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New law for microcredit debtors

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In April 2010, the Nicaraguan National Assembly passed law No. 716, Special Act for the establishment of basic conditions and guarantees for the renegotiation of debts between microfinance institutions and borrowers in arrears; it was published in the Official Gazette No. 67 of April 13 2010. The law's main purpose is to contribute to the country's macroeconomic stability through a series of safeguards and conditions for agricultural and commercial debtors can renegotiate their debts with microfinance institutions, non-profit associations and banks which function as microfinance entities.

This Law is to ensure the continuous flow of economic resources dedicated to grant credits to the microfinance sector, to restore and strengthen confidence among the various economic agents. The Superintendents of Banks and Other Financial Institutions (SIBOIF for its initials in Spanish) was set as the implementing agency of compliance with basic conditions and guarantees established in the Law for the renegotiation process of debts between microfinance institutions and their borrowers.

Beneficiaries of this Law are all debtors (individuals and corporations) from the commercial and agricultural sectors that fell in arrears as of June 30 2009; Law No. 716 is retroactive and at the same time it was declared of law of social interest. The purpose of the law is to avoid that the MFI have a delinquent portfolio with a high-risk rating, therefore SIBOIF deem necessary that all debts renegotiations credits will be classified in the same credit risk category they originally had and that they could be improved up to category A.

How is debt restructuring applied

Debtors who want to apply for the benefits of the law had to present themselves to restructure their loans in arrears 30 days after the publication of the law, which was May 13 2010. However, 120 days were established for debtors to comply with all requirements related to the granting of guarantees, which in principle should be the same as the original loan granted, otherwise it is allowed that they may be reinstated or that new guarantees are presented in an amount equal to the credit.

Benefits of restructuring

Act No. 716, established a number of benefits to debtors among which we mention the following:

- (i) for loans less than \$ 10,000, a minimum term of four years, should be given for repayment;
- (ii) for loans over \$ 10,000 a minimum term of five years should be granted;
- (iii) total exemption of past due accrued interests;
- (iv) a waiver of legal and collection fees or other fees related to the credit;
- (v) a waiver of ordinary interest accruing at a rate not less than 30%, in addition to other exemptions, for early payment or prepayment;
- (vi) the prohibition of imposing penalties for early payment or prepayment;
- (vii) the inability to reduce any of the restructuring conditions set forth in the Act;
- (viii) access to annual rate of 16%; and
- (ix) suspension of legal proceedings when a debtor applies to the law, including preliminary judicial measures such as liens, physical seizure or constraint.

Obligations of microfinance

As part of the implementation of the Law No. 716, it was established that the microfinance institutions should meet and adhere to the following provisions:

- (i) SIBOIF will be responsible for following up the restructuring within the period

of 120 days between the debtors to benefit from the law and the microfinance institutions;

- (ii) SIBOIF will issue the regulations for the implementation of the Act (dispositions was enacted by CD-SIBOIF-626-2-MAY6-2010);

- (iii) microfinance institutions subject to the law must report to the SIBOIF within 48 hours of every restructuring through single-copy or e-mail;

- (iv) SIBOIF will issue certificates of compliance; and

- (v) SIBOIF will send monthly report to the Committee on Production, Economics and Budget of the National Assembly on the progress and incidents of this process of renegotiation of debts, and a final report consolidated in fifteen days after the expiration of the one hundred twenty days (120) of the renegotiation process that was determined by law.

Punishment for breach of Act No. 716

As part of the guarantees established by this Act it was determined that those debtors who do not use the restructuring do not enjoy the benefits and privileges of the law. The microfinance institutions subject to the law, for breach thereof shall be fined with equivalent to 50% of the value of credit and may lose the legal personality where applicable (civil associations, non-profit). SIBOIF will apply sanctions by the regulations established by its Board of Directors.

This law was criticised because of the benefits granted to the debtors for the payment of their claims under special conditions, however, even though the microfinance institutions will recover loans granted to customers in those conditions, losses have been experienced and a negative effect on the future business of microfinances' can be expected as well as access to credit to the sectors involved. The effect on the country may be seen by the reduction of millions in loans that other international agencies, banks or other financial and non-financial entities investment channelled

through microfinance credits to facilitate access to credit in sensitive sectors such as commercial and agricultural.

