

# Bolivia

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## Corporate finance in Bolivia

**Fernando Aguirre**  
**Bufete Aguirre**  
**La Paz**

Companies established in Bolivia obtain financing for their activities in a number of ways. These include: (i) local banking finance; (ii) local issuance of bonds and securities; (iii) foreign financing; and (iv) equity participation by third parties.

Current investment, commercial and banking legislation contains a number of guarantees which facilitate obtaining financing, particularly in respect of foreign currency denominated loans, exchange and remittance regulations. Bolivian law authorizes foreign currency transactions and borrowers have free access to the exchange market. More particularly, US dollars can freely be purchased and exchanged either through the private banking system, exchange houses or the Bolivian Central Bank. The latter has a daily offer for sale of US dollars based on an offer and demand system, with local banks acting as intermediaries.

There are no restrictions on the remittance of loan payments in foreign currencies. Depending on the nature and nationality of the lender, there may be a remittance tax imposed on interests (and similar charges) ranging between 10% and 12.5%. Certain recognized bilateral or multilateral financing agencies enjoy an exemption from this tax. Local banks are authorized to open US dollar accounts for clients.

The local banking system is also regulated. Banks consider potential borrowers based on their financial situation, operations and cash flows, as well as on guarantees which are offered. Under the supervision of the Superintendency of Banks and based on its regulations, banks create risk/reserve accounts mainly depending on the type of guarantee offered. Real estate mortgages, for example, allow for a lesser reserve and potentially a lower rate of interest. As the strength of the guarantee declines, the reserve requirements are higher and consequently the interest rates are higher.

Short- and medium-term financing are the most common. One recurring issue, both in respect of these forms of financing and, in fact, all financing that involves mortgages and pledges, is that most of these types of guarantees require registration with the competent departmental real estate registry. The cost of registration is very high.

Public issues of securities by companies, especially bond issues, have increased in recent years. The issuer has to comply with a number of formalities, including the publication of a prospectus and the use of brokerage services. Other formalities include registration of the transaction with, and receipt of approval by, the competent supervisory entity, namely the Superintendency of Securities.

Public offerings are made through the stock exchange. Issuers are subject to compliance supervision and bound to notify, among other things, relevant information about the company, including any information that may affect either the company or the issue itself. This relevant information is published through the stock exchange.

It is also common that companies operating in Bolivia apply for and obtain financing from foreign sources, private or otherwise. Such loans only require registration, for statistical purposes, with the Bolivian Central Bank. Otherwise, the formalities to be complied with depend on the scope of the financing and, above all, on the type of guarantees which are offered in connection with the financing. The Bolivian Commercial Code and Civil Code provide the general framework for these types of transactions.

When the borrower is a regulated company (such as companies operating in the electricity, gas transportation, telecommunications, transport and other regulated sectors), special care is given to the effects of the applicable laws and regulations relating to lending operations. The applicable laws would normally contain administrative restrictions which make it more difficult for lenders to be repaid, particularly when they have to revert to judicial enforcement.

Equity participation normally takes the form of subscription of shares, whether ordinary or preferred, when dealing with stock companies. This represents an increase in the paid-in capital of the investor company which is subject to certain requirements and procedures as established in the Commercial Code. Other than in the case of certain regulated companies (such as banks), and apart from corporate formalities, registration requirements and filings, there is no need to obtain prior approval from a public authority. Preferred stock is given a preferred right of participation on profits.

In light of increased difficulties which companies have been facing in regard to their loan repayments, the risk/reserve requirement is somehow more flexible now than in the past. At the same time, companies in financial distress are finding such measures insufficient and new policies are being considered as a result.

## Corporate and commercial

### Recommended firms

Bufete Aguirre

CR & F Rojas

Guevara & Gutierrez Servicios Legales

Estudio Jurídico Gerke

Indacochea & Asociados Abogados

Quintanilla & Soria Abogados

Criales Urcullo & Antezana

Gonzalo Mendieta Abogados

Moreno Baldivieso

### Bufete Aguirre

Although smaller than Guevara & Gutierrez, and not on the same scale as CR & F Rojas, Bufete Aguirre is one of the leading corporate and commercial law firms in Bolivia, with talented lawyers and clients who say the firm is “very serious” and “extremely specialized”.

The firm has four partners and two associates in La Paz, the country’s capital, of which Fernando and Ignacio Aguirre are recognized as “outstanding” by their peers. It is a member of Globalaw, an informal and non-exclusive network of independent law firms, Lexuniversal and several other groups including the International Bar Association, the Association of Latin American Mining Lawyers and the Association of International Petroleum Negotiators.

