

Costa Rica

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Vicente Lines and Rodrigo Cordero

FA Arias & Muñoz

San José

The regional expansion of major financial interests throughout Central America, and experts' forecasts of the consolidation of banking and financial interests in the region, underline the importance of mergers and acquisitions (M&A) in that sector.

A diverse body of legislation, including corporate and regulatory laws and regulations, governs mergers of financial institutions.

Regulatory implications of a merger or acquisition

The acquisition of a financial institution (FI) only requires notice of the transaction to the Costa Rican general superintendent of financial institutions (the Regulator), regardless of whether the transaction involves a stock purchase, a merger or a sale of assets. The Regulator does not have express statutory authority to approve or reject the acquisition of an FI. However, it is customary for the Regulator to require information regarding the ownership of the entity, so it can determine the ultimate beneficial or direct ownership by physical persons. It is also customary for true statutory mergers to gain approval from the Financial Services Regulatory Council (Conassif).

Regulator approval

If the transaction involves the transfer of an ownership stake of more than 10% of the FI's total equity, the Regulator has to request information regarding the acquirer. The Regulator can exonerate acquirors from filing information when they are public entities or international multilateral institutions, or if they are well-known entities whose stock is traded.

Conassif approval

Although we are not aware of a legal or regulatory provision to expressly support the requirement, any merger of FIs is usually dependent on Conassif approval. Once approval is given, the FIs take the necessary corporate resolutions to complete the merger.

The corporate law perspective

Statutory procedures

M&A activities are regulated in specific ways depending on the form they take. The procedure involves similar steps to regulation

of mergers in other jurisdictions: (i) an agreement between the shareholders of each of the merging entities; (ii) a merger agreement; (iii) publication of the merger; and (iv) the issue of articles of incorporation for the resulting entity. M&A through the acquisition of shares in a company is not expressly regulated, except for certain protections for minority shareholders and limitations on the transfer of share ownership interests.

Lastly, bulk transfers of assets are regulated by a procedure requiring: (i) an agreement between seller and purchaser pursuant to statutory requirements; (ii) documentation of the transaction in a public deed; (iii) publication of the transaction for the benefit of creditors; and (iv) a statutory escrow procedure for payment, whereby the purchase price is deposited with an independent party (for example, a notary) who holds funds and disburses them to the seller after the duly-accredited creditors are paid off.

Minority shareholders' rights

Aside from the above procedures, M&A activity requires parties to focus on minority shareholders' rights. Costa Rican law allows parties to create substantial protections for minority shareholders. There are no special corporate minority shareholders' rights relating to the laws and regulations covering the financial markets.

Costa Rican corporate laws provide basic information and participation rights for minority shareholders, including:

- inspection of corporate and financial records at any time, giving proper advance notice and in preparation for general stockholders' meetings;
- owners of at least 20% of the share capital can demand an audit of the company's financial statements and operation, at their own expense;
- holders of a 25% stake can demand the competent company directors or management to convene a general meeting of shareholders;
- holders of a 20% stake can also demand a maximum 72-hour suspension of the general meeting of shareholders while management supplies further information and clarifications regarding issues to be decided at the meeting; and
- a single shareholder can demand that a general meeting of shareholders be convened if no annual meetings are held during two consecutive periods.

Costa Rican corporate law allows the inclusion of special

restrictions to share transfer rights to protect minorities, including rights of first refusal, tag-along rights, drag-along rights and preemptive rights on stock issues. It is not mandatory to include these provisions, but shareholders and partners can build them in to their corresponding corporate structures. There is little case law in relation to such provisions but, as M&A activity continues to expand, the enforcement of these provisions and their discussion in judicial and arbitration fora will be a key source of law and regulation.

Challenges ahead

The diversity of laws and regulations that apply M&A in the financial sector, together with the absence of an ample practice, both in the areas of corporate and financial regulation, present market agents, regulatory authorities and practitioners in Costa Rica with big challenges in the near future – especially if the forecasted consolidation comes to pass.

