

LATIN AMERICA YEAR IN REVIEW

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ARGENTINA

On May 25, 2003, Néstor Kirchner took office as President and continued the country's social and economic reorganization, which was initiated by former president Eduardo Duhalde in January 2002 with "pesification" (the mandatory conversion into pesos of all monetary obligations originally denominated in a foreign currency). Pesification led to the devaluation of the Argentine peso, the resignation of former president Fernando De la Rúa and numerous claims against the government.

In September, Argentina reached a debt rescheduling agreement with the International Monetary Fund which was viewed by foreign public opinion as a key element of the country's recovery and to rebuilding the confidence of overseas investors. The economy has shown signs of improvement. The inflation rate has dropped to 4% from 40% in 2002, and in 2003 the country's economy grew by 8.7%. On the political front, President Kirchner has announced public works programs to stabilize the country's economy.

A. GENERAL AND CORPORATE COMMERCIAL PRACTICE

Control of Foreign Companies Doing Business in Argentina.

1. *Resolution 7/2003 (Official Bulletin, September 25, 2003)*. The Inspección General de Justicia ("IGJ") established new requirements for foreign companies doing business in Argentina, whether as shareholders, via a branch office or through a permanent representative office. The IGJ can now request that a foreign company's by-laws comply with the Argentine Company Act, Law 19,550, if the IGJ determines that the purported foreign company is really, in fact, operating as a domestic one. Failure to comply can result in liquidation of the company and/or fines against members of the local board of directors.

2. *IGJ Resolution 8/2003 (Official Bulletin, October 22, 2003)*. Effective May 2004, transactions involving real estate in Buenos Aires undertaken by foreign companies not having a branch or other permanent representative office are required to be registered at the Real Estate Registry to be maintained by the IGJ.

3. *IGJ Resolution 12/2003 (Official Bulletin, December 4, 2003)*. If foreign companies, although registered abroad, maintain their corporate domicile or conduct their primary business in Argentina, they may be deemed domestic companies. As a result, the foreign company will be registered as a domestic company, and must comply with the requirements of Argentine law. This resolution comes into force on January 4, 2004.

4. *Suspension of Certain Provisions of the Argentine Company Act. Decree 1293/2003 (Official Bulletin, December 23, 2003)*. On July 16, 2003, Decree 1269/2003 suspended the applicability of Section 94, subsection 5, and Section 206 of the *Argentine Company Act* until December 10, 2003. This term has now been extended through December 10, 2004. Section 94, subsection 5 of the *Argentine Company Act* provides for the dissolution of the company upon the loss of corporate capital, and Section 206 provides that reduction of corporate capital must be reduced when losses exceed reserve funds plus 50% of the capital.

B. RENEGOTIATION OF PUBLIC UTILITIES AGREEMENTS AND DISPUTE SETTLEMENT PROCEDURE UNDER BILATERAL INVESTMENT TREATIES

1. *Regulation of the Renegotiation Process of Public Utilities Agreements. Decree 311/03 (Official Bulletin, July 4, 2003).* The Executive Branch established the Unit for Renegotiation and Analysis of Public Utility Agreements under the Ministry of Economy and the Ministry of Federal Planning to renegotiate public utilities agreements affected by the provisions of Public Emergency Law 25,561.

2. *Regulation of the Renegotiation Process of Public Utilities Agreements. Law 25,790 (Official Bulletin, October 22, 2003) amending Law 25,561.* The renegotiation process was extended until December 31, 2004, government decisions will not be limited by the provisions of the regulatory framework of the public utilities agreements, and interim grants may be established during the negotiation process.

3. *Key components include: Bilateral Investment Treaties. Unit for Assistance with Arbitral Defense. Decree 965/03 (Official Bulletin, October 29, 2003).* The Executive Branch established the Unit for Assistance with Arbitral Defense to promulgate guidelines for negotiations that arise pursuant to a Bilateral Investment Treaty, prior to any arbitral proceedings.

C. ECONOMIC EMERGENCY RULES

4. *Supreme Court Declares Conversion into Pesos of Bank Deposits Originally Made in Dollars to be Unconstitutional.* On March 5, 2003 the Supreme Court, in Provincia de San Luis v. Federal Government, declared unconstitutional the compulsory conversion into pesos of bank deposits originally made in dollars. In its decision, the Supreme Court reiterated the principle that all constitutional rights may be regulated, but that such regulation has to meet the standard of reasonableness.

The court held the remittance of pesos after a devaluation in an amount that is significantly less in comparison to the dollars originally deposited does not constitute a reasonable regulation of rights to property. Indeed, the Supreme Court held that the conversion into pesos of the bank deposit made in dollars by the Province of San Luis, as established by Section 2 of Decree 214/2002, violated the right to property protected by the Constitution and that the Government exceeded the powers delegated by Congress under Law 25,561. The bank deposit had to be returned in dollars (or in the amount of pesos necessary to purchase the relevant amount of dollars in the market). However, it is important to point out that the Court decided that the party obligated to pay such deposit is the bank (i.e. Banco de la Nación Argentina). The Court specifically stressed that its decision should not be automatically extended to other cases.

5. *Act 25,820 (Official Bulletin, December 4, 2003)* extended, until December 31, 2004, the Public Emergency declared by Act 25,561. This Law modified Section 11 of Law 25,561, establishing that debtors who defaulted on their obligations *prior* to the enactment of Law 25,561 were included in the pesification.

D. MERGER CONTROL

1. *Antitrust Commission Clears Bayer's Acquisition of Aventis Crop Science subject to Substantial Divestiture February 27, 2003.* Argentina's Antitrust Commission ("CND") recommended one of the largest asset divestitures in the history of Argentina's merger control regime, in the cotton defoliant, agricultural insecticides, seed treatment and household insecticides markets.

2. *Air Comet - Aerolíneas Argentinas Fined for Late Filing of Economic Concentration.* On October 2, 2001, Air Comet S.A. ("Air Comet") signed a share purchase agreement with *Sociedad Estatal de Participaciones Industriales de España* ("SEPI") with respect to the latter's shares in

Interinvest S.A., a company which owns 91.93% of the capital stock of Aerolíneas Argentinas S.A. ("Aerolíneas") and 90% of the capital stock of Austral Líneas Aéreas - Cielos del Sur S.A. ("Austral"). Even though the referred transaction was subject to antitrust laws, thus requiring its mandatory disclosure, the parties did not file the notice intended for the transaction with the CNDC. The CNDC recommended a fine of \$471,000 (approximately US\$147,600).

E. ENTERTAINMENT LAW

Cultural Areas – Limitation of Foreign Ownership. Law 25,750 (Official Bulletin, July 7, 2003.) This law restricts foreign ownership to a maximum of 30% of a company's capital stock and voting rights in an array of industries, especially those related to media, content production, internet services and publishing activities. The law does not affect current foreign ownership arrangements. Foreign shareholders may seek relief by recourse to Bilateral Investment Treaties. The law should not affect US investments in companies engaged in cultural activities in light of the Bilateral Investment Treaties to which Argentina and the United States America are parties. However, investment treaties with other countries may not apply to the same extent.

F. LABOR LAW: DOUBLE SEVERANCE PAYMENT

Amendment to Public Emergency Law 25,561. Labor and Employment Termination. Decree 1351/2003 (Official Bulletin, January 6, 2004). The Public Emergency Law provided, inter alia, for a 180 day double severance pay period in the event of termination without cause. Decree 1351/2003 extends the Act's reach until March 31, 2004. Although this law does not prohibit dismissals, in the event of a termination without just cause, the employer must pay the wrongfully dismissed worker twice the severance payments the worker would ordinarily be entitled to collect for a 180-day period.

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BOLIVIA

HISTORICAL BACKGROUND

A. TAX LAW

Over the past two decades, Bolivia has undergone increasing economic liberalization, which has led to a drop in inflation and to increased financial stability, but at a high social cost. The state is now a regulator, rather than the owner of large public enterprises. However tensions caused by the hydrocarbon law were a factor that led to political protest during 2003 and ultimately to the President's resignation.

1. *Law No. 2493 dated August 4, 2003 (Published in the Official Gazette No.2509)* modifies Law No. 843 of the Bolivian Tax Regime. This amendment exempts transfer of equity interests in Limited Liability Partnerships and Corporations from the standard transaction tax of three percent of the value of the transaction. The amendment was intended to increase commercial activity.

