

# Honduras

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## Honduras' new Securities Market Law

**Dennis Matamoros-Batson  
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Honduras**

The creation of a modern Securities Market Law (the Law) has ushered in a new era in corporate financing in Honduras. Under the old system the securities market was uncontrolled, and many companies without financial backing obtained millions of US dollars from investors who were attracted by higher interest rates but who suffered losses after those companies were unable to honour repayment requirements at maturity. Some participating companies managed to offer promissory notes at interest rates higher than those paid by banks for deposits, even though those companies, left unsupervised, were not meeting the legal requirements enabling them to do so. For example, while a company could qualify at the stock exchange market with a debt:capital ratio of five to one, some companies were still collecting funds through this mechanism with a debt-capital ratio of 60 to one. New loans obtained served only to make interest payments in respect of the first batch of loans, and so on. It naturally reached a point where hundreds of investors lost all their funds.

In an effort to restore public faith in these kinds of transactions, the Law was brought into effect, which now means that the public offering of securities is adequately supervised and controlled by the same entity that regulates the entire Honduran banking and insurance system – the National Banks and Insurance Companies Commission (the Commission). The Law was enacted in 2001 and has been complemented by special regulations prepared by the Commission. These regulations refer to specific provisions in the law, clarifying it and defining in detail the set of applicable rules.

For example, the law determines that participating companies, such as issuers of securities, must prepare reports that have to be rendered to the Commission. This means that there is regulation of information, as well as a procedure for the supply of information of the participants of the securities market, which complete the applicable terms of the law under which these reports have to be prepared, and which set out the specifics of their contents as well as the periodicity in which they have to be turned in. The Commission has also issued regulations regarding (i) the organization and activities of the corporations that are issuers of securities and of securitizations, and (ii) public offerings.

The Law states that a company can voluntarily seek registration at the Commission to be able to offer securities to the public through the Honduran securities market (private offerings are treated separately). Even though the Law refers to voluntary registration, in reality only some issuers have obtained their registration, and no

registrations of public offerings of securities have been applied for. It is conceivable that the financial entities in Honduras will be among the first issuers through securitizations of loan portfolios, a mix we believe will be appreciated by investors – a new form of investment, duly supervised, with the security of a batch of credits that have full guarantees. We believe this might be a truly groundbreaking form of securitization in Honduras.

Under Article 4 of the Law, a public offering is defined as when any kind of securities are issued, allocated, negotiated or traded and this offering is transmitted to the public or to specific groups through the media. Article 5 states that when a public offering is intended, the securities and the issuer must be registered in the public registry of the securities market, established by the Law and overseen by the Commission. As indicated, to date only issuers have requested and obtained their registration, but no financial instrument or derivative has yet been approved. The Law determines that the registration process should be completed within a 30-day period, but we are unable to verify if this deadline has been met.

A company that wants to make a public offering of securities must file a petition at the Commission. The issuer must also supply all relevant information pertinent to it, including details regarding administrative, employment, legal, economical, financial and contingent liabilities according to generally accepted accounting principles, all in the detail incorporated in the regulations. The amount and precise nature of the information depends on the characteristics of the issuer and of the securities being offered.

Once the issuer and the securities are registered, the issuer must prepare a prospectus relating to the offer. The prospectus must contain all information relating to the offer and the securities, as well as all relevant information regarding the issuer. This information includes the name and identification of the company and its line of business, the name of its administrators, if it has any business group interests, financial statements, external auditors' opinion and the risk classification of the securities to be offered. If the securities in question are company stock, the public offering is subject to the approval of the Commission.

After revising the legal aspects surrounding the securities market, and the scope of issues now subject to new regulations, the confidence of the public should soon be obtained, and hopefully there will be an increasing number of filings for the registration of issuers as well as securities. Investment in Honduras is still on the rise, particularly in the electrical and communications sectors, where long-term financing is required. The country will once again be able to promote investment through these types of corporate financing transactions. The reaction of the market will be positive, because the supervision to which these investments are now subject should go a long way towards preventing the abuses of the past.

## Corporate and commercial

### Recommended firms

#### Tier 1

Arias & Muñoz  
 Bufete Gutiérrez Falla  
 Consortium – JR Paz & Asociados  
 López Rodezno & Asociados

#### Tier 2

Aguilar Castillo Love  
 Bufete Batres y Asociados  
 Bufete López Castro  
 Central Law  
 García & Bodán  
 Ortez Sequeira & Associates

### Arias & Muñoz

US president George W Bush finally signed the Central America Free Trade Agreement (Cafta) into law in August 2005, sparking a flurry of legal activity to clear the way for an investment frenzy.

Arias & Muñoz is now among the forerunners in Honduras' burgeoning legal market, and advises big-ticket international banks like HSBC and Citigroup as well as Central American financial institutions including Banco Cuscatlán, Banco Mercantil and Banco Promérica.

