muñoz
Guatemala City

Because of its geographical location in the Central American isthmus, Guatemala is a privileged country, serving as a commercial bridge between North and South America.

The population of the country is 12,293,545 (by a July 2006 estimate, according to the *CIA World Factbook*). In 2006, Guatemala's GDP registered a growth rate of 4.6%, with an inter-annual inflation rate of 5.79%, a monetary reserve of \$4,052 million, and an exchange rate fluctuating around Q7.70 to \$1 for most of the year. The government has made big efforts to encourage foreign investment, promoting a more favourable and attractive environment for investors.

Trade and financial activities in the country are regulated by the Commercial Code, the Securities and Merchandises Market Law, the Banks and Financial Groups Law, the Financial Companies Law, the Central Bank Organic Law, the Monetary Law, the Financial Supervision Law, the Insurance Companies Law, and the Anti-Laundering of Money and Other Assets Law.

Corporate activity is regulated mostly by the Commercial Code. The following legal institutions fall under the scope of the Commercial Code:

(i) commercial companies – that is, general partnerships, limited liability companies, corporations and joint-stock companies;

(ii) the merger and transformation of companies – comprising the procedures by which companies can be merged or transformed, and the effects of such activities; and

(iii) certain regulations on the protection of free trade, which include very limited legislation in antitrust and unfair competition provisions.

Commercial and financial laws have undergone important reforms in the last decade, influenced by technological advancements, innovative structures and international financial markets. Efficient supervision was needed to achieve a more stable and solid financial system. With the enforcement of CAFTA-DR (a commercial agreement between the US, all five Central American countries and the Dominican Republic) a more modern and competitive economic system is expected, which will produce economic growth that can respond to the demands of globalization, as it will open up a market in which certain financial standards are required.

With regards to financial activities, the Guatemalan Monetary Board is in charge of determining the monetary, exchange and credit policies of Guatemala. The Superintendency of Banks in Guatemala directly supervises the country's banks, as well as finance, bond, and insurance companies. It also responds to the Monetary Board, and is organized in accordance to the provisions of the Financial Supervision Law.

Guatemala has one of the most adequate legal structures for financial growth in the region, and the current Banks and Financial Groups Law was created in 2002 to stabilize the Guatemalan financial system. This legislation has the task of regulating the creation, organization, mergers, activities, operations, functioning, suspension of operations and liquidation of banks and financial groups, as well as the establishment and closing of branches and of representative offices of foreign banks in Guatemala. It also regulates off-shore banks belonging to local authorized financial groups. The new banking legislation is inspired in the Basel Agreement. One of its more important regulations is the creation of financial groups, the incorporation of multi-banking institutions, and the institution of universal banking, by approving that banks can do everything that the law does not expressly forbid.

With the failures of two banks in less than six months, the relatively new Banks and

Financial Groups Law has been put to the test. Although some disgruntled investors have since filed several court objections to the actions taken by the regulatory authorities, from a strictly legal standpoint the failures have been well handled. The legal path set by the untested financial regulations has so far been proven to be satisfactory, even if some of the results are not. Another consequence has been banking's rapid consolidation in a market that has long been regarded as being overcrowded.

The transaction volume in securities dealings has increased steadily in the most active exchange market, the Bolsa de Valores Nacional (BVN). The securities market, however, is still in its initial development phase, as is evidenced by the BVN's report that a very small percentage of total transaction volume is represented by private primary and secondary market operations.

Financial and corporate

Recommended firms

Tier 1

Carrillo y Asociados
Consortium – Rodríguez Archila Castellanos
Solares & Aguilar
Mayora & Mayora

Tier 2

Arenales & Skinner-Kléé
Arias & Muñoz
Bonilla Montano Toriello & Barrios
Quiñones Ibagüen & Luján

Tier 3

Aguilar Castillo Love
Beltranena de la Cerda y Chávez
Saravia y Muñoz

Guatemala has been benefiting from the ratification of the Central America Free Trade Agreement (Cafta) in mid-2005, along with

its regional neighbours. Market insiders feel that, as one of the early signatories, Guatemala has gained an advantage over Costa Rica, which has yet to ratify the deal, although it is expected to do so in October 2007. Guatemala is perceived as the weather-vane for the region: what happens here will happen across Central America.

International banks like HSBC and Citibank were the first ones to make their presence felt in Guatemala, swooping in to buy the region's largest banks. Citi acquired Banco Cuscatlán and Banco Uno, both of which had operations in Guatemala. And the presence of the international players has been felt in the local market in other ways. Guatemala has seen continued consolidation among its local banks (one estimate reported that a third of the banks in existence a decade ago are now gone), perhaps in preparation for further acquisitions from these foreign institutions. Certainly, it is known that Scotiabank and HSBC are looking to make moves into Guatemala. For the latter, its purchase of Panama's Banistmo in July 2006 gave HSBC access to most of Central America, yet the bank still does not have a presence in the region's largest economy.

