

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
Website: 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

Fulvio Italiani

D'Empaire Reyna Bermúdez

Caracas

Besides the Antitrust Law, the most relevant statutes to mergers and acquisitions in Venezuela are the Venezuelan Commercial Code, the Venezuelan Capital Markets Law (which is only relevant to acquisitions of public companies), and the Tender Offer Rules (which, again, is 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 closed corporation or publicly traded. Specific authorizations might also be required, depending on whether the company operates in a regulated sector.

Mergers and acquisitions of closed corporations – the Commercial Code

Acquisitions of a closed corporation can be conducted through share purchases, purchases of assets or a transfer of an ongoing business, if the isolation of existing liabilities is required. Share purchases of closed 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 government agency, such as the Banking Superintendency, the Insurance Superintendency or the Telecommunications Agency. The sale of shares in Venezuelan companies is subject to income tax withholdings.

In the case of asset transfers, purchase agreements are normally executed. Specific assets might require registration 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 labour union and the labour authorities, are also required. The transfer of personal property is subject to 15% value-added tax.

If 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 required public announcements, at intervals of 10 days, are made. This announcement of the sale must be effected to protect the seller's creditors. 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 before the Commercial Registry Office, and is subject to a 2% stamp tax, payable upon registration of the agreement. Income tax withholdings also apply.

Mergers require approval by the shareholders' meeting of the merging companies. The bylaws of each company might also contemplate board level approval. Mergers are subject to a three-month waiting period, during which period 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 the case of mergers and the sale of most of a company's assets. These rules can be changed by the bylaws of each company.

Acquisitions of public companies

Procedures where a public company is the target vary enormously. 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, and 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. Extensions cannot exceed 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 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 conditions and the term of the offer), and plans for the target company. Public disclosure of the report requires the authorization of the CNV.

Where a public offering of shares is conducted, before launching the offering, the issuer must obtain authorization from the CNV and register the shares with the Venezuelan Securities Registry. A registration statement regarding the offering must be filed with the CNV.

Foreign investments and foreign exchange control

At the time of writing a foreign exchange control regime is in force. Regulations governing this regime include rules for the purchase of foreign currency for remittance of profits and capital; and payment 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 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 Venezuelan Central Bank.

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

Hoet Pelaez Castillo & Duque

Tinoco Travieso Planchart & Núñez

Torres Plaz & Araujo

Mergers and acquisitions

Recommended firms

Tier 1

Baker & McKenzie

D'Empaire Reyna Bermúdez

Tier 2

Anzola Raffalli y Rodríguez

Hoet Pelaez Castillo & Duque

Macleod Dixon

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

Macleod Dixon

Mendoza Palacios Acedo Borjas Páez Pumar & Cía

Steel Hector & Davis*

Torres Plaz & Araujo

Travieso Evans Arria Rengal & Paz

* In September 2005, Steel Hector & Davis became part of Squire Sanders & Dempsey

Baker & McKenzie

Baker & McKenzie is the largest of the law firms in Venezuela (with 32 partners and 46 associates), and has had an office in Caracas for 50 years. Reported to be "very active and of very good quality," it is the only firm with a top ranking in each of the practice areas. Reasons for this level of excellence include the firm's many international networks, its committed pro-business sense and its bedrock of capable professionals.

Over the past year, Baker & McKenzie's banking team negotiated the terms for a \$375 million loan to Compañía Anónima Nacional Teléfonos de Venezuela and represented the purchasers (a group of local investors) in relation to their acquisition of Nuevo Mundo Banco Comercial for \$14 million. It also acted for Inversora Previcredito when it acquired 99% of Banco Confederado for \$20 million, and provided counsel to JP Morgan in connection with the disposition of an undisclosed stake in Banco Mercantil.

The firm has been especially active in the mergers and acquisitions market. Among the many highlights, Baker & McKenzie acted for a group of local investors in relation to the purchase of \$45 million-worth of shares in CorpBanca, and advised Posco regarding the disposal of Posven's assets in a transaction valued at

\$40 million. At the time of writing, the firm is advising Procter & Gamble and Siemens regarding various business acquisitions.

The political situation in Venezuela does not engender a vibrant project finance environment, but the firm did successfully advise Aguas Industriales de José regarding a \$26 million water treatment system expansion project.

The firm's numerous clients include leading financial and corporate institutions such as Toyota Financial Services, JP Morgan, Bimbo de Venezuela, Banco Confederado, Banco del Caribe and Total.

From among the strong team, banking specialist Maritza Mészáros is described as "very responsive, well-educated, and user-friendly". Her regular co-worker Alvaro Posada is also highly praised for his "high level of attention and useful advice".

