

Honduras

Chamber of commerce:

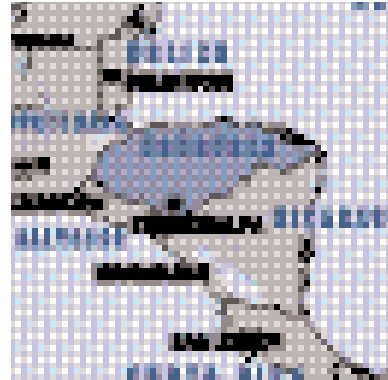
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Corporate finance legislation in Honduras

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Honduras is on its way to a new era in corporate financing, due to the creation of a modern Securities Market Law. In the once uncontrolled securities market, many companies without financial backing obtained millions of US dollars from investors attracted by higher interest rates who then suffered a loss after those companies were unable to honour repayment requirements at maturity. Some participating companies offered promissory notes at interest rates higher than those paid by banks for deposits, even though those companies, left unsupervised, were not meeting the legal requirements enabling them to do so. For example, while a company could qualify at the stock exchange market with a debt-capital ratio of five to one, some companies were still collecting funds through this mechanism with a debt-capital ratio of 60 to one. New loans served only to make interest payments in respect of the first batch of loans and so on. It naturally reached a point where hundreds of investors lost all their funds.

In an effort to restore public faith in these kinds of transactions, a new law has been brought into effect – the Securities Market Law (the Law). The public offering of securities is now supervised and controlled by the same entity that regulates the entire Honduran banking and insurance system: the National Banks and Insurance Companies Commission (the Commission). The Law was enacted in 2001, and is now being complemented with special regulations, prepared by the Commission and published in order to become effective. The Commission has stated that, with the exception of one set of regulations, all regulatory dispositions are now in effect. These regulations refer to specific provisions in the law, clarifying it and defining in detail the set of rules applicable. For example, the law determines that participating companies, such as issuers of securities, must submit reports to the Commission, so now there is regulation of information and a standard for the supply of information, setting out the specifics of a report's contents as well as the periodicity in which reports have to be turned in.

The Law states that a company can voluntarily seek registration at the Commission in order to be able to offer securities to the public through the Honduran securities market (private offerings are treated separately). Even though the Law refers to voluntary registration, in reality it becomes compulsory when a public offering is intended. Information has been given indicating that for March 2004, only some issuers have obtained their registration as such, but no public offering of securities registration has been applied for. One national bank is preparing an issuance of securities and it is expected that a filing for its approval will be presented soon.

Under Article 4 of the Law, a public offering is when any kind of security is issued, allocated, negotiated or traded and this offering is transmitted to the public or to specific groups through the media. Article 5 states that, when a public offering is intended, both the securities as well as the issuer must be registered in the Public Registry of the



Securities Market, established by the Law and overseen by the Commission. Issuers have requested and obtained their registration but still no financial instrument or derivative has been approved. The Law determines that the registration process should be completed within 30 days, but we could not verify if in fact this deadline has been complied with.

A company that wishes to make a public offering of securities must file a petition at the Commission. The issuer must also supply all relevant information pertinent to it, including details regarding administrative, employment, legal, economic, financial and contingent liabilities, according to generally accepted accounting principles, all in the detail incorporated in the regulatory dispositions. The amount and precise nature of the information depends on the characteristics of the issuer and of the securities being offered.

Once the issuer and the securities are registered, the issuer must prepare a prospectus relating to the offer. The prospectus must contain all information relating to the offer and the securities, as well as all relevant information regarding the issuer. This information includes the name and identification of the company and its line of business, the name of its administrators, whether it has any business group interests, financial statements, external auditors' opinion and the risk classification of the securities to be offered. If the securities in question are company stock, the public offering is subject to the approval of the Commission.

After revising the legal aspects surrounding the securities market, and the scope of issues now subject to new regulations we feel strongly that the confidence of the public will be obtained shortly and that filings for the registration of issuers as well as securities will increase. Investments in Honduras are still on a rise, particularly in the electrical and communications sectors where long-term financing is required. The country will once again be able to promote investment through these types of corporate financing. The reaction of the market will be positive, because the supervision to which these investments are now subject will stop the abuses of the past.

