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An overview of Guatemalan corporate finance legislation

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Because of its geographical location in the Central American isthmus, Guatemala is a privileged country, serving as a commercial bridge between North and South America.

As at July 2006, the population of the country was 12.29 million (according to the CIA World Fact Book). In 2006, Guatemala registered a growth rate of 2.27%, an inflation rate of 9.1%, a monetary reserve of \$3.78 billion, and an average exchange rate of Q763 to \$1. The government has made big efforts to encourage foreign investment, promoting a more favourable and attractive environment for investors.

Trade and financial activities in the country are regulated by the Commercial Code, the Securities and Merchandises Market Law, the Free Negotiation of Foreign Currencies Law, the Central Bank Organic Law, the Monetary Law, the Financial Supervision Law, the Insurance Companies Law, the Banks and Financial Groups Law, the Financial Companies Law, and the Anti-Laundering of Money and Other Assets Law.

Corporate activity

Corporate activity is regulated mostly by the Commercial Code. The following legal institutions fall under the scope of the Commercial Code: (i) commercial companies – that is, general partnerships, limited liability companies, corporations and joint-stock companies; (ii) the merger and transformation of companies – comprising the procedures by which companies can be merged or transformed, and the effects of such activities; and (iii) certain regulations on the protection of free trade, which include limited legislation covering antitrust and unfair competition provisions.

Important reforms to commercial and financial laws were made in the last decade, influenced by technological advancements, innovative structures and international financial markets. An efficient supervision and a stable and more solid financial system were needed to achieve the stability of the financial system. With the enforcement of the Central American Free Trade Agreement (Cafta-DR, a commercial agreement between the US, all five Central American countries and the Dominican Republic), a more modern and competitive economic system is expected, producing economic growth that can respond to the demands of globalization, as it will open to a market in which financial standards are required.

Financial activities

The Guatemalan Monetary Board is in charge of determining the monetary, exchange and credit policies of Guatemala. The Bank Superintendency in Guatemala directly supervises the country's banks and credit institutions, finance companies, bond companies and insurance companies. It acts under the direction of the Monetary Board, and is organized in accordance with the provisions of the Financial Supervision Law.

Guatemala has one of the most adequate legal structures for financial growth in the region, and the current Banks and Financial Groups Law was created in 2002 to stabilize the Guatemalan financial system. This legislation has the task of regulating the creation, organization, merger, activities, operations, functioning, suspension of operations and liquidation of banks and financial groups, as well as the establishment and closing of branches and of representative offices of foreign banks in Guatemala. It also regulates offshore banks belonging to local authorized financial groups. The new banking legislation is inspired by the Basel Agreement.

One of the more important regulations is the creation of financial groups, the incorporation of multi-banking institutions, and the institution of universal banking, by approving that banks can do everything that the law does not expressly forbid. This process of financial modernization in Guatemala started in 1993, it continued at the banking level in 2002, and the phase of consolidation of more modern legislation on insurance matters (including regulation on provisional insurance and mutual funds) is ongoing at the time of writing.

The transaction volume in securities dealings has increased in a 39% from 2004 to 2005, which is what has been reported by the most active exchange market (*Bolsa de Valores Nacional* – the BVN). The securities market, however, is still in its initial development phase, as is evidenced by the BVN's report that only 0.5% of total transaction volume is represented by private primary market operations, and only 0.6% by the secondary market. As mentioned above, transactional volume was higher than during the same period (Jan-Dec) in 2004, having reached Q186.59 million (\$24.6 million).

Corporate and commercial

Recommended firms

Tier 1

Carrillo y Asociados
 Consortium – Rodríguez Archila Castellanos Solares & Aguilar
 Mayora & Mayora

Tier 2

Arias & Muñoz
 Bonilla Montano Toriello & Barrios
 Quiñones Ibarquén & Luján

Tier 3

Aguilar Castillo Love
 Arenales & Skinner-Klée
 Beltranena de la Cerda y Chavez
 Díaz-Durán & Asociados – Central Law
 Saravia y Muñoz

Carrillo y Asociados

A ripe corporate and commercial market, a substantial client list and a foremost lawyer at the helm all help to ensure Carrillo y Asociados enjoys a favourable positioning in the Guatemalan legal market. Furthermore, the firm remains a member of numerous revered international networks, including Terralex, the World Services Group, the State Capital Law Firm Group and the International Business Law Consortium, which provides it with valuable access to a wealth of legal talent outside of Guatemala. The well-respected Alfonso Carrillo continues to be regarded as a leader for corporate and commercial matters in Guatemala.