With its finance expertise, Bufete Aguirre last year advised the International Finance Corporation on several loans and financings to local entities, including Banco Sol, Los Andes, Prodem, FIE and TDE. It also worked on financing deals for AES Communications and Banco Bisa. This builds on a history of strong banking work that has included advising ABN AMRO as lenders on a loan to Nuevatal PCS de Bolivia, which Nuevatal used to expand its telecommunications network, and the lenders on the financing of Transportada de Electricidad’s electricity transmission system.

Corporate clients include Repsol, which Bufete Aguirre advised on the restructuring of its corporate practice in Bolivia, and Zurich Financial Group, which employed Bufete Aguirre to help it on its purchase of majority control in the Bolivian pension funds administrator.

### Key contact partner

Fernando Aguirre

### Leading lawyers

Fernando Aguirre

Ignacio Aguirre

### CR & F Rojas

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Rojas stands as the oldest firm in Bolivia but, while this undoubtedly gives it an advantage in terms of long-standing clients and experience of the market, some competitors say it has not been that visible on large deals of late.

Rojas' history extends to four generations of lawyers, going back to its foundation in 1900, and it has four partners and five associates working in two offices – the capital, La Paz, and the oil and gas hub, Santa Cruz.

Notwithstanding the market's comments, at the time of writing the firm is working on several large transactions, including advising CDC Globaleq on a \$50 million sale of assets and shares in Bolivia, acting for Natexis Banques Populaires on a \$25 million loan agreement, advising Prisa on its corporate restructuring and related litigation and advising CAF and IDB on an \$88 million loan required to expand their network of pipelines. Fernando Rojas, the firm's managing partner, is leading the team on all of these transactions.

The firm also has a strong oil and gas practice out of Santa Cruz led by partner Diego Rojas. He is seen by the other leading oil and gas firm in Santa Cruz, Indacochea & Asociados Abogados, on "lots of deals" and has a long list of corporate clients, including British Gas.

Rojas is the Bolivian member of the International Lawyers Network, Multilaw, Club de Abogados and Lex Mundi, all leading associations of independent law firms.

#### Key contact partner

Fernando Rojas

#### Leading lawyer

Fernando Rojas

### Guevara & Gutierrez Servicios Legales

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Ramiro Guevara is "a great lawyer" who was active last year as the lead counsel on the Interamerican Development Bank's loan to US energy company AES. It was the first ever expansion of a foreign energy company in telecommunications into Bolivia.

Although the firm still misses Antonio Miranda, who left to set up his own practice, the lawyers it has hired since – partner Jorge Luis Inchauste and associates Mauricio Dalman, Alexandra Blanco, Pablo Caballero and Patricia García – have become a credit to the firm and fitted in well.

In terms of work Guevara & Gutierrez is a corporate powerhouse, examples of work in recent years include advising on Petrobras' acquisition of Pecom, where the firm worked alongside Clifford Chance, acting on Pan American's purchase of Bulo Bulo for \$48 million and advising on the share transfer of stock in Aguas del Tunari. In banking the firm has worked on the transfer of personal, real estate and credit portfolios for Citibank in Bolivia and a legal audit for Banco de Crédito.

#### Key contact partners

Enrique Barrios  
Ramiro Guevara  
Jorge Inchauste

#### Leading lawyer

Ramiro Guevara

### Estudio Jurídico Gerke

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Estudio Jurídico Gerke was founded in 1972 and comprises three partners and four associates in La Paz. Partner Javier Sánchez de Lozada is well regarded for his project finance work and is listed in Euromoney's *Guide to the World's Leading Project Finance Lawyers*.

Some in the market suggested that the firm perhaps isn't the outfit it was when it had Gonzalo Mendieta, who left last year to set up his own practice and was "a star corporate and commercial lawyer", but many peers say partner Carlos Gerke has been busy in the meantime, working on a loan to Cable & Wireless through the US Overseas Project Investment Corporation.

Carlos Gerke's corporate department is also strong, advising on many of the region's large mergers and acquisitions. Recently it worked on the merger of Cerveceria Boliviana and Cerveceria Taquina, and British conglomerate Cadbury Schweppes' multinational purchase of Adams Food from Pfizer. Cadbury paid \$4.2 billion for the manufacturer, which had assets in 16 Latin American countries. The deal was coordinated by US firm Shearman & Sterling in New York. Carlos Gerke also worked opposite Bufete Aguirre on the loan agreement for Nuevatal PCS de Bolivia to expand the company's telecommunications network.

