

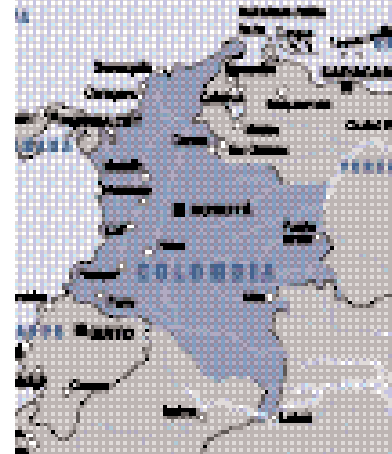
Colombia

Chamber of commerce:

Cámara de Comercio de Bogotá
Carrera 9, no. 16-21
Bogotá
Colombia
Tel: +57 1 381 0270
Fax: +57 1 284 7735
Website: www.ccb.org.co

Professional body:

Colegio de Abogados de Bogotá
Carrera 8, no. 16-79, of. 402
Bogotá
Colombia
Tel: +57 1 284 2959
Fax: +57 1 282 0258



Recent developments in corporate finance in Colombia

Carlos Urrutia-Valenzuela
Brigard & Urrutia
Bogotá

During the past year the Colombian government, under president Alvaro Uribe, has introduced various legislative changes that affect the business community. The most important piece of legislation in the area of corporate finance is the long-awaited bill that, once approved, will establish a new regulatory framework to govern the securities markets.

The bill was drafted by the Superintendence of Securities (the Superintendence) after wide consultation with other regulatory agencies, including the Ministry of Finance and the Central Bank, as well as with representatives of the local securities industry. The bill will replace most of the existing legislation that governs the Colombian securities market. It will also provide ample powers to the government and the Superintendence to regulate the various activities related to the management of resources raised through securities from investors in the capital markets.

The government has stated that the main purpose of the bill is to foster the growth of the securities market by means of clear and transparent regulations that will serve to promote the highest levels of integrity and professionalism among broker/dealers, and to provide the required degree of trust and safety to issuers and investors alike.

The Colombian securities market has developed substantially in the course of the past three years, in part due to the growing pool of resources managed by pension and severance funds. The need to raise debt to finance the government's fiscal needs, as well as the appetite of pension funds, have contributed to the development of a dynamic market for investment grade fixed income securities. This is evidenced by the fact that various multilateral credit agencies, including the World Bank and the IFC, have issued *peso*-denominated bonds in the local market that have been much in demand by local investors.

However, there is a perception that the equities market lacks the necessary depth and liquidity to attract investors. One of the goals of the new law is therefore to achieve market transparency and to provide the required level of comfort to all market participants.

The bill addresses the circumstances in which the government is authorized to intervene in the market. In that respect, the bill allows the government to: (i) issue regulations concerning the nature and characteristics of the securities that may be traded, the public offering and placement of securities, including the different types of offerings, and the types of activities deemed to involve intermediation of securities; (ii) regulate the entities subject to the supervision and control of the Superintendence, including the power to determine the requirements for their organization as well as their capital and net worth requirements and the rules of corporate governance and conflicts of interest; (iii) define the different categories of investors based upon criteria such as volume of investments and their professional qualifications and credentials; (iv) establish the rules applicable to the organization of the integral system of information of the



securities market; (v) regulate the requirements applicable to the information that must be reported or disclosed from time to time to the Superintendence and the investing public, as well as those requirements that must be observed to preserve trade secrets and confidential information and for the use of privileged (inside) information; and (vi) regulate the activities of brokers and dealers of securities.

The bill also establishes the principles to govern the systems of compensation and settlement of securities transactions, as well as the functioning of the institutions that act as depositories of securities.

The proposed law will devote ample attention to the issue of investor protection, including strict rules of governance imposed upon issuers and market intermediaries, as well as requirements for the protection of minority shareholders. The Superintendence is assigned authority to impose sanctions upon entities that are incurred in violations of securities regulations. The nature of the violations is defined in detail, and the definitions cover a wide spectrum, including the types of violations that have recently arisen as a result of the distribution of securities through the internet.

The sanctions that may be imposed by the Superintendence are based on the criteria that they must be proportionate to the nature of the violation, and must serve the purpose of dissuading market participants from violating the regulations. In imposing sanctions, the Superintendence must take into account the defences raised and the evidence provided by individuals or entities charged with violating the regulations. The Superintendence has the power to determine the right moment to disclose the facts to the public if the circumstances could jeopardize the stability of the market.

As far as the types of sanctions are concerned, the bill provides different degrees depending on the nature and seriousness of the violation. They go from the mere reprimand made by the Superintendence to the suspension or cancellation of the relevant permit to undertake activities in the public securities market – for example, a licence to act as market intermediary in the case of broker dealers, the right of an issuer to issue and trade its securities, or a licence to act as a depository of securities.