In recent times, Carrillo has strengthened its client list and has won some notable mandates. The Central American Retail Holding Company (Carhco) was a beneficiary during the process of negotiation, formalization and execution of the Wal-Mart/Carhco joint venture. The practice also assisted Carhco in matters of restructuring. The firm also acted for Grupo Difoto in the sale of a stake in the company to Jamaican investors.

In a further show of strength, Carrillo provided advice to the Guatemalan arm of the world-renowned shipping leader, Maersk, regarding its operations in the territory. In a further notable mandate, the practice advised leading Canadian firm Davies Ward Phillips & Vineberg when that firm was instructed to act for the purchaser of shares in Jaguar Nickel.

Carrillo also counts Lloyds TSB Bank, Microsoft, and the Ventana Mining Corporation as clients.

Leading lawyer

Alfonso Carrillo

Key contact partners

Alfonso Carrillo
 Analucía Carrillo
 Liz Gordillo

Consortium – Rodríguez Archila Castellanos Solares & Aguilar

Part of the Central American quintet of allied firms, Rodriguez Archila Castellanos Solares & Aguilar has had another successful year, winning roles on a collection of the jurisdiction's big-ticket deals.

A force in the banking arena, the practice was seen representing one of its foremost clients, Citigroup Global Markets (as arrangers and other lenders), on the inaugural international syndicated loan

for Banc G&T Continental. Citigroup Global Markets was a beneficiary of the firm's services once again in November 2005, this time in relation to the \$87 million Duke Energy refinancing. In another stand-out deal, which closed in March 2006, the firm advised the International Finance Corporation in relation to the \$30 million subordinated debt issue by Banco industrial.

Once again, the practice was particularly active in the project finance arena, under the leadership of Alvaro Castellanos. In what was probably the year's highlight, the firm advised the lender, Corporación Interamericana para el Financiamiento de Infraestructura, in relation to the \$61.5 million project financing of Ingenio Magdalena, granted for the expansion of its sugar mill and power generating unit. Elsewhere, Citibank received Consortium's advice in relation to its \$10 million financing package arranged for the expansion of Samboro's tile production line, and in September 2005 the IFC selected the firm to advise it in relation to an amendment to the \$45 million financing of Montana Exploradora de Guatemala, for the Marlin gold and silver mining project.

Leading lawyers

Alvaro Castellanos
 Alfredo Rodríguez

Key contact partners

Mario Archila
 Alvaro Castellanos
 Alfredo Rodríguez

Mayora & Mayora

The four-partner and eight-associate team at Mayora & Mayora was declared a top-tier firm once again by fellow practitioners and clients. The firm is headed by the well-regarded Eduardo Mayora Alvarado, who has guided the firm through a number of impressive mandates during the past year.

In a stellar year, Mayora & Mayora advised a major electricity distributor in Guatemala in relation to a \$28 million finance facility extended to it by a local commercial bank, and was on hand to guide GBM de Guatemala (an IBM alliance corporation) through the negotiation and execution of a major supply agreement of around \$5 million for the Property Registry of Guatemala.

Spring 2006 proved to be an especially fruitful period for the firm, particularly in the capital markets arena. During this time Banco Industrial instructed Mayora & Mayora in relation to the securitization of the bank's diversified payments rights and the issue of \$200 million-worth of corresponding securities in New York, and in another impressive deal the firm advised Citibank, Citicorp North America and Charta in relation to the extension of Banco Cuscatlan Guatemala's issue of securities backed by the bank's foreign currency denominated rights.

Among the year's other highlights, in a transaction worth around \$300 million, Mayora & Mayora represented the largest telecom group in Guatemala in relation to the negotiation of its interconnection agreements with several other telecom operators in the country, and acted for a major Guatemalan electricity distributor in relation to the extension of a contract with the Guatemalan state for the development of the electricity grid in the rural provinces of the country, in connection with which the government has agreed to contribute \$150 million.

The firm is the exclusive Guatemalan member of Lex Mundi, one of the world's leading association of independent law firms.

Leading lawyers

Eduardo Mayora Alvarado
 Rafael Briz Méndez

Key contact partner

Eduardo Mayora Alvarado

Bonilla Montano Toriello & Barrios

The well-regarded Bonilla Montano Toriello & Barrios is the designated Guatemalan member of Club de Abogados, an informal association of 21 Iberian law firms. As well as the leading lawyers mentioned below, contemporaries feel that Lorena Barrios is to be considered a rising star.

