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Guatemalan banking reform

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In Guatemala, soon we may be facing a new reform in banking legislation. Three reforms in this area may be clearly identified through our history after our independence in 1821. The first one was conducted in 1923 when the Banco Central de Guatemala, Sociedad Anónima (Central Bank of Guatemala) was established as a joint, public and private, capital stock company; at the same time the Credit Institutions Law, the Banking Inspection Law and the Monetary Law – establishing the Quetzal as our national currency– came into force. The second reform came in 1945, this one appointed through the Organic Law of Banco de Guatemala, (Congress Decree 215), Banco de Guatemala as our central bank with a 100% public capital, which came into force with 1946's Banking Law (Congress Decree 315), and a new Monetary Law (Congress Decree 203).

The third reform occurred after a period of approximately 57 years, in 2002. Although the 1946 Banking Law suffered several amendments in the years preceding this reform in order to adequate its provisions to international standards and in accordance with the country's obligation with the International Monetary Fund to strengthen its banking system. The steps to achieve that goal were established in the Monetary Board's approval of the Matriz del Programa de Modernización del Sistema Financiero Nacional (Matrix of the Program for the Modernization of the National Financial System) of 1993.

One of the most important amendments was the establishment of the minimum risk-based capital adequacy of banks in 10% –a bit higher than the 8% proposed in Basel I Capital Accord –; contained in Congress Decree 26-99. The financial modernisation was accomplished finally by the issuance of five laws namely:

Organic Law of Banco de Guatemala (Congress Decree 16-2002), Monetary Law (Congress Decree 17-2002), Financial Supervision Law (Congress Decree 18-2002), Banking and Financial Groups Law (Congress Decree 19-2002) and Congress Decree 74-2002 which contains the approval of the loan agreements with the International Bank for Reconstruction and Development which financed the reform in question.

By the time of this reform a number of related entities used to exist around banks which, as they were not subject to the regulator's supervision, served as vehicles where to transfer bad credits and/or unsuccessful operations that would have affected the bank's overall results and that may have triggered administrative penalties or even the imposition of fines.

Therefore the 2002 Banking and Financial Groups Law require that banks and their related financial companies present themselves as Financial Groups and to consolidate their operations and financial statements in order to evidence their real financial situation and to conduct businesses with the public in a transparent fashion. Guatemalan legislation in addition to the Financial Group Model –that of a holding company that controls all the entities that integrate it by holding more than 50% of the shares in each of them–, provides three additional ways by which financial groups may be integrated, those are:

- (i) the use of common management;
- (ii) the use of common image; or
- (iii) the agreement among the parties to act and conduct business as a group.

Of course the nature of all entities in such a group must be financial and one of them has to be a bank, which in case of not having a Holding Company, will take on its responsibilities and obligations – another Guatemalan special feature.

For the first time rep offices of foreign banks were briefly addressed in this new law as another way through which foreign banks may conduct financing operations in Guatemala; the

other way was and is, through branches –considered banks for law purposes.

A particular issue related with rep offices is that the law states that they may promote business in Guatemala, but no legal or official definition was given for the term promotion (promover); nonetheless it has been understood that it does not include the collection of funds from the public in any way nor the provision of any services related to accounts or products that Guatemalan clients may hold with the foreign bank in its headquarters or foreign branches.

Offshore banks were also regulated for the first time in Guatemala in 2002's legislation, the most important issue regarding their operation in Guatemala is that they must integrate a Guatemalan Financial Group; otherwise, their operations may represent the perpetration of the crime of financial intermediation.

After 8 years in effect, some amendment initiatives have been presented in the Guatemalan Congress to reform the current Banking and Financial Groups Law, especially after the Guatemalan financial crisis of 2006 – 2007, due to the suspension of operations of Banco del Café, Sociedad Anónima (the 4th biggest bank at the time) in October 2006, and that of Banco de Comercio, Sociedad Anónima, in January 2007; but none of them have gotten further. That is not the case for the last and most recent initiative, number 4073, presented to the Congress by the President of the Republic on June 25, 2009, based on the favorable opinion of, among others, the Monetary Board (Resolution JM-47-2009). Although this initiative does not seek a whole reform of the current legislation it does amend relevant provisions of two of them: the Banking and Financial Groups Law and the Organic Law of Banco de Guatemala.

