

# Nicaragua

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## Important new laws in Nicaragua

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The institutional and policy framework for corporations is still governed by a Commercial Code introduced in 1917, with few amendments. However, recent commercial activities have imposed the need to protect investors in a developing market. Two important laws have been recently enacted to ensure certainty for investors and plurality among financial institutions and listed companies.

### Competition Law

The Nicaraguan Competition Law, Law No 601 (*Ley de Promoción de la Competencia*), was approved by Congress on September 28 2006, and published on October 24 2006. This law will come into force on June 24 2007. The regulation to this law was approved on December 21 2006, and it was published on January 15 2007; it will come into force on June 25 2007.

Previously, Nicaraguan legislation did not contain any competition provisions guaranteeing free competition and market efficiency. The main purpose of Law No 601 is to promote and protect free competition among economic agents as well as prevent, forbid and sanction anti-competition practices.

Among forbidden anti-competition practices are those known as agreements among competitors or horizontal agreements, which aim to, among other things, (i) fix, rise and concert or manipulate price and sale conditions or the purchase of goods or services; (ii) split or impose portions or segments of the market of goods or services; (iii) eliminate other companies from the market or limit access to the market; (iv) establish or limit quantities of production; or (v) coordinate postures by fixing, abstaining or limiting prices on auctions or in any other bidding process.

Agreements among non-competitors, or vertical agreements, are also prohibited, subject to the verification of certain criteria defined in the same law. These include dominant position, the relevant market, and the anti-competitive effects of the agents subscribing to the agreements, as long as the objectives of such agreements are, among others: (i) the unjustified exclusive distribution of goods and services; (ii) price imposition and/or other conditions that a retailer shall behold at the moment of providing goods or services; (iii) the purchase of a good or service conditioned to the acquisition of other goods or services; (iv) refusal to sell to determined economic agents; (v) pressure on some clients or suppliers, or (vi) predatory practices.

Additionally, this law establishes a notification requirement for mergers or acquisitions of competitors that result in the acquisition or increase of a quota equal or superior to 25% of the relevant market; or that the economic agents party to the merger or acquisition have a combined gross income exceeding an average of 642,857 minimum wages.

Law 601 creates an enforcement authority called the *Instituto Nacional de Promoción de la Competencia* (Procompetencia). We expect that Procompetencia will be organized before the date of entry into force of the law and its regulation.

### Capital Markets Law

This law replaces an executive decree emitted in the nineties which used to regulate the stock market, as well as a series of regulations issued by the Superintendent of Banks; therefore, we have securities market regulations established by a law, which provides more certainty to investors.

The Capital Markets Law, Law No 586 (*Ley de Mercado de Capitales*), was approved by Congress on October 26 2006 and published on November 15 2006. It entered into force on December 15 2006. Regulations to this law are being issued by the Superintendent of Banks, the regulating authority. This law regulates the securities

market, the individuals and entities that intervene directly or indirectly in the market, the acts and agreements related to the market and the securities traded on the market. It promotes the conditions of transparency and competitiveness for the market's functionality through the disclosure of all the information necessary for this purpose, thereby protecting investors.

Law 586 introduces new elements to the securities market in Nicaragua, such as public tender offers, investment funds, securitization of assets, rules of conduct and risk assessment companies, among others.

- Investment funds: these will allow the raising of funds, goods or rights through a public tender offering, to be administered at the expense of the investors as a joint fund, in which the performance of every investor will depend on the collective performance. They will be administered by investment fund managers.
  - Securitization of assets: this is the process by which one or several entities transfer to a securitization fund a series of loans, credits or other assets capable of generating a continued cash flow. The securitization fund is authorized to issue securities supported by such assets to be placed in the market. Banks, other financial institutions and other entities authorized by the Superintendent of Banks will be able to transfer their assets to securitization funds.
  - Rules of conduct: to achieve transparency and efficiency on the market it is necessary that the participants, as well as their directors, representatives, advisers and personnel, comply with certain rules of conduct, which include the access and management of privileged information, the time in which certain information should be disclosed to the public, and conflict of interest rules.
- The Competition Law and Capital Markets Law are signs of Nicaragua's endeavour to develop its legal system and provide investors with the certainty they expect when doing business in developing countries.