A rival practitioner decided that Bonilla was to be commended "for the outstanding quality of its work in the Duke Energy project financing". Closing in November 2005, this \$80 million financial restructuring of Duke Energy proved to be the one of the highlight transactions in the country as a whole. The firm further displayed its strong credentials when it assisted Brightstar with negotiating its \$50 million insured accounts receivable agreement, while in the relatively quiet M&A sector, Lorena Barrios and Roberto Toriello teamed to advise BHP Billiton in relation to its \$19 million acquisition of Jaguar Nickel in November 2005.

Other clients of the firm include Burns Philp and the McDonald's Corporation. As well as its membership of Club de Abogados, the firm also benefits from its affiliation with the GlobalLaw and Asociacion Europea de Abogados law firm networks.

Leading lawyers

Jorge Rolando Barrios
Saul Guillermo Bonilla
Jorge Toriello

Key contact partners

Jorge Rolando Barrios
Jorge Toriello

Arias & Muñoz

Arias & Muñoz has fully justified its inclusion in last year's *IFLR1000* after another period of intense transactional activity. With leading lawyers Jorge Luis Aenales and Jose Orive at the helm the firm is guided by solid personalities and excellent lawyers, and the firm's expertise and capacity has been bolstered by the recruitment of Jose Augusto Toledo, an experienced banking lawyer.

Closing in May 2006, the firm provided its experience to Grupo Q and Citibank in relation to the structuring of a first secured credit line for working capital. In a further banking deal worth around \$10 million, the practice acted for borrower Newcom in relation to its financing operations with World Business Capital. Arias & Muñoz demonstrated its ability on the lender side, meanwhile, when it guided Hencorp through its modification of a security pledge agreement over securities of a sugar mill in Guatemala.

Arias & Muñoz has been visible on the corporate side too. Among the year's highlights, the firm advised GSI Constructions in relation to the sale and transfer of its participation in Newcom and its operating companies in Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, and served as legal counsel to Spanish company Ebro Puleva on the sale of Pozuelo, a biscuit and cookies factory in Costa Rica, and Kerns, a juice producer in Guatemala.

The firm's impressively international client roster also includes Visa International, BNP Paribas, GSI and Grupo Sacor.

Leading lawyers

Jorge Luis Arenales
José Orive

Key contact partners

Jorge Luis Arenales
José Augusto Toledo Cruz
José Orive

Aguilar Castillo Love

Aguilar Castillo Love appears in the rankings for the first time this year after multiple recommendations from market commentators. The three-partner, three-associate practice, led in Guatemala by Francisco Castillo-Love, has had a steady year. Among the most notable instructions, the firm advised Empresa Eléctrica on its \$93 million debt restructuring.

Regular clients of the firm over recent times have included Grupo Cervecería, Grupo Seguros El Roble and Glaxo Smithkline Beecham.

Leading lawyers

Jorge Luis Arenales
José Orive

Key contact partners

Francisco Castillo-Chacon
Juan Carlos Castillo-Chacon
Francisco Castillo-Love

Díaz-Durán & Asociados – Central Law

Díaz-Durán is affiliated with Rusconi Valdez Medina & Asociados in El Salvador, and together the two firms form the Central American alliance Central Law. The firm has developed a reputation for specialist corporate advice, and it tends to be found advising more on M&A and corporate restructuring work than on finance deals.

Standout moments for the firm this year have included being appointed as general counsel to the Railroad Development Corporation of Pittsburg, and to Ferrovias Guatemala. The instruction led to the firm being required to advise on the restructuring of the corporate framework of the Guatemalan entity, as well as representing it in relation to various issues with the Guatemalan government.

In another notable mandate, the practice also acted for Everest Medical in relation to the acquisition of Negocios Medicos Diversificados, a Guatemalan entity that is one of the main suppliers of medical diagnostic centers for the government of Guatemala.

Another M&A deal of note saw the firm act for McDonald's on its acquisition of the total franchisee operations of McDonald's restaurants in Nicaragua and Honduras, while a projects-related instruction led to the firm advising Chilean companies R&Q Ingenieria and Zañartu on their successful public bid for an important highway supervision management project in Guatemala.

The practice also counts ABB, Little Caesars and Grubo Ebis as clients.

Key contact partners

Mario Búcaro
Juan Pablo Carrasco de Groote