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Latin America and Caribbean

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This Article reviews significant international law developments in 2016 in Latin American and Caribbean countries, including Argentina, Bolivia, Columbia, Costa Rica, Ecuador, and Peru.

I. Argentina

A. AMENDMENTS TO CENTRAL BANK REGULATION

The Argentine Central Bank issued two main Communications, “A” 5850¹ and “A” 6037,² amending several of the Central Bank’s regulations and terminating de facto measures granting more flexibility to the Argentine foreign exchange market.

Communication “A” 5850 restored the possibility for Argentine residents to acquire foreign currency (with a limit of USD 2 million per calendar month—a cap that was later lifted) and put an end to various restrictions, such as those on (i) payment of services to related companies abroad; (ii) exchange transactions without prior registration of such transactions with the Federal Tax Authority; (iii) acquisition of currency (or payments abroad) for tourism and travel; (v) withdrawals from ATMs outside Argentina; and (vi) the obligation to bring funds originating from debt taken abroad into Argentina.³

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1. BANCO CENTRAL DE AL REPÚBLICA ARGENTINA, COMMUNICATION “A” 5850 (Dec. 15, 2015), <http://www.bcra.gov.ar/Pdfs/comytexord/A5850.pdf>; BANCO CENTRAL DE AL REPÚBLICA ARGENTINA, COMMUNICATION “A” 6037 (Aug. 8, 2016), <http://www.bcra.gov.ar/Pdfs/comytexord/A6037.pdf>.

2. BANCO CENTRAL DE AL REPÚBLICA ARGENTINA, COMMUNICATION “A” 6037 (Aug. 8, 2016), <http://www.bcra.gov.ar/Pdfs/comytexord/A6037.pdf>.

3. Grupo Supervielle S.A., Registration Statement (Form F-1) (Apr. 15, 2016).

Communication “A” 6037, in turn, was aimed at simplifying the market functioning by, amongst other things, (i) lifting the monthly limits on acquisition of foreign currency by Argentine residents; (ii) replacing the requirement to file supporting documents for exchange transactions by Argentine residents by a sworn statement; and (iii) removing restrictions on the payments for the import of goods.⁴

B. NEW IMPORT LICENSE SYSTEM

The Federal Tax Authority (AFIP), through General Resolution 3823⁵ of December 21, 2015, terminated the import regime that required AFIP’s prior approval and filing of an affidavit for clearance of imports into Argentina, and replaced it with a monitoring system named *Sistema Integral de Monitoreo de Importaciones* (SIMI).

Resolution 5/2015⁶ of the Production Ministry implemented automatic and non-automatic import licenses to work within the SIMI, based on whether the products fall within the Mercosur Common Nomenclature’s tariff codes (automatic licenses) or those codes created by this or subsequent resolutions (non-automatic licenses). With this new regime, the government aimed to protect certain Argentine industries under the non-automatic import license umbrella but “opened” the market to other products.

C. NEW ANTI-CORRUPTION LEGISLATION

In an effort to combat corruption and improve Argentina’s prospects for membership in the OECD, the Executive Branch prepared a new anti-corruption package consisting of three bills: a plea bargaining bill, an asset-forfeiture bill, and an international bribery bill. As of November 2016, just as the plea bargaining bill had been enacted, becoming Law 27304 (Plea Bargaining Law),⁷ while the other two bills were still pending before Congress.

The Plea Bargaining Law amended the Criminal Code by extending the pre-existing plea-bargaining provisions to crimes related to the public

4. *Important News on FX Regulations: The Argentine Central Bank continues to simplify the FX Market*, TAVARONE, ROVELLI, SALIM, & MIANI ABOGADOS (Aug. 8, 2016), <http://www.trsym.com/en/important-news-on-fx-regulations-the-argentine-central-bank-continues-to-simplify-the-fx-market/>.

5. Resolución General 3823 de la Administración Federal de Ingresos Públicos, Dec. 21, 2015 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257180/norma.htm>

6. Resolución 5/2015 Ministerio de Producción, Dec. 22, 2015 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257251/norma.htm>. Resolution 5/2015 was subsequently supplemented by Resolution No. 2/2016 of January 7, 2016, and Resolution No. 172/2016 of July 5, 2016, both issued by the Secretary of Commerce, amending the tariff codes requiring either an automatic or a non-automatic license.

7. CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 1 [41, 276] (Buenos Aires, 2016) (Arg.), [hereinafter Law No. 27304], <http://servicios.infoleg.gob.ar/infolegInternet/anexos/265000-269999/267115/norma.htm>.

administration pertaining to corruption of, or by, public officials. The Law sets forth the reduction in, and potential exemption of, sentences for those who cooperate with the government by providing true information on the perpetrators or participants in corruption crimes.⁸

The asset-forfeiture bill⁹ aims to enable an expedited forfeiture by the State of those assets that were acquired as a result of illegal activities, whether located in Argentina or abroad. The international bribery bill¹⁰ sets forth a liability regime for companies and other legal entities for corruption-related crimes, including crimes against the public administration and international bribery.

D. PUBLIC-PRIVATE PARTNERSHIPS

In an attempt to help finance infrastructure projects in the country, a new law regulating Public-Private Partnerships was enacted on November 16, 2016.¹¹ The Law defines Public-Private partnership contracts as those contracts entered into by and between the National Public Administration (whether centralized or decentralized) and private parties (e.g., contractors) with the purpose of developing projects in the fields of infrastructure, activities and services, productive investments, applied investigation and/or technological innovation, and ancillary services to those.

II. Bolivia—Bolivia to Join Mercosur as Full Member

Bolivia is currently a Mercado Común del Sur (Mercosur) associated State and aspires to be a full member with all benefits. Bolivia's full participation in the bloc has been under negotiation since 2007, when at the XXXII MERCOSUR Summit of Presidents, CMC Decision No. 01/07 of January 18, 2007, was adopted, creating an Ad Hoc Working Group for Bolivia's accession as a full member of Mercosur.¹² On July 17, 2015, at the Mercosur summit in Brasilia, the member countries, Argentina, Brazil, Paraguay, Uruguay, and Venezuela,¹³ signed a new protocol for Bolivia's entry into the organization.¹⁴ A previous accession protocol for Bolivia had already been signed by the other four Member States in 2012, when Paraguay was

8. *See id.*

9. Bill of Law No. 1406-D-16 (Arg. 2016). (Extinción de Dominio y Repatriación de Bienes).

10. Bill of Law No. 0030-PE-2016 (Arg. 2016). (Responsabilidad Penal de las Personas Jurídicas).

11. Law No. 2738, Nov. 16, 2016, [31,514] B.O. 1 (Arg.).

12. *See Decisión CMC No. 01/07 Mercosur (Jan. 1, 2007) (Arg.)*, <https://gestorweb.mercosur.int/files/564e3fbcc9344903fc3aef4c>.

13. As of December 2016, Venezuela has been suspended from Mercosur. *Mercosur suspends Venezuela over trade and human rights*, BBC NEWS (Dec. 2., 2016), <http://www.bbc.com/news/world-latin-america-38181198>.

14. Graciela Rodríguez-Ferrand, *Mercosur: Protocol for Accession of Bolivia Approved*, THE LAW LIBRARY OF CONGRESS (Aug. 18, 2015), <http://www.loc.gov/law/foreign-news/article/mercocor-protocol-for-accession-of-bolivia-approved/>.

temporarily suspended from Mercosur because of a coup against its former president Fernando Lugo.¹⁵

The government of Bolivia awaits the approval of its protocol of accession to Mercosur by Brazil's Congress, which is expected to occur before the first half of 2017.¹⁶ Bolivia's full accession to Mercosur is currently only delayed by Brazil's "internal procedures," despite previously obtaining approval from Argentina, Uruguay, Venezuela, and Paraguay.¹⁷ From the time that Brazil delivers the protocol of accession, at least 30 days must pass for the conditions to take effect under which Bolivia, within four years, has to adopt Mercosur rules to be part of all systems of the bloc.¹⁸