Financial and corporate

Recommended firms	
Tier 1	Arias & Muñoz Consortium - Taboada & Asociados García & Bodán
Tier 2	Alvarado y Asociados
Tier 3	Aguilar Castillo Love Barrios & Asociados Lexincorp Munguía Vidaurre Zuñiga

The Latin American culture of honouring personal debt is often cited as a reason why small-scale lending finds success in the regional market. But the microfinance industry faces its first test in Nicaragua's agricultural community, where a recent drought impacted yields and the ability of many farmers to make loan payments.

In 2009 a large faction of agriculturalists, merchants and micro-entrepreneurs refused to make payment on loans, protesting interest rates and judicial actions taken against debtors. Last January the *Movimiento No Pago* staged protest at local MFI offices and blockaded traffic on the Pan-American Highway, and demanded the intervention of the government.

Under increasing pressure the National Assembly passed a law last March ordering microfinance institutions to renegotiate their payment terms with a 16% rate cap and suspending all seizure of assets relating to delinquent payments. Nicaragua's lawyers caution that the *Ley Moratoria* has the potential to kill the budding microfinance sector by shaking the confidence multilateral lenders have in the \$140 million local industry.

Since the passage of the law several private-equity funds have already declined to renew their investments in Nicaragua, and even development organisations like the Inter-American Development Bank - with \$20 million already invested in the sector - are re-evaluating their support of local MFIs. Legal sources say the situation has become a crucible for the microfinance industry around the world. "Many of our neighbours are looking at the situation very closely," remarks one lawyer.

Adding to international investors' concerns is a political impasse regarding the selection of judges for Nicaragua's Supreme Court. With the country's sharply divided congress stymied over the replacement of two justices, President Daniel Ortega passed a decree last April that extended the tenure of the currently sitting magistrates.

Opposition members have moved to block the decrees as unconstitutional and politically motivated, pointing to the fact that the justices were instrumental in a 2009 ruling allowing Ortega to run for re-election beyond established term limits. Commentators say the difficulties spell uncertainty for Nicaragua's foreign investment climate. "It is always important for any investor that the government has a strong independent judiciary," says one Nicaraguan attorney.

With a contentious election coming this year, leading lawyers see a significant possibility of sweeping political changes at the highest level. Cleared of money laundering charges in 2009, former Nicaraguan president Arnoldo Aleman accepted the Liberal Constitutionalist Party's ticket last July, gearing up for a showdown with his current Sandinista-backed counterpart.

Arias & Muñoz

Acknowledging the firm participated in "most of the big deals" of Nicaragua's recent history, peers note Arias & Muñoz's local lawyers have the proven visibility at the top of Nicaragua's legal market. "They do a lot of international work and have a network throughout Central America," says one competitor, "so that would be an accurate reflection."

The firm's strong network makes them the choice of multilateral lenders throughout the region. Partner Bertha Argüello advised IFC on a credit line to palm oil producer Cukra Development. Based in Costa Rica, Cukra will use the \$25 million to finance a greenfield palm plantation on Nicaragua's Atlantic coast.

In a similar recent transaction partner Ana Teresa Rizo represented the Inter-American Investment Corporation's \$7 million loan to Cervecera de Nicaragua, brewers of Victoria and Toña beer, and co-sponsors of the 26MW Salto YY hydroelectric power plant.

Local players in the legal market contend the firm's Nicaragua office is primarily a vehicle for its region-wide transactions, like Grupo Terra's 2009 takeover of Shell Oil's operations across Central America. Rizo and partner Bernard Pallais advised Grupo Terra locally on the deal.

Arias & Muñoz's global profile translates into sophisticated work for locally active multinationals like B2Gold and Ram Power. Representing Ram subsidiary Polaris Energy

de Nicaragua, Pallais negotiated a \$77 million syndicated loan led by Cabai to finance an expansion of the San Jacinto-Tizate geothermal site.

Leading lawyers

Bertha Mariana Argüello de Rizo
Bernard Pallais Herdicia
Ana Teresa Rizo

Alvarado y Asociados

Regional competitors admit Alvarado & Asociados fills a niche for multinationals and local corporates looking solely for Nicaraguan representation. "There's certainly a market here for them," says one competitor.

