

# El Salvador

## Chamber of commerce:

Cámara de Comercio e Industria de El Salvador  
9a Av Norte y 5a C Pte  
San Salvador  
El Salvador  
Tel: +503 2231 3000  
Fax: +503 2271 4461  
Email: [camara@camarasal.com](mailto:camara@camarasal.com)  
Web: [www.camarasal.com](http://www.camarasal.com)

## Recent regulatory changes in El Salvador

Benjamín Valdez Iraheta  
Rusconi Valdez Medina & Asociados  
San Salvador

The rules and regulations applicable to El Salvador's financial system have been fairly stable for the last years. Very few reforms have been introduced, notwithstanding the fact that last year the election of a leftist government ended 20 years of right wing parties.

None the less, a major change is foreseen in a regulation that is not directly related to the banking and financial system, but which will have a major impact in its activities. The Ministry of Economy is involved in drafting a Ley de Garantías Mobiliarias (Movable Asset Securities Law) and has retained the services of Rusconi Valdez Medina & Asociados to advise the international team drafting the law and for such purpose is following the recommendation of the Organisation of American States (OAS).

During its 2002 sessions, the Legal Committee of the OAS drafted the format of a Movable Assets Securities Law, which was further approved by the OAS Assembly during the same year's sessions, with a recommendation addressed to its member states to adopt this uniform regime, adapting it to the local conditions and applicable rules and regulations of each country. So far, in the Central American region Guatemala and Honduras have enacted Movable Asset Securities Laws more or less inspired in the OAS model. Other countries in Latin American have also followed the recommendation.

The objectives of adopting similar legislations are, among others, updating an already obsolete regime, based on Roman Law, and the trend towards globalisation, requiring competitive markets, based on the reduction of transaction costs. The high interest rates caused by legal, commercial and political risks bar many competitors from entering glob-

alised markets and damage the economy of nations.

Part of this legal risk is attributed to the legal uncertainty of collecting securities based on movable assets. In El Salvador, once the debtor is in default and a collection lawsuit is filed, up to five years can elapse before the creditor can take possession of the mortgaged assets or the money produced by its sale. If the security posted consists of movable assets, by the time the collection effort is over, the assets, in the best case can be obsolete; but if they were perishable assets the creditor gets nothing.

Thus, access to commercial credit is limited to those who can provide better securities. Credit rating also requires that loans be classified taking into consideration the quality of the security. The net effect of all the above is limiting the credit capability of those borrowers with inadequate securities.

The draft being prepared for El Salvador's Ministry of Economy contains, among others, revolutionary regulations which, we can anticipate, will create ample and heated discussions among all parties involved. Just for starters: the concept of civil and commercial law prenda (pledge) is being substituted by the more ample garantía (security), a change that to some might seem semantic, but which entrails a broader and different concept. Civil and commercial pledges in the Salvadorian legislation in effect restrict not only the assets that could be posted as security, but the type of operations in which it could be used.

With the Movable Asset Securities Law draft under discussion, all types of movable assets, tangible or intangible, present or future, with economic value or without economic value, even obligations to perform (i.e. erect a bridge, make a sculpture) can be posted as security for financial leasings, sale-purchase agreements, and, to make the list short, any type of operations where the effect is securing a credit or protecting the rights of creditors over movable assets.

E-commerce operations are also validated, even in the absence of specific regulations regarding the matter. And not only e-operations are validated, but the public registry where all securities are to be registered, is mandated to be kept in electronic files. This might seem normal for more advanced jurisdictions, but it is worth mentioning that El Salvador has no e-commerce regulations, and that all records are kept in physical files (mainly paper and photocopies).

Other novel regulations have to do with the capacity of registrars to scrutinise the contents of operations being recorded. Regulations in effect grant registrars the right to oppose, and eventually deny registration to, operations that are not only intrinsically wrong, but those who, in the form, present deficiencies.

This might seem right and wise, and in effect grants better assurances to the parties involved, but also creates an inefficient bureaucracy, long registration terms and, worst of all, allows very little margin for innovation and the rise or adoption of new legal forms and institutions. With the new regulations, Registrars will have very little to say.

