

Nicaragua

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M&A regulation in Nicaragua

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 Nicaragua

In Nicaragua, mergers and acquisitions are regulated by the Commerce Code. This legislation was enacted in 1914 and has not been greatly modified since then. Some additional provisions relating to the acquisition of stock are set out in the General Securities Law of 1971.

Mergers

The entity resulting from a merger might either be a new corporation (different from all the merging parties) or a continuation of any one of them. In either case, the resulting entity is the automatic successor of the rights and obligations pertaining to the merging companies.

A merger requires the approval of the shareholders' meetings of each of the merging corporations. The minutes approving the merger must be published in the Official Daily (*La Gaceta*) or in any other national newspaper.

The merger shall be performed as follows: (i) execution of the merger agreement between the merging companies; (ii) where one of the companies absorbs the other or others, amendment of the articles of incorporation of the surviving company in order to register the increase of the capital stock and any other amendment agreed by the merging parties, and to register such amendments with the public registry; (iii) where a new company is incorporated, registration of new articles of incorporation with the public registry.

The merger will become effective three months after the publication of the shareholders agreement upon proof that: (i) the debts of the merging corporations have been paid; (ii) the merging corporations have consigned the outstanding debts of the merging company in court; or (iii) the merging corporations have the consent of their creditors to proceed with the merger.

The merger may be declared null and void in court if the formalities to take this type of decisions established by law or/and the articles of incorporations of the merging companies are not complied with.

Acquisitions

There are generally no restrictions on the acquisition or transfer of the stock of privately held corporations. In the case of stock companies, nominative stock is transferred by means of endorsement and its corresponding registration with the shareholders' registry book,

and bearer stock is transferred by simple material delivery of the shares. The execution of a stock purchase agreement (SPA) among the parties is optional, but recommended so as to include all necessary provisions regarding tax, representations, warranties and financial issues.

Any SPA should be preceded by a complete legal due diligence review of: (i) the title and legal status rights derived from the shares of stock subject to the transaction; and (ii) the legal status of the company's business affairs (that is, its assets and liabilities).

When acquiring a company it is important to take into consideration, as is customary in other jurisdictions, whether there is a Shareholders' Agreement or not, because this document may contain certain provisions agreed among the shareholders, such as rights of first refusal, tag-along rights, drag-along rights, dispute resolution provisions and preemptive rights. Additionally, the articles of incorporation should be carefully analyzed to determine whether such provisions are established therein.

Transfers of commercial businesses (bulk sales) are not regulated under Nicaraguan law. Therefore all assets, whether movable goods or real estate, have to be transferred independently from the purchase of stock. Real estate must be transferred before a notary public and duly registered with the public registry.

Draft competition/antitrust law

At the time of writing, Nicaraguan legislation does not contain any antitrust law provisions applicable to mergers and acquisitions. A draft competition law is however being discussed in Congress.

The law will provide, among other things, the obligation to notify a merger to the relevant government entity. However, some regulated businesses (such as insurance, banking, energy and telecommunications) have specific notification requirements according to their specific regulations in cases of mergers and acquisitions.

It is expected that this law will be approved sometime during 2006. The enactment of this important law will allow Nicaragua to regulate antitrust issues, whether derived from mergers and acquisitions or not. The law is especially important in respect of the implementation of free trade agreements recently signed by Nicaragua (such as DR-Cafta) or ones that are being negotiated, as these will increase foreign investment. The law will provide investors with the certainty that competency issues would be duly regulated, and will also assure local businesses that an economically stronger investor will not be allowed to perform abusive and monopolistic practices.

Corporate and commercial

Recommended firms

Tier 1

Consortium – Taboada & Asociados
García & Bodán

Tier 2

Aguilar Castillo Love
Alvarado y Asociados
Arias & Muñoz
Barrios y Asociados
Delaney & Associates

Consortium – Taboada & Asociados

Taboada & Asociados is one of Nicaragua's largest firms, comprising 24 lawyers and an overall staff of more than 40. It was founded in 1969 and operates from the capital city of Managua.

Taboada & Asociados is one of five leading central American firms that have joined together to create one regional firm. The alliance – which also includes Guatemala's Rodriguez Archila Castellanos Solares & Aguilar, Costa Rica's Laclé & Gutiérrez, El Salvador's Delgado & Cevallos and Honduran firm JR Paz & Asociados – is referred to collectively as Consortium.

