

Nicaragua

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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 provisions relating to the acquisition of stock are also found in the General Securities Law of 1971.

Mergers

The resulting entity from a merger might be a new corporation that is different from all of the merging parties; alternatively, it might be a continuation of any one of them. In either case, the resulting entity is the automatic successor to 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 recording the approval must be published in the official daily newspaper (*La Gaceta*) or in any other national newspaper.

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

The merger will enter into force three months after the publication of the shareholders' agreement, unless it is proven that: (i) the debts of the merging corporations have been paid; (ii) the merging corporations have consigned the outstanding debts in court; or (iii) the merging corporations have the consent of their creditors to proceed with the merger.

The merger can 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 (regarding quorum, voting requirements, summoning and so on).

Acquisitions

There are generally no restrictions on the acquisition or transfer of the stock of private corporations. In the case of stock companies, nominative stock is transferred by means of endorsement and its corresponding registration with the shareholders' registry book. 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 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 consider whether there is a shareholders' agreement, because this document might 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. The articles of incorporation should also be carefully analysed to determine whether they contain such provisions.

Nicaraguan legislation does not cover transfers of commercial businesses (that is, bulk sales). Therefore, all assets – whether movable goods or real estate – must be transferred independently from the purchase of stock. Real estate must be transferred before a notary public and duly registered before the public registry.

Draft of a competition/antitrust law

At the time of writing, Nicaraguan legislation does not contain any antitrust law provisions applicable to mergers and acquisitions. The Ministerio de Fomento, Industria y Comercio is working on a draft law regarding competition (*Ley de Defensa de la Competencia*). This draft is being discussed by the interested parties, and the bill will be submitted to congress at the end of 2005.

The draft provides, among other things: (i) the obligation to notify the merger to the relevant government entity, where the companies involved each have average annual sales of over \$6 million (this required amount can be changed by the entity in charge); and (ii) the prohibition of mergers or acquisitions that

would grant a company a dominant position in the market that would allow that company to perform abusive and monopolistic practices.

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 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

Alvarado y Asociados

Consortium - Taboada & Asociados

García & Bodán

Tier 2

Barrios y Asociados

Delaney & Associates

FA Arias & Muñoz

Munguía Vidaurre Chavez

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.

The firm is noted for its excellent relationships with international investors, thanks to an emphasis on providing a “personal and thorough service”. This year it acted on several financial transactions, including loans to local energy companies and an equity offering for an undisclosed mining corporation.

José Antonio Alvarado heads the legal team and is considered an expert in privatization issues. The firm is the Nicaraguan member of international law firm association Lex Mundi.

Leading lawyers

José Antonio Alvarado
Luz Marina Espinosa

Key contact partner

Luz Marina Espinosa

Consortium - Taboada & Asociados

The largest of the Nicaraguan law firms, Taboada & Asociados was founded in 1969 and operates from the capital city of Managua. Its team of 23 lawyers is described as “especially

good,” and offers counsel in financial and commercial operations such as joint ventures, foreign investment, mining and natural resources, telecommunications, labour law and intellectual property.

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 and market recognition”. 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.

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

Leading lawyers

Rodrigo Taboada Rodríguez
José Evenor Taboada

García & Bodán

García & Bodán is a young firm, founded in Nicaragua in 2000. In that short time it has expanded to open further offices in Honduras and the US (in Florida). Its Nicaraguan head office has nine lawyers, with two US-qualified partners. Of these, Terencio García Montenegro is the most respected, particularly as counsel on matters of financial and telecommunications law.

The Nicaraguan office has a growing reputation for its expertise in M&A deals, and is most active in this sector. This year it has advised on three high-profile share purchases – the first by America Movil in telecommunications company Enitel, the second by Poma Group in vehicle distribution companies including Honda, Ford and Volkswagen, and the third by the Assa Group in BDF Bank.

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

Leading lawyers

Terencio García Montenegro
Federico Gurdíán Sacasa

Key contact partner

Terencio García Montenegro

F A Arias & Muñoz

F A Arias & Muñoz was founded in El Salvador in 1942, and now also operates from subsidiary offices in Guatemala, Honduras, Costa Rica and, since 1996, Nicaragua. Described as “a very good firm” by one commentator, it has had an active year, especially in project finance.

The firm advised Citibank (the lender) in relation to the structuring and proposed guarantees for the \$25 million financing of a sugar cane processing plant, to be constructed by

Nicaragua Sugar Estate. Other noteworthy financing transactions saw the firm provide local counsel to Corporación de Supermercados Unidos regarding a \$10 million loan for the development of the biggest distribution centre in Nicaragua, and advise Banco Cuscatlán de El Salvador in connection with several financing projects in the automobile and sugar industries. In the M&A field, F A Arias & Muñoz represented Telefónica Móviles when it acquired telecommunications operator Bellsouth in a deal worth \$7.5 million.

This impressive level of activity suggests that the recent departure of managing partner Carlos Conrado Cabrera has not overly affected the firm's credentials; indeed the market picks out Oscar Montes, in particular, as the partner responsible for maintaining the office's excellent reputation for project finance advice.

Leading lawyers

Bertha Arguello
Oscar Montes
Ana Tereza Rizio