2. *Law No. 2492 (Published in the Official Gazette No. 2508).* Effective November 3, 2003, the government, in an attempt to increase revenues to balance the debt, has enacted a tax amnesty for unpaid taxes from 1998 to July 2003.

B. ADMINISTRATIVE LAW

New Administrative Procedure Law. Law No. 2341 (Published in the Official Gazette No.2390). Effective July 31, 2003, this law aims to facilitate accountability and responsiveness by administrative entities by incorporating the legal fiction of negative administrative silence. As a result, if an administrative agency does not issue a specific administrative order in response to a petition during the prescribed statutory period, the petition will be deemed rejected and the applicant may seek other administrative remedies. In the past the State other asserted litigation defenses of failure to exhaust administrative remedies.

C. LABOR LAW

Amendments to Labor Law. Supreme Decree No. 26877 dated December 21, 2003 (Published in the Official Gazette No.2450 December 2002). Foreign workers no longer have to obtain a Labor Credential in order to work in Bolivia.

Foreign workers now must register their employment contract with the Labor Ministry or, in the absence of an employment agreement, submit a notarized letter describing their work and tax registration with the National Revenue Office.

In addition, all employers must note their employees' citizenship in their monthly payrolls in order to create a database of foreign workers in Bolivia.

D. BANKING LAW

Amendments to the Banking Law. Law No 2297 dated December 20, 2001 (Published in the Official Gazette No. 2368). Amendments have been introduced to the 1993 Banking Law to increase the powers of the Superintendence with respect to liquidations, mergers and restructurings.

E. REGULATORY AND CORPORATE LAW

This Superintendency of Companies was created pursuant to *Supreme Decree No. 27203 of October 7, 2003 (Published in Official Gazette No. 2529)*. The Superintendency is empowered with the regulation, control and supervision of all natural and juridical persons which are carrying out commercial activities in accordance with the Commercial Code, within the framework of the System of Financial Regulation (SIREFI), including matters relating to corporate governance, defense of competition, restructurings and liquidation.

Regulation of voluntary restructurings is in response to demands of companies to introduce flexibility for the restructuring of their debts, particularly within the banking system, a need that has become apparent after the economic crisis of the last five years.

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BRAZIL

A. THE NEW CIVIL CODE

On January 11, 2003, Brazil enacted a new civil code, replacing the 1916 Civil Code.

Among notable changes to the prior code are the following: legal capacity is now reached at eighteen instead of twenty-one; a new property system has been established between spouses; relatives, spouses or companions may claim economic support from one another; and the freedom to enter into contracts has become subject to the principles of probity and good faith.

The new Code also contains significant changes to the Companies Law. Under the new Code, limited companies, one of the most used corporate vehicles in Brazil, will now be strictly regulated. Among the new rules is the requirement that all resolutions must be made in a shareholders' meeting, the stipulation of a minimum quorum for approval of certain resolutions and the shareholders' obligation to hold an annual meeting of the company's members to deliberate and approve the officers' accounts and the allocation of profits.

B. TELECOMMUNICATIONS LAW

2003, the first year of a new government, was full of significant events in the Brazilian telecommunications regulatory sector.

1. SFTS Concession Contracts

Switched Fixed Telephony Service (SFTS) Concession Contracts, to be executed in 2006, have now been finalized.

2. SFTS Tariff Adjustment

While tariff adjustments were initially set in concession contracts to be subject to the IGP-DI index, the Brazilian Public Prosecution Service filed an action to change the adjustment index to IPC-A, and a preliminary injunction was granted, replacing the IGP-DI with the IPC-A, both for consumers' bills and interconnection charges.

3. 1.9 GHz Band Use

ANATEL decided, through an administrative process, to maintain the 1.8 GHz band for Personal Mobile Service (SMP), leaving the 1.9 GHz band to be used in providing other services.

4. Administrative Sanctions Regulations

Through Resolution 344/03, ANATEL approved the regulations concerning the application of administrative sanctions. The regulations seek to minimize subjectivity in the determination of sanctions in proceedings at the Agency for violations of the laws, regulations and rules pertaining to the telecommunications sector.

5. The Agency's Presiding Officers

One of the most expected events in 2003 was the appointment of Pedro Jaime Ziller de Araújo, who was appointed to ANATEL's Board of Directors. Luiz Guilherme Schymura de Oliveira, the Agency's former President, resigned the presidency.

6. Digital Communication Service

A new telecommunications service in Brazil has been established, intended to implement broadband access in schools, universities and libraries using the financial resources collected through the FUST – Fund for Universalization of Telecommunications Services. The FUST has accumulated around R\$3.26 billion to date. The Regulations, General Grant Plan and General Universalization Goals Plan for this new telecommunications public service are already under Public Consultation for implementation.

C. ENERGY LAW

1. New Electric Sector Profile (Provisional Acts 144 and 145, dated December 10, 2003). Two provisional acts are pending approval. Claims of unconstitutionality have been filed; further changes may, therefore, be anticipated. Provisional Act No. 144 provides the rules for electric power commercialization.

Provisional Act No. 145 authorizes the creation of an Energy Research Company (Empresa de Pesquisa Energética (EPE), which will be charged with estimating the supply and demand for electric power in Brazil. It is anticipated that EPE will undertake activities that had been previously abandoned by other entities, including assessing the Brazilian hydrographic basins.

The National Electric Energy Agency (ANEEL) is still responsible for holding energy auctions, however, the auctions will be based on the number of megawatts and on projects determined by EPE. This gave rise to criticism by some analysts, who have accused the model of being too centralized and of having weakened ANEEL and the National Electric System Operator.

Distributors must now have contracts for 100% of their market; formerly they were obliged to have contracts for only 95% of their market, with the possibility of selling any remainder or trying to acquire their energy deficiencies at the Electric Power Wholesale Market (MAE).

The Electric Power Wholesale Market has been replaced with the Electric Power Chamber of Commerce (CCEE), which will put together the pool for medium and long-term contracts (10, 15 or 20 years), and will not regulate short-term pricing for energy. Obtaining environmental permits is a prerequisite for the bidding of hydroelectric companies and transmission lines. Bidding for new hydroelectric projects will be granted to public or private generating companies based on energy blocks, and no longer on a specific project.

Distributors will now be subject to more comprehensive regulations and will not be allowed to pursue unrelated activities, such as optical fiber cabling and power generation, unless such activities are pursued through separate corporate entities.

D. TAX REFORM

Constitutional Amendment 42, published in the Federal Official Gazette December 31, 2003). This amendment resulted in a number of changes to the tax system, including the following: the sharing of tax information between tax administrators and the federal, state and municipal governments; tax incentives for micro and small-sized companies; the possibility instituting a single collection system for the collection of all taxes whether federal, state or municipal; *anterioridade* (the principle under which no tax need be paid during the year it was enacted) combined with the *anterioridade* of 90 days from the publication of the law that increases or creates taxes; reduction of the Excise Tax (IPI) on the acquisition of capital goods; a new progressiveness to the Rural Land Tax (ITR), for the purpose of discouraging non-productive property; the possibility of the collection the of ITR by the Municipalities provided that there is no reduction of the tax; immunity from Value Added Tax on Sales and Services (ICMS) on export operations of goods and services; exemption from VAT for certain telecommunication operations using free radio broadcasting; minimum and progressive rates for the Automotive Ownership Tax (IPVA); the transfer of 25% of the fuel CIDE (Economic Domain Intervention Contribution) to the States and Federal District; extension of the Temporary Contribution on Financial Transfers (CPMF) to December 31, 2007, with the maintenance of the rate of 0.38% and revocation of the provision that determined the reduction of this percentage to 0.08%; and extension, for a further 10 years, of the term of the Manaus Duty-free Zone.

E. SOCIAL SECURITY REFORM

Constitutional Amendment (EC) No. 41, of December 19, 2003, introduced several amendments to the Constitution, particularly with regards to the social security system. Among the most relevant changes: the social security system applicable to public servants now receives contributions payable by the public entity, by inactive servants and by pensioners; for determining pension amounts, the workers' contributions to the system will be taken into account, rather than the worker's compensation amount as on retirement date; a ceiling was set for death benefits; the Federal Supreme Court Justices' subsidies will no longer be mandatory or determined pursuant to a bill of law jointly proposed by Congress, the President and the Supreme Court Justices, but by the National Congress, and sanctioned by the President; and low income workers will now have access to social security benefits in the amount of a minimum wage.