This initiative was known by the Plenary of the Congress on August 20, 2009 and a favorable opinion to it was issued by the Economy and Foreign Commerce Commission of Congress on February 2, 2010. Some of the issues addressed by this initiative are:

- Market discipline (required by Basel Accords—3rd pillar, specifically);
- Mandatory annual risk rating for banks, investment banks and offshore banks;
- Clarification of the elements that configure Tier I (Core Capital) and Tier II (Supplementary Capital);
- Mechanisms through which credit portfolios may be assigned, sold or transferred between banks and/or investment banks; and
- Submission of offshore banks and financial entities such as leasing or factoring companies which are part of financial groups, to limits of exposure and concentration on investments and contingencies.

Financial and corporate

Recommended firms

Tier 1

Carrillo & Asociados
 Consortium - Rodríguez Archila Castellanos Solares & Aguilar
 Mayora & Mayora

Tier 2

Aguilar Castillo Love
 Arenales & Skinner-Kléé
 Quiñones Ibargüen & Luján

Tier 3

Arias & Muñoz
 Bonilla Montano Toriello & Barrios
 Saravia & Muñoz

Tier 4

Díaz-Durán & Asociados - Central Law
 Lexincorp

“Guatemala is no stranger to disaster, but this time it’s a one-two punch from nature,” says one commentator regarding last May’s simultaneous eruption of the Pacaya volcano and impact of tropical storm Agatha. The fluke flooding caused when volcanic ash choked drainage points took more than 150 lives and wiped out bridges and roads across the nation. The catastrophe went viral when images of a 200 foot-wide sinkhole in Zone two of Guatemala City circulated across the internet, garnering billions of views.

As the second significant hole to open in the same neighbourhood in two years, interviewees say the hole illustrates a fundamental problem with the city’s drainage system and the nation’s infrastructure, in general. Lawyers don’t see much political appetite to take on the daunting task of modernising the sewer system, and as one respondent says, “it could

not be implemented without the multilateral institutions getting involved.”

Further hampering reconstruction efforts the nation remains unable to tap the global markets, despite Moody’s raising the Guatemalan bond rating last June. Even when the government went to the local market that same month, it launched a fraction of its expected \$500 million notes due to unfavourable interest rates. Yet with sustained GDP growth and a low debt burden, Guatemala’s legal sources predict a sovereign debt issuance as early as 2011.

Perhaps the most sensational story in Guatemala before the sinkhole involved the May 2009 murder of Rodrigo Rosenberg Marzano, in which the respected lawyer implicated President Alvaro Colom and the first lady in a self-made, posthumously-released video. Equally shocking were the findings of the eight-month investigation led by revered Spanish adjudicator Carlos Castresana, which concluded Rosenberg had orchestrated his own execution and framed the president to raise awareness about allegations of corruption in the government.

Guatemala’s legal community contends that although astonishing, the results of the investigation are credible owing to the reputation of Castresana and the clarity of evidence supporting the conclusion. “In my opinion they made one of the best criminal investigations I’ve ever seen,” remarks one lawyer, adding: “When Mr Castresana speaks, the country listens.” With the murder case closed legal sources say Castresana will investigate the accusations made by Rosenberg in his tape.

Carrillo & Asociados

Competitors admit Carrillo has “repositioned itself as a really strong law firm” with its 2009 acquisition of rival Beltranena de la Cerda y Chavez. In weighing the effects of the merger on the partnership, one peer states: “What they gained is experience in energy with [partner] Rodolfo Alegría.” Another commentator agrees, adding litigator Francisco Chávez to the equation, saying, “with those two lawyers the dynamic of the whole firm changes.”

One client describes Alegría as “a very well known lawyer in the electricity sector, a good rep locally and very important to local generators, particularly co-generators.” Alegría’s work with Carrillo has been broader to date. In 2009 Alegría and partner Rodrigo Callejas helped SC Johnson & Son terminate a distribution agreement in favour of a new partner while ensuring a smooth transition of delivery services.