Mercosur has a strategic character for Bolivia, as 70 percent of its boundaries are next to the countries that make up this bloc.¹⁹ In economic terms, the main exchange between Bolivia and Mercosur occurs in the gas sector, accounting for about 94 percent of its exports due to the gas export contracts with Brazil and Argentina. The remaining 6 percent consists of powdered milk, crude oil, fresh bananas, and natural barium sulfate, and other items as well.²⁰ Therefore, some believe Bolivia's accession will not offer major trade benefits to the country given the dominance of hydrocarbon sales to Mercosur member states.²¹

The biggest impact is likely to be from a policy perspective, notably Bolivia's adoption of the Common External Tariff (CET). There are some important differences in certain sectors between Bolivia's tariff structures and the bloc's tariff structures, particularly in mid-tech manufacturing, where the rates levied on Bolivian imports from other countries other than Mercosur's countries are considerably lower. This is particularly relevant in the automotive sector. Consequently, the Andean country's convergence with the CET could prompt Mercosur to export industrial goods to Bolivia.²²

15. See E.F.E., *Bolivia firma protocolo de adhesión al Mercosur*, EL DÍA (Jul. 17, 2015), https://www.eldia.com.bo/index.php?articulo=Bolivia-firma-protocolo-de-adhesion-al-Mercosur&cat=1&pla=3&id_articulo=176283.

16. See *Bolivia Awaits Brazil's Decision to Join Mercosur*, PRESNA LATINA (Aug. 19, 2015), <http://www.plenglish.com/index.php?o=RN&id=2697&SEO=bolivia-awaits-brazils-decision-to-join-mercosur>.

17. *Id.*

18. *Id.* (quoting Brazil's Deputy Minister of Foreign Trade, Clarems Endara).

19. See Walker San Miguel Rodríguez, *Bolivia en el Mercosur*, LA RAZON (Jul. 26, 2015), http://www.la-razon.com/index.php?url=/suplementos/animal_politico/Bolivia-Mercosur_0_2313968624.html.

20. See Gretel Ledo, *Bolivia in the Mercosur: what are the real benefits?*, INTERNATIONAL DEMOCRACY WATCH, <http://www.internationaldemocracywatch.org/index.php/news-archive/532-bolivia-in-the-mercosur-what-are-the-real-benefits>.

21. See *Political Risk Analysis - No Major Trade Benefits From Mercosur Membership - SEPT 2015*, BMI RESEARCH (Jul. 2015), <http://www.latinamericamonitor.com/political-risk-analysis-no-major-trade-benefits-mercosur-membership-sept-2015>.

22. See *Progress and significance of Bolivia's accession to MERCOSUR*, NETWORK FOR JUSTICE IN GLOBAL INVESTMENT (Aug. 27, 2014), <http://justinvestment.org/2014/08/progress-and-significance-of-bolivas-accession-to-mercosur/>.

Another relevant aspect is the possibility of accessing funds from Mercosur's FOCEM (Structural Convergence Fund), a mechanism through which the largest countries of the bloc contribute resources to specific projects. Bolivia may be the recipient of these financial resources for infrastructure or productive modules.²³

III. Colombia

A. TRADE AGREEMENTS

The President of the Republic of Colombia ratified Laws 1747 of 2014 and 1763 of 2015, which, respectively, approved the Free Trade Agreements (FTAs) signed with the Republic of Korea and the Republic of Costa Rica.²⁴ However, according to the Colombian Constitution, such FTAs must be submitted to constitutionality control by the Constitutional Court of Colombia²⁵ for them to be effective. In 2016, decisions 184 and 157,²⁶ issued by the Court, declared the FTAs and their respective approving Laws constitutional and thus enforceable. Subsequently, Decrees 1078 of 2016 and 1231 of 2016 were issued by the Colombian Congress to regulate and develop the tariff and market access commitments acquired under the FTAs.²⁷

The treaty with Korea could generate more agricultural export opportunities to the Asian market.²⁸ Many view the treaty with Costa Rica as an opportunity to promote investment, diversify exports, and contribute to the country's growth.²⁹

B. CUSTOMS REFORM

Decree 390, the most recent customs reform in Colombia, became effective in 2016.³⁰ The decree seeks to modernize foreign trade operations through a computerized system and risk assessment mechanisms, facilitate trade, and provide greater security and confidence to actors participating in international trade operations. One of its main goals is to strengthen risk

23. *Id.*

24. *FTA with Korea and Costa Rica*, BRIGARD & URRUTIA (July 6, 2016), <http://bu.com.co/en/newsandpublications/342>

25. See CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P] art. 241.10.

26. See Sentencia C-184/16, CORTE CONSTITUCIONAL DE COLOMBIA, Apr. 14, 2016. (Colom.); see also Sentencia C-157/16, CORTE CONSTITUCIONAL DE COLOMBIA, Apr. 6, 2016. (Colom.).