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CHILE

A number of significant legislative developments occurred in 2003. The most important are summarized below.

A. U.S.-CHILE FREE TRADE AGREEMENT

The treaty was signed on June 6, 2003 and has been ratified by each country.

The treaty improves the commercial position of Chilean products and provides the following:

1. - *Trade Liberalization.* All tariffs and quotas cease at the end of a period of transition: tariffs will decline to zero after twelve years.

2. - *Trade in Goods.* The U.S. will eliminate customs duties on Chilean imports within four years and the U.S. has agreed to prohibit the creation of any new obstacles to free trade.

3. - *Impact of the F.T.A. on United States Asset Management and Investment Companies, Especially in Relation to the Chilean Private Pension System.* U.S. asset-management firms will be allowed to freely compete with Chilean firms for the administration of Chile's voluntary and mandatory pension funds.

4.- *U.S. Public Purchases.* Chilean companies may now bid to supply the U.S. Government with products and services provided the contracts are for an amount equal to at least U.S. \$50,000.

B. LIMITED LIABILITY INDIVIDUAL COMPANIES

Law 19.857 (published in the Official Gazette on February 11, 2003). The law authorizes the establishment of Limited Liability Individual Companies. The main aspects of the law are the following:

1) The law authorizes all capable persons to form a Limited Liability Individual Company and the liabilities of such a company will be restricted to its assets..

2) The law regulates the formation and modification of Limited Liability Companies using the rules applicable to other corporate entities (public deed, inscription, publication in the Official Gazette within a certain term, and sanctions in the case of nullity in the constitution).

3) It establishes the instances where the corporate veil may be pierced: when the company's officers do not act on behalf of the company or act outside the scope of employment, where there are sham contracts, or in the case of fraudulent bankruptcy.

4) It provides for other corporate entities to become a Limited Liability Individual Company (when a single shareholder holds 100% of the company) and for Limited Liability Individual Companies to be transformed into other types of companies.

5) The law provides that Limited Liability Individual Companies shall be subject to the same legal and tax rules applicable to commercial limited liability partnerships.

C. ISSUE OF PUBLIC DEBT AND HEDGE OPERATIONS BY THE PUBLIC SECTOR

Law 19,908 (published in the Official Gazette on October 3, 2003) provides for the issuance of public debt by means other than through documentary instruments. As a result:

- i) there is no need to manage, verify and control the certification;
- ii) the issue of fraud or forgery is decreased; and
- iii) investors can receive on-line information on dealings in their securities.

Law 19,908 also grants to the National Treasury and other public entities, except regional governments and municipalities, the ability to use hedge instruments such as swaps, futures, put options, and forwarding of foreign currencies or interest rates.

D. COURT OF DEFENSE OF FREE COMPETITION

Law No. 19,912 (Published in the Official Gazette on November 14, 2003); effective ninety days after the date of publication.

The law amends Decree Law N° 211, of 1973, the "Antitrust Law" as follows:

1) It replaces the current Resolutive Commission with a newly created Court of Defense of Free Competition, recognizing it as an independent jurisdictional entity, subject to the appellate jurisdiction of the Supreme Court. Appointment of the members of the Court shall be by means of public competition, members will be remunerated, and there will be a complete separation between the Antitrust Prosecutor and the Public Administration. Members of the court may not serve as public officials and may only be removed for cause.

The law also provides a detailed definition of the purpose of the law and amends the examples of anticompetitive behavior, thus allowing the Court to be more accurate in its decisions, criminal sentences are eliminated and replaced with higher fines and the joint liability of the executives involved in anticompetitive actions.

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COLOMBIA

Legislative changes followed the new presidential mandate which began August 7, 2002. The government has found itself lacking the funds to deal with the obligations that it inherited, and has adopted measures designed to reestablish the confidence of foreign investors.

A. AMENDMENTS TO FOREIGN EXCHANGE LAW

1. *Amendments to General Regulation of Foreign Capital Investments in Colombia and of Colombian Capital Investments Abroad (Decree 1844 of July 2, 2003)*. The amendment offers a flexible mechanism to foreign investors for the acquisition of shares in a business, and for the management and transfer of shares in unregistered companies through trusts. The Decree extends to all branches of foreign companies the possibility to register available capital kept in an account with a parent company in the corresponding year, as direct foreign investment in the form of supplemental capital. This possibility was formerly available only to branches in the oil and mining sector. The law also simplified the proceeding for registration of foreign investments.

2. *Amendments to Exchange Regulations (Official Bulletin August 15, 2003)*. The Central Bank will now allow foreign companies to transfer different currencies to their branch offices in Colombia for payment of services and as intermediaries in the exchange market to obtain financing in foreign currencies from foreign agents.

3. *Amendments to Exchange Regulation (Official Bulletin November 21, 2003), Instructive DCIN 83 of the Central Bank*. This amendment establishes new rules for registration of exchange operations, including registration of foreign investment and foreign indebtedness operation.

B. TAX LAW

1. *Amendments to the Tax Code on Transfer Pricing. Law 788 (Published in the Official Journal December 27, 2002).* The law instituted a comprehensive transfer pricing regime between affiliated entities and expressly incorporates the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as a tool for interpreting the tax law. The law also regulates payments made to entities located in "tax havens" (as defined by the OECD and Colombia): (i) such payments must meet transfer pricing regulations; (ii) payments that constitute taxable income under Colombian law are subject to an income and remittance tax withholding in an aggregate amount equivalent to 39.7%; (iii) payments that are not subject to withholding tax (i.e. foreign indebtedness operations), are only deductible to the payor if they correspond to (a) credits registered before the Central Bank prior to December 27, 2002, or (b) the transaction has met all transfer pricing criteria.

2. *Decision C - 690 of September 29, 2003.* The Constitutional Court declared that the reference made by Law 788/02 to "tax havens" as defined by Colombia and the OECD is unconstitutional. The Court stated that since Colombia is not party to the OECD treaty, Colombia can not be bound by the actions or declarations of this multilateral treaty organization.

3. *Law 863 (Published in the Official Journal December 29, 2003)* provides that (i) the national government will determine which jurisdictions will be deemed tax havens; (ii) there will be a withholding tax of 35% on income tax and capital gains, and a 7% remittance on payments or transfers that constitute taxable income to a resident of a tax haven; (iii) there will be a tax on estates with a net worth greater than 3 billion pesos (approximately US \$1,050,000), which will be applied at a rate of 0.3% (this tax will remain in force from fiscal year 2004 through fiscal year 2006); (iv) there will be a 10% net taxable income surcharge for the fiscal years 2004 through 2007, so that as of December 31, 2003 the applicable income tax rate in Colombia is 38.5%.

4. *Decree 1242 of 2003 (Official Journal May 19, 2003).* Decree 1242 regulates articles 326 and 327 of the Colombian tax code, which address the obligations placed on foreign investors in connection with the sale of their investment holdings. Within one month following the sale of equity holdings by a foreign investor, the investor is obligated to file an income tax return on account of the capital gains from the sale even if no gains are realized. Foreign investors are bound to keep relevant documentation available for possible tax audits for up to five years. Each sale of equity holdings by foreign investors will be deemed an independent sale, even if part of a series of transactions. Thus, for each such sale, the foreign investor has the obligation to file an income tax return.

C. LABOR LAW

1. *General Pension System (Official Journal January 29, 2003).* It is now mandatory for independent contractors (individuals receiving income not derived from an employment agreement) to join and contribute to the General Pension System. The ability to obtain a pension has been modified: the minimum amount of weeks which must be contributed to the system was increased from the current 1000, to 1300 in the year 2015 and the minimum eligibility age will be increased as of 2014 to 57 for women and 62 for men.

2. *Amendments to Labor Law (Official Journal December 27, 2002).* This new law extended the ordinary day shift from 6:00 a.m. to 10:00 p.m. It should be noted that the 8-hour working day, and the 48-hour working week, are maintained as standard working hours (cost of hours worked in excess of such maximums are to be paid with a 25% increase in work during day shift and 75% in work during night shift).

D. CORPORATE LAW

Joint Control (Official Bulletin March 27, 2003, File No. 6271). The State Council confirmed the possibility of joint control by several companies or persons over one or more companies. The situation of joint control has been protractedly debated as it must be distinguished from "*afecctio societatis*" (joint cooperation directed towards the achievement of its purpose).