But the most controversial change will come from the procedure to repossess movable assets posted as security. The new procedure contemplates the possibility of a private and consensual repossession, mainly through a notarised agreement among the debtor and the creditor that incentivises both parties to reach an agreement. It also allows for arbitration as a means to repossess security and regulates simpler and abbreviated procedures in the event the case is taken to court.

Even though the passing of a legislative bill approving the Movable Asset Securities Law is a matter of commercial and civil law, it is not hard to foresee why the banking and financial community will be profoundly impacted.

## Financial and corporate

### Recommended firms

#### Tier 1

Arias & Muñoz  
 Consortium - Centro América Abogados  
 Guandique Segovia Quintanilla

#### Tier 2

LatinAlliance  
 Romero Pineda & Asociados  
 Rusconi Valdez Medina & Asociados -  
 Central Law

#### Tier 3

Aguilar Castillo Love  
 Espino Nieto & Asociados  
 Garcia & Bodan  
 Sáenz & Asociados  
 Lexincorp

While commentators say the 2009 election of Mauricio Funes added to the insecurities affecting investors in El Salvador, many still maintain that the president is defying the socialist sentiment of his backing party and carving a more moderate route. In his first year in office Funes has reached out to centrist opponents of his FMLN party and formed civic groups to promote his agenda. As one leading lawyer says, "It is a way of telling his party he can find his own followers."

These tactics have helped garner tacit support from the Obama administration, which has helped ease fears over the repeal of Cafta-DR or similar drastic measures. "Investors have started thinking it won't be that bad," says one contributor. With diminished remittances, infrastructure problems and a junk bond rating on its sovereign debt, free-trade regime and multilateral institutions will be essential for the nation to progress alongside its regional neighbours.

El Salvador's taxation regime has been overhauled several times in recent history but still suffers from poor management and a low rate of collection, dragging down the value of the nation's bonds abroad. Since 2001, the US government, through the USAid-funded Tax Policy and Administration Reform (TPAR), has sought to modernise the country's tax administration most recently by establishing taxpayer call centres and computerising the audit selection process.

At the end of 2009 the Funes' administration announced its own changes to the tax code, including a higher tax on alcohol, an increase of the value-added tax, and the elimination of exemption for capital gains. The amendments met broad opposition from industry, particularly the agriculture and the insurance sectors, where an additional 25% tax on offshore-domiciled companies spurred

Hannover Re and Gen Re to question their participation in the market.

Lawyers find the new legislation obscure and full of loopholes. "There's not too much clarity on how this regime will work," remarks one leading attorney. "I most likely imagine in some areas administrative procedures may arise."

Still, lawyers see the crucial support of multilateral lenders filling in as the country modernises. "In the past 12 months we've seen a lot of support and interest by entities like IFC and IDB," observes one commentator, adding, "They've helped the country a lot in channelling funds through local systems to finance medium to small commercial entities and low-income families."

### Arias & Muñoz

"It is the largest firm and a leader in the market," is how one competitor sums up Arias & Muñoz in El Salvador. Rival lawyers contend the firm has been growing and adding new partners to their local office, affirming its leading position in the market.

One half of the firm traces its lineage to the country through founding partner Armando Arias, whom peers note is more involved in lobbying than legal work these days.

Still, rivals admit the firm has many layers of talent that provide challenging counterparts across the table. "They are tough but they are good," one peer explains. "You are always on the defence with them."

For corporate matters, partners Zigmunt Brett and Lilian Zelaya Panting are considered "very active in the market". Brett earns praise from the competition for his commitment to high standards of quality and juris prudence. "He's very ethical, and not trying to do things the wrong way or trying to outwit you," notes one peer.

Recent experience had Brett locally advise industrial services group Harsco in the regional acquisition of Esco Interamerica, one of Latin America's leading providers of engineering equipment.

On the financial side partner Julio Valdéz earns praise from customers for his unique knowledge of capital markets transactions. "Not many lawyers in the region have done securitisation," explains one client, "and he's one of them."

