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Corporate finance legislation in Costa Rica

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Costa Rican financial and corporate activities are mainly regulated by the Code of Commerce (the Code). The Code includes, among other things, provisions regarding the different ways to establish a company in Costa Rica. Corporations and limited liability companies are the most frequently chosen company business structures. Furthermore, the Code establishes the basis for credit and banking operations, securities, acquisitions of commercial establishments, mercantile contracts, guarantees and insolvency procedures, as well as business mergers.

The Code provides certain rules applicable to mergers and acquisitions. Mergers are usually carried out through an asset purchase or a stock purchase. The anti-competitive effects of these mergers are regulated by the Competition Promotion and Consumer Protection Act. Mergers of financial establishments such as banks, non-banking financial institutions, bonded warehouses, stockbroking firms and investment companies are governed by separate pieces of legislation, namely the Central Bank Organizational Law, the Securities Market Regulatory Law, the General Regulation of Investment Funds and Managed Companies, the Private Regime of Complementary Pension Funds, the Bylaws on the Requirements for the Authorization of Tender Offers, and the General Regulation for the Negotiation of Stock Market Issuance.

At the foundation of Costa Rican securities market legislation lie the Securities Market Regulatory Law and the Public Offer of Securities Bylaws. The regulatory authority primarily responsible for the administration of these rules is the Costa Rican Securities Commission (Superintendencia General de Valores), also referred to as Sugeval. Sugeval supervises and controls the securities market, the activities of private individuals and of corporate entities that are directly or indirectly participating in it, and related transactions and contracts.

Other specific legislation governing the activities of markets, brokerage houses and financial groups include the Bylaws for the Investment of Sources from Investment Funds in Foreign Securities; the Regulation of the Brokerage Houses' Authorized Activities; the Bylaws for the Public Offering and Negotiation of Foreign Securities and for the Purchase and Sale of Foreign Securities; and the Bylaws for the Incorporation, Transfer, Registration, and Operation of Financial Groups, among others. At the time of writing, Costa Rica is in the middle of the process that will grant it recognition by the Central American Securities Markets, which will allow the negotiation of securities abroad even if the participant is only registered in a local market. This opens the possibility for

investors from all over the area to negotiate securities in any of the participating stock markets.

Costa Rica's securities exchange is the Bolsa Nacional de Valores, SA (the BNV), which started operating on August 19 1976. It has over 131 registered issuers, including national and foreign private enterprises and government institutions.

Since the early 1980s, the country's banking industry has undergone a period of major financial restructuring to allow healthy private competition. The government implemented a series of financial regulations, including the National Bank System Organizational Law, the Central Bank Organizational Law, the Private Regime of Complementary Pension Funds, the Securities Market Regulatory Law and the Law for Employee Protection.

Congress is analyzing a number of proposals that would amend many of these laws. These proposals intend to establish legislation that allows fair competition between private and national banks. One of these proposals amends the National Bank System Organizational Law and the Central Bank Organizational Law to improve the operational efficiency of the Costa Rican national commercial banks. Other proposals are geared towards the creation of a national development bank, which would provide economical support for agricultural activities and small businesses.

The most controversial project now before Congress is the Tax Plan, a complete tax restructuring proposal. The Tax Plan resulted from general concerns about the country's large tax deficit. The plan introduces radical changes to the Costa Rican tax system, such as introducing the universality principle as the basis of taxation instead of the territoriality principle, capital gains tax, a sales tax on services, amendments to the income tax regime and to the sanction system, as well as the introduction of new policies to improve the quality of public spending.

In January 2004 negotiation of the Central American Free Trade Agreement reached its conclusion. Once the agreement has been executed the Costa Rican executive branch will send the document to Congress. This agreement establishes important provisions regarding market access, origin regulations, intellectual property, telecommunications, insurance, customs law, investment, foreign companies representation, financial services, e-commerce, environmental law and labour law matters, among others.

Corporate and commercial

Recommended firms

Facio & Cañas

FA Arias & Muñoz

Bufete Odio & Raven

Laclé & Gutiérrez

Pacheco Coto

Zürcher Montoya & Zürcher

Alfredo Fournier & Asociados

Alvarez Jiménez De Pass

Lara Lopez Matamoros Rodriguez & Tinoco

André Tinoco Abogados

KPMG

Vargas Jiménez & Peralta

Facio & Cañas

Both the biggest firm in Costa Rica and the most recommended, Facio & Cañas continues to dominate the country's legal market. It has "influential partners with important political careers" and "manages to keep up with modern developments by seconding lawyers abroad". The quality of the work is equally praised, with clients using phrases such as "very good," "very professional and attentive," "excellent" and "good for complexity".