## Financial and corporate

Recommended firms	
<b>Tier 1</b>	Consortium - Taboada & Asociados García & Bodán
<b>Tier 2</b>	Alvarado y Asociados Arias & Muñoz
<b>Tier 3</b>	Aguilar Castillo Love Barrios y Asociados Delaney & Associates

There was a change of government in Nicaragua last year, with unexpected results. The conservative administrations of the past 16 years have given way to a more socialist government with the election of Daniel Ortega. Although the return of the former Marxist raised some concerns - he led the country from 1979 until 1990 - Ortega pledged his main priority was to bring foreign investors into Nicaragua.

So far, so good, according to market insiders. Business has been doing well, and both the economy and the political climate are relatively stable. The economy is growing, albeit at a rather pedestrian rate that is less than half most its neighbours; but as one partner said: "Growth is growth."

Tourism and real estate are two industries that are doing particularly well. Since both sectors require stability to attract investors, these are benchmarks to measure the country's progress. The country has been experiencing an increase in M&A activity recently. This includes some worldwide deals involving multinational corporations that have operations in Nicaragua. This is particularly true in the energy and financial industries.

The most significant deals were those by Citibank and HSBC, which each bought into leading regional banks with branches in Nicaragua. Banco Uno, Banco Cuscatlán, Banistmo: all have operations across Central America. These deals have helped begin a turnaround in the local banking economy.

As for financial law, the leading firms are reporting changes in their infrastructures as they attempt to modernize. Human resources (particularly in administrative areas), technology and marketing - these are areas that had been previously neglected but that are now being emphasized by the best lawyers. The best *bufetes* across Nicaragua are looking to hire first-rate attorneys to remain competitive; and these days, the market is not just local, there are regional players that must be taken into consideration as well. Even though the market only has two firms in the top tier,

regional firms are looking to pick up their share of the work in Nicaragua as well.

### Consortium - Taboada & Asociados

Taboada & Asociados is one of Nicaragua's oldest and largest law firms and one of the proponents of the regionalization of law firms that has swept Central America. The Consortium label indicates it is part of the network comprising one leading law firm in each of the five countries of Central America. A rival partner said: "Consortium is one of the oldest firms. It has a wide presence in the region but is also known locally."

As one of the leading firms in Nicaragua, Consortium has been able to participate in several deals that have been significant for all involved - the firm, its clients and even the country as a whole. The firm represented Arnecom, the joint venture between Mexican conglomerate Xignux and Japanese auto-parts supplier Yazaki, in its continuing expansion efforts within Nicaragua. The light manufacturing group invested some \$55 million last year, as it continued to expand its operations in the country.

Another project that benefited the Nicaraguan economy, particularly the tourist industry, was the efforts of Consortium client Nicaragua Development Company. This real-estate company acquired beachfront property to develop the \$100 million Seaside Mariana, an exclusive resort that includes a Jack Nicklaus-designed golf course. Considering the surge in tourism to the country, this resort has come along at the right time.

Throughout the region, Citibank's acquisitions have made a great impact in each of the five Central American markets. The buyout of credit card issuer Banco Uno, estimated at close to \$1 billion, was one of the largest deals. Uno had operations across the region, and the purchase gave Citibank instant access to all of Central America. Consortium represented Citibank in this deal, which highlighted the firm's abilities to work simultaneously in multiple markets for a multinational client.

Consortium's largest deal in Nicaragua was advising its clients DS Construction and Israel Corp. The two formed a joint venture to buy the Americas assets of power industry investment group Globeleq. The deal - for approximately \$1 billion - entitled the joint venture to acquire operations in Nicaragua and seven other countries in Central America, the Caribbean and South America.