Consolidation, either domestically or from multinational banks, has had the effect of increasing competition in the area. The new banks have also introduced new financial products that the local banks did not have or use. Lending rates are low, and will remain so due to the increased competitive environment, meaning that financing for bigger projects will become available.

Another industry enjoying plenty of activity is the sugar market. The high cost of petroleum and even ethanol has led some to research the use of sugar as a source of energy. Though in the nascent stages, Guatemala's sugar mills have been quite busy buying up competitors.

There are slight concerns about the upcoming national elections, scheduled late in 2007. The current administration has kept things stable, and the economy has responded positively. Several specialists in Guatemala have noted that things may slow down a little in response to uncertainty over a possible administration change.

Carrillo y Asociados

Carrillo y Asociados, the largest firm in Guatemala with 25 lawyers, has been praised by its rivals for its accomplishments in the commercial and financial markets. Partner Alfonso Carrillo is considered by many of his peers to be one of the most respected lawyers in the country.

The firm represented its client PricewaterhouseCoopers, which was acting as

custodian for the liquidation and bankruptcy settlement of Bancafé International. The Barbadian bank had to pay creditors and depositors in Guatemala, Barbados, New York and Florida. The multi-jurisdictional resolution totalled \$150 million.

Telecoms client Americatel Guatemala required the services of Carrillo y Asociados in its dispute with Telgua, the local subsidiary of Telmex. The dispute concerned an interconnection agreement after the privatization of Telgua. Although final resolution is pending, it is expected that this case will set a precedent in the public service sector and open the doors to competition in the Guatemalan communications sector.

The firm's international client list is quite impressive. It includes international banks but also multinational companies: the key names are Lloyds TSB, JPMorgan, Unilever, Honda and British American Tobacco.

Leading lawyers

Alfonso Carrillo
Analucía Carrillo
Liz Gordillo
Luis René Pellecer López

Consortium – Rodríguez Archila Castellanos Solares & Aguilar

"Consortium is in the forefront of the market. With Alvaro Castellanos and Alfredo Rodríguez, they are a very strong firm. They are right there at the very top of Guatemala law firms," said a rival of Consortium – Rodríguez Archila Castellanos Solares & Aguilar. The firm is the Guatemalan member of the Nicaraguan law practice known as Consortium, which includes the largest law firms in each country in Central America.

Being in the forefront, and representing its client Citibank, Consortium participated in the two biggest banking mergers in Guatemala for 2006. First was the December 2006 buyout of Banco Cuscatlán, a \$1.5 billion deal which netted Citi the Guatemalan subsidiaries of one of the region's largest banks.

This was followed by the March 2007 deal for credit card issuer Banco Uno. This deal granted Citibank access to the consumer finance market in Guatemala (and the region). Both deals were strategic expansions by Citi; they also allowed Consortium to demonstrate its abilities to handle complex transactions, since both deals were multi-jurisdictional events, taking place across Central America.

Clients such as Citibank, with operations across the region, are typical of Consortium's base. A significant client, for example, is Pollo Campero. The Guatemalan fried-chicken

restaurant chain has operations in Central America, Ecuador, Mexico, Spain, China, Indonesia and the US. Another client is Banco de America Central, whose operations across the region were acquired by GE Consumer Finance in 2005. The Spanish-led wireless group Telefónica Móviles is a client for its Guatemalan operations.

Leading lawyers

Mario Archila
Alvaro Castellanos
Alfredo Rodríguez

Mayora & Mayora

The smallest of the three top-tier firms in Guatemala – and one of the oldest – Mayora & Mayora continues to get respect from the marketplace. The name of partner Eduardo Mayora Alvarado is one that constantly comes up when discussing the leading lawyers in the country. One rival said: "Mayora & Mayora are good people. They are always going to be one of the main law firms in Guatemala, and Eduardo Mayora is very well respected around here."

Two deals demonstrated the firm's creativity in the financial markets. Eduardo Mayora worked with Banco Industrial – the largest local bank – on the issuance of several tranches of securitized notes placed in the New York market. These notes, valued at \$300 million, were backed by remittances from Guatemalan nationals living in the US. The future cash flow of these remittances provides the capitalization for the notes. Mayora then led a team that created a similar but smaller vehicle offered by Citibank's Banco Cuscatlán.

The firm has a glittering client list including banks from all over the world, like Spain's Banco Bilbao Vizcaya, Banco de Crédito del Perú, and Citibank. The national stock exchange is a client, as is GlaxoSmithKline, the German cosmetics company Beiersdorf, Telecomunicaciones de Guatemala, Chevron and Coca-Cola.

Rivals have voiced some concerns about whether the firm would be able to grow because of its closely held status, but reports indicate that Mayora plans to make full partnerships available to non-family members as well. That should allow the firm to continue to move along with the changing marketplace.

Leading lawyers

Eduardo Mayora Alvarado
Rafael Briz Méndez

Arias & Muñoz

One of the few truly regionalized Central American law firms, Arias & Muñoz has been

able to work on some of the region's most interesting deals. This keeps the Guatemalan office well positioned in the *IFLR1000*. In a region ripe with opportunities, particularly in banking, Arias & Muñoz looks to keep itself ready for new challenges.