Leading lawyers

Carlos Delgado
Eugenio Hernández-Bretón
Roberto Mendoza
Maritza Mészáros

Key contact partners

Carlos Delgado
Roberto Mendoza
Maritza Mészáros

D'Empaire Reyna Bermúdez

D'Empaire Reyna Bermúdez is praised for being "very good and very active," as well as having a number of "excellent and very consistent professionals". It is strong in capital markets, especially in sovereign debt, and has managed to stay involved in project finance despite the political situation militating against growth in this sector.

An overview of the firm's sovereign debt transactions leaves little doubt that D'Empaire Reyna Bermúdez leads the field in this area. It recently represented Deutsche Bank and UBS Securities, who underwrote the Republic of Venezuela's issue of \$1.22 billion 7% global bonds. Previously, the firm had advised Credit Suisse First Boston in an exchange of floating rate notes issued by the Republic of Venezuela worth \$161 million due 2008 for a new date of 2011.

In a transaction voted liability management deal of the year by *Latin Finance*, D'Empaire Reyna Bermúdez provided counsel to Merrill Lynch, Barclays Capital and Pierce Fenner & Smith in their capacity as dealer-managers regarding an invitation to shareholders by the Republic of Venezuela to exchange selected Brady bonds (which are bonds issued by the governments of developing countries) for US dollar-denominated, SEC-registered bonds. In 2004, the firm also acted for Dresdner Bank and UBS Securities as underwriters of another issue of floating rate notes by the Republic of Venezuela – this time for \$1 billion.

The firm has acted on some of Venezuela's largest project finance transactions of late. In August 2004, Petrolera Ameriven initiated its crude oil upgrade scheme, known as the Hamaca project, at a cost of \$1.8 billion, and D'Empaire Reyna

Bermúdez advised the Flour Daniel/Inelectra joint venture involved. Another significant projects transaction was CVG-Alcasa's Line 5 project, an aluminium production venture costing \$800 million, in respect of which the firm advised Glencore International.

Two smaller projects in which D'Empaire Reyna Bermúdez was involved were the construction of a power plant in Maracaibo by Enelven for \$180 million, and Pemex's offshore platforms for living quarters in Mexico (valued at \$127.5 million).

Leading lawyer

Fulvio Italiani

Macleod Dixon

Macleod Dixon is a Canadian law firm that has had a base in Caracas since 1997, during which time the office has grown from two partners to 12 partners and 23 associates. The firm has a good reputation in banking, telecommunications, administrative and labour law, but is regarded above all as the leading firm for advice on hydrocarbons legislation. Interviewees were unanimous as to the firm's strength in natural resources, and comments underlined both the firm's growth in this area (remarking that the firm "has grown tremendously in the past three years") and its reputation (stating that it is "good, aggressive and concentrated in the oil and gas sector").

This year the firm advised Precision Drilling and Saxon Energy when those companies' assets were purchased by Global Santa Fe and Justiss Drilling respectively (the former for \$40 million). Its largest transaction was the acquisition of the Venezuelan bakery products division of Burns Philip by Associated British Foods for \$1.175 billion, in relation to which Macleod Dixon acted for the seller.

As might be expected, many of the firm's top clients are in the petrochemical and mining sectors. Among them are ChevronTexaco, Anglo Coal, Petrobras and Anglo-American Mining.

Key contact partners

Elisabeth Eljuri
Jorge Neher
Gabriela Rachadell de Delgado

Mendoza Palacios Acedo Borjas Páez Pumar & Cía

Mendoza Palacios has been in operation in Venezuela since 1896, and has offices in Caracas and Valencia. It is described as "very strong in corporate, commercial and civil law," with a team of "extremely good professionals". The firm regularly advises clients such as Citibank, Telefónica Móviles, Coca-Cola and CANTV (Venezuela's largest telecommunications operator) regarding their business interests in Venezuela, and boasts one of the country's leading litigation practices.

Despite being a firm renowned for its experience in advising on banking issues and regulatory matters in equity transac-

tions, most of Mendoza Palacios' most impressive deals this year were in M&A. The firm provided local counsel to Spanish multinational Telefónica Móviles regarding its \$5.8 billion buy-out of Bellsouth Corporation's assets in Venezuela, which included the purchase of the Venezuelan telecommunications company Telcel, previously one of the five largest corporations in Venezuela. In particular Mendoza Palacios advised Telefónica Móviles on due diligence, antitrust and regulatory issues.