E. CIVIL LAW

Law 791 of 2002 (Official Journal December 27, 2002). Statute of Limitations. All twenty year statutes of limitations contained in the Civil Code were reduced to ten years. Law 791 supplemented Article 2513 of the Civil Code by providing that statutes of limitation on property title acquisition and foreclosure are susceptible to being presented both as a claim and as a defense, by the interested party, or by creditors, or by any other person holding an actionable interest in such declaration. With respect to Article 2529 of the Civil Code, Law 791 reduced the statute of limitations for adverse possession from ten to three years for movable property and to five years for real estate property.

F. FINANCIAL LAW

Amendments to the Financial Law (Official Journal January 14, 2003). Foreign financial and reinsurance companies will be able to establish a branch office in Colombia with the authorization of the Superintendency of Banks.

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COSTA RICA

In 2003, Costa Rica's political and economic system underwent a transitional period, where implementation of the new Presidential administration's programs and legislative agenda was held to a slow pace. The most significant legal developments of the year were a decision of the Constitutional Chamber of the Supreme Court allowing former Presidents to run again for Presidency and the negotiation of the Central American Free Trade Agreement, or "CAFTA".

A. COSTA RICAN CONSTITUTION

Amendment to the Constitution, Judgment 2771-2000, Constitutional Chamber of Costa Rica's Supreme Court. As of April 4, 2003, provision 132 of the Costa Rica's Political Constitution was amended by a decision of the Constitutional Chamber of Costa Rica's Supreme Court. In July 2002, a claim was brought challenging as unconstitutional the 1969 amendment to the Constitution which prohibited former Costa Rican Presidents from running for office again. The Supreme Court held that the Costa Rican Constitution could not be amended by Congress if the amendment was not in full compliance with Human Rights Treaties and with basic political and economic principles enshrined in the Constitution of 1949. Denying a former President the right to run again was viewed as both violating the individual's rights and as inconsistent with political tradition. The immediate beneficiary of the decision is likely to be former President and Nobel Prize winner Oscar Arias, and the decision may also indicate the beginning of a "natural law" type of approach by the Constitutional Chamber.

B. NEGOTIATION OF A REGIONAL FREE TRADE AGREEMENT WITH THE UNITED STATES OF AMERICA

Costa Rica and other Central American countries conducted nine rounds of negotiations with the United States to sign a Free Trade Agreement. The negotiations sought agreement on agriculture, market access, intellectual property, government procurement, investment, labor, environmental issues, and dispute resolution procedures. The United States has demanded Costa Rica's abolition of monopolies in the telecommunications and insurance industries, and the repeal of the Law for the Protection of Representatives of Foreign Firms. After the negotiations, Costa Rica was the only central American

country not to sign the Free Trade Agreement, and, instead, agreed to extend the negotiations for two more rounds in order to discuss the opening of the telecommunications and insurance markets, the establishment of safeguards regarding palm oil, and negotiations for products such as textile, pork, chickens, sugar, onions, and potatoes. Negotiations between Costa Rica and the United States were finally concluded on January 25, 2004, with ratification expected during 2004.

C. POLITICAL PARTIES LOSE BANKING SECRECY

Judgment 3484-2003, Constitutional Chamber of Costa Rica's Supreme Court. On May 8, 2003, the Constitutional Chamber of the Supreme Court of Costa Rica held that political parties will henceforth not enjoy absolute secrecy of their banking information.

Under the ruling, any person may request and receive information regarding the bank accounts of political parties or of those companies that manage resources linked to political groups and associations. The Chamber held that this information is of public interest and, therefore, should be open to the public.

The ruling was made after a minority congressman requested that bank accounts be open to the public, due to suspicions that have arisen in relation to illegal contributions made to the two main political parties.

D. OIL CONCESSIONS – HARKEN COSTA RICA HOLDINGS LLC

The subject of oil exploration resurfaced in Costa Rica in 2003, after Harken Costa Rica Holdings LLC filed and then withdrew a request for international arbitration to settle a contract dispute for oil drilling off the country's Caribbean coast, seeking to recover \$57 billion in claimed investment and damages, a figure that represents about four times Costa Rica's annual Gross Domestic Product.

The Costa Rican Government insisted that because the Environment Ministry's Technical Secretariat (SETENA) had rejected the company's Environmental Impact Study - necessary for the project to move forward - the contract is no longer valid. Based on a decision by the Constitutional Chamber that held that SETENA does not have the authority to deal with oil exploration, the company has filed a constitutional claim against the Government's action. This appeal is pending.

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DOMINICAN REPUBLIC

In 2003, the Dominican Republic suffered an unparalleled banking scandal with an enormous economic impact. A fraud perpetrated by three of the main local private banks (Baninter, Bancredito and Banco Mercantil) that is estimated to be in excess of US\$3 billion. As a consequence of the financial scandals, the Dominican currency had a rapid devaluation from RD\$17.56 per US\$1.00, to RD\$35.78 per US\$1.00, affecting all areas of life. To protect the fragile Dominican economy and banking system, the legislative branch proceeded to evaluate different legal and tax projects. Important changes were also made to the judicial system.

A. FINANCIAL

Sovereign Bonds. Seeking to stabilize the exchange rate by obtaining fresh hard currency with indirect foreign investments, on January 7, 2003, President Mejia enacted Law 01-03, authorizing the Dominican government to issue a US\$600-million sovereign bond placement in the international capital markets. These bonds were promptly placed and traded in international capital markets at an interest rate of 9.59%.

B. JUDICIAL

In September 2003, the Dominican Supreme Court ruled unconstitutional the Executive decrees that established a 5% tax on exports of goods and services and a 2% tax on imported goods. The court held

that the taxes violated the principles of separation of powers of state established by Articles 37, 99 and 110 of the Dominican Constitution.

On November 13, 2003, the Supreme Court announced Resolution No.1920-03, which sets forth 21 fundamental legal principles that must be adhered to for due process of law and fair trials, pursuant to the guidelines of the Dominican Republic Constitution (2002), the United Nations Universal Human Rights Declaration of 1948 and different international treaties signed by the Dominican Republic. Under these principles, the initial preparation phase of a criminal proceeding will no longer be secret, judges may not make unilateral decisions on bail releases, the accused and their witnesses will be able to directly respond to a judge's questioning and may remain seated, a reasonable time shall be granted to defendants to appear and prepare their defense in a court of law, and defendants will enjoy the right to be assisted by counsel.

C. BANKING

Money laundering. In order to comply with U.S. international guidelines in the fight against drug trafficking, the Dominican Executive branch enacted Presidential Decree Order, Ruling 19-03, regarding the procedures to be applied during the confiscation and custody of drug-related assets in accordance with the money laundering laws 50-88 and 72-02.

D. LEGAL

Public Prosecutors. On April 15, 2003, Congress passed a bill that creates independent public prosecutors. Law 78-03 provides the Dominican General Attorney's Office (*Procuraduria General de la Republica*) with its own budget, disciplinary rules and a school to train its personnel. Notably, the law prevents prosecutors from being removed from their positions for unjust causes.

E. INTELLECTUAL PROPERTY

On August 12, 2003, the Dominican Congress enacted Resolution 150-03, which ratifies the International Treaty of Performance and Phonograms signed before the World Intellectual Property Organization (WIPO).

F. FAMILY LAW

On August 7, 2003, the Dominican Republic Executive branch enacted Law No.136-03, which establishes a new Code to protect minors, by instituting severe penalties for the illegal trafficking of minors, child abuse and child labor, pursuant to the latest human rights guidelines established by the United Nations and UNICEF.

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ECUADOR

2003 was a quiet year for Ecuador. General elections placed a center-left coalition into the Executive Branch, which steadily veered to the right. Economically, it was a year of stability. At year's end, annual inflation was at 6%. Ecuador has improved its import-export balance, lowering its deficit by close to 80%, despite having four years of a U.S.-dollarized economy, a decrease in volume of petroleum exports, and increased import expenditures.

A. ENVIRONMENT

Ecuador unified and harmonized its environmental legislation (Decree No. 3516, Official Registry Special Edition No. 2, March 31, 2003) in, among other areas: forestry, biodiversity, coastal resources, environmental quality, and the special regime regarding the Galapagos Archipelago. In particular, the legislation establishes various dispositions to optimize industrial activities and improve the environmental controls over those activities. The text contains various form and content errors which have made its application less than completely effective and it has not been highly publicized.

