

# Bolivia

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## Ricardo Indacochea

### Indacochea & Asociados Abogados Santa Cruz

Up until the mid-1990s, many industries in Bolivia – particularly those in the electricity, transportation, telecommunications and hydrocarbon sectors – were under the control of the Bolivian government. Because of the financial burdens of administrating these industries, coupled with the country's low credit rating, the government decided that it was necessary to provide investment incentives and attract private capital for the development of all state-run companies. Bolivian economic policy therefore became geared towards market liberalization, and the participation of national and international private capital through a process known as capitalization.

In 1994, by virtue of Law 1544 of March 21 1994, the capitalization process in Bolivia was initiated. This form of privatization caught the attention of numerous multinational corporations, who decided to invest in the country. Soon afterwards, multinational investors privatized the state-run companies and, to complete their multimillion-dollar projects, the search for additional funds started. These corporations needed financing for their projects, which was to come from international banks. Bolivia had improved its credit rating, and as a result was eligible to receive financial support from various finance institutions (including the World Bank, the Inter-American Development Bank and the *Corporación Andina de Fomento*), which were keen to develop the broad variety of projects that each of the privatized companies had under way.

The state-run companies often provided a public service (such as electricity, communications and transportation) and so were considered by Bolivian legislation to be of public interest. For this reason, a regulatory body – the Sectorial Superintendence Regulation System (Sirese) was created, which directly supervises the government through the corresponding superintendence. The Sirese's objective is not limited to the supervision of the quality of service, but also deals with the financial status of the regulated company.

In Bolivia, then, project financing faces particular legal challenges when it involves the above-mentioned regulated companies or activities. For instance, the Bolivian Civil Code and the

Bolivian Commerce Code regulate the granting of securities (liens, pledges, mortgages and so on) settled for the benefit of the lenders, in the traditional form of a typical civil law system. That is, under a default scenario the secured party can easily execute the collateral by following an expeditious judicial process, which encompasses a judge's order to auction the collateral where any third party without qualification can bid.

Practice shows that where a regulated company has granted securities, the enforcement process is distorted or limited. This is because Sirese is obliged to evaluate a regulated company's administrative, technical and financial credentials before granting it a concession. For this purpose, it usually ends up evaluating the shareholders and the operator of the regulated company requesting the concession.

The enforcement of any of the above-mentioned securities granted over the regulated company's main assets will inevitably involve the intervention of the regulating entity's superintendence. Again, under a default scenario the secured party will want to execute the collateral by following the above-mentioned judicial process. The problem is that the bidding process is not open to any, potentially unqualified, third party – the superintendence must ensure that the service continues to be provided by an entity with the required technical, financial, operational and administrative characteristics. Of course, the lenders would not be able to comply with the technical qualifications regarding the continued operation and provision of the public service.

This situation has forced lawyers that handle these types of international project financings to be innovators in creating a security package that will assure the position of secured parties in case of an event of default by the borrowers.

To minimize the exposure of the lenders or secured parties, pledges of shares from the Bolivian borrower (or even its shareholders) are among the most usual securities issued in relation to these projects. Also common are contractual mechanisms of account control and guarantees given by the parent companies. For instance, a pledge of shares or quotas, depending on whether the company is a corporation (*sociedad anonima*) or a limited partnership (*sociedad de responsabilidad limitada*), has its own set of precautionary steps that must be taken into consideration. The exercise by the secured parties of their rights under a pledge of shares or quota agreement might give rise to

an effective change of control. If this is the case, the deal will require the approval of the superintendence, which will want to make sure that whoever ultimately holds those shares or quotas complies with the technical, administrative and financial qualifications required for the type of regulated business it will end up owning.

The above, plus the fact that most Bolivian regulated companies are owned by foreign entities, has converted credit operations into truly international negotiations involving legal advice from lawyers around the world.

Another important aspect worth mentioning is that it is almost impossible to avoid government intervention during the negotiation process of a project financing operation. The superintendence is generally consulted by the secured parties, and usually its approval is requested by lenders to avoid future inconveniences or misunderstandings.

Notwithstanding the existing difficulties in creating guarantees, and the regulatory limitations mentioned above, Bolivian regulated companies have been subject to loans since 2000, amounting to around \$2.8 billion.

## Corporate and commercial

### Recommended firms

Tier 1

**Bufete Aguirre**

**CR & F Rojas**

**Guevara & Gutierrez Servicios Legales**

Tier 2

**Estudio Jurídico Gerke**

**Indacochea & Asociados Abogados**

**Quintanilla & Soria Abogados**

Tier 3

**Criales Urcullo & Antezana**

**Mendieta Romero y Asociados**

### Bufete Aguirre

Bufete Aguirre is a family firm of three partners and two associates, with over 50 years' experience in civil and commercial law. Although the practice is small, Bufete Aguirre's lawyers draw on a broad range of experience and are described as "personable" and demonstrating "great attention to detail". In particular the firm is considered to be excellent in mining, finance and regulatory issues, and provides expert advice on corporate governance, international commercial contracts, joint ventures and M&A transactions. The strength of the firm's intellectual property credentials were weakened slightly last year, when partner Perla Koziner left the firm to become interim head of the Bolivian National Intellectual Property Office – but it is unlikely that this will pose any long-term problems for the firm's standing in the market.