Peers note partner José Antonio Alvarado remains proactively involved in Nicaragua's political circles, and much of the legal work of the firm is carried out by partner Gloria María de Alvarado. "She's a good lawyer with a lot of experience in corporate and transactional work," one rival says.

The firm benefits as the Nicaraguan reference for several legal networks, including Lex Mundi and the Bomchil Group. Additionally, close ties with independent practices throughout Central America give Alvarado the resources to coordinate transactions regionally.

Leading lawyers

Gloria María de Alvarez

Consortium - Taboada & Asociados

In Nicaragua's legal ranks no firm earns greater marks for finance deals than Consortium's partnership. The firm's lead figure is José Taboada, a practitioner who competitors say comes highly regarded in the banking community though his experience as president of Nicaragua's central bank. "His resume adds important value to the firm," says one peer.

But José Taboada's reputation in the market reaches beyond the financial community. The statesman acted for Shell in 2009 when the oil company sold its operations in Central America to Honduran conglomerate Grupo Terra. Representation involved ten months of negotiations and complex cross-border regulatory requirements, all of which was handled for Shell by the Consortium firm across the region.

Clients particularly appreciate the skills of associates Olga María Barreto and Alfonso Saldino for their work behind the scenes. "At the end of the day, it's the associates that do the work," says one client, adding, "These guys are particularly good."

Competitors hold Consortium's strength in Nicaragua lays in bank-related transactions, and have been the choice of Citibank since its 2008 entrance into market. Partner Rodrigo Taboada received recent finance work from Macquarie, the lead underwriters of B2Gold's \$32 million share offer. The mining company made the offering, including 3.3 million over-allotted shares, to primarily finance pit mines in Nicaragua.

Last year, Rodrigo Taboada helped Scandinavian tobacconist Swedish Match, makers of Macanudo and Cohiba cigars, assure its access to premium crop with a 20% stake in Nicaraguan tobacco grower Placencia group.

Leading lawyers

Olga María Barreto Gutiérrez
Alfonso Saldino Granera
José Evanor Taboada
Rodrigo Taboada Rodríguez

García & Bodán

With its growing network in the region, competitors say the flagship office of García & Bodán has been more busy managing practices abroad than managing big deals in Nicaragua. But market feedback holds the firm's background advancing large-scale real-estate development attracts a diverse pool of corporate clients with projects in regulated sectors.

Rivals attribute García & Bodán's aggressive growth to partner Terencio García, whom one peer notes as "the closest to a gray hair figure that firm gets." García showed recent prowess in the renewable energy representing Thermasource, the contractor chosen to drill geothermal collection wells in the San Jacinto-Tizate Project. Representation included the creation of a local subsidiary and particular consideration to equipment import requirements.

Last year, partner Carlos Téllez Páramo became managing partner of the firm's Nicaraguan office. Peers say Téllez gained the most visibility recently in the real-estate market creating legal structures governing large-scale condominium complexes.

Commentators note Gustavo Molina has left the firm's roster for an in-house position with an energy company. Before departing García & Bodán last year, Molina helped Egenicsa gain regulatory approval for the Salto YY hydroelectric project in North-eastern Nicaragua.

The firm received a notable mandate from the International Baseball Association through its Central American affiliate, which tapped the firm to advise its construction of a

state-of-the-art baseball academy on Nicaragua's Pacific coast.

Leading lawyers

Terencio J García Montenegro
Mauricio Herdocia Icaza
Carlos E Téllez Páramo

Other ranked firms

Regional option **Aguilar Castillo Love** has what competitors call a "tiny office" of three lawyers carrying out regional matters in Nicaragua. "Their firm is really attorney-based," says one rival. The firm boasts internationally active clients in the technology sector, including Eastman Kodak and Hewlett-Packard.

Peers note **Lexincorp** only entered the market recently, recruiting young lawyers to lead their operations in Nicaragua. "Maybe at this point they are not well known," says one rival, "[but] they have a presence."

Among recent work the firm advised Salvadorian Banco Agrícola in a \$3 million revolving credit line to a Nicaraguan melon producer.