Corporate and commercial

Recommended firms

Tier 1

Facio & Cañas

Tier 2

BLP Abogados

Consortium – Lacle & Gutiérrez

FA Arias & Muñoz

Pacheco Coto

Zürcher Odio & Raven

Tier 3

Alfredo Fournier & Asociados

Batalla & Asociados

KPMG Abogados

Lara Lopez Matamoros Rodriguez & Tinoco

Oller Abogados

Tier 4

Alvarez Jimenez De Pass

André Tinoco Abogados

Feinzaig Sharf Van Der Putten

Pacheco Odio & Alfaro

Facio & Cañas

Facio & Cañas is one of the best – if not *the* best – Costa Rican law firms. It is also the largest, and boasts a great many excellent partners. Among them, Victor Garita, Roberto Leiva and Mauricio Salas all appear in Euromoney's *Guide to the World's Leading Project Finance Lawyers*, and one client described Salas as "the head of a new generation of attorneys." From among the rest of the team, Carlos Oreamuno and Carlos Valverde were also highly recommended by peers and clients alike.

The firm is a member of Lex Mundi, the leading international association of independent law firms, and Club de Abogados, an association of 21 independent firms spanning Spain, Portugal, and Latin America. The firm's client list is,

unsurprisingly, impressive, and counts such names as Coca-Cola, Dell, Lehman Brothers, McDonald's and Samsung Electronics.

Over the past year, Facio & Cañas has advised on the Costa Rican elements of the restructuring of German music company Bertelsman, and acted for Alterra Partners Costa Rica on the renegotiation of the management contract for services provided at the Costa Rican International Airport.

Facio & Cañas also represented Productos de Pollo Kornelson y Duek on its acquisition of the Propokodusa Group Company, and acted for Inversiones Nacional Chocolates and its subsidiaries (Compañía Nacional de Chocolates and Compañía de Galletas Noel) on their acquisition of the Central American operations of Nestlé Products.

Leading lawyers

Victor Garita

Roberto Leiva

Carlos Oreamuno

Mauricio Salas

Carlos Valverde

Key contact partner

Roberto Leiva

BLP Abogados

BLP Abogados makes its first appearance in the rankings after an overwhelming number of recommendations by its peers. The firm recently opened a new office at Los Suenos Resort located on Costa Rica's central pacific coast, and joined two international legal networks: Meritas, a worldwide alliance of nearly 200 independent business law firms, and the State Capital Global Law Firm Group, an association of more than 110 independent law firms in the state capitals of the US. BLP Abogados is considered by clients to be a firm that "does good work in corporate law matters."

Partner David Gutierrez has been ranked in Euromoney's *Guide to the World's Leading Project Finance Lawyers*, and Luis Castro also comes highly recommended. Clients of the firm include American Airlines, GE Capital, Overseas Private Investment Corporation (OPIC) and UPS.

Over the course of this year, BLP Abogados won a role on one of the most important infrastructure projects in Costa Rica, when it advised the Private Sector Department of the Inter-American Development Bank on the financing of the construction of the San José-Caldera toll road on a public works basis. BLP Abogados also advised OPIC on a transaction to provide mortgage-lending financing to Banco Lafise, acted for industrial conglomerate Amanco on its corporate restructuring and spin-off of two production line divisions by way of bulk sale, and represented the LKQ Corporation, a provider of automotive replacement parts, on its acquisition of a Costa Rican company in concurrence with a larger deal involving Guatemala and the state of Florida.

The firm also advised Corporación Andin de Fomento on a \$90 million loan to finance the construction of a poliduct to transport clean fuel connecting with the ports of Moin in the Atlantic with Barranca in the Pacific.

Leading lawyers

Luis Manuel Castro
David Gutierrez

Key contact partners

Luis Manuel Castro
David Gutierrez

Consortium – Laclé & Gutiérrez

Lacle & Gutierrez is one of five leading Central American firms that have joined together to create one regional firm. The remaining firms are Rodriguez Archila Castellanos Solares & Aguilar (Guatemala), Delgado & Cevallos (El Salvador), JR Paz & Asociados (Honduras), and Taboada & Asociados (Nicaragua). The new alliance will be referred to collectively as “Consortium.”

From among the team, partner David Campos stands out, having appeared in Euromoney’s *Guide to the World’s Leading Banking Lawyers*.