27. COLOMBIA CONTENT UPDATES, https://content.managementdynamics.com/TW/REFERENCE/status/update_colombia.html (last visited Mar. 23, 2017).

28. See *Los retos del TLC entre Colombia y Corea, ¿quiénes ganan?* DINERO (Apr. 28, 2016), <http://www.dinero.com/edicion-impresa/pais/articulo/tlc-entre-colombia-y-corea-del-sur-2016-entra-en-vigencia/222965>.

29. See *¿Qué gana Colombia con la entrada en vigencia del TLC con Costa Rica?* DINERO (Aug. 1, 2016), <http://www.dinero.com/economia/articulo/el-tlc-con-costarica-entro-en-vigencia>

30. D. 390, marzo 7, 2016, DIARIO OFICIAL [D.O.] (Colom.).

management in customs control in order to neutralize corruption and money laundering, prevent environmental risk, and ensure security in the logistics chain. Additionally, this regulation defines who are deemed as subjects responsible for complying with customs duties, and broadened its scope for sanctioning purposes. But it also included provisions that aim to reduce punitive circumstances and facilitate trade. For example, formal errors that do not affect the value of the duties, taxes, or sanctions will not be punished by the Colombian Customs Authority. Likewise, formal errors will not result in seizure or confiscation of the merchandise.

C. TRANSNATIONAL CORRUPTION

Law 1778 was enacted on February 2, 2016, regulating the liability of legal entities for acts of international corruption.³¹ The Law grants power to the Superintendence of Companies to investigate and sanction legal entities whose employees, contractors, administrators, or associates give, offer, or promise a foreign public official a sum of money, any object of pecuniary value, or other benefit for the latter to carry out, omit, or delay acts related to the exercise of his or her functions and to an international transaction. Parent companies will also be liable (and may be sanctioned) if their subordinates perform acts of international bribery with their consent or tolerance.

Accordingly, legal entities may be sanctioned with fines up to approximately forty-four million USD and a suspension on the ability to contract with any Colombian government entity for up to twenty years. Additionally, liable companies will be prohibited from receiving incentives or subsidies from the government for a term of five years, and sanctions will be published in a daily newspaper of broad circulation and registered in the Trade Registry.

D. TAX REFORM

On October 19, 2016, the Minister of Finance and Public Credit, Mauricio Cárdenas, filed before the Colombian Congress Bill No. 178 of 2016, proposing a structural tax reform to strengthen the fight against tax evasion.³² Adopting the reform has been a controversial issue among the different sectors of the economy, given that, among other changes, this regulation proposes to (i) increase the Value Added Tax (VAT) on products that currently have a VAT of 16 percent; (ii) charge the so-called wealth tax to companies or individuals with a net worth of approximately one million pesos (approximately 334 USD); (iii) charge VAT for connection and internet access services to middle class taxpayers, who, as of 2016, are exempt from making such payments; and (iv) strongly sanction tax evaders.

31. L. 1778, Feb. 2, 2016, DIARIO OFICIAL [D.O.] (Colom.).

32. Proyecto de Ley No. 178 de 2016, GACETA DEL CONGRESO 894/16. (Colom.).

As of December 2016, the Bill was still pending final debates in Congress, and final determinations are expected promptly.

E. PEACE NEGOTIATIONS WITH FARC

Since 2013, the Colombian government has been negotiating with the FARC guerrilla group, in Havana, Cuba, to reach an agreement that could eventually end a fifty-two year internal conflict. In July 2016, both parties agreed to a definite ceasefire, and on August 24, 2016, they announced a final Peace Accord.³³ The Accord would have committed FARC to turn in its arms to representatives of the United Nations, demobilize, and, under certain conditions, transition into a civil society.