Last June Valdéz advised longstanding client IFC in a unique financing of securities tied to remittances, providing up to \$30 million for microfinance cooperative Fedecredito.

#### Leading lawyers

F Armando Arias  
 Zigmunt Brett  
 Julio Valdéz

### Consortium Centro América Abogados

The most recent office to be integrated into Consortium's regional network, the El Salvador office is particularly noted in the legal market for its presence in the nation's largest financial transactions. "We always hear them in issues regarding banking," one competitor remarks.

In response to the evolving sophistication of the country's legal structure, the firm has added several associates and partners with specialised backgrounds in practice areas like structured finance, investment funds and environmental law.

But competitors contend the recent departure of partner José Roberto Tercero, who left to start his own practice, and a spinoff of four other partners including Enrique Borgo Bustamante and Juan Pablo Córdova directly impacted the firm's corporate, litigation and arbitration abilities. "It was a major blow, but maybe not in the professional sense," one competitor says, explaining, "It's more a reputational problem - people wonder what went wrong."

The firm's mainstays in finance matters are partners Aquiles Delgado and Diego Martín-Menjívar, whom peers characterise as "challenging to work with, but in a good way." As one rival explains, "you always have to give your best or you end up losing the case with them."

It's the firm's reputation for aggressiveness that one client appreciates, particularly in rights infringement cases. "Sometimes we try the carrot and sometimes we try the stick," the client explains regarding their anti-piracy matters, "and if we need to go with the stick we use Consortium."

Among its recent work from last year, the firm offered local counsel for Bermudan wireless service Digicel in restructuring seven tranches of its revolving credit from Citibank in the amount of \$200 million.

#### Leading lawyers

Ricardo Cevallos  
 Aquiles Delgado  
 Diego Martín-Menjívar

### Guandique Segovia Quintanilla

Competitors hold that GSQ retains a solid reputation among El Salvador's local banks but has "gone under the radar" in recent months. One peer contends, however, that "[GSQ] would be one of the firms I have seen the most in the transactions we have seen." Market feedback maintains the firm advises a small but important roster of loyal corporate clients on both sides of the table.

While the firm's prestige rests firmly on the mantle of its founding partners, one competitor points out partner Ana Patricia Portillo is the partner carrying out the firm's field work. "We have no difficulties working with her," notes one peer.

In 2009, Portillo acted locally with lead arrangers Citibank and JPMorgan in the government's first international bond placement since 2006. The ten-year, \$800 million notes will be used to finance local debt and pay for reconstruction following the landslides spurred by Hurricane Ida in November 2009.

While strictly an El Salvador-based firm, GSQ recently participated in the cross-border financing of Millicom and Amnet, representing a Standard Bank-led syndicate in extending \$250 million to the recently-merged cable service providers.

In a time when concrete relationships between firm and client are rare, at least one large international company has signed a contract with GSQ to cover all its corporate, regulatory and securities work, including the provision of a dedicated lawyer to work in-house. "The firm has enough credit that I was able to get the compliance office to approve the full use of their services last year," the client explains.

#### Leading lawyers

Carlos Quintanilla Schmidt  
Luis Nelson Segovia  
Ana Patricia Portillo Reyes

#### LatinAlliance

This year the El Salvadorian office of this regional firm dropped Torres Lemus & Asociados from its name plate, and competitors hold the firm may have lost some exposure in the market along with it. Still, the firm maintains a presence with partner José Adolfo Torres, whom one rival says is "very active" but is "the only visible element" of the firm.

Recent experience shows Torres keeps busy with Guatemalan Banco G&T Continental in several medium-sized financings. Toward the end of last year Torres counselled G&T and Panama's GTC Bank through a \$6 million loan to finance the construction of Avante El Salvador, a new office centre in the nation's capital.

With Shell retreating from the region, LatinAlliance is playing a small but crucial role in the transfer of the oil company's assets. In October 2009 partner Raúl Pineda advised Banco Agrícola in extending several bridge loans totalling \$23 million to the local subsidiaries of Honduran Grupo Terra, to purchase Shell's national distribution network and share in a refinery.