Alfonso Carrillo M “continues to be the driving force behind the firm’s banking and

finance deals,” one rival says. One recent job had Carrillo advise Tapametal de Guatemala through a financial restructuring of its over \$50 million bank debt and obligations. Negotiations involved 13 financial institutions throughout the region and various labour and litigation issues for the metal manufacturer.

Market commentators mention one influential local client of the firm is the Paiz family, who owned the Wal-Mart franchise in Guatemala before its February sale to Walmart. Carrillo helped negotiate a share swap and \$110 million cash consideration for the regional deal.

Leading lawyers

Rodolfo Alegría T
 Rodrigo Callejas A
 Alfonso Carrillo M

Consortium - Rodríguez Archila Castellanos Solares & Aguilar

“They would be the most active I have seen,” says one Guatemalan lawyer about the local partners of the Consortium network. Clients and competitors share esteem for partner Alvaro Castellanos for both his legal work and leadership in the legal community. “He’s very much involved in issues outside his scope of practice - national issues and getting things to change in the country,” one peer notes.

One corporate counsel says Castellanos excels in “providing advice on international transactions, project finance and structured finance.” In a recent confidential transaction Castellanos and partner Alejandro Cofiño Rodríguez led a team that advised a US multilateral development institution in financing a local bank. Representation involved securitising a credit portfolio under the recent Movable Property Collateral Law.

Clients praise partner Alfredo Rodríguez for his creativity and ability to take multiple perspectives on a legal issue. “He’s very solution-oriented and puts himself in the client’s position,” says one representative client.

In 2008 Consortium counselled a syndicate of financial institutions led by Citibank in financing Costa Rican retailer Grupo M as it spread throughout the region. Recently, the firm again advised Citibank and co-lenders IFC and FMO regarding Grupo M’s local security package, adding flexibility measures to mitigate risk involved in the company’s corporate restructuring. The value of the local collateral was also increased to \$18.8 million.

Leading lawyers

Alejandro Cofiño Rodríguez
 Alvaro Rodrigo Castellanos Howell
 Alfredo Rodríguez Mahuad

Mayora & Mayora

Age is a mark of distinction in the legal market, and as one competitor explains of partner Eduardo Mayora Dawe: "He's the most senior member of the banking and finance community you will find on that list". Rivals specifically mention the firm's founding member's experience as counsel to the local stock market "shows his expertise in these types of matters."

Clients also praise Mayora's role as trusted counsel, academic and statesman. "He is more of the intellectual in the sense that he sometimes takes more time and is less practical, but he is very good," says one corporate counsel.

Partners Claudia Pereira and Rafael Briz both maintain prominence in the market beyond the firm's namesake. Competitors say Pereira "handles most of the important international matters at Mayora." Briz earns praise for his leadership of the Spanish-Guatemalan chamber of commerce.

One peer mentions Briz for his representation of Unión Fenosa, and in 2008 the Spanish electricity company's Guatemalan subsidiaries signed two 15-year agreements to distribute power from the proposed 200MW Jaguar power project on the Pacific coast. Briz continues to represent Deors and Deocsa through the financing and development stages of the Ashmore-owned project.

Leading lawyers

Rafael Briz
Eduardo Mayora Dawe
Claudia Pereira

Aguilar Castillo Love

Aguilar ascends the ranks in affirmation that the Guatemalan office of the regional firm maintains a recognised dedication to the local market. "They are a good firm and seem to have good international counsels," one peer remarks. Partner Juan Carlos Castillo earns praise by competitors for his involvement with local utilities and regulated markets.

One client points out Castillo's growing reputation on in the capital markets served as a reference for their selection of the firm. "I heard about him from his work with the stock exchange and decided to check him out," the client says. A rival sums up Castillo's talents: "He's a very sharp lawyer, a very good litigator a very quite man, a competent lawyer."

In addition to the firm's confidential work in the energy sector, the Guatemalan office recently teamed up with their counterparts in Costa Rica to assist Eastman Kodak with the revision of distribution agreements in the two countries.