Accordingly, the Colombian congress regulated the plebiscite for endorsement of the Peace Accord through Law 1806 of 2016³⁴ and through Decree 1391³⁵ of the same year. Colombian people were summoned to decide whether to support or reject it. On October 2, 2016, the plebiscite was held, and, unexpectedly, by a very narrow majority, Colombians voted not to approve the concluded Peace Accord.³⁶

As of October 2016, the government and the opposition worked together to agree upon essential issues that needed to be discussed with FARC. On November 12, 2016, the President announced that FARC and the Government had agreed to a new Peace Accord that amended certain points and was intended to satisfy the concerns of the opposition. The new Peace Accord was signed on November 24, 2016, and this time, it was submitted to Congressional approval.³⁷ On November 30, 2016, the Peace Accord was approved by an absolute majority. Furthermore, the Constitutional Court endorsed the so-called “fast track:” a mechanism that grants the congress powers to approve regulations regarding the implementation of the Peace Accord in half the time it would normally take and grants powers to the President to issue decrees with the force of law.³⁸ Since December, congress studied the amnesty law that was approved in the first debate. Although there is no clear path on how this new Accord will be implemented in practice, there is a consensus among Colombians that it is of paramount importance to achieve positive outcomes for the country.

33. See *Acuerdo Final para la Terminación del Conflicto y La Construcción de una Paz Estable y Duradera* (Aug. 24, 2016), Oficina del Alto Comisionado para la Paz.

34. L. 1806, agosto 24, 2016, DIARIO OFICIAL [D.O.] (Colom.).

35. D. 1391, agosto 30, 2016, DIARIO OFICIAL [D.O.] (Colom.).

36. Sibylla Brodzinsky, *Colombia referendum: voters reject peace deal with Farc guerrillas*, THE GUARDIAN (Oct. 3, 2016), <https://www.theguardian.com/world/2016/oct/02/colombia-referendum-rejects-peace-deal-with-farc>.

37. Nicholas Casey, *Colombia and FARC Sign New Peace Deal, This Time Skipping Voters*, THE NEW YORK TIMES (Nov. 24, 2016), https://www.nytimes.com/2016/11/24/world/americas/colombia-juan-manuel-santos-peace-deal-farc.html?_r=0.

38. Nicholas Casey, *Colombia's Congress Approves Peace Accord With FARC*, THE NEW YORK TIMES (Nov. 30, 2016), <https://www.nytimes.com/2016/11/30/world/americas/colombia-farc-agreement-juan-manuel-santos.html>.

IV. Costa Rica

A. NEW CIVIL PROCEDURE CODE

The new Costa Rican Civil Procedure Code³⁹ is probably the most important piece of legislation passed this year. It addresses the country's need to guarantee a swift yet effective judicial process on civil matters and to put an end to long processes that many times take more than a decade to receive a final judgement. The process will be less formal and based on orality. Appeals will be limited and the enforcement of the sentence will no longer require a new process.

B. LABOR LAW

In addition, congress also passed an amendment to the Labor Code.⁴⁰ This amendment brings changes for judicial procedure, making it more expeditious. It also facilitates collective bargaining and the right to strike. For individual workers, it provides more protections, particularly against discriminatory treatment and unfair termination. Employers must specify the cause for termination in termination letters.

C. COMMERCIAL CODE

The Commercial Code was amended to strengthen the protection of minority shareholders.⁴¹ Shareholders that own at least 10 percent of the stock capital now have the right to inspect transaction documents when the value of the transaction exceeds 10 percent of the total assets, and can request an accounting audit of all the corporate records. The amendment also includes an obligation on the Board of Directors to approve a corporate governance policy stating that a pre-approval by the Board of Directors is required for the acquisition, sale, mortgage, or pledge of assets that account for 10% percent or more of the total value of the assets.

D. AMENDMENT ON THE LAW OF NARCOTICS

The Law of Unauthorized Drugs, Money Laundering, and Terrorist Financing Activities⁴² has been amended to enhance the powers of the authorities fighting against terrorism financing and activities and money laundering. Every financial entity must report to the Unit of Financial Intelligence (UFI) of the Costa Rican Institute on Drugs when an uncommon activity or wire transfer is detected. These new powers include the possibility to freeze assets, including bank accounts, as soon as the UFI starts an investigation.

