

Venezuela

Chamber of commerce:

Federacion Venezolana de Camaras y Asociaciones de Comercio y Produccion de Venezuela
Avda. El Empalme
Casilla 2568 Urbanizacion El Bosque
1050 Caracas
Venezuela
Tel: +582 731 1711
Fax: +582 731 0246
Email: direje@fedecamaras.org.ve
Web: www.fedecamaras.org.ve

Professional body:

Federacion de Colegios de Abogados de Venezuela
Av La Salle
Torre Inpreabodago
Piso II
Los Caobos
Venezuela
Email: rveloz@colegio-abogados.org.ve

Corporate finance legislation in Venezuela

Fulvio Italiani
D'Empaire Reyna Bermudez
Caracas

Besides the Antitrust Law, the most relevant statutes governing Venezuelan corporate finance activity are the Venezuelan Commercial Code, the Venezuelan Capital Markets Law (only relevant to acquisitions of public companies) and the Tender Offer Rules (only relevant to acquisitions of public companies). Companies in the telecommunications, banking, and insurance sectors are subject to specific regulations and statutes.

Legal proceedings for M&A transactions vary depending on the structure of the transaction and on whether the target company is a close corporation or publicly traded. In addition, specific authorizations may be required depending on whether the company operates in a regulated sector.

Mergers and acquisitions of close corporations – the Commercial Code

Acquisitions of close corporations can be achieved through share purchases, purchases of assets, or the transfer of an ongoing business, if the isolation of existing liabilities is required. Share purchases of close corporations are generally effected through the execution of a share purchase agreement. Title is transferred through entries in the stock registry book of the company being sold, signed by seller, purchaser and any officer or director required by the bylaws of the relevant company. The transfer of control of companies in regulated sectors generally requires the approval of a governmental agency, such as the Banking Superintendency, the Insurance Superintendency or the Telecommunications Agency. The sale of shares of Venezuelan companies is subject to income tax withholdings.

In the case of asset transfers, purchase agreements are normally executed. Specific assets may require registration requirements to perfect the transfer of title. Such assets include trademarks and real property. In addition, where employees are being transferred, procedures for the transfer of employees, such as notices to the employees, the labor union and the labor authorities are required. Transfers of personal property are subject to value added tax (15% at the time of writing).

In cases where the transfer of assets qualifies as a sale of an ongoing business, specific publication requirements must be complied with. The business cannot be delivered to the purchaser before three public announcements, at intervals of 10 days, are made. This announce-

ment of the sale must be effected to protect creditors of the seller. Therefore, the sale of a going concern is subject to a 33-day waiting period. If the public announcements are not made the transaction can be completed, but joint and several liability of the seller and the purchaser will arise. The agreement for the transfer of an ongoing business is subject to registration with the Commercial Registry Office and is subject to a 2% stamp tax, payable upon registration of the agreement. Also, income tax withholdings apply.

Mergers require approval by the shareholders meeting of the merging companies. The bylaws of each company can also contemplate board level approval. Mergers are subject to a three-month waiting period. During such term, creditors can oppose the merger. An opposition filed by a creditor suspends the merger.

As a general rule the Venezuelan Commercial Code contemplates special supermajorities or approval rights of shareholders in cases of mergers and sales of the majority of a company's assets. Such rules can be changed by the bylaws of each company.

Acquisitions of public companies

Procedures where a public company is the target vary a great deal. In effect, in the case of an exchange offer or takeover, the offeror must notify the Venezuelan securities agency (the CNV) of the offer at least five stock exchange days in advance; the offer must remain open for a minimum of 20 stock exchange days and a maximum of 30 stock exchange days. The term of the offer can be extended with the approval of the CNV, to a maximum of 30 stock exchange days in aggregate. The settlement of the transaction must be completed through the stock exchange, and is subject to a 1% flat rate of tax.

In public tender offers, the offeror must file with the CNV a report containing general and financial information on the offeror, the purpose of the offer, the shares of the target owned directly or indirectly by the offeror, the relationship between the offeror and the target company, specific conditions of the offer (including the price, payment conditions, guarantees, minimum condition, proration rules and the term of the offer) and plans for the target company. Public disclosure of the report requires CNV authorization.

In cases of public share offerings, before launching the offering the issuer must obtain CNV authorization and register the shares with the Securities Registry. A registration statement regarding the offering must be filed with the CNV.