The only criticism levelled at the firm by some market participants is that the partners tend to operate as separate units under the umbrella of the firm's name and reputation. But while some competitors see this as a problem, clients are keen to praise those independently operating partners – Victor Garita is said to be "excellent" and both Mauricio Salas and Roberto Leiva are highly recommended.

The firm's client list is impressive, with ABN AMRO, Alcatel, Bank of Tokio-Mitsubishi, Caterpillar, Coca-Cola, Dell, Intel, JP Morgan Chase, Lehman Brothers, Marriott Corporation and Morgan Stanley among the most high profile.

Examples of recent work are: advising on the management buyout of Dole, the acquisition of customs clearance business Cormar by Deutsche Post, the acquisition of Bysecure's central American operation by Network Associates and the financial restructuring of Costa Rican coffee mill company Grupo San Antonio.

In the past the firm was involved with Royal Ahold on its strategic alliance with Corporación de Supermercados Unidos, Spanish construction firms Obrascon Huarte Lain and Expansión Exterior in their joint venture to build

Alajuela's public hospital and Mexican company Sigma Alimentos on its takeover of Inlatec, the second largest dairy company in Costa Rica.

Key contact partner

Rodrigo Oreamuno

Leading lawyers

Victor Garita
Roberto Leiva
Mauricio Salas

FA Arias & Muñoz

The advantage FA Arias & Muñoz holds over its Costa Rican competitors is its extensive network throughout central America, which brings both experience and international clients to the firm. It began in El Salvador, where it is still the top firm in the country, and expanded into Costa Rica in 1998. Since then it has opened offices in Nicaragua, Guatemala and Honduras. This is "a big advantage" according to some of its competitors and has "added a lot of value" to its reputation. Clients concur, saying they have been working with the firm throughout central America for several years and, as such, trust its knowledge of Costa Rica.

Some peers suggest that the firm doesn't deserve its place in the second tier as it is among the smallest in the country. But clients rejoin that "although the firm is small it has some very good partners" and that the quality of work is "excellent and very professional". Those highly regarded lawyers are José Antonio Muñoz, Pedro Muñoz, Vicente Lines and Carolina Flores.

Flores heads the banking department, which clients say is "extremely efficient". The department's work includes advice to ABN AMRO on cash pulling payments in Costa Rica and Banco G&T Continental on financing a loan. The corporate department, headed by Antonio Muñoz, recently worked with Kraft Foods on the sale of its yeast, baking powder and food service to Burns Philip and Philip Morris, advising on various local law issues, including corporate structuring, tax planning and regulatory matters. Other clients include Heineken, Newcom Communications and Fyffes Bananas.

Key contact partners

Carolina Flores
José Antonio Muñoz
Pedro Muñoz

Leading lawyers

Carolina Flores
Vicente Lines
José Antonio Muñoz
Pedro Muñoz

Bufete Odio & Raven

Although Odio & Raven is no newcomer to the legal market, it has grown audaciously in recent years, hiring young talent and bringing lawyers across from other firms. This has prevented the generation problems that sometimes arise at some of Costa Rica's other law firms, where big gaps can develop between the old, institutionalized partners and new associates. Fernando Vargas, Francisco Chacón and Jonatán Picado are highly recommended by their legal contemporaries. Vargas is picked out as one of Costa Rica's finest lawyers, particularly well regarded for his technical skills and negotiating flair.

The firm has an impressive roster of foreign clients, mainly from Germany and the US. For example, it acted as Costa Rican counsel on the Arcos 1 Consortium and New World Network Holdings telecoms project, which provided telecoms connections from Costa Rica to the US and to 14 Caribbean countries. The total value of the project was \$380 million. New World Network Holdings is a US company and Arcos 1 a consortium formed by US, German, English, and Canadian companies.

Other deals in recent years include advising concessionaire Grupo Istmo de Papagayo on one of the largest financing packages in Costa Rica, a senior facility from Scotiabank in the Cayman Islands for \$53 million, and acting as counsel to the Costa Rican Ministry of Transportation and the General Bureau of Civil Aviation on the concession of Costa Rica's airport.