Banking and capital markets

Recommended firms

Baker & McKenzie

Brigard & Urrutia

Cárdenas & Cárdenas Abogados

Gómez-Pinzón Linares Samper Suárez Villamil

José Lloreda Camacho & Co

Parra Rodrigues & Cavelier

Posse Herrera & Ruiz

Prieto & Carrizosa

Mergers and acquisitions

Recommended firms

Baker & McKenzie

Brigard & Urrutia

Gómez-Pinzón Linares Samper Suárez Villamil

Prieto & Carrizosa

Cárdenas & Cárdenas Abogados

José Lloreda Camacho & Co

Parra Rodriguez & Cavelier

Zuleta Suarez Araque & Jaramillo Abogados

Project finance

Recommended firms

Baker & McKenzie

Brigard & Urrutia

Cárdenas & Cárdenas Abogados

Gómez-Pinzón Linares Samper Suárez Villamil

Holguin Neira Pombo y Mendoza

Prieto & Carrizosa

Baker & McKenzie (Raisbeck Lara Rodriguez & Rueda)

One of the top corporate and commercial firms in Colombia, Baker & McKenzie benefits both from its international status and from its strong domestic reputation built on its 1979 merger with Raisbeck Lara Rodriguez & Rueda. Because of this, the firm acts for a mixture of local corporations and international banks. The heads of the banking department are Jorge Lara and Andres Williamson, and the two have recently steered the firm's seven-lawyer banking team through a \$650 million debt restructuring deal. In a deal completed in March 2004, lawyers Jaime Trujillo and Christina Rueda acted for BellSouth Colombia and its shareholders, while White & Case acted as US counsel to the borrower. The firm also advised a group of syndicated banks and ABM AMRO in a \$150 million syndicated loan deal completed in late 2003. The lawyers involved from Baker & McKenzie were Jorge Lara and Christina Rueda. The firm has also acted for the Corporación Andina de Fomento, Banca Intesa SPA and ING Bank.

TermoYopal required advice on the legal structuring of a domestic power plant, and Baker & McKenzie oversaw the preparation of power purchase and logistical matters regarding the plant's construction. At the time of writing, Jaime Trujillo, Carolina Pardo and Alejandro Mesa were also involved in the legal structuring of passenger transport systems for the cities of Cali and Pereira, providing advice to Corporación Financiera del Valle.

The firm has a considerable mergers and acquisition capacity, and the M&A team has recently been increased to 13 with the hiring of Francisco Cabal as an associate. Baker & McKenzie has recently advised Pfizer SA and Pfizer Inc on a merger completed in December 2003. The team advising on the transaction included Jaime Trujillo, Adriana Londoño and María Clara López.

Key contact partners

Jorge Lara
Jaime Trujillo
Andres Williamson

Leading lawyer

Jaime Trujillo

Brigard & Urrutia

The oldest firm in Colombia, Brigard & Urrutia has an established reputation for providing high-quality advice to domestic and international clients. In recent years, the firm has advised Amcor on its \$115 million acquisition of the Latin American plastic packaging business of Alcoa. It has also acted for Bear Stearns and Credit Suisse First Boston on a \$500 million bond issue by the Republic of Colombia.

Brigard & Urrutia is a member of the American Bar Association, and as well as being locally qualified, most of the firm's lawyers hold either a European or US post-graduate

diploma. There are six partners and 34 associates working across a range of practice areas including corporate law, public utilities and telecommunications.

Key contact partner

Sergio Michelsen Jaramillo

Leading lawyer

Carlos Urrutia Valenzuela

Gómez-Pinzón Linares Samper Suárez Villamil

Although it has only been around for the past decade, this firm provides advice on a broad range of corporate and commercial law matters. Areas in which the firm has developed a strong presence include both structured and project finance, banking, capital markets and corporate finance.

The firm recently consolidated its position as a top-tier operation by merging with fellow Colombian law firm Silva Piñeros & Gómez Abogados. The merger was effective from January 12 2004, and saw Mauricio Piñeros, the managing and founder partner of Silva Piñeros & Gómez Abogados join the firm as partner. One competitor says the merged firm is "even stronger now" and has benefited greatly from the injection of tax expertise from Silva Piñeros & Gómez. Gómez-Pinzón now has 32 lawyers based in three offices in Colombia, and serves a client base that spans the Americas, Europe and Asia.

The firm boasts an impressive client list for corporate work, and includes the Standard Bank, and Chivor, the fourth largest power generator in Colombia. The firm has also advised the country's largest beverage company. It also has an impressive capital markets reputation, and has advised the Inter-American Development Bank regarding its role as partial guarantor to the first issue of mortgage bonds in the public securities market.

Key contact partner

José Luis Suárez Parra

Leading lawyers

Alejandro Linares
José Luis Suárez Parra

Zuleta Suarez Araque & Jaramillo Abogados

This firm has recently recruited several associates, bringing its headcount of lawyers up to 16, including four partners. Its client list for banking work includes the Bank of America, Banco Continental de Panamá, Banco Latino-Alemán de Panamá and ABN AMRO Bank. Name partner Eduardo Zuleta has acted in deals involving each of these companies.

Also active in insolvency work, Zuleta Suarez Araque & Jaramillo has been involved in various restructuring procedures, offering advice on ABN AMRO's restructuring of AT&T's Latin American debt. The firm's lawyers also advised the Unsecured Creditors Committee of Avianca on

the restructuring of Avianca in a deal worth \$200 million. The insolvency team conducts business in Spanish, English and French and houses eight attorneys.

Despite the departure of Phyllis Gleiser to IBM's legal department, the firm's M&A team has recently been busy with a raft of high-profile clients. These have included Cadbury, which the firm advised in a \$70 million sale to Pfizer in a deal completed in June 2003, as well as Deloitte & Touche and Pepsico.

Key contact partner

Eduardo Zuleta

Other notable firms

Particularly strong in capital markets and project finance work, **Cárdenas & Cárdenas Abogados** is a firm of about 20 lawyers based in Bogotá. The firm advises a range of domestic and international clients, acting as international counsel for firms with project finance interests in Latin America and the Caribbean. **Prieto & Carrizosa** is regarded as relatively young in the Colombian market, but at the same time one that is on the up. An influx of lawyers coupled with excellent existing connections has increased its profile, and it is described by one competitor as being a firm "seen in most deals". Meanwhile, Bogotá firm **Holguin Neira Pombo y Mendoza** maintains its profile in project finance work, as well as a reputation for expertise in telecoms matters.