

## Latin America and Caribbean

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### I. Argentina

#### A. REQUIREMENTS FOR NON-COMPETITION CLAUSES

Although the validity of non-competition clauses must generally be reviewed on a case-by-case basis, the Argentine Antitrust Commission (*Comisión de Defensa de la Competencia*) issued a report on December 23, 2008<sup>1</sup> with the following guidelines for non-competition clauses:

- The relevant clause should not restrict third parties' behavior, but only the behavior of parties to the relevant transaction;

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1. Argentine Antitrust Comm'n Rep. No. 704 (Dec. 23, 2008) (file *Molinos Río de la Plata S.A. y Otros s/ Notificación art. 8 Ley 25.156 (Conc.677)*, No. S01:0503916/2007).

- Non-competition clauses should be directly related to, and not substantially different from, the primary relevant transaction;
- The interpretation of any such clauses must provide a restrictive, rather than expansive, meaning and scope to such clauses;
- The relevant non-competition clause should be material (in the sense that without them, the relevant transaction would not have been executed, would be more onerous, or would be less certain or successful as to its results);
- Non-compete obligations may be valid for up to a five-year term if the transaction involves the transfer of know-how, and for a maximum of two years if only goodwill is transferred;
- Non-compete clauses in a corporate acquisition transaction should be geographically limited to the market where the seller provided the relevant products or services prior to the transaction; and
- A non-compete clause in a corporate acquisition transaction should be limited to products or services relating to the transferred business.

#### B. SECURITIES AND EXCHANGE COMMISSION: ENVIRONMENTAL DISCLOSURE

On August 18, 2009, General Resolution No. 559/09 issued by the Argentine Securities and Exchange Commission (Comisión Nacional de Valores, or CNV) was published in the Official Bulletin.<sup>2</sup> This resolution introduced the obligation of companies engaged in the public offering of stock and securities to file statements with regard to the management of certain environmental matters.

Pursuant to this new resolution, companies subject to the public offering system<sup>3</sup> with a corporate purpose that includes activities deemed as entailing a risk to the environment under Resolution No. 177/07,<sup>4</sup> must report the following circumstances to the CNV as material events:<sup>5</sup> (i) conduct of environmental audits, (ii) adequacy programs and their respective schedules, (iii) environmental insurance coverage, as provided for by Section 22 of Environmental Framework Law No. 25,675, and (iv) measures implemented by the

2. Comisión Nacional de Valores Gen. Res. No. 559/2009, Aug. 6, 2009, [31717] B.O. 10 [hereinafter CNV 559/2009]. This resolution supplements General Comisión Nacional de Valores Gen. Res. No. 368/2001, May 17, 2001, [29666] B.O. 1 [hereinafter CNV 368/2001].

3. Pursuant to Chapter II, arts. 16 and 17 of Law No. 17811, "public offering" means: "An offer to individuals or entities in general or specific sectors or groups to perform any legal act involving securities, made by issuers or by organizations or companies engaged, either exclusively or partially, in the trading of such securities, by means of personal offers, advertisements, radio or television broadcasting, film screening, advertising signs, posters or notices, programs, circulars and printed notices or by any other means of communication . . . ." Comisión Nacional de Valores Law No. 17811, July 16, 1968, [21481] B.O. chap. I, art. 6 of Law No. 17811 provides that the CNV is empowered to authorize the public offering of securities.

4. Resolution No. 177/2007 issued by the Secretariat of Environment and Sustainable Development (Secretaría de Ambiente y Desarrollo Sustentable, or SAyDS), as amended, identifies certain activities listed therein as environmental risk activities that fall within categories 2 or 3 set forth therein. See Secretaría de Ambiente y Desarrollo Sustentable Res. No. 177/2007, Mar. 13, 2007, [31114] B.O. 8.