39. Law No. 9342, Apr. 8, 2016, LA GACETA 68, Alcance 54. (Costa Rica).

40. Law No. 9343, Jan. 25, 2016, LA GACETA, 16, Alcance. (Costa Rica).

41. Law No. 9392, Oct. 4, 2016, LA GACETA, 190. (Costa Rica).

42. Law No. 8204, Aug. 1, 2016, LA GACETA, Alcance 134. (Costa Rica).

E. INTERNATIONAL BRIBERY

The Law Against Corruption and Illicit Enrichment in the Government Service redefined the crime of international bribery, in line with the FCPA, to penalize those who offer, promise, or give to a public official of another country, directly or through an intermediary, any gift, payment, or undue advantage, either for that official or for another person or entity, so that the official performs, delays, or omits any act or wrongly asserts influence derived from his or her position over another official.⁴³

F. TAXES

Due to structural fiscal constraints, the government has been promoting several pieces of legislation to enhance the power of the tax authority and to increase the tax revenue.⁴⁴ Furthermore, Costa Rica has entered into several different bilateral cooperation and double taxation agreements. The most recent agreement is with the Federal Republic of Germany, which went into effect on January 1, 2017 and follows the agreement signed with Spain in 2011. Also, in 2016, Costa Rica signed agreements related to information exchange and now has treaties with the following countries: Argentina, Australia, Canada, Faroe Islands, Finland, France, Greenland, Iceland, Mexico, Netherlands, Norway, Sweden, and the United States.⁴⁵

G. INVESTMENT FUNDS

The latest amendment to the Costa Rican Regulation on Management Companies and Investment Funds will make it possible for any entity, whether public or private, to invest through a public offer, on every infrastructure project on the market (*i.e.*, transportation, construction, renewable energy) and not solely real estate development, as was previously the case. The amendment also changed the minimum amount required to invest from fifty thousand USD to one thousand USD.⁴⁶

43. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78dd-1-3 a, 78dd-1, 78dd-2, 78ff, 78m, 78o (2012)).

44. L. Arias, *Government wants to hike taxes to boost income*, THE TICO TIMES (Mar. 14, 2015), <http://www.ticotimes.net/2015/03/14/government-wants-to-hike-taxes-to-boost-income>.

45. Acuerdos de Intercambio de Información Tributaria y Convenios de Doble Imposición vigentes y/o en proceso de ratificación, MINISTERIO DE HACIENDA, http://www.hacienda.go.cr/docs/57f3bbf71693d_Listado%20de%20Acuerdos%20de%20Int%20Info%20y%20Doble%20Imp%20DIT%20sharepoint.pdf (last visited Mar. 23, 2017).

46. Ley N° 122, julio 15, 2016, La Gaceta [D.O.] 1 (Costa Rica).

V. Ecuador

A. LAW AMENDING THE ARMED FORCES AND NATIONAL POLICY'S SOCIAL SECURITY REGIME

This new law establishes that the Social Security Institute of the Armed Forces will be part of the national social security system.⁴⁷ The General Director of the Social Security Institute of the Armed Forces shall be elected from a list submitted by the Minister of National Defense.⁴⁸ Military on active duty, officers, candidate aspiring troops, or conscripts who are providing their services to the date of issue of the amended Law, or who enter the facility after that date, will not be entitled to benefits under the life insurance and occupational accident insurance.⁴⁹

