

El Salvador

Chamber of commerce:

Cámara de Comercio e Industria de El Salvador

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During the end of the 1980s and early 1990s, substantial reforms were enacted in El Salvador, all of which contributed to the consolidation of a fairly developed and modern financial system in the country – and within the Central American region. These reforms included: (i) the reorganization of the Salvadoran Central Reserve Bank (BCR) to control inflation, preserve the internal and external value of the local currency and maintain adequate levels of liquidity; (ii) the regulation of all financial institutions (for example, unregulated credit institutions were forced to convert into fully regulated members of the financial system); and (iii) the privatization of local banks. As a result of these initial reforms, and of recent reforms that have come along, the financial system in El Salvador has been able to maintain stability and steady growth for the past half-decade.

Entities participating in the local financial system include privately owned commercial banks, branches of foreign banks, non-banking financial intermediaries, state-owned banks, public credit institutions, a state-owned mezzanine bank, a reciprocal guaranty institution, insurance and reinsurance companies, private pension funds, financial leasing companies, factoring companies, bonded warehouses, brokerage/dealer firms, and the stock exchange. Each of such participants – and their activities – has a specific regulation, which explains El Salvador's extensive legislation in this sector.

The banking sector

As a result of a national financial crisis during 1997, modern but restrictive banking legislation was passed by Congress in 1999 that provided for greater protection to depositors by creating stricter capital and risk-management requirements, granting broader authority and supervising powers to the local regulator – the Superintendence of the Financial System (SSF) – and by improving compliance with Basel standards. The present banking legislation in El Salvador regulates the financial intermediation by banks, their organization and operation requirements and standards, as well as their insolvency and reorganization processes.

As of June 2005, there are nine privately owned commercial banks, two foreign bank branches, two state-owned banks specializing in agricultural and housing incentive credits and one mezzanine bank (Banco Multisectorial de Inversiones)

registered in El Salvador, which are authorized to grant financings and/or to perform deposit-taking operations with the general public.

Non-banking financial intermediaries

Non-banking financial intermediaries are also contemplated by local law. These entities have been created to facilitate the financial intermediation to specific financing vehicles not willing or able to create a bank, and to improve financing opportunities to individuals and small business units. These financial intermediaries consist primarily of cooperative/credit unions (entities constituted to provide financial services to their members), federations (organizations of cooperatives engaging in the same type of financial activity that provide assessment and technical assistance services to their member cooperatives) and savings and loans associations (non-government financial entities that may take deposits from the general public and make loans). These intermediaries are also supervised by the SSF. To date, five non-banking financial intermediaries are registered in El Salvador.

Pension funds

In 1996, a new pension fund system law was enacted in the country, pursuant to which a substantial portion of the public pension savings system was replaced by a private pension savings system based on individual accounts. Under the new system, which became effective mid-1998, participating workers make monthly contributions to private pension funds, which may invest in permitted Salvadoran securities. A Pension Superintendence (PS) was created to supervise and overview compliance with all applicable regulations by the pension systems' participants (such as private administrators and employers). There are two (from the original five) private pension fund administrators operating in El Salvador.

Some relevant reforms to the system that are being analyzed by the executive branch include: (i) reducing administration fees payable to pension fund administrators; and (ii) granting authorization to private administrators to invest pension funds in other profitable investment vehicles (such as foreign securities).

Securities and capital markets

Public offerings of securities and their trading, and public issuers and their issuances, are regulated by the Salvadoran Securities Market Law and other complementary legislation,

and are subject to certain local registration requirements. Private offerings are exempt from such regulation and from local registration requirements.

Foreign securities issued by Central American states or their central banks, and/or by certain regional or international financial organisms may be subject to registration and negotiation in the local stock market, with prior approval by the local regulator – the Securities Market Superintendence (SMS). A simple certification from the foreign stock exchange that originally listed the securities or a copy of the securities' issuance authorization is needed to register foreign securities locally.

Foreign securities issued by other foreign states or their monetary-policy management organisms, and/or by foreign public or private entities or financial institutions, may also be subject to registration and negotiation in the local stock market, with prior approval by the SMS, provided that: (i) the securities are duly registered with a foreign stock market regulator and/or are traded in a duly organized foreign securities' market; (ii) information concerning the securities is available in capital markets' systems acknowledged by the SMS; and (iii) the securities come from a jurisdiction that has a duly organized stock market with similar or superior supervision requirements to those in force and effect in El Salvador.

To obtain approval from the SMS, among other general requirements: (a) the brokerage firm seeking to locally trade the foreign securities must provide evidence of having sufficient human and/or technological resources to keep prospective investors duly informed; and (b) local and foreign custodians must have entered into agreements that provide for the appropriate custody of the foreign securities to be traded in El Salvador, and for the terms and process of the transaction's settlement. Further, brokerage firms are required to issue daily updates to the SMS in connection with the public trading of foreign securities.