Foreign investments and foreign exchange control

A foreign exchange control regime is in force in Venezuela. Regulations governing this regime include rules for the purchase of

foreign currency for remittance of profits and capital, payments of dividends, payments under certain contracts of the private and public sector and foreign debt. In this regard, foreign investors are required to register their investments in local companies with the Superintendency of Foreign Investments (the SIEIX) to have the right to re-export them with profit and interest. Authorization to purchase currency for this re-export must be requested from the Foreign Exchange Administration Commission. Also, all currency from exports of goods and services, as well as all foreign currency and financial assets brought into Venezuela for direct foreign investment, must be sold to the Central Bank.

In September 2005 Congress enacted a Criminal Law on Unlawful Foreign Exchange which sets forth fines and penalties for violation of Exchange Control Regime regulations. This law also contemplates obligations to inform the government of certain foreign exchange transactions, such as imports and exports of foreign currency in excess of \$10,000 and exports of goods and services worth more than \$10,000.

Banking and capital markets

Recommended firms

Tier 1

Baker & McKenzie
D'Empaire Reyna Bermúdez
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Rodner Martínez & Asociados

Tier 2

Rodríguez & Mendoza
Travieso Evans Arria Rengal & Paz

Tier 3

Aarons & Asociados Abogados
Despacho de Abogados Miembros de Macleod Dixon
Hoet Pelaez Castillo & Duque
Squire Sanders & Dempsey
Tinoco Travieso Planchart & Núñez
Torres Plaz & Araujo

Mergers and acquisitions

Recommended firms

Tier 1

Baker & McKenzie
D'Empaire Reyna Bermúdez
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Squire Sanders & Dempsey

Tier 2

Anzola Raffalli y Rodríguez
Despacho de Abogados Miembros de Macleod Dixon
Hoet Pelaez Castillo & Duque
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Rodríguez & Mendoza
Steel Hector & Davis
Tinoco Travieso Planchart & Núñez

Project finance

Recommended firms

Tier 1

Baker & McKenzie
Rodner Martínez & Asociados
Rodríguez & Mendoza

Tier 2

D'Empaire Reyna Bermúdez
Despacho de Abogados Miembros de Macleod Dixon
Mendoza Palacios Acedo Borjas Páez Pumar & Cía
Squire Sanders & Dempsey
Torres Plaz & Araujo
Travieso Evans Arria Rengal & Paz

Aarons & Asociados Abogados

Described by one satisfied client as “an excellent firm with good financial expertise”, young outfit Aarons & Asociados appears in the rankings again this year after consistent praise from peers and an impressive deal flow. From a client’s perspective, the experience of working with the banking and finance boutique is described as “very pleasant, responsive and ethical”. Fred Aarons and Luis García Montoya were pinpointed as leading lawyers by market commentators and clients alike. Numbers have grown this year, following the recruitment of Luis García Montoya as of-counsel from García Montoya, Wallis & Guerrero in August 2005 and María Angeles Leyba Zavarse, who moved from her in-house position in Citibank’s Venezuelan legal department.

In one standout finance instruction, in September 2005 Aarons & Asociados guided issuer Sea Pioneer through its \$55 million bolivar-denominated public offering in the local market, involving the securitization of a US dollar-denominated oil transport contract with PDVSA. Most recently, in December 2005, the firm advised Barbados company Inside Solutions on its \$1.5 million purchase of Damovo Venezuela from selling shareholder, Damovo UK, a tricky deal that included an complex escrow structure.

Leading lawyers

Fred Aarons
Luis García Montoya

Key contact partner

Fred Aarons

Baker & McKenzie

With 31 partners and 37 associates, Baker & McKenzie’s Venezuelan arm is the largest firm in the jurisdiction. It is also one of the most respected; according to commentators and clients “Baker in Venezuela is a name in the legal field that cannot be disputed”. Satisfaction among clients appears to be the norm, with another stating that the firm has an “excellent network, consistent and professional”. The personnel remain strong, with the “very good” Carlos Delgado at the helm.

A number of respondents to this year’s edition of the *IFLR1000* noted the “disturbing” political situation in the jurisdiction, but announced that the corporate market is in fact ripe. The high price of oil has been a driving force in consolidating the workload in a number of practice areas, with banking certainly one of those affected. It will come as no surprise that Venezuela’s premier firm has seen its capacity and expertise put to the test over the past year. December 2005 saw the firm advising HSBC on two lendings to Caracas Metro Operations, for \$9.7 million

and \$15 million respectively. Financial services work was indeed an active area for the firm, particularly in the second quarter of 2006, as Baker & McKenzie assisted Deutsche Bank and Barclays Capital on issues of credit-linked notes.

In other transactions, the practice guided Nera through its sale of shares in CNH Bermuda, a parent of Telecom NGTV. Gold Reserve Incorporated was also a beneficiary of Baker's advice, turning to the firm during its \$30 million public offering to fund the ongoing development of the Brisas del Cuyuni project, among other things.

