

Costa Rica

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Investment market legislation

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Costa Rica, like many other countries, has sought to establish a legislative and regulatory framework that grants greater security to the commercial and investment markets, by providing general guidelines by which to develop economic activity and encourage participation in that activity. Some of these pieces of legislation, and associated measures, are outlined below.

Law Against Corruption and Illicit Enrichment in the Public Service

The war against corruption, and the illicit enrichment of civil servants and private individuals in their interaction with the state, is covered by the Law Against Corruption and Illicit Enrichment, in effect since October 29 2004.

Its main goal is to prevent, detect and sanction corruption in the exercise of the civil service by setting responsibilities and administrative, civil, and criminal sanctions. It contains statutory provisions – for civil servants and private individuals – that may commit acts that the law constitutes as fraud against public interest. The new legislation introduces higher sentences for wrongdoings than those already set out in the Penal Code.

New types of offences are also incorporated. These include irregular extra charging paid in contracts entered into with the administration; influence peddling; irregular payments of administrative contracts; transnational bribery; and influence peddling in the Treasury.

As for illicit enrichment specifically, the new legislation introduces civil sanctions as well as the corresponding penal sanctions. It is important to note that once a civil servant ceases to be employed as such, if he or she has participated in the decision-making of a bidding process, that person is prevented from working for that company for a year.

External Auditors Regulations and Corporate Management Measures

The External Auditors Regulations and the Corporate Management Measures (the Auditors Regulations) contemplate a series of steps to be taken to reinforce internal and external control mechanisms established to verify the financial information of the entities being supervised and the faculties of the superintendence. These regulations came in to effect on February 9 2005.

The Auditors Regulations establish a set of minimum capability requisites relating to the degree of professional experience and independence necessary for professionals who provide external auditing services to the supervised entities. Compliance with the Auditors Regulations is verified through the parties' registration with an Eligible Auditor Registry.

The Auditors Regulations also establish all the rules that auditors must follow when providing their external auditing services, in effect making it mandatory for auditors to follow international auditing norms.

As far as internal control is concerned, it was also necessary to establish a set of minimum standards of good corporate management. Its goal is to clearly set out the responsibilities of the management of the audited entities, and to establish policies, procedures and controls for the obtaining of reliable financial information.

Finally, the Auditors Regulation also reinforces the faculties and duties of the superintendence, because they can (and, indeed, must) go through the contents of the auditors' reports. They can also insist on compliance with the requirements regarding capability, professional experience and independence, as well as the procedures for periodic substitutions of the auditors, among other things.

The regulation of takeovers

In response to the need to make improvements to the Regulations on Takeover Bids, in effect since 2002, the National Council for Supervision of the Financial System (the Conassif) agreed to request a public consultation on a proposal on reformed regulations on takeover bids (the Takeover Regulations).

The proposal intends to address the needs of market participants by giving them new options consistent with international practice and promoting a more dynamic and accessible market, while at the same time filling in some gaps in the existing regulations.

The reforms include:

- an assessment of some of the assumptions on takeover bids;
- the need to allow new products and issuers, redefining for example the range of the so-called restricted takeover bid to make it mandatory in the case of issuers with insufficient historical background; and
- better definition of the profile of institutional investors and sophisticated investors that can be party to a restricted takeover bid.

The Takeover Regulations also regulate a series of mechanisms and stock exchange products commonly used in the international markets. To this end, they contain the authorization and registry of certain structured products, convertible bonds and issue plans, provide a space for small- and medium-sized businesses, authorize

increases to the allowed amount during placement periods, and establish a maximum time limit for the placement of issues.

Also, and as a result of past experiences, the Takeover Regulations regulate the eventual modification of registered issues (at present, issues are not modifiable unless such modification is approved by all the investors). Issues of structured products are excluded from this regulation, because they tend to contain international modification mechanisms that the issuer can specify in the prospectus.

Likewise, to introduce more efficient procedures for the benefit of issuers, the Takeover Regulations rationalize the prerequisites of the takeover bid by eliminating some of them, simplifying the documents and substituting or modifying the means by which they are provided.

At the time of writing, the proposal is in its final review stage at the General Superintendence of Securities. Once concluded, the proposal will be sent to the Conassif for approval and eventual publication.