Representative clients include the Inter-American Development Bank, General Electric, Caterpillar, Panabank and Banco Aliado. Founding partner José Evenor Taboada is noted by clients for his "excellent experience". He was president of the Central Bank of Nicaragua from 1992 to 1997, and consequently is a recognized expert on banking and finance regulatory matters. His colleague Rodrigo Taboada Rodriguez also came in for praise from peers, who described him as "a very solid lawyer".

Leading lawyers

José Evenor Taboada
Rodrigo Taboada Rodriguez

Key contact partner

José Evenor Taboada

García & Bodán

García & Bodán has developed a reputation for being a particularly wise choice for corporates seeking expert advice on M&A deals, and is most active in this sector. Last year the firm advised on three notable share purchases – by the Poma Group in vehicle distribution companies including Honda, Ford and Volkswagen, by the Assa Group in BDF Bank, and by America Movil in telecommunications company Enitel.

Despite being a young firm, since its foundation in Nicaragua in 2000 García & Bodán has expanded into Honduras and Miami, US. Its Nicaraguan head office has nine lawyers and two of-counsel, of which Terencio García Montenegro remains the most respected.

The firm's expanding client list includes Red Bull, Payless ShoeSource, the Bennetton Group and Continental Airlines.

Leading lawyers

Terencio García Montenegro
Federico Gudián Sacasa

Key contact partner

Terencio García Montenegro

Aguilar Castillo Love

Aguilar Castillo Love makes its first appearance in the rankings this year after market recommendation and on the strength of an impressive deal flow. The firm was founded in Costa Rica and

Guatemala in the 1960s and now has a network of offices across the Central American region.

Thelma Carrion-Blandon is the resident partner in the firm's Nicaraguan office, and over the past year she has handled a number of notable deals. For example, over the past year she has advised the General Electric company twice – first, in relation to the Nicaraguan aspects of a global sale, and secondly, in relation to client guarantees to be received as part of an international sale and purchase agreement.

More recently, in January 2006 Carrion-Blandon joined forces with Jalima Portobanco to conduct a major due diligence exercise regarding the possible acquisition of a power generation plant, and the following month the same pairing was instructed by Banco G&T Continental to advise it on a \$3 million financing operation with an international financial institution.

Key contact partner

Thelma Carrion-Blandon

Alvarado y Asociados

Alvarado y Asociados was founded in 1990 and deals mainly with corporate and commercial law, labour law and intellectual property, though it occasionally advises on banking, telecommunications and tax. It counts pharmaceutical companies, food processing corporations and financial institutions among its clients.

Market reports suggest that the firm has been slightly less active than in past years, which may be the result of the perception that name partner José Antonio Alvarado is "fully dedicated to politics". However, the firm's reputation ensures strong links to international investors, which in past led to it acting on an equity offering to a mining company and various finance matters.

The firm's continued membership of leading global law firm network Lex Mundi further ensures its international credentials remain intact.

Leading lawyers

José Antonio Alvarado
Luz Marina Espinosa

Key contact partner

Luz Marina Espinosa

Arias & Muñoz

Bertha Argüello heads the two-partner, two-associate banking practice, which over the past year has provided ongoing advice to Pacific Credit Rating on obtaining authorizations from Nicaragua's Bank Superintendence for various local banks and financial institutions to offer financial services in the country. Previous finance mandates included acting for Banco Cuscatlán de El Salvador in connection with several financing projects in the automobile and sugar industries, and serving as counsel to Corporación de Supermercados Unidos regarding a \$10 million loan for the development of the biggest distribution centre in Nicaragua.

The firm's corporate practice, meanwhile, is headed by Ana Teresa Rizo, who leads a team of one other partner and four associates. In August 2005 Oscar Montes spearheaded the firm's advice to the Central America Retail Holding Corporation (Carhco) on the due diligence process conducted on all of Carhco's Nicaraguan subsidiaries in relation to the sale of 51% of its capital stock, and the following month Rizo and Montes joined forces to act for Corporacion Improsa in relation to its acquisition of 100% of the capital stock of Alma del Sur.

In another standout instruction, Arias & Muñoz advised the Millennium Challenge Corporation on the establishment and development of the Millennium Challenge Account Programme. The Millennium Challenge Corporation is a US government entity that has awarded the Nicaraguan government \$175 million to fund projects that will contribute to the reduction of poverty in Nicaragua.

Leading lawyers

Bertha Argüello
Ana Teresa Rizo

Key contact partners

Bertha Argüello
Ana Teresa Rizo