B. ORGANIC LAW OF SOLIDARITY AND STEWARDSHIP

The Solidarity and Stewardship Organic Law establishes the collection of contributions to enable the planning, construction, and reconstruction of public and private infrastructure in Manabi, an Ecuadorian province, which was affected by the earthquake that occurred on April 16, 2016.⁵⁰ The solidarity contributions are as follows: people who receive a monthly remuneration equal to or greater than one thousand dollars will pay a contribution equal to one day's salary during the next eight months (using a table as reference); people who, until January 1, 2016, have individual assets equal to or greater than one million dollars, will pay the contribution of 0.90 percent, according to the rules established in the law; companies that carry out economic activities and are subject to income tax, will pay a contribution of 3 percent of their profits, which will be calculated by reference to the taxable income of fiscal year 2015; there will be a contribution of 1.8 percent of the cadastral valuation of 2016 on all existing real estate in Ecuador; and, on the representative rights of capital of companies based in Ecuador, owned by companies existing in tax havens or other foreign jurisdictions are created only once.⁵¹ Additionally, the law establishes that new productive investments set up in the next three years in the affected areas will be exempt from paying income tax for five years as of the investment.⁵²

47. Oficio No. T.7329-SGJ-16-614, art. 1, Registro Oficial [R.O.] No. 867, octubre 21, 2016, Armed Forces and National Police's Social Security Law Amendment (*Ley reformatoria del Régimen de seguridad social de Fuerzas Armadas y Policía Nacional*) (Ecuador).

48. *See id.* at art. 6.

49. *See id.* at art. 45.

50. Oficio No. T. T.7315-SGJ-16-315, art. 1, Registro Oficial [R.O.] No. 759, mayo 20, 2016, Armed Forces and National Police's Social Security Law Amendment Organic law of solidarity and stewardship (*Ley orgánica de solidaridad y de corresponsabilidad ciudadana*) (Ecuador).

51. *See id.* at arts. 2-6.

52. *See id.* at art. 9.

C. ORGANIC CODE FOR GENERAL PROCESSES

This new Code regulates the procedural processes in all areas except constitutional, electoral, and criminal law.⁵³ Previously, in Ecuador, the written system was more popular than any oral system. This generated setbacks in the processes in terms of time, speed, and procedural costs. At present, the claims are resolved with reasoned decision at the hearing.⁵⁴ People will be notified with a single oral pronouncement of the decision.⁵⁵ Recourse to the terms will be counted from the notification of the judgment or order written.⁵⁶ Evidence will be presented orally during the trial hearing.⁵⁷ Processes that are pending on the effective date of this Code shall continue until completed in accordance with the regulations in force at the time of their inception.⁵⁸ In all matters not provided for in the General Organic Code of Processes, the current provisions of the Organic Code of Children and Adolescents, Organic Tax Code, Civil Code, Labor Code, and Code of Commerce shall be observed in a supplementary manner.⁵⁹

D. HEALTH INSURANCE LAW

This organic law aims to regulate, monitor, and control the establishment and operation of companies that finance health insurance services as well as the provision of those services.⁶⁰ This law approved the content of health insurance plans and contracts⁶¹ and prohibited health insurance companies from refusing to cover or renew a contract due to preexisting diseases, conditions or state of health, sex, gender identity, or age.⁶² Pursuant to this new law, companies will have to perform the respective coordination of benefits within public entities and observe the procedure established by the National Health Authority for payment priority among public and private entities.⁶³ The insurance companies must cancel or reimburse the Public Health Network for the amounts paid for health care to people under public health coverage who are also holders and/or beneficiaries of private health insurance.⁶⁴

53. Oficio No. SAN-2016-0797, art. 1, Registro Oficial [R.O.] No. 506, mayo 22, 2015, Organic Code for General Process (*Código Orgánico General de Procesos*) (Ecuador).

54. *See id.* at art. 79.

55. *See id.*

56. *See id.*

57. *See id.* at art. 159.

58. *See id.* at Transitory Disposition 1.

59. *See id.* at Final Disposition 1.

60. Oficio No. SAN-2016-1835, art. 1, Registro Oficial [R.O.] No. 863, octubre 17, 2016, Health Insurance Law (*Ley Orgánica de Seguros y Medicina Prepagada*) (Ecuador).

61. *See id.* at art. 1.

62. *See id.* at art. 33.

63. *See id.* at General Disposition 4.

64. *See id.* at General Disposition 5.