#### Key contact partner

Carlos Gerke

#### Leading lawyers

Carlos Gerke  
Javier Sánchez de Lozada

### Indacochea & Asociados Abogados

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Indacochea is a very different animal to its peers in the second tier. It does not have the same expertise on international corporate and commercial transactions, but justifies its ranking by virtue of being the dominant firm in Santa Cruz de la Sierra, the area of north-west Bolivia where the country's oil and gas industry is located. "In energy, Indacochea is in a class of its own," say both peers and clients. Top-tier firms CR & F Rojas and Bufete Aguirre also have recommended energy practices and they "can bring in resources because of their size" but "they do not have the refinement of Indacochea".

It also "without a doubt has the advantage of having partner Ricardo Indacochea in the firm, who is without

parallel in the country”. His knowledge of “hydrocarbons and energy in general really makes a difference when one is seeking a more technical piece of advice”. Clients also rate the quality of the firm’s advice, calling it “very efficient and friendly, with a quick turnover”.

Last year the firm advised BHP Billiton Boliviana de Petroleo on its commercial contracts with Repsol, and advised on disputes over gas transportation agreements between Gas Transboliviano, Petrobras and YPFB. Previous oil and gas work has included the Bolivia-Brazil pipeline, where the firm advised Halliburton and Brown Rooth and Murphy on its construction. Since the project’s completion, Indacochea has acted as outside counsel for Gas TransBoliviano, the company that owns and operates the pipeline. It was also responsible for the incorporation of GasOriente Boliviano, which owns and operates the Rio San Miguel to San Matías-Cuiabá pipeline and, after the Transredes petroleum leak in 2000, counselled the company in Oruro on its recovery programme and environmental plan for the region.

In the power sector, previous work has included acting as borrower’s counsel in financing the thermoelectric power plant in Cuiabá and advising on Bolivia’s privatization process, working on the sale of the Empresa Nacional de Electricidad energy units and the privatization of Yacimientos Petrolíferos Fiscales Bolivianos.

#### Key contact partners

Ricardo Indacochea  
Mariana Pereira  
Karla Würth

#### Leading lawyer

Ricardo Indacochea

### Quintanilla & Soria Abogados

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Quintanilla is a steady performer in the Bolivian legal market, well regarded and recommended by its clients without quite receiving the attention of those firms in the first tier. Those clients, which include many in the banking sector, say the firm is “an obvious option for work,” one saying it has always used the firm since it began operating in Bolivia in 2002. Mauricio Torrico Galindo is “highly recommended, an excellent lawyer,” as is Eduardo R Quintanilla B, who heads the corporate department.

Quintanilla has four partners and two associates working in La Paz, and one partner and one associate in Santa Cruz de la Sierra, the country’s oil and gas heartland. The firm’s work last year encompassed work for Red Eléctrica de España Transportadora de Electricidad on international loan agreements, advising Swissport GBH Cotecna Bolivia on its public bid for the national warehouses administration service, acting for Empresa Eléctrica San Marcos on its contracts and regulatory issues with the national electricity regulator and advising Apex Silver Mines on several project financing transactions.

#### Key contact partners

Eduardo R Quintanilla B  
Santiago Nishizawa Takano  
Mauricio Torrico Galindo

#### Leading lawyers

Eduardo R Quintanilla B  
Mauricio Torrico Galindo

#### Other notable firms

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**Criales Urcullo & Antezana** is “especially good on oil and gas related deals” according to its clients and José Criales Estrugo is “an excellent professional”. The firm was formed by the merger of two firms in 1999 and has a long record of working on privatization deals in the country. It also serves as legal advisor to the Bolivian stock market and was involved with the establishment of the country’s securities law. **Gonzalo Mendieta Abogados** is the firm established by Gonzalo Mendieta after he left Carlos Gerke. His practice is “up and coming” and benefits from “a substantial portfolio of clients that he brought with him from Gerke”.

**Moreno Baldivieso** is the largest firm in Bolivia, with offices across the country. Its strength is as an intellectual property advisor and for this reason some competitors view it as “just a patent firm”. But it has expanded into corporate finance and now has large clients such as British American Tobacco, Anglo Gold and Pepsi. The firm is also the Bolivian representative of LatinLex, a Latin American association of independent law firms, and has a strong academic reputation as many of its lawyers serve as professors of law.