5. See CNV Res. 368/2001, *supra* note 2, § 2 ("Managers of issuing entities offering marketable securities to the public and members of the supervisory committees thereof shall be vested with a duty to report to the Commission promptly . . . about any event or circumstances which, by reason of their significance, may affect the placement of such issuing entity's marketable securities or the development of negotiations to a substantial extent.").

company for environmental damage prevention. Environmental information must also be included in offering circulars for marketable securities.<sup>6</sup>

### C. NEW FRAMEWORK FOR MEDIA ACTIVITY

On October 10, 2009, the Argentine Congress enacted a new law on Audiovisual Communication Services<sup>7</sup> that replaced the former Broadcasting Law of 1980. This new law governs (a) the media business and its members; (b) broadcasts originating within Argentina, or abroad when retransmitted or distributed within Argentina; and (c) broadcast contents. The following are some of the most salient provisions of this new law:

- It creates a new enforcement authority, the *Autoridad Federal de Servicios de Comunicación Audiovisual* (Federal Authority of Audiovisual Communication Services, or AFeSeCa).
- Licensees may be (i) state entities, or (ii) individuals or private entities (profit or non-profit). Public utilities are not allowed to provide broadcasting services, unless they are non-profit organizations. The requirements for the rendering of audiovisual services are similar to those required under the former system.
- The participation of foreign capital in licensed companies is limited to thirty percent of the voting stock. Such percentage may be higher for investors from nations that have entered into certain Bilateral Investment Treaties with Argentina.
- The duration of the licenses is reduced to ten years, renewable for an additional ten-year term.
- The holding of multiple licenses has been limited and redefined. For example, the new law forbids operating a satellite service and another type of broadcasting license simultaneously, holding more than twenty-four cable television licenses, or serving more than thirty-five percent of the population in Argentina.
- New taxes, levied as a percentage of total gross income, are imposed on licensees.
- The new law includes provisions regarding programming content, including tax and advertisement incentives to increase broadcasting of national production.

### D. CHANGES TO STAMP TAX IN THE CITY OF BUENOS AIRES

Until January 2009, the City of Buenos Aires (as opposed to most Argentine provinces) applied a stamp tax exclusively to documents governing the transfer or lease of commercial real estate.<sup>8</sup> Upon the enactment of Law No. 2997,<sup>9</sup> the City of Buenos Aires changed its tax policy and expanded the application of the stamp tax generally to contracts and trans-

6. See CNV 559/2009, *supra* note 2, art. 1 (The information must be included under the heading "Key Issuer Information" and shall include (II) the information detailed in (a) through (d) as significant events in the above paragraph and authorizations granted by specific enforcement authorities exercising control in the jurisdictions where such companies carry on business.).

7. Law No. 26522, Oct. 10, 2009, [31,756] B.O. 1.

8. In general terms, the stamp tax is levied against written contracts and other transaction documents executed or performed for consideration in the relevant jurisdiction. The taxable event arises from the execution of the document regardless of actual performance under, or future amendments of, the relevant document. See art. 345 of the Tax Code of the City of Buenos Aires, *Ciudad Autónoma de Buenos Aires*, Law No. 541, Dec. 28, 2000, [1115] B.O. (as amended by Decree No. 651/08, Annex I, [2,952] B.O.).

9. *Ciudad Autónoma de Buenos Aires* Law No. 2997, Jan. 9, 2009, [3092] B.O. 52.

action documents executed for consideration. Applicable stamp tax rates in the City of Buenos Aires currently range from 0.5% to 2.5% of the relevant transaction price or amount.

#### E. NEW RULES ON TAX AMNESTY, UNREGISTERED EMPLOYMENT AND UNDECLARED ASSETS

In December 2008, Congress enacted a new law to encourage taxpayers to regularize the status of undeclared assets, underpaid taxes, and unregistered employees.<sup>10</sup> This new law and its regulations created various tax benefits, including the following:

- In connection with underpaid or unpaid federal taxes (including income tax) and social security obligations, by adhering to the tax regime provided under this law,<sup>11</sup> taxpayers who owed back taxes and social security obligations accrued on or before December 31, 2007, benefited from a significant reduction of interests and a waiver of fines and other penalties, provided that no final judgment had been rendered regarding such taxes and obligations;
- Regarding the registration of unregistered employees, the new tax regime allowed employers to disclose employment relationships existing as of December 24, 2008, as well as understated compensation and false employment starting dates, with a full release from fines and sanctions; and
- In connection with reporting and repatriation of assets, this new tax regime offered taxpayers the right to disclose unreported taxable assets while benefiting from preferential tax rates.<sup>12</sup>