Leading lawyers

Ana Cecilia Bonilla
Juan Carlos Castillo-Chacón

Arenales & Skinner-Klée

A family firm now entering its third generation, Arenales & Skinner-Klée has gained the most attention recently for representing Guatemala's electricity commission CNEE in a dispute with main power distributor Eegsa. In 2009 senior partners Alejandro Arenales and Alfredo Skinner-Klée were given power of attorney for CNEE for the ongoing arbitration in front Icsid in Washington DC.

In addition to his relations in the energy sector, competitors note Arenales has recently represented Scotiabank and several smaller banks in financial transactions. One corporate counsel in particular notes Arenales maintains the management duties of the firm. "He knows very well what happens in every corner of the office," says the client.

Clients and competitors as well praise non-family partners Luis Ruiz and Rodolfo Salazar as important second-level members of the firm. Recently Salazar led a team that advised the shareholders of one of Guatemala's leading newspapers in the sale of their interest. Corporacion de Noticias, publisher of Siglo XXI, sold complete control of the paper to a local family-owned enterprise.

Leading lawyers

Alejandro Arenales
Alfredo Skinner-Klée

Quiñones Ibargüen & Luján

In one typical remark about QIL a competitor states: "They're an excellent law firm with young lawyers coming up." Other common descriptors include "international clients" and "good reputation" in financial matters. Peers also note the firm's background utilities as counsel for Empresa Eléctrica, Guatemala's largest power distributor.

Leading lawyers affirm partner José Quiñones quickly established a reputation for talent in financial transactions. "He's very quiet but very thoughtful and very responsible - it's very nice to work with him," says one peer. Market feedback recommends partner Marcos Ibargüen in corporate matters.

The firm's expertise covers the recent Movable Assets Registry implemented in 2009. Working with Caterpillar's financing agents throughout Latin America, Ibargüen has recently advised the structure of security packages for several transactions involving the financing of heavy machinery.

Leading lawyers

Marcos Ibargüen
José Quiñones

Arias & Muñoz

Central America's most successful regional firm maintains a modest presence in Guatemala, according to competitors. "They haven't been able to grow a local clientele base," one rival notes, "but their regional coverage has to be acknowledged." While market feedback holds partners Jorge Luis Arenales and José Augusto Toledo to be "competent professionals", at least one peer notes: "They would benefit from obtaining more senior partners of weight in Guatemala."

Yet at least one in-house counsel finds the team's young, dynamic reputation to be an asset; particularly in the field of criminal litigation. "In these matters you have to be very involved, and they are more experienced at that," explains the client.

Recently, Arias & Muñoz has brought the local office work with IFC in two parallel credit lines to one of the largest sugar mill operations in Central America. With Series II approved last January Panteleón has received a total of \$100 million in loans and equity from IFC.

Leading lawyers

Jorge Luis Arenales
José Augusto Toledo

Other ranked firms

Peers see the network of Diaz Durán & Asociados - Central Law as more loose than competing regional models, and see a disparagement in quality among the firm's members. But all agree with one leading Guatemalan lawyer, who says partner Juan Pablo Carrasco is "very competent" and "the most recognizable face in the firm."

In a rare recent transaction in the mining sector, Carrasco advised the local subsidiary of Radius Explorations in the buyout of its partner in the Tambor gold operation along the Motagua fault zone in central Guatemala. Minerales Guatemala paid \$6.5 million for the remaining stake held by a subsidiary of South African outfit Gold Fields.

Leading lawyers: Juan Pablo Carrasco

With a team of diverse backgrounds in the legal community, Lexincorp earns mention in a wide range of areas, including real estate, intellectual property and financial work. The firm's profile rests on partner Gonzalo Menéndez Park, whom peers call "a well-known individual" in the hotel industry. Citing ties to Banco Industrial and its offshore counterpart, one rival says partner Luis Pedro

Fuxet “may be a driver for work coming from” the banking sector.

Last February Lexincorp participated in Siemens’ buyout of its subsidiaries throughout the region. Partners Julio Aparicio and Edvin Montoya represented the global communications conglomerate locally in the deal.

Leading lawyers: Luis Pedro Fuxet Ciani