B. INTELLECTUAL PROPERTY

For the last several years, Ecuador was the only country in South America considered by the U.S. Trade Representative to have complied with and enforced the WTO intellectual property agreement (TRIPs) which seeks to protect foreign intellectual property. In 2003, the USTR put Ecuador back on the Special 301 List, because Ecuador was required by Andean Community law and Andean Tribunal and Secretariat Decisions, on pain of economic sanctions, to reject a "second-use" pharmaceutical patent. See, <http://www.ustr.gov/reports/2003/special301.htm>. Ecuador is now included in the list of PCT countries, in which Patent Cooperation Treaty inventions can be registered. (Official Registry No. 431, 12 October 2001).

C. FAMILY LAW

Significant changes were made to the law: reference is no longer made to minors, but rather to adolescents and juveniles, who now formally receive more protection from the court system than they did from an administrative agency. Law # 2002 – 100 (Official Register No. 737, of January 3, 2003).

D. NGOs

2003 was the first year in which the Secretary General of Administration took over regulation of local branches of foreign NGOs. Notification and governmental/NGO agreement requirements also have changed and should be reviewed with local counsel. Regulation for the Approval, Control and Extinction of Private Non-Governmental Organizations, Official Registry No. 660, of September 11, 2002.

E. ELECTRONIC COMMERCE

In 2003, following closely on the New Electronic Commerce Law of the previous year, came the governing regulations, dealing with employee privacy, electronic contract, electronic signatures, the use of electronic communications as evidence in civil and criminal cases, and other similar issues.

E. TRADE

Ecuador became a member of the Group of 12 Latin American States that opposed further liberalization of the WTO Agreements unless the U.S. and European countries agreed to stop subsidizing and dumping their agricultural products. Soon thereafter, however, Ecuador began negotiations on a bilateral Free Trade Agreement with the U.S. These talks have now broadened to the Andean Community and to negotiations on the Free Trade of the Americas.

G. WAR CRIMES AND CRIMES AGAINST HUMANITY

Ecuador was one of the countries that both signed the International Criminal Court Treaty and refused to make a side agreement with any country that wanted its citizens to be exempt from the reach of the International Criminal Court. When Ecuador stood by its obligations under the ICC Treaty, the U.S. government notified Ecuador that it would no longer receive U.S. military aid.

H. TAXATION

While there were many fiscal modifications in 2003 in the tax arena, the most salient changes were: (1) new rules on the drawback rights of exporters for customs duties paid for goods used in the production of exported products¹; (2) new income tax tables for individuals and undivided estates² plus new

¹ Decree 653, published in Official Register 144, August 11, 2003

² Res. NAC-0069, published in Official Register 22, February 14, 2003

withholding percentages; (3) IRS rulings on national taxes on financial markets³, the transportation⁴ and electric sectors⁵, and free trade zones activities⁶; and (4) new rules on invoicing formalities⁷

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EL SALVADOR

In 2003 the FMLN, the left-wing party, became the largest party in parliament after legislative elections. Free trade negotiations between the U.S. and all of the nations of Central America took center stage.

A. CIVIL LAW

In order to separate, define and limit the property or possession in *de facto* joint-tenancy situations, a "Special Temporary Law to limit the Property and Possession Rights of Undivided Real Estate" was enacted. This law addresses numerous existing joint tenancy cases, both registered and unregistered.

B. COMMERCIAL LAW

1. Amendments to the Regulating Law for the Deposit, Transportation and Distribution of Petroleum Products were published in the Official Gazette on January 24, 2003. The Hydrocarbons and Mines Bureau is now entrusted with all proceedings regarding this law.
2. In 2000, the Commerce Code was significantly amended, including an increase in the minimum capital of mercantile corporations to US\$11,428.57 (100,000 Colones). Companies were granted a three-year term to adjust their capital to the amendment. As of April 2, 2003, mercantile corporations were granted an additional year to adjust their capital in accordance with the law.
 - a) An Executive Branch regulation has established the minimum requirements that must be complied with in the labeling of cigarettes destined for sale to consumers in El Salvador. Primary and secondary packages must clearly identify, in Spanish, the name of the product, its quantity, origin or source, containing at minimum the following information: registered trademark, precautionary legend, nicotine and tar net content, identification of the date of manufacture or expiration, identification of the origin and name, or corporate name of the manufacturer and importer. Commercial Labeling, NSO 65.24.01:03, published in the Official Gazette of Sept. 2, 2003, Approved by the Executive Branch/Ministry of the Economy, Agreement No. 539, on June 23, 2003.

C. LABOR LAW

On May 23, 2003, the President published a decree to increase the minimum wage pursuant to the following chart:

Sector	Daily Wage
Commerce and services	US\$ 5.28
Industry	US\$ 5.16
Textile and confection industries	US\$ 5.04

In addition, this decree entitles workers of a single company and who perform the same task in identical labor circumstances to earn the same wage notwithstanding their gender, creed or nationality.

³ Res. No. NAC-0004, published in Official Registry 4, January 21, 2003

⁴ Res. No. NAC-0179, published in Official Registry 49, March 27, 2003

⁵ Decree 348, published in Official Registry 78, May 9, 2003

⁶ L. No. NAC-CON-0960, July 24, 2003

⁷ L. No. NAC-CON-0405, April 15, 2003

D. LITIGATION

On September 2, Executive Decree No. 65 was published in the Official Gazette, the "General Ruling of the Mediation, Settlement and Arbitration Law". The Ruling is to implement the Mediation, Settlement and Arbitration Law enacted in August 2002, establishing the Ministry of the Interior's powers to supervise, control and oversee Arbitration Centers as well as the requirements regarding arbitrators.

E. ADMINISTRATIVE LAW

1. *Legislative Decree No. 1216 (Published in the Official Gazette dated May 9, 2003.)* The law regulates the generation, transmission, distribution and commercialization of electric energy. The amendment defines the penalty regimes, access to information, the quality of services and the relation of the authority with the system's operator and market's administrator. The amendment also grants the Superintendence with powers to prevent anti-competitive behavior and to temporarily impose market offerings that reflect a competitive market.
2. *Legislative Decrees; Amendments to Transportation Security. (Published in the Official Gazette on March 13 and May 26, 2003.)* The law that regulates land transport, transit and traffic security was amended this year. The amendment allows for interest of 4% for fines unpaid 30 days after issuance; the possibility to appeal the final resolution issued by the Transit Procedures Unit via e-mail; and the appointment of the Transport Vice Ministry and the Police Department's Land Transit Unit, as entities empowered to follow the legal procedures and remedies.
3. *Drug Activity Regulating Law. (Published in the Official Gazette dated November 7, 2003.)* This law creates the National Anti-drug Commission as the entity in charge of planning, coordinating, supervising and evaluating government plans, strategies and policies directed to prevent and combat the traffic, sale and illegal use of drugs. This law also creates new crimes regarding drug-related activities.

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GUATEMALA

On December 28, 2003, Oscar Berger (the former Major of Guatemala City) was elected President, backed by a coalition of three new political parties (Partido Patriota, Movimiento Reformador and Movimiento de Solidaridad Nacional). His administration is formed mostly by businessmen and the initial indications are that Guatemala will once again promote foreign investment.

Berger replaced Alfonso Portillo, who was a member of Frente Republicano Guatemalteco (FRG), which was formed by General Efraín Ríos Montt, who governed the country from 1983-1984 after taking power through a military coup. Portillo's government was generally viewed as corrupt, and as a result, foreign investment in the country was low during Portillo's tenure.

Since 2003 was an election year, there were few legislative developments. The Constitutional Court, however, decided many challenges to amendments to tax laws.

A. ENERGY

Incentives for the Development of Renewable Energy Projects Law (*Decree of Congress No. 52-200, Official Gazette, November 10, 2003*). On October 28, 2003, Congress approved the Incentives for the Development of Renewable Energy Projects Law. The law aims to promote the development of renewable energy projects and to establish the tax, economic and administrative incentives for the same. The incentives that are granted are: (i) Exemption from import duties and VAT; (ii) Exemptions from income tax payment for a 10 year term (the term starts on the date of commercial operation of the project); and (iii) Exemptions from Commercial and Agricultural Companies Tax payment for the same 10 year term.