VI. Peru

A. NATIONAL FOCUSING SYSTEM (SINAFO)

Law No. 30435, enacted on May 17, 2016, created the National Focusing System (SINAFO).⁶⁵ Public intervention should be aimed at a specific segment of the population that presents a set of characteristics or the conditions that constitute a situation of disadvantage or vulnerability identified within the framework of the outcome of some social policy. The proposal for targeted public intervention must have a technical support and content structure determined by the Ministry of Development and Social Inclusion.⁶⁶ This law is mandatory for all entities of public administration.⁶⁷ Within the framework of SINAFO, a set of guidelines, rules, and instruments are defined to identify the eligibility criteria for individuals, households, housing, populated centers, communities, population groups, or geographic jurisdictions that will be users of public interventions that provide goods or services aimed at achieving a specific social purpose through generation and transfer of information in order to facilitate the implementation of targeted interventions.⁶⁸

B. PARAMETERS AND PROCEDURAL GUARANTEES FOR THE CONSIDERATION OF THE CHILD'S HIGHEST INTEREST

Law No. 30466, enacted on June 17, 2016, aims to establish procedural parameters and guarantees for the primary consideration of the best interest of the child in the processes and procedures in which the child is immersed.⁶⁹ The best interest of the child is a right, a principle, and a procedural rule that gives the child the right to have his or her best interest in all measures that affect him or her directly or indirectly.⁷⁰ For the primary consideration of the best interests of the child, in accordance with General Comment 14, the following parameters are taken into account: universal, indivisible, interdependent, and interrelated character child rights; recognition of children as right holders; nature and scope of the Convention on the Rights of the Child; and respect, protection, and realization of all the rights recognized in the Convention on the Rights of the Child.⁷¹ The Ministry of Women and Vulnerable Populations, in the exercise of its guiding function

65. Ley N° 30435, art. 1 [Law N° 30435], Creating the National Focusing System (Sinafo) (*Que Crea El Sistema Nacional De Focalización (SINAFO)*), May 17, 2016, EL PERUANO, No. 587425 (Peru).

66. *See id.* at art. 6.

67. *See id.* at art. 2.

68. *See id.* at art. 4-4.1.

69. Ley N° 30466, art. 1 [Law N° 30466], *Ley Que Establece Parámetros Y Garantías Procesales Para La Consideración Primordial Del Interés Superior Del Niño* [Establishing Parameters and Procedural Guarantees for the Primarily Consideration of the Superior Interest of the Child], June 17, 2016, EL PERUANO, No. 589716 (Peru).

70. *See id.* at art. 2.

71. *See id.* at arts. 4.1-4.8.

of the National System of Comprehensive Child Care, carries out the follow-up of the corresponding actions.⁷²

C. LEGAL ENTITIES: BRIBERY

Law No. 30424, enacted on April 21, 2016, regulates the administrative responsibility of legal entities for the crime of transnational active bribery.⁷³ For the purposes of this Law, legal entities are considered bodies of private law, and so too are associations, foundations and unregistered committees, irregular societies, entities that manage an autonomous heritage, and Peruvian State entities or mixed-economy companies.⁷⁴ Legal persons are to be administratively liable for the offense of active transnational bribery when the illegal act has been committed in the company's name or on its behalf and for its direct or indirect benefit. The company will be liable for any act carried out by (a) the company's directors, legal representatives, or contractual and corporate bodies acting in the exercise of the functions of their office; (b) individuals providing any service to the company; and (c) individuals when not exercising due control and surveillance by the administrators, legal representatives, or contractual and corporate bodies.⁷⁵ The law provides for the following penalties and sanctions in the event of breach: fines; disqualification (suspension of corporate activities; prohibition of activities of the same kind or nature of those whose conduct has been committed, aided, or concealed; prohibition to contract with the State); cancellation of licenses, concessions, rights, and other administrative or municipal authorizations; closure of their premises or establishments; and dissolution.⁷⁶

72. *See id.* at Final Disposition.

73. *See* Ley N° 2738, art. 1 [Law N° 27811], Ley Que Regula La Responsabilidad Administrativa De Las Personas Jurídicas Por El Delito De Cohecho Activo Transnacional [That Regulates the Administrative Responsibility of Legal Entities for the Crime of Transnational Active Bribery], Apr. 21, 2016, EL PERUANO, No. 583798 (Peru).

74. *See id.* at art. 2.

75. *See id.* at art. 3.

76. *See id.* at art. 5.