#### F. SUPREME COURT RULES ON INFLATION ADJUSTMENTS

On July 3, 2009, the Argentine Supreme Court (Corte Suprema de Justicia de la Nación) issued a decision in a leading case involving the use of inflation adjustments for tax purposes in 2002.<sup>13</sup> In declaring the tax authority's position as "confiscatory" and "unreasonable," the Court held that the tax rules prohibiting inflation adjustments could not be used to tax illusory corporate income that is no more than a reflection of inflation.<sup>14</sup>

In 1991, Argentina pegged its currency to the U.S. dollar and eliminated monetary (as opposed to price) inflation. Consistent with this policy, Congress eliminated inflation adjustments from corporate income tax reporting. Ten years later, when Argentina moved off of the currency peg, the Argentine peso quickly devalued, and by early 2002, double-digit annual inflation prompted a renewed demand for inflation adjustments. Nonetheless, the tax authority refused to allow these adjustments. As a result, corporate taxpayers, particularly those with substantial fixed assets or inventories and U.S. dollar-denominated

10. Law No. 26476, Dec. 24, 2008, [31559] B.O. 1.

11. The term to opt into this regime expired on August 31, 2009. *See id.* § 1.

12. Taxpayers opting into the new regime were required to report, on or before August 31, 2009, any currency and assets existing but undisclosed as of December 31, 2007. *See id.* § 25.

13. A year where annual inflation exceeded one hundred percent. *See* Sistema De Indices De Precios Mayoristas (SIPM), <http://www.indec.gov.ar/nuevaweb/cuadros/10/IPIM-dde1993.xls>.

14. Corte Suprema de Justicia de la Nación [C.S.J.N.], 3/7/2009, 2009, "Candy S.A. v. A.F.I.P. y otros / acción de amparo," Colección Oficial de Fallos de la Corte Suprema de Justicia de la Nación [C.S.C.] (2009 866 L.XLII) (Arg.).

liabilities, were taxed on inflation-based profits, regardless of their actual, constant peso-based profits.

Various corporate taxpayers, among them Candy S.A., challenged the government's position on constitutional grounds. On July 3, 2009, the Supreme Court finally accepted the taxpayer's arguments in *Candy* and held that rules preventing adjustments may not constitutionally support a tax that, as a practical matter, is patently confiscatory.<sup>15</sup> The Court ordered the government to accept the inflation adjustments for tax reporting purposes for the 2002 fiscal period.<sup>16</sup>

## II. Bolivia

### A. NEW CONSTITUTIONAL ORDER

After a long, controversial, and at times even violent process, which first involved a Constitutional Assembly that did not fully accomplish its mission to approve a new Political Constitution, finally a consensus was reached between the official political party and the opposition in Congress, and a new Constitution was promulgated on February 7, 2009, following its confirmation by a National Referendum in January.<sup>17</sup>

The complex text of the new Constitution is contained in 411 articles and 10 interim provisions.<sup>18</sup> Numerous new features and institutions are found in the text. As part of a simultaneous first constitutional interpretation by the Executive Branch, the nation changed its name from "Republic of Bolivia" (which was not fully abandoned)<sup>19</sup> to "Plurinational State of Bolivia" by a Decree dated February 7, 2009.<sup>20</sup> The new name reflects the country's general orientation aiming to recognize that the Bolivian nation is comprised of "all Bolivians, aboriginal indigenous and peasant nations and peoples and intercultural and afro-Bolivian communities."<sup>21</sup> In addition to Spanish, thirty-six languages from aboriginal nations are now recognized as official languages in Bolivia.<sup>22</sup> Along those same lines, a new chapter establishes eighteen specific rights of said nations; including the right to collective entitlement of their territories.<sup>23</sup> Within the framework

15. *Id.*

16. *Id.*

17. See Eulogio Núñez, Constitution, *Gaceta Oficial de Bolivia*, Special Edition, Feb. 2009, available at <http://www.laconstituyente.org/?q=node/2604>.

18. See Republica del Bolivia Constitución de 2009 [hereinafter Constitution of 2009], available at <http://pdba.georgetown.edu/Constitutions/Bolivia/bolivia09.html>. The amended Constitution in effect since 1997, now abrogated, contained 234 articles. See Constitución Política de la República de Bolivia, available at <http://pdba.georgetown.edu/Constitutions/Bolivia/consboliv2005.html>.