Corporate and commercial

Recommended firms

Bufete Gutierrez Falla

López Rodezno & Asociados

JR Paz & Asociados

FA Arias & Muñoz

Bufete Batres y Asociados

Bufete López Castro

Ortez Sequeira & Associates

Bufete Gutierrez Falla

Gutierrez Falla is one of the most traditional of the law firms in Honduras. Harvard-educated Laureano Gutierrez Falla, who founded the firm in 1974, dominates the firm. Most Honduran firms that are not large enough to adopt a modern partnership structure are dominated by their name partners (JR Paz & Asociados being a notable exception). Gutierrez Falla is also recommended by the market for his long legal experience in Honduras' corporate and commercial sector.

The firm has many international banks among its clients. For example, it advised Lloyds TSB on the Honduran aspects of its \$82 million sale of its central American banking assets to El Salvador's Banco Cuscatlán, and acted as local counsel to Barclays Bank as arranger of a \$120 million commercial paper programme for the Central America Bank for Economic Integration, which was designed to finance the Bank's foreign trade operations.

Bufete Gutierrez Falla comprises five partners and two associates based in the firm's office in the Honduran capital, Tegucigalpa. The only negative comment made by any firm to our researchers was that Gutierrez Falla could do with a few new, younger lawyers.

Key contact partner

Laureano Gutierrez Falla

Leading lawyer

Laureano Gutierrez Falla

López Rodezno & Asociados

The reputation of López Rodezno is almost unparalleled in Honduras. Even competitors admit the firm is "excellent" and a "good, high-performing" outfit.

Notable work includes acting as Honduran counsel on South African Breweries' acquisition of a 97% equity interest in Cervecería Hondureña. Cervecería Hondureña is the sole brewer and largest soft drinks bottler in Honduras, and also holds exclusive bottling rights for

Coca-Cola. The equity interest was purchased from the Dole Food Company for a cash consideration of \$537 million. The firm also represented a Guatemalan group in connection with the privatization of a sugar mill in the south of Honduras, advised an American energy company on the development of a 60-megawatt power project and represented a large French company on a natural gas joint venture.

The firm was founded in 1955 by Guillermo López Rodezno, now retired, and has offices located in Tegucigalpa, San Pedro Sula and Choluteca. Senior partner Rene López Rodezno is highly recommended by his peers for the quality of his corporate advice.

Key contact partner

Rene López Rodezno

Leading lawyer

Rene López Rodezno

JR Paz & Asociados

JR Paz is the largest firm in Honduras, with six partners and seven other lawyers. Its key figure is leading lawyer and founding partner José Ramon Paz, although Chicago-educated partner José Rafael Rivera is also highly recommended and often acts as the first point of contact for clients.

A work highlight was acting as Honduran counsel to Banco Continental de Panama, Panama's third largest private bank, on its acquisition of the shares of Banco Alemán Platina, a Swiss-German bank with offices and operations in Peru, Colombia, Ecuador, Panama, Costa Rica, Nicaragua, Guatemala, El Salvador, Honduras and Mexico.

The firm has offices in both the administrative inland capital Tegucigalpa and the more modern commercial centre San Pedro Sula, enabling it to serve clients easily throughout Honduras.

Key contact partner

José Rafael Rivera

Leading lawyer

José Ramon Paz

FA Arias & Muñoz

Arias & Muñoz is the firm in central America with the greatest spread and depth of offices. It has people in Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica. The Honduras office is the most recent addition to the network, where it has taken over local firm Matamoros Batson & Asociados.

The firm recently advised on the largest syndicated loan in Honduran history, advising Citibank and Banco de Honduras on the facility in November 2003. Other banking clients include Hortifrutti Honduras, Banco Promerica, Banco Cuscatlán and the Interamerican Investment

Corporation. Meanwhile, in project finance the firm recently acted as local counsel to the lenders on a \$40 million energy project, acted again for the banks on an \$18.5 million textile sector deal and advised on a large energy project valued at \$117 million.

The firm has one partner and five associates working on corporate finance transactions as a whole.

Key contacts

Dennis Matamoros Batson

Evangelina Lardizabal

German Martell

Other notable firms

Bufete Batres y Asociados has a strong list of international corporate clients that includes Avon Products, Citibank, Dole and IBM. Name partner and former minister for foreign affairs Cesar Batres is highly recommended by peers and clients. **Bufete López Castro** is small but highly regarded, with a history of handling high-profile work, including advising the government of Honduras on the construction of a 400 MW power plant in a joint venture with Pluto Energy and working on the first energy plant in Honduras to burn sugar cane refuse. **Ortez Sequeira & Associates'** founding partner Enrique Ortez Sequeira is heavily involved with politics in Honduras but also finds time to lead a law firm that specializes in shipping as well as corporate and commercial work. He works with two associates in the firm's Tegucigalpa office.