The firm's three-partner, seven-associate mergers and acquisitions practice, headed by Carlos Delgado & Luis Miguel Vicentini, has also continued to make the most of the relatively buoyant market. Among recent highlights, the corporate practice assisted Asea Brown Boveri in the sale of its transmission lines business, advised Enso International on the \$68 million sale of a fleet of drilling barges in Venezuela. And although projects work has not been as prevalent in recent times, the firm did pick up a role acting for Aguas Industriales de Jose/Earth Tech in relation to the arrangement of a \$6 million secured loan agreement.

The firm's impressive client list also includes Citibank, CopBanca, Banco de Venezuela, Standard Chartered, General Motors Acceptance Corporation, Toyota Financial Services; Deutsch Bank, Merrill Lynch International, JP Morgan Chase and Tyco International.

Leading lawyers

Carlos Delgado
Eugeni Hernández-Bretón
Roberto Mendoza
Maritza Mészáros

Key contact partners

Carlos Delgado
Roberto Mendoza
Maritza Mészáros

D'Empaire Reyna Bermúdez

Respected by market commentators, D'Empaire Reyna Bermúdez has had a notable year, not just because of the litany of key transactions in which it has been involved, but also in terms of its dynamic. Over the past year the practice has admitted three partners – Isabella Reyna, Alberto Benschimol and José Humberto Frías – and also recently opened offices in Barcelona-Puerto la Cruz, where some of the largest oil and petrochemical projects are located. This development will undoubtedly position the firm well for future work from that area. The one cloud, though, was the departure of leading lawyer José Rafael Bermúdez.

The firm proved its expertise by winning roles on a variety of complex transactions this year. At the time of writing, D'Empaire was advising Teléfonos de México and América Móvil on their agreement to buy Verizon's equity participation in Venezuela's incumbent telephone company. The firm also guided ABN Amro and a banking syndicate through a \$135 million pre-export finance facility granted to CVG Ferrominera Orinoco, and represented ABN Amro, Calyon Securities and Deutsche Bank in connection with two bond offerings by the Bolivarian Republic of Venezuela, each worth \$1.5 billion.

Other notable transactions saw D'Empaire representing Telecom Italia Mobile (TIM) on the sale of its 100% stake in Corporación Digitel, and advising Maurel & Prom in its acquisition of Venezuelan and Columbian oil assets from Knightsbridge Petroleum for \$460 million.

Finance and projects work, meanwhile, has included acting for German company Man-Ferrostal in relation to its \$195 million turnkey EPC contract with Enelven's Termozulia II power

plant in Maracaibo, Estado Zulia, advising Deutsche Bank as underwriter of Siderúrgica del Turbios \$100 million note issue and \$13 million short-term facility, and acting for subsidiaries of Empresas Polar and Inepectra in connection with the termination of its agreements to operate the Kaki and Maulpa oil fields.

Leading lawyers

José Rafael Bermúdez
Fulvio Italiani
Carlos Omaña
Gustavo Reyna
Arnoldo Troconis

Key contact partner

Fulvio Italiani

Despacho de Abogados Miembros de Macleod Dixon

Having had just two lawyers in June 1997, the Venezuelan arm of Canadian firm Macleod Dixon firm now consists of 14 partners and 30 associates, making it one of Venezuela's largest firms. Market commentators continued to note the firm for its reputation in banking, telecommunications, administrative and labour law, but once again singled out the firm for its "first-rate" advice on natural resources matters.

Recent finance highlights included advising Saxon and Standard Bank on a \$55 million credit facility granted to Saxon Energy and guiding Mitsui through its \$1.7 billion proposed loan to PDVSA.

In corporate matters, meanwhile, the firm has been frequently visible. One standout deal saw the firm called upon to act for purchasers Coalcorp International in relation to its \$78 million acquisition of two coal mining companies in Colombia. Among other highlights, the firm served as transaction counsel on Hapag-Lloyd's acquisition of CP Ships, and on Vincler Oil and Gas' purchase of West Falcon Samson Hydrocarbons from Samson-International and Samson Resources, and acted for Knightsbridge on its sale of Hocol Assets to Maurel et Prom. At the time of writing, Leopoldo Olavarría was leading a team that was acting for Pacific Stratus Energy on its acquisition of Sociedad Internacional de Petróleo's Colombian assets.

Key contact partners

Elisabeth Elijuri
Jorge Neher
Gabriela Rachadell de Delgado

Mendoza Palacios Acedo Borjas Páez Pumar & Cía

According to one client, "Mendoza Palacios is an excellent firm" and boasts "a professional and highly qualified team with great solutions to any problem we have encountered in the jurisdiction."