"It has been a pleasure to work with Arias Muñoz, and particularly with the very competent Dennit Matamoros and Evangelina Lardizábal, especially as it was our first exposure in the country," said one of the firm's corporate clients, adding that its lawyers were "consistent throughout [the transaction] and very good at dealing with setbacks".

Lardizábal recently advised regional supermarket conglomerate La Fragua, and its major shareholder Corporación de Supermercados Unidos, on the \$7.5 million purchase of a supermarket chain in Honduras. Yamana Gold also used the firm's services in relation to its acquisition of a gold and silver mine for \$10 million. Other key deals this year include acting for Cementos del Sur on its purchase of a cement plant, and handling the due diligence and acquisition negotiations as Unión de Bancas Cuscatlán Internacional (UBCI) acquired the assets of a savings, loan and insurance company.

The centrepiece of the firm's financial year was advising the Millennium Challenge Corporation, a US government entity, on the establishment of an account to distribute \$215 million to combat poverty. The initiative was aided by a new financial model created by the Law MCA-Honduras. Arias & Muñoz provided counsel on the drafting of documents for the new framework.

Dennis Matamoros Batson provides Arias & Muñoz's project finance advice, and in June 2005 he advised Citigroup on a \$3.7 million financing plan for the expansion of a fishery. At the time of writing he was providing advice to the Overseas Private Investment Corporation in relation to the construction of a housing project for low income individuals. The development is valued at \$9.29 million.

Partner German Martell departed to join a bank this year, but the arrival of three banking associates, with more to come, should temper the setback to an extent.

#### Leading lawyer

Dennis Matamoros Batson

#### Key contact partners

Dennis Matamoros Batson  
 Evangelina Lardizábal

### Consortium – JR Paz & Asociados

JR Paz & Asociados has five partners practising commercial law, and is the Honduran member of Consortium, a regional network comprising five law firms. The association is designed to exploit the new Cafta framework.

Though its client list is dominated by Central American entities, the firm has a broad international reach, advising clients from the US, Europe and Asia. Notable examples include Phillip Morris, Hewlett-Packard, Daimler-Chrysler, Dresdner Bank, the Import-Export Bank of Malaysia, and elements of the Fox Broadcasting Company.

The firm recently contributed to Honduras's status as a desirable seat of alternative dispute resolution, as it acted as counsel in the country's first arbitration between two banks.

#### Leading lawyers

José Rafael Rivera Ferrari  
 José Ramón Paz

#### Key contact partner

José Ramón Paz

### López Rodezno & Asociados

López Rodezno & Asociados comprises three partners, each with a different practice area focus. René López Rodezno heads up the corporate department, Carlos López Luna specializes in energy and communications law, and Jorge López Loewenberg is responsible for the firm's banking team.

A client of the firm commented that "Jorge López Loewenberg is a very capable individual", and his team is present on many of the jurisdiction's financing deals. This year, for example, it advised Banistmo Securities on a secured syndicated \$21.5 million facility granted to Coral Knits, a textile manufacturer. Citibank returned to the firm for advice on several loans, including a security sharing agreement for a \$34 million facility with Grupo Jaremar, and further eight-figure loans granted to Multiplaza and Financiera Credi Q. The firm also assists Citibank and Banco de Honduras in annual reviews of the local regulatory framework for several programmes of derivatives, securities and other financial products.

In September 2005, López Rodezno & Asociados completed a regional remittance securitization transaction with the Honduran arm of Banco Cuscatlán. The transaction had a value of \$100 million.

#### Leading lawyers

Jorgé López Loewenberg  
 René López Rodezno

#### Key contact partners

Jorgé López Loewenberg  
 René López Rodezno

### Other notable firms

Laureano Gutiérrez Falla sadly passed away this year. As he was one of Honduras's leading lights, the market is monitoring **Bufete Gutiérrez Falla** closely to see how it deals with the loss.

Making its first appearance in the *IFLR1000* rankings this year, **Aguilar Castillo Love** has been heavily involved in the mining sector in 2005. Through its leading M&A lawyer Enrique Rodríguez-Burchard, the firm advised RNC Gold in relation to its purchase of Aurora Exploración in May 2005, followed in December 2005 by its acquisition of Minerales de Occidente for \$21 million. Grupo Inter instructed the firm in relation to its \$875,000 takeover of the Pollo Campero restaurant chain. Over the past 12 months the firm has also advised Banco Ficohsa on a \$22 million transaction with Wachovia Bank.

Another firm making its debut in the rankings is **Central Law**, which has offices in Guatemala, El Salvador, Nicaragua, Costa Rica, Panama and the Dominican Republic, as well as Honduras. Among the year's highlights, the firm represented Metropolitana during its reverse takeover by Fundacion Covelo.