#### Leading lawyers

Raúl Ernesto Pineda  
José Adolfo Torres

#### Romero Pineda & Asociados

Comparing similarly-ranked firms to RP&A, one rival admits, "I can say objectively that they are more active." Another peer sums up the firm's core practice areas: "They have a very large IP practice but they are also a very strong corporate firm." Market feedback believes the firm's finance department "catches some deals" mainly through partner Mario Ayala.

It was a high-profile merger in the insurance industry that brought Ayala the most exposure in recent months. Mundial provides insurance in all the other countries in Central America, and at the end of 2009 the Panamanian company consolidated its regional profile through a joint venture with Mapfre in El Salvador. Ayala acted for Mundial locally obtaining regulatory authorisation for the agreement, creating the largest insurance provider region-wide.

As most banks gain a foothold in El Salvador through acquisition, RP&A recently earned distinction as the only firm in the country to create a retail banking franchise from the ground up. In November 2009 Banco Azteca inaugurated operations of 29 branch offices nationwide. Lawyers at RP&A structured, established and obtained approval for the Mexican bank, which has made aggressive inroads into the Central American market in recent years.

#### Leading lawyers

Mario Ayala  
Carlos Castillo  
Roxana Romero

#### Rusconi Valdez Medina & Asociados - Central Law

For many international investors doing business in El Salvador is a package deal with regional transactions, and comparing the local office of Central Law to their other counsels, one client says, "Rusconi is the one who have people trained in the US, good relations with government and is inexpensive."

One competitor in particular praises the firm for maintaining an accurate profile in the market. "My personal impression is certain firms have done a lot in advertising that is beyond the quality of their work," they explain, "they are the opposite of that."

El Salvador's legal structure is still evolving, and when it comes to introducing novel concepts to the market one clients say partner Benjamin Valdez Iraheta is particularly proficient. "He's very creative at using existing laws to determine what can and cannot be done," the corporate counsel notes.

Competitors say too that Valdez is "very knowledgeable about international transactions and capable on local matters." Toward the end of 2009 Valdez advised IFC in granting a \$25 million credit line to La Hipotecaria for the purpose of providing sub-loans to mortgage holders.

#### Leading lawyers

Benjamin Valdez Iraheta

#### Other ranked firms

Market feedback holds that the El Salvador office of **Garcia & Bodan** is quite small compared to its Nicaraguan counterpart, and recently-arrived managing partner Federico Gurdian Sacasa has yet to gain exposure in the local market. The firm lists among its recent transactions a flurry of service and distribution agreements for international brands like Kodak and Energizer.

One particularly visible recent client is Macquarie, and Gurdian Sacasa's team recently helped the Australian bank structure several novel derivatives vehicles instruments. Because there are no formal statutory controls on El Salvador's derivatives market, the team had to make a comparative analysis and apply it to the existing legal framework.

*Leading lawyers:* Federico Gurdian Sacasa

As a start-up office of a regional firm, one peer says **Lexincorp** in El Salvador formed its partnership by accretion. "They were basically in-house counsels," remarks the competitor, "so now they are working actively as outside counsels." Rivals in particular mention partner Manuel Telles' experience at the bank BMI gives him "a lot of experience in local regulations concerning banks and financial operations."

In the promising information technology market the firm recently advised French call centre operator Teleperformance expanding its operations in El Salvador's free zone. The company's growth underscores an important growing sector of the country's economy.

*Leading lawyers:* Enrique Escobar and Manuel Telles

Partners Humberto and Mario Antonio Sáenz Marinero of **Sáenz & Asociados** earn the highest praise for their arbitration skills, but one competitor says "both also have a knowledge of commercial matters." Peers note the firm has a "growing, young team" of "very qualified professionals".

Toward the end of 2009 the firm counselled McDonalds franchise operator Servamatic in the sale of its rights to a Guatemalan rival for an undisclosed amount.

*Leading lawyers:* Humberto Sáenz Marinero and Mario Antonio Sáenz Marinero