B. INTELLECTUAL PROPERTY

Ratification Instrument to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) (Official Gazette, February 20, 2003). Adhesion Instrument to the World Intellectual Property Organization (WIPO) Phonograms and Performances Treaty (WPPT) (Official Gazette, February 17, 2003). On May 23, 2002, the President executed the Instrument of Ratification to the WCT (1996) and on June 10, 2002, the President executed the Instrument of Adhesion to the WPPT (1996). These two treaties adapt copyright law to the digital age, approved by Congress through Decree No. 13-2002. The treaties set out the legal framework to safeguard the interests of creators in cyberspace and open new horizons for composers, artists, writers and others to use the Internet with confidence to create, distribute and control the use of their works within the digital environment.

C. CONSUMER PROTECTION

Consumer and User Protection Law (Decree of Congress No. 006-2003, Official Gazette, March 2003). On February 18, 2003, Congress enacted the Consumer and User Protection Law. This law was enacted to promote, divulge and defend the rights of customers and users, and establish the fines, sanctions and proceedings applicable to consumer protection complaints.

D. INVESTMENT

Decree of Congress No. 42-2003, (Official Gazette, October 13, 2003). Congress approved the Agreement between the Republic of Guatemala and the Kingdom of Spain for the reciprocal promotion and protection of investments.

Ratification Instrument of the Agreement between the Republic of Guatemala and the Republic of Cuba for the reciprocal promotion and protection of the investments (Official Gazette, March 14, 2003). On November 15, 2003, the President executed the Instrument of Ratification of the Agreement between the Republic of Guatemala and the Republic of Cuba, for the reciprocal promotion and protection of investments, approved by Congress through Decree No. 63-2000.

Ratification Instrument of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) (Official Gazette, April 3, 2003). On July 24, 2002, the President executed the Instrument of Ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), executed by the Government on November 9, 1995 and approved by Congress through Decree No. 50-96. Guatemala made the following declarations: (i) Guatemala does not accept the jurisdiction of ICSID with respect to conflicts resulting from armed movements or civil disturbances; (ii) Guatemala shall request the use of an administrative proceeding prior to consenting to an ICSID Convention arbitration; and (iii) the Judicial Branch shall be competent to enforce the arbitration award.

E. EMPLOYMENT

Rules for the authorization of employment of foreign employees in the private sector (Official Gazette, September 29, 2003). On September 17, 2003, through Presidential Decree No. 528-2003, the Ministry of Labor issued the "Rules for the Authorization of Employment of Foreign Employees in the Private Sector."

F. AIR TRANSPORTATION

Ratification Instrument of the Agreement between the Republic of Panama and the Republic of Guatemala with respect to the air services between both territories (Official Gazette, February 26, 2003). On May 29, 2001, the President executed the Instrument of Ratification of the Agreement between the Republic of Panama and the Republic of Guatemala with respect to the air services between both territories, approved by Congress through Decree No. 12-2001.

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HONDURAS

During 2002 and 2003, the Honduran government attempted to simplify antiquated regulations and procedures that deterred badly-needed foreign investment and to reduce the number of requirements necessary to do business in Honduras. All of which, it is hoped, will prepare the country's accession to the Central American Free Trade Agreement.

Some of the most important changes introduced to Honduran laws are as follows:

A. COMMERCIAL LAW

Amendments to the Commerce Code (Decree N° 255-2002), "Law of Administrative Simplification." The procedure for the incorporation of companies has been simplified by: a) reducing the minimum number of stockholders required from five to two; b) eliminating the requirement that there be a judicial revision of the articles of incorporation prior to a company's registration in the Mercantile Registry; and, c) recognizing electronic media as a tool for storage of accounting records.

B. IMMIGRATION LAW

Decree N° 255-200. There has been a liberalization of the policy for granting residency permits to foreigners who temporarily relocate to hold management positions in companies operating in Honduras. Authorizations are no longer subject to validation by the government; award of such permit is now a purely ministerial matter.

C. ADMINISTRATIVE LAW

Decree N° 255-2002. AFIRMATIVA FICTA (Implied Affirmation) has been created in response to delays on response from the administrative board. Governmental authorities have a period of forty days to respond to petitions presented to them, after which time, the law finds in favor of the petition as a result of the delay in the response.

D. TELECOMMUNICATIONS

Decree N° 159-2003: "Telefonía para Todos." This decree ends the monopoly of the telecommunications sector (HONDUTEL). The national telecommunications company may now enter into contracts with private operators, thus opening a once closed market to the private sector under free market conditions.

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NICARAGUA

In the last two decades the Nicaraguan political and economic system has undergone an enormous transformation. These changes, together with Nicaragua's links in the Central American region and the ever growing global market, have brought the need to implement reforms that affect sensitive areas such as taxation regulations and foreign investment. More recently, Nicaragua, together with other Central American countries, has reached a Free Trade Agreement with the United States, which will result in further substantive changes in the country's legal and economic framework. Below are the most important recently adopted developments:

A. INVESTMENT LAW

Law for the Promotion of Foreign Investment. (Law No. 344, Law for the Promotion of Foreign Investment, published in the Official Gazette No. 97, dated May 24, 2000, and its Regulation, Decree Law No. 74-2000, published in the Official Gazette No. 163 dated August 28, 2000.) Foreign investors now have the same rights as national investors.

The rights granted to registered foreign investors are as follows: the right to buy and sell foreign currency, the ability to freely convert foreign currency, and the right to freely distribute profits and repatriate capital to shareholders and investors abroad. Foreign investment is subject to the general tax regime and dispute resolution may be subject to local or international arbitration as provided for pursuant to international treaties in force in Nicaragua.

B. TRADEMARK LAW

Nicaragua has a relatively new Trademark Law that came into force in 2001, which replaced the relevant provisions of the Central American Trademark Convention in effect.

Nicaragua passed legislation to comply with new international regulations (Law N° 380 of 2001) and has signed and ratified the Paris Convention for the Protection Industrial Property and passed implementing regulations, in addition to establishing new regulations concerning Commercial Names and Trademarks.

C. TAX LAW

A new Tax Law ("Ley de Equidad Fiscal") came into effect on May 6, 2003. The law replaced the "Ley del Impuesto sobre la Renta" (Income Tax Law), the "Ley de Impuesto General al Valor" (Value Added Tax), Decree No.23-94 on the consumption tax and stamp tax. The law is designed to reduce tax evasion and to consolidate all the principal tax laws into one law. It also aims to promote investment and overall economic growth.

Income tax for individuals is calculated through a progressive tax rate as income increases up to a maximum rate of 30%. For corporations and other associations there is a flat tax rate of 30%. Taxable income is based on Nicaraguan-source income.

The consumption tax is applicable to non-essential items and is based on the producer's sales price. For imports, the consumption tax will be levied on the CIF price and any other tariffs on the imported product excluding the value added tax. This tax is levied only once.

The value added tax, at a 15% rate, is applicable generally to sales of goods and services. However, the law has exempted the sales of several primary goods such as school materials, medicines and essential food staples, among others.

D. CRIMINAL LAW

New Criminal Procedure Code. The new Criminal Procedure Code of 2002, effective as of December 24, 2002, replaced the Instructional Criminal Code of 1879. The new trial system changes the former inquisitorial system, which was secret and largely written, to an adversarial, oral system, where proceedings are public.

The new Criminal Procedure Code has created the Public Ministry as a separate entity no longer part of the Attorney General's Office. Trials will now be conducted by the prosecutor and the defense, with the judge serving as an impartial arbiter. It will be the task of the prosecutors of the Public Ministry, in coordination with the National Police, to conduct investigations and bring charges. The Public Ministry will now function as an independent institution responsible for promoting fair and transparent criminal proceedings.

The new Criminal Procedure Code provides for a preliminary investigation stage carried out by the Public Ministry and the National Police, a period to determine whether a trial is needed, during which the defense can also be involved, and an oral stage (which includes the right to trial by jury), followed by an appeal or annulment phase.

For cases that reach a trial, a twelve member citizen's jury may be constituted if the defendant so wishes.

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PANAMA

2003 produced significant legal developments in the Republic of Panama, primarily in the sectors of telecommunications, aviation, taxation, international trade, financial crimes, petroleum and combating terrorism, among others.

A. TELECOMMUNICATIONS

January 2, 2003 marked the opening of the open market for the basic and fixed telephone sectors in compliance with Concession Contract No. 134 of May 29, 1997. Starting in July 2001, Panama solicited proposals by companies interested in obtaining concessions for basic telecommunication services. The deregulated services are Basic Local Telecommunications Services, National Basic Telecommunications, International Basic Communications, Public and Semi-Public Telephone systems, and the service of leasing circuits dedicated to voice.