Clients of the firm include Scotiabank, Lafise Bank, Cemex (Costa Rica), and Citibank. Consortium – Laclé & Gutiérrez recently advised Banco Lafise on a financing transaction with the Overseas Private Investment Corporation, and acted for Scotiabank de Costa Rica on its \$3.5 million sale and lease of office space and other commercial agreements with Torre Mercedes.

Leading lawyer

David Arturo Campos B

Key contact partners

Mario Quesada Bianchini
David Arturo Campos B
Rolando Laclé Zúñiga

FA Arias & Muñoz

Partner José Muñoz appears in Euromoney’s *Guide to the World’s Leading Project Finance Lawyers*. The firm’s client list includes Federal Express Costa Rica, Kraft, Phillip Morris International Management, US Airways.

Over the past year FA Arias & Muñoz has advised Iridium Satellite on a contract to implement the operation of its satellite communications system in Costa Rica with Instituto Costarricense de Electricidad. In relation to this matter, the firm also advised Iridium Satellite on the execution of a satellite infrastructure landing rights agreement amongst the parties.

FA Arias & Muñoz also advised Grupo Q, major automotive retailer in El Salvador, on a joint venture and acquisition matter involving another automotive business in Costa Rica.

Leading lawyers

Carolina Flores
Vicente Lines
José Antonio Muñoz
Pedro Muñoz

Key contact partners

Carolina Flores
Vicente Lines
José Antonio Muñoz

Pacheco Coto

From among the talented team of lawyers at Pacheco Coto, Hernán Pacheco is highly recommended by peers. The firm is a member of the International Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York, the International Tax Planning Association and the International Fiscal Association. The firm’s client list includes such impressive companies as Bacardi USA, Dole Fresh Fruit International, Pitney Bowes, Eli Lilly and Unisys.

The firm has been particularly active over the last 12 months on matters such as advising a Costa Rican franchisee of a large US fast food chain on its corporate reorganization. Additionally, the firm has represented a Mexican industrial group on setting up a manufacturing plant in Costa Rica as a platform to the Central American Market, and advised a US pharmaceutical company on the acquisition of the distribution operation of pharmaceutical products.

Leading lawyers

Gino Capella
Freddy Fachler
Hernán Pacheco
Humberto Pacheco

Key contact partners

Jorge Guzmán C
Freddy Fachler G
Hernán Pacheco

Zürcher Odio & Raven

Two well-known firms in Costa Rica – Bufete Odio & Raven and Zürcher Montoya & Zürcher – merged last year, to form a new firm under the name of Zürcher Odio & Raven. It will be interesting to see how this new firm makes its mark on the Costa Rican legal market.

Zürcher Odio & Raven is affiliated with The Bomchil Group, an association of independent Latin American law firms engaged international practice in each of the 18 jurisdictions in which its members are located. From among the team, partner Claudio Donato appears in Euromoney’s *Guide to the World’s Leading Project Finance Lawyers*, and partner Alberto Raven Jr is considered to be a “top-drawer lawyer” by clients.

Clients of Zürcher Odio & Raven include 3M Corporation, Abbott Laboratories, IBM, Merrill Lynch, Shell Oil, and Starbucks.

Leading lawyers

Francisco Chacón
Claudio Donato
Ignacio Gallegos
Harry Zürcher

Key contact partners

Harry Zürcher Blen
Ignacio Gallegos
Alberto Raven Odio

Alfredo Fournier & Asociados

Alfredo Fournier & Asociados is considered by peers to have “good attorneys in a firm that is trying to restructure with new blood.” The firm’s client list includes American Express, Sunbeam Corporation, and Blockbuster Video Corporation.

Earlier this year, Alfredo Fournier & Asociados advised Condominios Riverside on a \$3 million project finance matter, and represented Cocomar Beach Condominios on a project finance and real estate matter valued at \$2.5 million. It also acted for Trams Property Management on its \$1 million real estate project.

Leading lawyer

Alfredo Fournier Beeche

Key contact partners

Alfredo Fournier Beeche
Carlos Ayón Lacayo
Octavio Fournier M

Batalla & Asociados

Appearing for the first time in the rankings, Batalla & Asociados has a solid corporate and commercial practice in Costa Rica. Name partner Alejandro Batalla has been deemed by one peer to be “an attorney with a good reputation,” and peers have also recommended fellow partner Rodrigo Zelaya.