One client commenting on the firm's abilities said: "They are excellent for their responsiveness, technical resources, and standard deliverables. They know how we expect them to provide services."

The firm's network has kept well respected partner Jorge Luis Arenales very busy last year, particularly with concurrent deals last August. The firm represented the Spanish food company Ebro Puleva in the sale of its two Central American operations. One sale was to Colombian company Compañía Nacional de Chocolates, while the other was to Florida Ice and Farm, of Costa Rica. The combined value of the sales was \$202 million.

Arenales also coordinated Arias & Muñoz's operations in Guatemala when the firm represented regional investment group Central American Capital Group in an acquisition of a 49.9% stake in telecoms firm Amnet's holdings. The sale, like the Ebro Puelva deal, helped showcase Arias & Muñoz's growing reputation as a regional powerhouse. The firm's offices in all five Central American countries were called into the deal.

These two operations highlight what one rival partner said: "They are good, very competitive and if they continue to grow, they will be a tier one firm because of their value-added network." That network is already beginning to pay handsome dividends.

Leading lawyers

Jorge Luis Arenales
José Orive
José Augusto Toledo Cruz

Bonilla Montano Toriello & Barrios

The well established firm of Bonilla Montano Toriello & Barrios has a good presence in the Guatemalan market. A rival partner said: "Bonilla Montano is well respected and has hired new attorneys that are helping the firm keep its place." With four partners and nine associates, it appears that only the firm's size holds it back from the top of the market.

Lorena Barrios, daughter of partner Jorge Barrios, has been identified as one of the rising stars in the Guatemalan legal community by rival partners. She led the team that advised Duke Energy in its dispute with Empresa Eléctrica de Guatemala, a local electric utility, which went to an arbitration hearing. Changes to laws in the electricity industry had invalidated an agreement between the

two enterprises. Barrios was able to help Bonilla Montano client Duke Energy to reach a settlement with the local utility for an undisclosed but significant amount.

Lorena Barrios was also in charge of the team that led the firm's mining client BHP Billiton acquire Jaguar Nickel in a \$19 million sale. Though the size of the deal was not particularly large, it did represent the introduction of BHP Billiton. Guatemala has been looking to exploit nickel mines in the country for the past decade; the presence of the world's largest mining company is expected to give the entire mining industry a big push with the technology and capital that BHP can provide.

Despite the firm's size, it has a fairly impressive client list: McDonald's, Banco Industrial, First Data, Microsoft, Tyco International and Kimberly-Clark are a representative list. It remains to be seen, in the new Central American environment of regionalization, how Bonilla Montano handles the transition.

Leading lawyers

Jorge Rolando Barrios
Saul Guillermo Bonilla
Jorge Toriello

Aguilar Castillo Love

Aguilar Castillo Love returns to the rankings for a second time, confirming its inclusion last year with another good year. The three-partner office doubled the number of associates to six this year.

In a deal that closed November 2006, the firm represented Panamanian insurance company Grupo Mundial in its purchase of Seguros Alianza, a local insurer. The \$10 million acquisition was a strategic expansion into Guatemala for Mundial, but it was also the first acquisition of a Guatemalan insurance company by another Central American insurer.

Another foreign transaction involved the buyout of local paper company Papelera Internacional, which also had operations throughout the region. Aguilar Castillo Love represented Grand Bay, a British Virgin Islands subsidiary of the Kruger Group, in a \$30 million deal which closed in summer 2007.

Aguilar Castillo Love also represented News Corp subsidiary Fox International Channels. The media conglomerate had been looking for an internet medium in Latin America. Fox's Directa Network merged with ClickDiario to create DirectaClick Fox, an online medium with access to Mexico, Argentina, Brazil and other Latin markets in Europe and South America.

These deals demonstrate the firm's ability to handle international clients in strategic

acquisitions. As part of the Aguilar Castillo Love network, the Guatemala office is expecting to see an increase in these sorts of deals in the coming year.

Leading lawyers

Juan Carlos Castillo
Francisco Castillo Love

Beltranena de la Cerda y Chávez

The praise that comes in for Beltranena de la Cerda y Chávez belies the firm's size. Despite being only three partners and three associates, competitors "recommend Beltranena when we have conflicts of interest with our clients". Another said that the firm "does more sophisticated work".

The firm advised Banco Agromercantil in the January 2007 acquisition of Corpobanco, one of several local deals in which Beltranena participated. Though the deal was small, it enabled Agromercantil to increase its market share. It also presented Beltranena as a player in the local bank consolidation scene.

Certainly the fact that the firm advised investment bank JPMorgan and the international lawyers at Clifford Chance in the due diligence of the Guatemalan chapter in an M&A transaction indicates the confidence such companies have in the firm's abilities.

Leading lawyers

Francisco Chávez Bosque
Fernando de la Cerda Colom
Rodolfo Alegria Toruño