B. AVIATION

Through Laws No.21, 22 and 23 of January 29, 2003, the Republic of Panama adopted new regulations for civil aviation in its territory.

Law No.21 of January 23, 2003, published in the *Official Gazette 24,731 of January 31, 2003*, entered into force April 1, 2003, repealed Cabinet Decree No.19 of August 8, 1963, and introduced important changes including the creation of the Civil Aeronautic Registry, modification of the limits of civil liability on international and national flights, provisions regarding aircraft insurance, provisions on violations and penalties incurred by the owner, operator and charterer of the aircraft, and the addition of four articles to the Criminal Code.

Law No. 22 of January 23, 2003, published in the *Official Gazette 24,731 of January 31, 2003*, repealed Cabinet Decree No. 13 of January 22, 1969 and created the Civil Aeronautics Authority as an autonomous entity of the State empowered to manage and regulate air transport services. It sets forth the

regulatory framework to enable the Government, through state-owned companies, to provide the services to the public.

C. TAX REFORM

The Tax Code was reformed by Law No. 61 of December 26, 2002, and regulated by Executive Decrees Nos. 18, 19 and 20 of March 20, 2003. Some of the most relevant changes produced by this law are the following:

1. New Annual Tax Rules for Panama Corporations and Foundations
2. Introduction of Services Tax
3. Banking and Exchange Houses Licenses
4. Personal Income Tax Exemptions
5. Investment Tax Exemptions

D. PETROLEUM FREE ZONES

Cabinet Decree No. 36 of September 17, 2003, published in *Official Gazette 24,892 of September 22, 2003*, creating the legal framework necessary to establish a petroleum policy and the market liberalization of all products derived from petroleum in Panama. It superseded all prior legislation in the filed, though it embraced many previous provisions.

E. FINANCIAL CRIMES

By means of Law No. 45 of June 4, 2003, published in the *Official Gazette No. 24,818 of June 9, 2003*, the Republic of Panama updated its criminal legislation by incorporating to Title XII of the Second Book of the Criminal Code, a Chapter VII, named "Financial Crimes." It is thereby established that persons and/or corporations that perform or participate in these crimes will be subject to a prison term ranging from three to ten years.

The punishable conduct is the following:

1. Possession, unlawful use or illegal transfer of financial resources.
2. Falsification of accounting and financial information.
3. Fraudulent approval of credits.
4. Illegal exercise of financial activities.
5. Disclosure of confidential information.
6. Illegal purchase and sale of securities.

F. TERRORISM

Law 50 of July 2, 2003, published in the *Official Gazette 24, 838 of July 7, 2003*, created a new Chapter VI in the Criminal Code titled "Terrorism," and implemented prison penalties of up to 15-20 years for such crimes.

G. INTERNATIONAL TRADE

The Treaty for Free Trade in Central America, signed in El Salvador, was ratified by the Republic of Panama via Law 24 of February 3, 2003, published in the *Official Gazette 24,734 of February 5, 2003*. The Bilateral Free Trade Agreement between Panama and the Republic of China, was approved by Law No. 62 of October 18, 2003 and published in *Official Gazette 24, 915 of October 30, 2003*.

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PERU

During 2003, the most significant legislative activity was with respect to amendments to the tax regime. Concern regarding national budgetary requirements prompted the internal revenue authorities to develop regulations to reduce tax evasion, increase taxes paid, and increase the tax base.

Last year also saw an end to complaints regarding the validity of the Constitution of 1993 and the affirmation of the concession contract for the fixed telephone service. Below is a brief review of these events.

A. AMENDMENTS TO TAX LEGISLATION

1. Increase of the General Sales Tax (*Law 28033, Official Gazette, July 19, 2003*).

By means of Act 28033, Congress increased the General Sales Tax (VAT), from 16% to 17%. Combined with the 2% Municipal Promotion Tax, the effective sales tax is now 19%. The increase, which is slated to be only temporary to address the unexpected deficit, has been effective since August 1, 2003, and is due to expire December 31, 2004.

2. Delegation of legislative powers to the Executive Branch to legislate in Tax matters (*Law 28079 Official Gazette, September 27, 2003*).

Law 28079 delegates tax legislation matters for a period of 90 days to the Executive Branch. The law seeks to improve tax collection, thereby increasing revenues. The powers granted to the Executive Branch include the power to modify (i) the Income Tax, Sales Tax and other tax regimes to eliminate exemptions and to expand the tax payer base; and (ii) the tax regime applicable to state entities.

3. Measures aiming to reduce tax evasion (*Legislative Decree N° 939, Official Gazette, December 5, 2003*).

Pursuant to the delegation by Congress, on December 5, 2003, the Executive Branch introduced a series of measures to reduce levels of tax evasion, including requiring that certain money operations, to be determined by the Ministry of Economy, be consummated through financial institutions, and the creation of a 0.15% Financial Transaction Tax (ITF), which will affect all operations carried out through financial institutions.

The ITF Tax is applicable from March 1, 2004 through December 31, 2006.

B. MODIFICATIONS TO LIMITS ON PENSION FUND INVESTMENTS

Increase of limits for investments by Peruvian Pension Funds in foreign instruments (*Circular N° 016-03-EF Official Gazette, June 3 2003*).

The Central Bank has increased the limit imposed on local pension funds with respect to investments they may have in foreign securities from 7.5% to 9%. Pursuant to Law 27988 (*published in the Official Gazette on June 4th, 2003*) the maximum percentage that the Central Bank can allow for investments in foreign securities is 20%.

C. DECENTRALIZATION

New legal framework for the promotion of investments in Peruvian regions (*Law 28059, Official Gazette, August 13, 2003*).

Law 28059 grants the local and regional governments the power to develop and establish their own investment promotion programs for increasing both local and foreign capital. These governments will need to take into consideration the general policies contained in the Concerted Development Plan, but will be entitled to technical assistance from PROINVERSION (the agency in charge of promoting investments throughout the country).

D. RESOLUTIONS OF THE CONSTITUTIONAL COURT

1. Resolution that denied an action that questioned the validity of the Constitution of 1993 (*File N° 014-2003-TC, December 10, 2003*).

In November 2003, a group of 5,000 citizens challenged the validity of the 1993 constitution on the basis that the Fujimori government promulgated the Constitution through an invalid Constituent Assembly, since the Congress was disbanded on April 1992. The suit sought the reinstatement of the 1979 Constitution.

The Constitutional Court, while stating that it shared the concern about the Constitution's legitimacy, held that the suit was not the correct method to declare the invalidity of the 1993 Constitution. The Constitutional Court also stated that the authority to determine the validity of the 1993 Constitution was vested in Congress and not the courts.

2. Resolution that denied a constitutional claim raised against the contract executed between Telefónica del Perú and the Peruvian State with respect to the fixed telephone system concession. (*File N° 0005-2003-AI, October 3, 2003*).

In September 2003, 64 Congressmen challenged Law 26285, which authorized the execution of the concession contract between Telefónica del Perú and the Peruvian State in 1994. The suit claimed that the contract and the law promoted the creation of a monopoly in violation of constitutional principles that prohibit the State from creating any monopoly.

The Constitutional Court declared such action groundless and further held that it was only authorized to resolve matters related to the constitutionality of laws, not the alleged unconstitutionality of private contracts, as the state was acting in the private sphere.

The Court also held that its decisions were not retroactive; therefore, no decision could effect a contract executed in 1994.

Finally, the Court held that considering that prior to the contract with Telefónica, the telephone sector was controlled by only one state-owned company, then the situation generated as a result of the aforementioned contract should not be considered as the creation of a monopoly, but as a temporary phase towards complete liberalization of the relevant market.

E. OTHER IMPORTANT PUBLICATIONS

1. Final Report of the Truth and Reconciliation Commission (Presented on August 28, 2003).

On August 28, the "Truth and Reconciliation Commission" presented its final Report to President Alejandro Toledo's administration. This commission was appointed by law two years ago to investigate the effects of terrorism on Peruvian citizens, especially on the poorest sectors of the population.

The Report details the extent of the human rights violations that Sendero Luminoso and MRTA committed as well as the conduct of the armed forces in their fight against such movements.

The Report was submitted to Congress, the Judiciary and to the office of the Attorney General.