Fernando Aguirre – a former secretary-general of the Bolivian presidency and director of the Bolivian Central Bank – is an accepted authority on banking and administrative law, referred to by one client as "a charismatic lawyer of excellent

integrity". His son, Ignacio Aguirre, is also highly praised for his expertise in commercial and environmental matters.

Most of the firm's clients are from the private commercial sector, but the practice also advises non-government organizations, rural development services, church organizations and public sector agencies. Several of the firm's members sit on the board of local client companies; for example, Fernando Aguirre is president of the board of directors of Embol, Coca-Cola's main bottler in Bolivia.

Recent deals Bufete Aguirre has worked on include advising energy company Hidroeléctrica Boliviana on its \$65 million bond restructuring, carrying out an environmental audit of Inti Raymi's mining activities, and representing AFP Futuro de Bolivia in connection with the \$7.7 million restructuring of Ametex's debt. In November 2004 the firm also represented a group of international and domestic purchasers that acquired a majority interest in BancoSol.

Bufete is a member of several law firm associations, including Globalaw, the International Bar Association and the Association of International Petroleum Negotiators. Among its varied clients are AES Communications Bolivia, Givenchy, the US Embassy and the Catholic Church.

### Leading lawyers

Fernando Aguirre

Ignacio Aguirre

### Key contact partners

Fernando Aguirre

Ignacio Aguirre

Carolina Aguirre Urioste

### CR & F Rojas

Founded over a century ago, CR & F Rojas is Bolivia's oldest practice. It is now a highly regarded four-partner firm with a burgeoning international presence. Based in La Paz and the oil and gas-rich city of Santa Cruz, the firm "offers a full service covering diverse areas" from aviation to biodiversity, but it is strongest in hydrocarbons, mining and project finance. It will be interesting to see how this area of the firm's work withstands developments in the country as a whole – the political crisis in Bolivia looks set to dissolve the country's status as the gas hub of South America, with a consequent downturn in investment and substantial transactions.

Clients of the firm include the Inter-American Development Bank, Nestlé and Citibank, and Rojas receives praise as "the most comprehensive and reliable" of the Bolivian law firms. The firm is advising construction company Camargo Correa on a \$200 million road development, BNP Paribas on a \$500 million project to develop an iron ore mine and a \$220 million loan for the construction of a silver mine, and Petroquímica Boliviana in connection with a \$10.5 million loan.

Fernando Rojas, the firm's senior partner, was for 20 years a professor of commercial and tax law at the Universidad Católica Boliviana Business School, and is considered by many to be the pre-eminent mining lawyer in Bolivia. Carlos Ferreira, described

by one interviewee as “the driving force” within the practice, is recognized as an expert in banking, arbitration and contracts law.

Clients agree that CR & F Rojas possesses excellent international connections. It is a member of Club de Abogados, Multilaw and Lex Mundi, all leading international law firm networks.

#### Leading lawyers

Carlos Ferreira  
Fernando Rojas

#### Key contact partners

Carlos Ferreira  
Diego Rojas  
Fernando Rojas

### Guevara & Gutierrez Servicios Legales

Guevara & Gutierrez, “a very respected and well-structured firm,” is without question among the top tier of Bolivian firms, boasting a wealth of experience across different sectors and an impressive deal roster. The firm acts as local counsel for several large oil multinationals and the two largest electricity generating companies in Bolivia, and has a leading project finance practice, especially for projects in the mining and electricity sectors. Clients include Petrobras, ExxonMobil, Coca-Cola and Adecco. As a consequence of the current political predicament, the firm anticipates a drought in hydrocarbon deals – but it is confident that the mining sector will remain steady due to high commodity prices.

Recent deals involving Guevara & Gutierrez include a \$164 million merger between Petrobras Bolivia Internacional and World Fund Investments (on which the firm advised all parties), acting for Interconexion Eléctrica ISA Bolivia on a transmission line interconnection project valued at \$89 million, and representing Tenasla on the restructuring of Hidroeléctrica’s bond issue.

The founder of the firm, Ramiro Guevara, who one peer described as “a pioneer in corporate law,” is one of the foremost lawyers in Bolivia. A former board member of the Bolivian Central Bank and the National Stock Exchange Commission, he is the Bolivian representative of the International Bar Association and noted as “very gifted, and very hot on arbitration”. He represented the Bolivian government during the negotiations for the development of the Bolivia-Brazil pipeline, spearheaded the legal team that negotiated the restructuring of Bolivia’s foreign debt, and helped draft the national Stock Market Law and Pensions Fund Law. Enrique Barrios is less experienced than Ramiro Guevara but is “making a lot of noise” in the market.