The firm’s client list includes Aureos Capital, Banistmo Private Equity, Actis Capital, Finnish Fund for Industrial Cooperation (Finnfund), and Norwegian Investment Fund for Developing Countries (Norfund).

Earlier this year, Batalla & Asociados advised Torre Mercedes on the \$3.5 million sale and lease of office space to Scotiabank de Costa Rica and other commercial agreements, and acted for Norfund and Finnfund on their \$8 million equity investment in Corporacion Interamericana de Financiamiento de Infraestructura. The firm also served as lead counsel to Aureos Capital on its \$5 million equity investment in Panamanian corporation, Grupo Difoto, and represented CDC Capital and Torre Mercedes on the \$9 million restructuring matter of Torre Mercedes.

Leading lawyers

Alejandro Batalla
Rodrigo Zelaya

Key contact partners

Alejandro Batalla
Róger Guevara
Rodrigo Zelaya

KPMG Abogados

Although KPMG Abogados is best-known for its tax practice, the firm has also been engaged in various transactions within its business law, and government contracting and infrastructure departments. For instance, KPMG Abogados advised a subsidiary of the Costa Rican Power and Telephone Company on a \$135 million stock issue and capital increase. It also represented a leading construction company in a bid promoted by the National Concessions Council to build and operate a highway.

Among the year’s other standout deals, the firm also served as local counsel to a Costa Rican pharmaceutical company in relation to a \$17 million equity investment and International Financial Corporation loan for the purposes of expanding its operations, and represented a French company in relation to its bid on one of the largest road projects in Costa Rica valued at \$240 million.

Key contact partner

Alonso Arroyo

Oller Abogados

Oller Abogados makes its first appearance in the Costa Rican rankings this year, following an impressive deal flow and numerous recommendations from the market. It boasts a solid practice that specializes in project finance and public contracting. Roberto Esquivel, who has experience in contracting, energy cogeneration projects, and project finance, leads these specialty areas. Oller Abogados is the exclusive member for Costa Rica of TagLaw, a network of high-quality law firms. In the past the firm has represented clients such as GBM, COPA Airlines, Red Bull, and Banco Continental.

In the past year, Oller Abogados has counselled Zilkha Renewable Energy, a leading US independent wind energy development company, on its acquisition by Goldman Sachs. Zilkha Renewable Energy owns a 4,000MW portfolio of energy concerns in the US and across central and Latin America (including Costa Rica) that are in various stages of development.

Oller Abogados also advised Taisai Corporation (Japan) and Bilfinger Berger (Germany) on their joint venture to participate in the bidding process for the construction of the 128MW power plant for the Pirris hydroelectric project, and served as local counsel to Easybets.com on a transaction with online gaming company Bet On Sports. At the time of writing, the deal was estimated at \$15 million, but given certain provisions within the agreement, the amount might reach \$32.5 million.

Leading lawyer

Pedro Oller

Key contact partners

Mauricio Bonilla
Adrián Obando
Pedro Oller
Ricardo Vargas

Other notable firms

André Tinoco Abogados is considered to be “a small emerging firm with a good reputation in litigation.” Peers recommended Arnoldo Andre, Jurgen Nanne, and Sergio Perez as the firm’s best corporate lawyers. **Feinzaig Sharf Van Der Putten** was built from a group of attorneys that left Facio & Canas and considered “a firm to watch for in the future”. **Lara Lopez Matamoros Rodriguez & Tinoco** is a well-respected firm in Costa Rica. Last year the firm advised the Corporacion Interamericana de Financiamiento de Infraestructura on the \$8 million equity investment made in the corporation by the Norwegian Investment Fund for Developing Countries and the Finnish Fund for Industrial Cooperation. Partner Franklin Matamoros appears in Euromoney’s *Guide to the World’s Leading Project Finance Lawyers*. And lastly, **Pacheco Odio & Alfaro**, a new firm that has spun-off from Zurcher Montoya & Zurcher, is considered to have “very solid and active law professionals,” including Edgar Odio and Mario Pacheco, who have been recommended by peers.