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VENEZUELA

The principal legal developments in Venezuela during 2003 were largely in the political realm, reflecting the continuing political turmoil in the country since President Hugo Chavez assumed power in January 1999. By virtue of the sharply divided unicameral National Assembly, the legislative output in 2003 was slim. Likewise, with an evenly divided supreme court (Supreme Tribunal of Justice or "STJ"), there were few judicial developments of significance, with the exception of those noted in this report of a political nature. Rather, the main legal focus during 2003 was the continuing struggle for control of the few remaining quasi-independent public institutions and the implementation of the recall referenda contemplated in the 1999 Constitution, involving President Chavez and one-third of the members of the National Assembly.

A. ELECTORAL MATTERS

The year 2003 began on a tumultuous note as the national strike that began in December 2002 and was intended to provoke the government into resigning did not end until early February 2003. On January 22, the STJ declared that the term of the then members of the National Electoral Council ("NEC"), an equal branch of government that is to supervise all elections, had expired and that new members had to be elected by the National Assembly (by a two-thirds vote) before any new elections could take place (File no. 00001, Electoral Chamber, Judge Luis Martinez Hernandez). In defiance, the end of the strike was highlighted by a one-day petition drive for a consultative (non-binding) referendum asking the president to resign, which was signed by over four million citizens (3.2 valid signatures, about a third of the electorate). After six months of fruitless efforts by the Assembly to select the new members of the NEC, on August 4 the STJ declared an "institutional vacuum" and held that it would designate the new NEC members itself on a provisional basis (File no. 03-1254 and 03-1308, Constitutional Chamber, Judge Jesus Eduardo Cabrera), which it then proceeded to do on August 25 (File no. 03-1254, Constitutional Chamber, Judge Jesus Eduardo Cabrera). Despite the fact that, according to the Constitution, the NEC is to be composed of individuals who are not affiliated with any political movement, three of the five principals are identified with the government and the other two with the opposition, even though at the time the government's popularity hovered around 35%.

In August, the opposition filed with the NEC the 3.2 million signatures that had been collected in February, but on September 16 the new NEC resolved that they were invalid for purposes of the constitutionally-mandated recall referendum against President Chavez (NEC Resolution No. 030912-461, Official Gazette No. 37.776 on September 16, 2003). Then on September 26, the NEC issued regulations for the recall referenda (NEC Resolution No. 030925-465, Official Gazette No. 37.784 on September 26, 2003), which were generally viewed as complex, bureaucratic and subject to manipulation. At the same time, the NEC determined that the official sector could collect its signatures for the recall of certain opposition National Assembly members between November 21-24, and that the opposition could do likewise for President Chavez and Assembly members who support the government.

As the year ended, the NEC was to begin the process of validating the reportedly 1.2 million signatures collected by supporters of the government and the 3.4 million (one million more than required to convoke a recall of President Chavez) signatures of the opposition, although delays were experienced from the beginning. Moreover, the credibility of the NEC began to be called into question when many experienced NEC employees were replaced by individuals supposedly loyal to the government. Into January 2004 it still had not been determined to what extent international observers, led by the Organization of American States and the Carter Center, would be able to monitor the signature validation, and the government immediately began a political campaign alleging a "megafraud" on the part of the opposition. In principle, however, the NEC is to announce in February whether sufficient valid signatures (20% of the relevant electorate) were collected and then the recall referenda could take place in May or June of 2004, provided that the process is not derailed by legal manipulation.

B. CONSTITUTIONAL LAW

As a result of the STJ's decisions, the recall referendum for all popularly elected officials is now enshrined as a general political right. The political right to the recall referendum was set forth in Article 72 of the Constitution of 1999 (published in the Official Gazette N° 5,453 on March 24, 2000). This article constituted a new development under Venezuelan law. The former Constitution of 1961 did not provide for recall referendums or for similar mechanisms. Article 72 states that all elected public officials are recallable. In order to recall an official, at least 20% of the registered electorate in a particular circuit must sign a petition to hold a recall referendum for the public official after one half of the elected official's term of service has elapsed. For a recall to be valid, the constitutional amendment requires that 25% of the registered electorate participate in the recall election and an equal or larger number of voters than the number that elected the public official vote in favor of the recall. When these requirements have been met, the recall is effective and the elected official's mandate is deemed revoked.

C. COMMERCIAL TRANSACTIONS

Exchange Control Decree. (Published in the Official Gazette N° 37,614 on January 21, 2003). Pursuant to this decree, the Ministry of Finance together with the Venezuelan Central Bank issued the Exchange Agreement N° 1 (published in Official Gazette N° 37,625 on February 5, 2003). The Exchange Agreement sets forth measures to control the stability of the currency through an exchange control and a fixed exchange rate. The Exchange Agreement states that the controls provided therein are a result of the decrease in the supply of currency originating from oil and from an extraordinary demand for currency that negatively affected the level of the country's international reserves. It further states as its *raison d'être* the substantial reduction of the national oil industry's exports which negatively affected the nation's accounts and the resulting necessity of adopting measures to control the stability of the currency and to ensure the country's international payments. Five other Exchange Agreements of a similar nature to N° 1 were published throughout 2003, and Exchange Agreement N° 2 fixed the amount of the official exchange rate at 1 US\$/1.600 Bs. It is important to note that the Exchange Control was presented as a temporary measure. However, it is about to reach the one-year mark, and multiple changes and new additions to the Agreements have been published.

The coordination, administration, control and establishment of the requirements, procedures and restrictions necessary for the execution of the Exchange Agreements are the responsibility of the Commission for the Administration of Foreign Currency (CADIVI), created by Presidential Decree N° 2,303 (published in the Official Gazette of the Bolivarian Republic of Venezuela N° 37,625 of February 5, 2003). During 2003, CADIVI enacted many provisions that regulated currency exchange. In general terms, the decisions of CADIVI regarding the exchange of currency are discretionary. In practice, the exchange of currency is limited by its availability, as well as the prioritization of the request as determined by CADIVI. With regards to foreign currency creditors, requests for foreign currency to pay private external debt were accepted until November 28, 2003. If a debtor failed to register its debt before November 28, 2003, the debtor will not have access to the official exchange market in order to pay his creditor. However, the registry of the debt does not guarantee the exchange of currency and there are many unfilled requests still pending before CADIVI.

D. LABOR LAW

1. *The Organic Law on Labor Procedures ("OLLP") (Official Gazette N° 37,504 on August, 13, 2002).* The OLLP's innovations, most of which became effective in 2003, include a new organization of Labor Courts and a substantial change to judicial procedures. As a result of the OLLP, employers should conduct a labor audit to verify the status of the documents, procedures, and evidence that shows their conformity with the legal obligations.

2. The last reform of the *Minimum Wage* was published on May 2, 2003 (published in the Official Gazette N° 37,681 on May 2, 2003) and it set the general Minimum Wage at 247,104.00 Bolivars.

E. LAW AGAINST CORRUPTION

The Law Against Corruption (published in the Official Gazette N° 5,637 on April 7, 2003) is a reform of the Organic Law for the Safeguard of Public Patrimony (published in the Official Gazette N° 3,077 on December 23, 1982). As its predecessor, it aims to safeguard the public patrimony and to guarantee the adequate and transparent management of public resources. It provides for a specific procedure to impose sanctions on public officials as well as a specific governmental body that handles corruption matters. Although it is directed toward the state and public administration, it does include sanctions on private persons or entities that participate in corrupt practices involving public officials and the public administration.

E. INTERNATIONAL AGREEMENTS

1. *Frame Agreement CAN - MERCOSUR*. On December 16, 2003, certain members of the Andean Community (CAN) (Venezuela, Colombia and Ecuador) and the members of the Common Market of the South (MERCOSUR) (Argentina, Brazil, Uruguay and Paraguay) signed an Economic Complementation Agreement for the formation of a Free Trade Area which will take effect as of July 1, 2004.

2. *The Inter-American Convention Against Terrorism* became effective on July 10, 2003 (published in the Official Gazette N° 37,841 on December 17, 2003). The purpose of this Convention is the prevention, punishment and elimination of terrorism. As a result, Member States commit themselves to adopt the necessary measures and strengthen their cooperation in accordance with the terms of the Agreement.

F. OTHER LEGAL EVENTS

The disarmament of the Caracas Metropolitan Police by the military was determined by the STJ in May 2003 to be unconstitutional (see Official Gazette No. 37.681 of May 2). Even though the government did eventually comply with the decision of the STJ by withdrawing the military, it has not returned to the police department its principal armaments.

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