19. See Constitution of 2009, art. 11.

20. See Estructura Organizativa del Ejecutivo del Estado Plurinacional (Decree on the Organic Structure of the Executive Branch of the "Plurinational State"), *Gaceta Oficial de Bolivia*, Special Edition No. 0116 (Feb. 7, 2009), available at [http://www.economiayfinanzas.gov.bo/biblioteca/VPT/documentos/DS\\_29894\\_ES-TRUCTURA\\_ORGANIZATIVA\\_DEL\\_ORGANO\\_EJECUTIVO.pdf](http://www.economiayfinanzas.gov.bo/biblioteca/VPT/documentos/DS_29894_ES-TRUCTURA_ORGANIZATIVA_DEL_ORGANO_EJECUTIVO.pdf).

21. See Constitution of 2009, art. 3.

22. See *id.* art. 5.

23. See *id.* art. 30, § II.

of a new territorial organization of the State, different levels of autonomous territories and rights will be implemented over time, including indigenous ones.<sup>24</sup>

The new economic organization, which dictates active participation and control by the State in most areas of economic activity, addressed a need to substitute the “neoliberal open model” of economy that has been in place since the 1980s. It recognizes however, that the “Bolivian economic model is plural” and is “constituted by community, state, private and social cooperative forms of organization.”<sup>25</sup> The new Constitution guarantees the right to own private property<sup>26</sup> and the “[s]tate recognizes, respects and protects private initiative to contribute to economic and social development and the strengthening of economic independence of the country.”<sup>27</sup>

Effective implementation of the new Constitution is to occur starting in 2010.<sup>28</sup> Hundreds of new laws are required within what is expected to be a long and complex political and legislative process. Apart from a number of organic laws relating to the organization of the state powers, to be approved within 180 days from the inauguration of the new Executive and Legislative branches in January of 2010, an interim article provides that during the first five-year period of the new National Congress, all new laws necessary for the implementation of the general constitutional rules are to be approved.<sup>29</sup> As a result, substantive changes in the laws can be expected.

With respect to certain specific economic activities, the new Congress shall approve new laws over the course of 2010 ensuring the implementation of constitutional rules that provide for an “adaptation” to the new order regarding natural resources, electricity, telecommunications, and basic services.<sup>30</sup> In legislating on the obligation to “adapt” to the new rules, “acquired rights” are to be respected.<sup>31</sup> Within the same period, mining concessions granted to private companies, national or foreign, are to be adapted to a new contractual system, the nature of which is a matter of current debate.<sup>32</sup> Regarding the current operation agreements relating to the important hydrocarbon sector, they will be adapted to a new form of “service contract.”<sup>33</sup> All natural resources are acknowledged to belong to the “Bolivian people,” with the State being the administrator.<sup>34</sup>

International treaties signed before February 9, 2009, which are not contrary to the new Constitution, will continue to have legal effect.<sup>35</sup> Those considered contrary to the new constitutional order are to be denounced or renegotiated within a period of four years from the election of the new Executive Branch on December 7, 2009, when a full revision

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24. Together with a new election for President and Vice-President and Congress, which on December 6, 2009, re-elected President Morales for an additional five-year term, the first seven indigenous autonomous territories have been confirmed by local referendums. Daily “La Prensa,” La Paz, Bolivia, No. 4.162, Dec. 7, 2009, available at <http://www.laprensa.com.bo/noticias/07-12-09>.

25. See Constitution of 2009, art. 306.

26. See *id.* art. 56. The right to private property is subject to performing a “social function.”

27. See *id.* art. 308.

28. *Id.* Interim Provisions 5, 8.

29. *Id.* Interim Provision 5.

30. *Id.* Interim Provision 8(I).

31. *Id.*

32. *Id.* Interim Provision 8(II).

33. *Id.* art. 362.

34. *Id.* art. 349.

35. *Id.* Interim Provision 9.

of all international treaties is expected.<sup>36</sup> Specifically, investment treaties, such as the twenty-two Bilateral Investment Treaties previously signed by Bolivia, will merit a special revision.<sup>37</sup>

### III. Brazil

#### A. INVESTOR VISA TO BRAZIL

A permanent visa, granted by Brazilian authorities, is required when a foreign person is in need of establishing residence in Brazil, or becoming manager or executive officer of a Brazilian company.<sup>38</sup> Therefore, foreign entrepreneurs are usually interested in obtaining either permanent management or investor visas.