Key contact partner

Ignacio Gallegos

Leading lawyers

Francisco Chacon
Jonatán Picado
Fernando Vargas

Pacheco Coto

Pacheco Coto partner Humberto Pacheco "dominates" the legal market, with his experience and excellent legal knowledge, while Harvard-educated Freddy Fachler has been recommended for his incisive understanding of his client's business and associate Gino Cappella is the subject of consistent praise. This team of lawyers specializes in offshore legal advice and has set up offices in Zürich, Vaduz and Grand Cayman.

Pacheco Coto isn't one of the largest firms in Costa Rica, with four partners and eight associates in San José, but it is one of the oldest – it was founded in 1939. The firm is also a founding member of the Alliance of Western Hemisphere Infrastructure Professionals, a continental network of firms working on infrastructure development and project finance with members in 14 countries across the Americas.

The firm advised Inlatec, Costa Rica's second largest dairy producer, on its acquisition by Mexican company

Sigma Alimentos and advised coffee company Tostadora La Meseta on its sale. Other work includes advising Spanish outfit Metalurgias del Guarco on its acquisition of a large Czech metallurgy company and working on the merger of clothing retailer La Gloria with Mundo Graffiti in Venezuela.

Key contact partners

Freddy Fachler
Humberto Pacheco
Hernán Pacheco

Leading lawyers

Gino Cappella
Freddy Fachler
Humberto Pacheco

Zürcher Montoya & Zürcher

Zürcher is another mainstay of the Costa Rican legal market that has done well in keeping up with the times over the last few decades. It has specialized in corporate and commercial law ever since its foundation in 1936. Founding partner Harry Zürcher, who has been recommended for his technical skills in corporate and commercial advice, works with a team of 16 lawyers.

The firm worked opposite Bufete Odio & Raven in May 2003 on Costa Rican hotel concessionaire Grupo Istmo de Papagayo's financing from Scotiabank in the Cayman Islands. The \$53 million it contributed and the \$5 million subordinated facility from Four Seasons Hotels was required to finish the construction of a Four Seasons hotel and resort in the Papagayo region. The deal's size and remote location created complications, as did contractual relations between Scotiabank and the government.

Other work includes advising car manufacturer Daimler-Chrysler on its separation from local distributor Automercantil and advising Payless Shoes on setting up a chain of shops across central America. Other international clients include Citibank, Merrill Lynch, Pfizer, Crédit Lyonnais and Copa, the Panamanian airline.

Leading lawyer

Harry Zürcher

Alfredo Fournier & Asociados

Like FA Arias & Muñoz, Alfredo Fournier is recommended as a "small but very good team" of lawyers. Unlike FA Arias & Muñoz, however, it has been around in Costa Rica since 1962.

Two of the firm's biggest clients are the Costa Rica-Canada Trust and American Express, for which it does a lot of intellectual property and mergers and acquisitions work. Other clients include Austin Powder Corporation of Cincinnati, which it advised on its purchase of the controlling stock in Fertilizantes de Centro America, Semicon-Tec,

which it advised on the purchase of by HIG Capital Partners, and the Costa Rican subsidiary of Seagrams, which it advised on its acquisition by Diageo and Treat Venture.

The firm also gives investment and corporate advice to LG Electronics Panama, assists Onix Insurance Group on its corporate matters in Costa Rica and acts as local counsel to Renaissance Hotels, Cabo Rico Yachts and Alimentos Preparados.

Key contact partners

Carlos Ayon
Alfredo Fournier
Octavio Fournier

Other notable firms

Alvarez Jiménez De Pass specializes in real estate and private investment work, while **Vargas Jiménez & Peralta** is an old Costa Rican firm that bases its reputation on founding partner Fernando Vargaz.

Laclé & Gutiérrez is an up-and-coming firm that has "made a lot of progress lately" and is "rapidly making inroads, particularly in banking". It has now grown to a team of 15 lawyers. Peers agree that **Laclé** and **Lara Lopez Matamoros Rodriguez & Tinoco** are two of the firms that have dealt most successfully with updating their old, traditional structures.

André Tinoco Abogados is referred to as "a good firm making progress" by its competitors, while **KPMG** is going through changes as to its structure in Costa Rica, has reduced in size and is specializing more in tax advice.