Mendoza Palacios also provided counsel to Industrias Venoco, a holding company for a group of companies that manufactures and distributes petrochemicals, when it was acquired by Petroklm for \$32.7 million. It also represented Stanford Financial Group Company when it purchased a local bank, now named Stanford Bank Venezuela, for \$15 million. In capital markets, meanwhile, the firm acted for Lafarge in relation to its worldwide employee share offering for an undisclosed amount.

The pick of the legal team at Mendoza Palacios is Manuel Acedo, "an exceptional professional" who regularly works on M&A, tax planning and regulatory issues. One client was so impressed by Mr Jaramillo's knowledge and abilities that he recently invited him to be a member of the company's board of directors.

Leading lawyer

Manuel Acedo-Sucre

Key contact partners

Carlos Eduardo Acedo

Manuel Acedo-Sucre

Carlos Bello

Arminio Borjas

Rodner Martínez & Asociados

Despite being a small firm of 11 lawyers, many consider Rodner Martínez to be the top Venezuelan law firm for specialist banking advice, especially for derivatives and private sector loan restructuring work. Interviewees described it as "a very good boutique," one even saying that the firm "stands head and shoulders above the others in banking". 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. However, the firm has experienced a paucity of transactions in this area of late, largely because potential foreign investors are waiting for the redefinition of investment regulations.

James-Otis Rodner is a hugely respected capital markets lawyer, and has produced numerous articles and books on issues in this field.

Leading lawyers

Jaime Martínez-Estévez

James-Otis Rodner

Key contact partner

James-Otis Rodner

Rodríguez & Mendoza

One of the oldest law firms in Venezuela, Rodríguez & Mendoza was founded in 1910 and is now a nine-partner firm described by commentators as "very traditional" and "very solid". Its strongest areas are banking and project finance, and it counts several international banks and multinational corporations among its clients, such as Banco Mercantil, Unibanca, Gillette, Texaco and Petroleos de Venezuela.

The firm has previously advised the underwriters in extra-heavy 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.

Leading lawyer

Reinaldo Hellmund

Steel Hector & Davis

Steel Hector & Davis is a Miami firm that opened the first of its Latin American offices in Caracas in 1993; this office now boasts a 23-strong department, including six international partners. It advises on most aspects of corporate and commercial law, but, much like rival firm Macleod Dixon, is "very active and aggressive in oil" and "growing well in the oil sector". Steel Hector acts as counsel both for state-owned and private gas and oil companies, and tends to advise them on regulatory aspects, contractual matters and specialized dispute resolution.

Hernando Díaz-Candia and Bernardo Weininger are the top lawyers at the firm, and have been involved in many of Steel Hector's biggest transactions this year. The most significant was advising Petróleos de Venezuela (PDVSA) concerning the negotiation of the joint venture agreement for the development of the \$3 billion Mariscal Sucre natural gas project. Other notable project financings were the negotiation of the long-term aluminium supply agreement between the Metal Exchange Corporation and CVG-Alcasa for \$5 million, and assisting PDVSA with the development of the Plataforma Deltana, an offshore hydrocarbons platform.

As well as project finance, Steel Hector is a well-regarded choice for M&A counsel. In the past year it represented Fondo Común Bank, the fifth-largest bank in Venezuela, when it was sold for \$250 million, and was involved in the acquisition of Servicios Petroleros Flint (a Venezuelan oil drilling company) by Ensign Resource Service Group for \$50 million. Hernando Díaz-Candia and Bernardo Weininger

were the lead lawyers when Steel Hector advised Alcoa on its acquisition of Toptec.

Steel Hector is the Venezuelan member of Lex Mundi, an association of 163 independent law firms in 99 countries.

At the time of going to press, Steel Hector had just announced that it will become a part of international law firm Squire Sanders & Dempsey, effective September 6 2005. The combination will strengthen Steel Hector's position in Florida, expanding the firm's international and US platform, and will enhance Squire Sanders' presence in Latin America. It will be interesting to see how the new entity will take on global heavyweights such as Baker & McKenzie in Latin America over the next few years.

Leading lawyers

Hernando Díaz-Candia

Bernardo Weininger

Key contact partners

Juan José Delgado

Hernando Díaz-Candia

María Cecilia Rachadell

Bernardo Weininger

Other notable firms

Aarons & Asociados Abogados is a new banking and finance boutique, formed in 2004 by four lawyers previously at Citibank. It is headed by partner Fred Aarons, who is also the general counsel of the Venezuelan Bankers' Association. Despite its small size and brief history, the quality and experience of the legal team has already attracted some impressive clients, including Global Capital, Barclays, State Trust and Inverunión Casa Bolsa. And **Anzola Raffalli y Rodríguez** is said to be another "relatively new firm doing a good job," particularly in the corporate sector. Gonzalo Rodríguez and Dr Raffalli are both recommended.