The Salvadoran stock exchange, which has been operating for more than a decade, lists 45 private-companies, four public institutions and 16 international entities, sovereign states and foreign central banks. However, to date, public offerings and trading of securities in the local market has been limited, where the Salvadoran state, some commercial banks and a handful of privately owned companies have acted as issuers.

During 2004 and 2005, the Republic of El Salvador has issued public debt in the form of notes, for trading in the national and international markets, for an aggregate amount of \$661.4 million. Both offerings received fair ratings (Baa3/BB+) and were placed in record time in the international market, with an over-demand for the notes of more than 500% on average.

Proposed merger of regulatory authorities

An important event that will affect the Salvadoran financial system is the expected unification of all the supervising and controlling entities within the system (the SSF, SMS, and PS) into a single entity or super superintendence, seeking to standardize all supervision and control mechanisms, centralize information, and so exercise a more consolidated supervision of the entire financial system. This proposal is being drafted by the executive branch and is expected to reach Congress shortly.

Investment conditions

A US-dollar based economy, limited trade barriers within the region, ongoing modernization of roads and ports, advanced communications and technology, and one of the leading financial systems in the region, create favourable conditions for investing in El Salvador. Several laws have been enacted in the country to stimulate investment, including the Investment Law (which provides, among others, for the free repatriation of investment funds and any other payment from legal investment activities in the country), the Industrial and Commercial Free Trade Zones Law (which allows for the establishment and operation in free trade zones of both national and foreign entities – with significant tax exemptions), as well as modern and updated intellectual property and antitrust legislation. Further, as part of the government agenda, several tax reforms have been enacted since late 2004 to close tax loopholes and fight tax evasion.

Corporate and commercial

Recommended firms

Tier 1

Consortium – Delgado & Cevallos

FA Arias & Muñoz

Tier 2

Guandique Segovia Quintanilla

Rusconi Valdez Medina & Asociados

Tier 3

Espino Nieto & Asociados

FA Arias & Muñoz

After another year of frequent roles on the El Salvador's largest domestic and cross-border transactions, FA Arias & Muñoz continues to be one of the country's outstanding top-tier firms.

The firm's recent work includes advising Telefónica España on its \$5.8 billion acquisition of Bellsouth's telecom operations in Guatemala, Nicaragua and Panama, as part of the acquisition of all of Bellsouth's Latin American operations.

In the banking and finance sphere FA Arias & Muñoz is particularly strong, with a almost unrivalled expertise in capital markets advice. Over the past year the firm provided legal advice to the London branch of Deutsche Bank, Ericsson Credit and the lending syndicate in connection with the assignment of a \$32 million syndicated facility loan agreement granted to Digicel, and served as local counsel to Citigroup Global Markets in its capacity as manager of the \$286 million bonds issued by the Republic of El Salvador.

On the corporate side, FA Arias & Muñoz served as the main legal advisor to the majority shareholders of capital stock in Cemento de El Salvador, in relation to a lengthy and complex transaction under which Holcim, a large European cement company, was able to acquire the majority of Cemento de El Salvador's capital stock for \$220 million.

Representative clients of the firm include Chevron Texaco, Citicorp, Johnson & Johnson and Kraft Foods International. As

well as its regional network of offices, the firm is also a member of Interlaw, an international association of independent law firms, providing it with access to the legal expertise of many leading firms outside the Latin American region.

Leading lawyers

F Armando Arias
Zygmunt Brett
Lillian Zelaya

Key contact partners

F Armando Arias
Zygmunt Brett
Lillian Zelaya

Consortium – Delgado & Cevallos

Delgado & Cevallos is one of five leading central American firms that have joined together to create one regional firm. The new alliance – which also includes Guatemala's Rodriguez Archila Castellanos Solares & Aguilar, Costa Rica's Laclé & Gutiérrez, Honduran firm JR Paz & Asociados, and Nicaraguan firm Taboada & Asociados – will be referred to collectively as Consortium, and it will be interesting to see how the alliance works together to bring a multi-jurisdictional approach to cross-border deals in the region.

Delgado & Cevallos' client list includes Banco Cuscatlán, HSBC, Wachovia Bank, Payless Shoesource, and Sara Lee Corporation, and the firm has been very active over the past year as it continues to strengthen its practice. On corporate and commercial matters, the firm counselled Brazilian brewer Ambev, one of Latin America's leading brewing companies, as it made its first foray into the Salvadoran market with its beer brand Brahma – or Brahva, as it is known outside of Brazil. In a large, complex multi-continental merger that was shortlisted for *IFLR's* European M&A deal of the year, Ambev merged with Interbrew to form Inbev, one of the largest beer producers in the world.

Delgado & Cevallos also assisted in-house counsel on the representation of Latin America's telecommunication leader, America Movil, when it acquired 41.54% of stocks in government-owned company CTE Telecom. At \$295 million, the purchase was considered to be the largest single stock transaction in El Salvador, and as a result of the purchase America Movil became the largest shareholder in the company, owning 94.4% of CTE Telecom's shares.