Corporate and commercial

Recommended firms

Tier 1

Facio & Cañas

Tier 2

Arias & Muñoz

BLP Abogados

Consortium – Laclé & Gutiérrez

Pacheco Coto

Zürcher Odio & Raven

Tier 3

Aguilar Castillo Love

Batalla & Asociados

KPMG Abogados

Lara Lopez Matamoros Rodriguez & Tinoco

Nassar Abogados

Oller Abogados

Tier 4

Alfredo Fournier & Asociados

Alvarez Jimenez De Pass

André Tinoco Abogados

Doninelli & Doninelli

Feinzaig Sharf Van Der Putten

Pacheco Odio & Alfaro

Facio & Cañas

San José operation Facio & Cañas has been given the mantle as the only representative in the first tier because of numerous recommendations to that effect from both peers and clients. The largest of the Costa Rican firms, Facio & Cañas comprises a raft of enviable personnel; among the partners, Victor Garita, Roberto Leiva and Mauricio Salas continue to be highly regarded and receive many plaudits from the market.

Over the past 12 months the firm has been involved in a variety of significant transactions. JP Morgan Chase benefited from the firm's expertise when it selected it to advise on a structured note offering in September 2005. Facio & Cañas was also on hand to advise the PNC Bank National Association on loans to construction companies in Costa Rica. Renowned for restructuring work, the practice took a key role advising Inversion Nacional de Chocolates in relation to the corporate restructuring of its Central American operation, the corporate restructuring of McAfee in Central America and the local restructuring of the YKK Corporation.

On the whole, mergers and acquisitions activity in Costa Rica continued to be rather sluggish over the past year, mainly because of the anxiety of the change in administration (from Pacheco to Arias) and the fact that Costa Rica is the only country not to have yet approved Cafta. Facio & Cañas defied this market trend though, picking up roles on the few pieces of work that did make it to market. Among the highlights, the firm advised Agrocomercial Zunivasur in three key acquisitions, and assisted Caterpillar Financial Services with the financing of heavy equipment acquisitions. The practice also guided GE Consumer Finance on its acquisition of the stock capital of BAC International Bank.

Facio & Cañas is the Costa Rican member of Lex Mundi, the leading international association of independent law firms, and Club de Abogados, an association of 21 independent firms spanning Spain, Portugal and Latin America.

Leading lawyers

Victor Garita

Roberto Leiva

Carlos Valverde

Key contact partner

Roberto Leiva

Arias & Muñoz

Arias & Muñoz is, according to one satisfied client, "a highly efficient firm with an excellent team of professionals." Consensus among market commentators was that the firm continues to be a solid player in the corporate and commercial sphere in Costa Rica.

The practice gained a role as main counsel to Group Q, one of the major automobile dealerships in the region, in relation to the acquisition of a majority interest in one of the three major Costa Rican automobile dealerships. Elsewhere, the firm served as legal counsel to Spanish company Ebro Puleva on the sale of the major Costa Rican biscuit and cookie factory, Pozuelo. This high-profile deal was ongoing at the time of writing, and due to close shortly afterwards.

Arias & Muñoz is a member of Interlaw, an international association of more than 5,000 lawyers in 113 cities worldwide.

Leading lawyers

Caroline Flores

Vicente Lines

José Antonio Muñoz

Pedro Muñoz

Key contact partners

Carolina Flores

José Antonio Muñoz

Pedro Muñoz

BLP Abogados

Appearing in the rankings for the second year, BLP Abogados has affirmed its position as one of Costa Rica's foremost practices for corporate and commercial advice. Now a four-partner, 19-associate outfit, the recruitment of Andres Lopez, along with new associates Vivian Liberman and Eduardo Rojas, has helped to give the

firm a specialist banking tag. As a result, the practice now provides services in the banking law field to local and international financial institutions.

The transaction list for the past year makes impressive reading, given the fact that real estate and tourism are the main growth areas. The firm guided Corporación Andina de Fomento (CAF) through its \$10 million credit facility provided by CAF to Costa Rican banks, advised the International Finance Corporation on a \$40 million credit facility loan to Banco Banex, and provided local counsel to the Inter-American Development Bank in connection with a loan to Corporación Interamericana para el Financiamiento de Infraestructura. The project involved an infrastructure credit facility made up of a loan of up to \$50 million.

Among the year's cornucopia of other highlights, the firm represented Darby Overseas Investments, a specialized private equity fund that targets Central American financial institutions, in relation to its acquisition of an equity interest in Banco Cucatlán. Another standout deal saw the firm guide Corporación Andina de Fomento through structuring, negotiating and documenting a \$90 million loan to the Costa Rican oil refinery Recope.

The firm counts ABN Amro, American Airlines, Cisco Capital and UBS as clients, and has also acted as country counsel for the United States Department of Justice. BLP Abogados is also a member of two respected international legal networks – Meritas, a worldwide alliance of nearly 200 independent business law firms, and the State Capital Global Law Firm Group, an association of some 110 independent law firms.