#### Leading lawyer

Ramiro Guevara

#### Key contact partners

Enrique Barrios  
Ramiro Guevara  
Jaime Lora

### Estudio Jurídico Gerke

Estudio Jurídico Gerke was formed in 1972 and is based in La Paz. The market applauds the firm for being “very professional, very competent and dynamic,” despite a relative scarcity of major deals compared with the top-tier firms. The firm’s main strengths lie in project finance, where Javier Sánchez de Lozada is considered highly proficient, as well as corporate work such as high-profile mergers and acquisitions.

The firm recently advised telecommunications company NuevaTel on a \$50 million network expansion project, and represented La Estrella on a restructuring deal. It has also been busy advising brewery companies, such as Cervecería Boliviana Nacional, on investment schemes.

Clients comment that Gerke is “a serious firm whose handlings are always professional,” with lawyers who “demonstrate great capacity and honesty to resolve very complicated problems”.

#### Leading lawyers

Javier Sánchez de Lozada  
Carlos Gerke Siles

#### Key contact partners

Javier Sánchez de Lozada  
Carlos Gerke Siles

### Indacochea & Asociados Abogados

Indacochea is the only firm in the top two tiers with its main office in Santa Cruz, the region where Bolivia’s oil and gas industries are focused, rather than the Bolivian capital, La Paz. Consequently the firm has an outstanding reputation in hydrocarbons and the energy sector, in which it has advised contractors such as Transredes, Pan American Energy, Shell and Baker Hughes International. Indacochea also represented Halliburton on the construction of the Bolivia-Brazil pipeline, and has been retained to act as outside counsel for Gas Transboliviano, the company that now owns and operates the pipeline. Clients state that Indacochea’s lawyers are “efficient, quickly resolve answers put before them and fully understand the issues related to civil and commercial operations”.

Unfortunately, Maria Kim – an expert in the oil sector – left Indacochea in March 2005, but interviewees thought that the strength of the firm would not be overly diminished. The main reason for this is the continued presence of Ricardo Indacochea, often cited as the most expert energy and hydrocarbons specialist in Bolivia, with “a very precise technical knowledge”. He also advises on regulatory law, banking and project finance matters.

The firm has recently begun to broaden its expertise beyond the energy sector, as evidenced by two large project finance deals this year – a \$230 million project with Transredes and a \$54 million transaction with electricity generator Isa.

The firm is also the official Bolivian member of the Latin American Network, an organization of commercial Latin American law firms with specializations in telecommunications, energy, project finance and commercial law.

**Leading lawyer**

Ricardo Indacochea

**Key contact partners**

Ricardo Indacochea

Mariana Pereira

**Quintanilla & Soria Abogados**

Established in 1975 and based in La Paz, Quintanilla & Soria provides counsel across the corporate and commercial sector, particularly in energy and mining law, taxation, and foreign investment. It is also expanding into other developing areas in Bolivia, such as international joint ventures, securities law and telecommunications, and prides itself on a commitment to providing a quality *pro bono* service to non-government organizations and individuals.

The firm has been involved in the San Cristobal project since its initiation, an ambitious mining venture aiming to lessen Bolivia's economic dependence on hydrocarbons in favour of metals such as gold, lead and zinc. Among the year's other deals, Quintanilla advised on the reorganization of the Apex Group – the owner of the largest mining project in Bolivia – in Bolivia and Peru. It also represented Empresa Eléctrica Corani in connection with its negotiations to obtain a construction licence, and acted for the Bolivian branch of Coca-Cola on its restructuring.

Clients of the firm, such as PricewaterhouseCoopers, Río Tinto, Transportadora de Electricidad and Ford, comment that Quintanilla's service and professional approach are "very good". Quintanilla has welcomed back impressive lawyer Santiago Nishizawa Takano from studies in New York, which has strengthened the firm's depth of expertise. The two key partners are Eduardo Quintanilla Ballivián, a recognized authority on mining, energy and hydrocarbons legislation, and Mauricio Torrico Galindo, who is highly recommended in corporate and tax law.

**Leading lawyers**

Eduardo Quintanilla Ballivián

Mauricio Torrico Galindo

**Key contact partners**

Eduardo Quintanilla Ballivián

Mauricio Torrico Galindo

Santiago Nishizawa Takano

**Other notable firms**

The reputation of **Criales Urcullo & Antezana** continues to grow. Peers and clients variously describe the firm as "recommendable," "up and coming" and "excellent in energy and regulatory issues". For a relative newcomer to the Bolivian market (the firm is the product of a 1999 merger of two firms), its client list is impressive, and includes Petrobras, Transportadora de Electricidad and the Bolivian government. Name partner José Antonio Criales Estrugo is considered a

leading lawyer in Bolivia for project finance, and "an excellent lawyer in administrative and public law".

**Mendieta Romero y Asociados** is a young firm with a good reputation and some large clients, such as BBVA and Banco de Crédito de Bolivia. It advises on securities and administrative law, and has been particularly active in pension funds this year.