The firm is also strong on the finance side, and in one highlight it served as external counsel to Banco Cuscatlán on its \$141 million commercial paper issue, whose notes were held in a US depository institution, Wachovia Bank, and sold into the US through a private placement. The firm also acted as local counsel to Banco Salvadoreño as issuer in relation to a \$100 million diversified payment rights (DPR)-backed issue. The bank effected an electronic issue of DPR-backed floating rate certificates in two tranches – Series 2004-1 (worth \$75 million, and with a five-year maturity) and Series 2004-2 (worth \$25 million, and with a seven-year maturity).

At the time of writing, Delgado & Cevallos was acting for Avery Dennison on its incorporation in El Salvador and the start of its operations. At an estimated \$6.5 billion, this is considered to be the largest investment in free trade and industrial zones in El Salvador in recent times.

Leading lawyers

Ricardo Cevallos
Aquiles Antonio Delgado
Omar Ivan Martinez

Key contact partner

Ricardo Cevallos

Guandique Segovia Quintanilla

Guandique Segovia Quintanilla has a solid law practice that is capable of providing the full range of legal services to domestic and international clients across many practice areas, including corporate and financial law.

Over the past 12 months Guandique Segovia Quintanilla acted as local counsel to Citibank, Scotia Bank & Trust (Cayman) and ABN Amro as lenders of a \$50 million syndicated loan to Telemovil El Salvador, which was granted in two parts: a \$40 million term loan and a \$10 million revolving credit loan. The firm also provided local services to Wachovia Capital Markets and Wachovia Bank on Banco Salvadoreño's \$100 million DPR funding, in which the floating rate notes were distributed in two tranches of \$75 million and \$25 million respectively.

On another capital markets transaction, Guandique Segovia Quintanilla advised CreditQ Inversiones on its two-tranche \$20 million securitization.

Leading lawyers

Luis Ernesto Guandique Mejía
Carlos Quintanilla Schmidt
Luis Nelson Segovia

Key contact partners

Luis Ernesto Guandique Mejía
Carlos Quintanilla Schmidt
Luis Nelson Segovia

Rusconi Valdez Medina & Asociados

Rusconi Valdez Medina & Asociados has been consistent in maintaining an active and well-rounded practice.

Over the course of the year, the firm, led by Benjamin Valdez, advised the Bank of Nova Scotia on its \$177 million acquisition of shares in the Banco de Comercio. On a related matter, the firm represented the El Salvador branch of Scotiabank and its affiliates on its merger with Banco de Comercio; the newly formed merged entity is valued at around \$1.6 billion. In another mergers and acquisitions transaction, the firm represented the Amzak Corporation on its \$4 million acquisition of several cable and data companies in El Salvador, Honduras and Nicaragua.

Rusconi Valdez Medina & Asociados was also given the chance to display its expertise in the area of project finance over the past year. In this area, it served as local counsel to Amnet El Salvador on a \$23 million operation and restructuring matter, and won an instruction from the International Finance Corporation to advise on the \$50 million financing of a Salvadoran bank. The firm also boasts a creditable tax practice, which last year was involved in acting for high-tech textile company, the Texollini Corporation, on the design of its \$10 million corporate tax structure for its future investment in El Salvador.

Other clients that have turned to the firm for advice in recent times include Exxon, Microsoft, the AES Corporation and the Neumann Gruppe. The firm benefits from its membership of Central Law, and also has a local alliance with Deloitte.

Leading lawyers

Luis Medina
Benjamin Valdez

Key contact partners

Luis Medina
Benjamin Valdez

Espino Nieto & Asociados

Espino Nieto & Asociados is a widely respected firm with great strength in its corporate and commercial practice areas. Despite the departure of name partner Felipe Francisco Umaña last year, the firm continues to be extremely successful, and retains a wealth of talented lawyers that are more than capable of plugging the gap left by Umaña. One client commented that the firm “has a serious group of professional attorneys in different practice areas that provide excellent services in a timely manner.” Among these experts, Luis Miguel Espino was noted by one client to be “not only a very intelligent attorney, but a gentleman who understands business needs and provides clear opinions and excellent personal service.” And Danilo Rodriguez was described as “one of the best practicing attorneys on intellectual property matters in El Salvador.”

The firm is a member of Club de Abogados and State Capital Global Law Group, giving it access to legal expertise outside El Salvador, and notable clients of the firm include Citibank, Colgate-Palmolive, Duke Energy International and Kimberly-Clark. One recent matter saw the firm advise Mexican fruit juice manufacturer Jumex on its \$825 million acquisition of land from Fiamac. Jumex acquired the land as the first stage in its plan to begin a bottling operation in El Salvador. The firm also represented Citibank on various credit facilities made available to Salvadoran companies, for a value of about \$48 million.

Leading lawyers

Luis Miguel Espino
Danilo Rodriguez

Key contact partner

Rafael Alberto Mendoza Calderón