The firm advises international corporations that have demonstrated needs for strategic expansions. Citibank, Telefónica Mviles, Unilever, Wal-Mart and Arnecom are some of Consortium's clients in Nicaragua.

### Leading lawyers

José Evenor Taboada  
Rodrigo Taboada Rodríguez

### García & Bodán

The seven-year-old law firm of García & Bodán is young, both as a firm and with young lawyers and partners. The firm has already created an impression in the market; one veteran rival said: "They are a small firm, but they do a good job."

Others have commented on the practice's good marketing, and indeed, García & Bodán is one of the firms that enhanced its human resources and technology capabilities. The firm has added five lawyers to its rolls since last year. It has also joined the regionalization trend, with operations in Honduras and El Salvador besides the original Nicaragua office. A distinctive approach that the firm is taking from other regional law firms is its decision to expand slowly, moving into new markets with studied caution.

The firm was involved in several deals throughout the past year advising clients from outside of Nicaragua. McDonald's Guatemala, for instance, acquired the properties of McDonald's International in Honduras and Nicaragua. The September 2006 deal valued the Nicaraguan properties at \$1 million. While García & Bodán advised McDonald's Guatemala in Nicaragua, the firm's local office in Honduras was also involved handling that market's segment.

The energy industry is a growing one in Nicaragua, and the firm participated in the acquisition of geothermal concessions for its client Enel Italy. The power generation company paid \$15 million for the right to explore geothermal sources in April 2006. The terms of the concession allow Enel to pay up to \$500 million in total in subsequent phases of the project.

AeroMéxico turned to the firm as its local adviser when the Mexican airline wanted to begin operations in Nicaragua. The firm obtained the flying and operational rights, and created the corporate structure to conform to local regulations. Local knowledge helped a foreign client in Nicaragua, something García & Bodán is quickly gaining a reputation for accomplishing.

The firm's client list is a varied one, including América Movíl, McDonald's Centroamerica, Hilton Princess Hotels and Siemens, as well as airlines Continental Airlines and AeroMéxico.

### Leading lawyers

Terencio García Montenegro  
Federico Gudián Sacasa

### Arias & Muñoz

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“They are a firm of young, talented lawyers who will become very good with some experience.”

These commendations for Arias & Muñoz come from a partner at another firm, and reflect the quality of the regional firm in Nicaragua. The firm benefited from the regional nature of its operations - the two biggest transactions it participated in were originated in other markets, and included assets in Nicaragua.

Bertha Argüello led the team advising Banco Uno in the Nicaraguan leg of its \$1.5 billion takeover by Citibank. The deal involved all offices of Arias & Muñoz in the region.

Similarly, the full resources of the firm were called in to advise shareholders at Durman Esquivel in its sale to the Belgian company Aliaxis. The Nicaragua office was led in this deal by managing partner Ana Teresa Rizo.

In a local deal, partners José Bernard Pallais teamed up with Bertha Argüello to advise a syndicate of international banks in a \$75 million loan to a local sugar cane processor. The terms of the deal were not disclosed but the November 2006 transaction demonstrated the firm’s capabilities in the local markets as well as on the larger stage. It is also an indication of what another rival partner said: “If they continue the way they are, they will be a top-tier firm with all the work and experience they are getting.”

#### Leading lawyers

Bertha Argüello

José Bernard Pallais

Ana Teresa Rizo

### Other notable firms

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Nicaragua is another market for the regional services of **Aguilar Castillo Love**. The firm has been noted for its youth in this market, with its presence frequently acknowledged by competitors. In the past year, the firm’s most notable work was advising its client Kodak in the \$500,000 resolution of a dispute with a local dealer. The firm also conducted the due diligence for its client Tigo in an acquisition conducted by the wireless company. Considering the potential deal flow from regional clients, it will be interesting if the firm can join the other regional *bufetes* in participating in the most important transactions in Nicaragua.