Recent highlights have seen the firm advising the selling shareholder, Damovo UK, in relation to the sale of its Venezuelan subsidiary, which involved a complex escrow structure. In a standout banking transaction, meanwhile, the practice acted for Deutsche Bank, Citigroup, Credit Suisse First Boston and JP Morgan as lead arrangers of Jefferson Smurfit's €3.79 billion financing of its acquisition of Kappa Holding.

In an excellent demonstration of the firm's corporate capacity, Mendoza Palacios assisted Information Resources when it sold the retail measurement business unit of Datos Information Resources, a major marketing information industry in Venezuela.

Most recently, in May 2006, Carlos Acedo Sucre and Luisa Acedo de Lepervanche teamed up to advise the bank lenders of Digitel, in relation to Digitel's \$485 million acquisition of Telvenco from its sole shareholder, Telecom Italia Mobile. Digitel is one of the three key players in the Venezuelan mobile phone market.

Leading lawyers

Carlos Eduardo Acedo Sucre
Manuel Acedo Sucre
Carlos Bello

Key contact partners

Carlos Eduardo Acedo Sucre
Manuel Acedo Sucre
Carlos Bello
Arminio Borjas

Rodner Martínez & Asociados

Despite being a small firm of 11 lawyers, many consider Rodner Martínez & Asociados to be the top Venezuelan law firm for specialist banking advice, especially for derivatives and private sector loan restructuring work. The firm works as local counsel for international investment banks, multinational corporations and international funds involved in debt and equity securities. Typical clients include Bank of America, Royal Bank of Canada, Société Générale, the Bank of Tokyo-Mitsubishi, the Inter-American Development Bank and the Andean Development Corporation.

Over the past two years Rodner Martínez has advised on direct loans to the Republic of Venezuela, mainly for public sector projects, for a total of around \$415 million. As well as advice on loans and structured finance products, it also has a good reputation in structuring project financing programmes, particularly in the oil and gas sectors.

Leading lawyers

Jaime Martínez-Estévez
James-Otis Rodner

Key contact partner

James-Otis Rodner

Rodríguez & Mendoza

Rodríguez & Mendoza was founded in 1910 and its nine partners continue to enjoy a good reputation among peers and clients. It is strongest in banking and project finance matters and boasts an impressive clientele in these areas, including Banco Mercantil, Unibanca, Gillette, Texaco and Petroleos de Venezuela.

The firm has previously advised the underwriters in a number of large oil projects, such as the Cerro Negro project and the Sincor project, and provided counsel to International Briquettes Holding when it became the first non-Venezuelan company to be listed in Venezuela. Most recently, it served as counsel to paper and packaging company Jefferson Smurfit Group when it acquired Kappa Holding and its subsidiaries.

Leading lawyer

Reinaldo Hellmund

Squire Sanders & Dempsey

A force throughout Latin America, especially since its merger in September 2005 with Steel Hector & Davis, Squire Sanders & Dempsey has the ability to undertake transactions at both the international and local level. The 22 lawyers at the firm can aid clients in matters relating to competition, arbitration, labour, project finance, tax and on general corporate matters. The firm also retained leading lawyers Hernando Díaz-Candia and Bernardo Weininger after the merger, which further enhances its presence in the country.

Landing a plum role advising on the merger of three major regional GSM mobile-phone carriers ranks as a standout deal for the firm because the newly formed corporation became the third largest national mobile carrier in Venezuela as a result of the transaction. Another highlight saw the practice advise on the corporate and antitrust aspects of the proposed acquisition by the Linde Group of competitor BOC, a key transaction in the industrial gas market last year. In other corporate work, Squire Sanders & Dempsey advised Silgan Holdings in relation to the acquisition of Amcor Pet packaging.

The Venezuelan operation is also a solid choice for finance advice, and the past year has been another busy one. Among the highlights, the firm advised PDVSA in relation to the negotiation of the master plan for the development of the Plataforma Deltana project, an offshore hydrocarbons platform to be exploited in joint ventures with private investors, and has provided ongoing advice to Caterpillar Financial Services and the Raytheon Aircraft Credit Corporation on the restructuring of their private financings.

The firm's impressively international client list includes Caterpillar, Pfizer, Accenture, Allied Domecq and General Motors.

Leading lawyers

Hernando Díaz-Candia
Bernardo Weininger

Key contact partners

Juan José Delgado
Hernando Díaz-Candia
Maria Cecilia Rachadell
Bernardo Weininger