Leading lawyers

Luis Manuel Castro
David Gutierrez

Key contact partners

Luis Manuel Castro
David Gutierrez

Consortium – Laclé & Gutiérrez

Laclé & Gutiérrez, the Costa Rican member firm of Central American regional alliance, Consortium, is well placed to reap the rewards of international investment work in Costa Rica. There has been something of a paucity of deal flow for this type of transaction in Costa Rica in recent times, but Laclé & Gutiérrez has had a fruitful period, landing roles on some challenging transactions.

The firm continues to be noted for its highly respected banking practice and the past year has seen Laclé & Gutiérrez assist a range of active financial institutions, including brokerage houses, investment banks and mutual fund administrators. Over the period, the practice gave legal assistance and counsel regarding the structuring and documenting of corporate loans, including loans for industrial and office parks acquisitions and syndicated letters of credit involving top-tier financial institutions.

Among the highlights, the firm acted as counsel to Interbolsa in a particularly significant real estate mutual fund deal, involving the acquisition of four buildings leased by Procter & Gamble subsidiaries. Laclé & Gutiérrez also provided international legal assistance to a regional financial group in relation to the acquisition of a bank in Honduras.

Leading lawyer

David Arturo Campos B

Key contact partners

Luis Manuel Castro
David Gutierrez

Aguilar Castillo Love

As far as at least one client is concerned, "John Aguilar Osbourne and John Aguilar Quesada are excellent lawyers, very serious and ethical as well as extremely competent." As such, Aguilar Castillo Love is another new entry into the rankings this year, following a number of positive indications to this effect from the market.

After the Central American Bank for Economic Integration opened a US commercial paper programme for \$200 million, Aguilar Castillo Love acted as counsel in relation to the sixth amended and restated credit agreement, closing in November 2005. The charity Habitat for Humanity International also recently appointed Aguilar Castillo Love to be external general counsel for Costa Rica, Latin America and the Caribbean.

The firm boasts an impressive client list that includes such illustrious names as Fyffes International, Hewlett-Packard and General Electric company.

Leading lawyers

John Aguilar Osbourne
John Aguilar Quesada

Key contact partners

John Aguilar Osbourne
John Aguilar Quesada
Olga Qusada Alvarado

KPMG Abogados

Among the year's highlights, full-service firm KPMG Abogados assisted a financial entity with the fiscal due diligence of a financial corporate group with operations in Central America and the Caribbean, in a deal worth \$300 million. Closing in November 2005, in a similar deal KPMG guided a global power company through the fiscal due diligence for a group of Central American companies.

In other deals, the practice was kept busy acting for a subsidiary of the world's largest dental laboratory in relation to the design and implementation of its legal and tax business. KPMG also held an advisor's role on the legal and tax design, structuring and implementation of an important industrial condominium project in the metropolitan area, and acted for an international financial corporation engaged in financing major infrastructure projects in the Latin American region.

Key contact partner

Alonso Arroyo

Nassar Abogados

Nassar Abogados appears in the rankings for the first time after multiple recommendations from peers, and on the evidence of frequent involvement in notable transactions. Led by the well respected Tomas Nassar, the firm has offices in Costa Rica, Honduras, Nicaragua and El Salvador.

In one standout deal, the practice advised Westrust Bank in relation to the granting and structuring of credits in Costa Rica for \$15 million, and in Honduras for \$7 million, as well as guarantees that accompanied such credits. Elsewhere, the firm acted for Transammonia on the creation of a syndicated trust to promote the sale of a pipeline facility located in the Pacific Coast of Costa Rica.

Nassar Abogados boasts an impressive international client list that includes Air Canada, America West, DHL Aviation, Maersk and the Gillette Company.

Key contact partner

Tomas Nassar

Oller Abogados

Oller Abogados received welcome praise from clients, commentators and rival practitioners. One beneficiary of the firm's advice insisted that they "never thought of changing to another firm, for we trust the work of Oller Abogados". Compliments were also heaped upon name partner Pedro Oller, described as "a very competent individual ... highly respectable".

Recent successes have seen the firm representing a plastics company in raising capital through a closed equity offering, and successfully advising a foreign corporation in the administrative bidding process that resulted in the award of a concession to explore and drill for oil and other hydrocarbons. The firm also guided a global financial entity through the legislation allowing for an offer of securities to be made to local investors, in connection with an issue structured at the New York Stock Exchange.

Leading lawyer

Pedro Oller

Key contact partners

Mauricio Bonilla

Adrián Obando

Pedro Oller

Ricardo Vargas