On February 10, 2009, the National Immigration Council enacted Resolution No. 84, which altered some of the requirements for granting investor visas. Before this resolution, someone seeking an investor visa had to demonstrate an investment in a Brazilian company, in his or her own name, of at least US\$200,000.<sup>39</sup> The new resolution lowered the minimum investment amount to R\$150,000 (one-hundred and fifty Reais).<sup>40</sup> The resolution further allows the National Immigration Council to grant an investor visa to someone who has invested less than the minimum amount if that investment serves a Brazilian "social interest."<sup>41</sup>

The concession of permanent visas is still a discretionary act of the Brazilian Immigration authorities. Therefore, any petition for a permanent visa shall be duly supported with pertinent documentation and information.

#### B. TRANSFER OF OBLIGATION IN CORPORATE JUDICIAL RECOVERY

In 2005, Law No. 11.101 introduced into the Brazilian legal system corporate judicial recovery, which replaced the so called *concordata*, the equivalent of a Chapter 11 bankruptcy in the United States.<sup>42</sup> The spirit of the new law is to provide a possibility of recovery for companies in financial and economic difficulty, while maintaining their production and jobs, realizing their corporate social function, and stimulating Brazilian economic activity.<sup>43</sup>

One of the possibilities of recovery available to companies is the sale of part of the company's interest or some of its assets.<sup>44</sup> In 2009, the Brazilian Federal Supreme Court

36. *Id.*

37. President Morales has instructed his Ambassadors abroad to start discussions on the matter with the Country's counterparts.

38. See Lei No. 6.404 art. 146, de 15 de dezembro de 1976, Lex XL: 938, 1976 (Braz.).

39. Resolução Normativa No. 84, de 10 de fevereiro de 2009, D.O.U. de 13.02.2009 (Braz.), available at [http://www.mte.gov.br/legislacao/resolucoes\\_normativas/2009/rn\\_20090210\\_84.pdf](http://www.mte.gov.br/legislacao/resolucoes_normativas/2009/rn_20090210_84.pdf).

40. *Id.* art. 2.

41. *Id.* art. 3.

42. Lei No. 11.101, de 9 de fevereiro de 2005, D.O.U. de 09.02.2005 (Braz.).

43. *Id.* art. 47.

44. *Id.* art. 50.

decided two important cases related to the acquisition of assets from companies under judicial recovery.<sup>45</sup>

The first such judgment examined the transfer of an employer's labor obligations, and the Court decided that the law established that such obligations are not transferred to the purchaser of the company's interest or assets.<sup>46</sup> The second case analyzed the jurisdiction of the courts overseeing the recovery process, and the Court reached the conclusion that the recovery court has jurisdiction to make decisions related to the payment of all credits, including the labor credits.<sup>47</sup>

These decisions represent greater security for the potential purchasers of companies—whether it be part of their interest or some of their assets—under judicial recovery, by establishing the non-transferability of obligations and delineating the jurisdiction of recovery courts.

### C. A NEW REGULATION ON THE WRIT OF MANDAMUS

Brazil adopted a new federal law modifying the writ of mandamus as applied in the Brazilian legal system.<sup>48</sup> The writ was previously governed by federal legislation dating back to 1951.<sup>49</sup> The writ of mandamus is a legal action provided by the Federal Constitution created and developed in the Brazilian legal system (with influences from the United States and Britain) to eradicate damage or threatened damage to the substantial rights of Brazilian citizens caused by the wrongful acts of public authorities.<sup>50</sup> The new legislation in 2009, however, includes some negative aspects in that some articles are overly restrictive and, in practice, impair the full exercise of this important legal action. For example, the law allows courts to impose a guarantee, bail, or deposit from a petitioner before granting a requested injunction, and this rule may inhibit the rights of some litigants who cannot afford the amount imposed.<sup>51</sup>

The new law was the subject of a recent lawsuit for the Declaration of Unconstitutionality (ADI), which was filed by the Brazilian Bar Association, who argued that this legal provision, besides being an obstacle to the absolute exercise of the writ of mandamus, could even generate a “legal-social apartheid,” given that its consequence is to benefit the population with greater financial resources.<sup>52</sup>

Another legal provision that has been the subject of criticism (and that was yet another issue raised in the ADI) is that which prohibits the issuance of injunctions in cases where the remedy sought is the compensation of tax credits; the delivery of merchandise and goods from abroad; the reclassification or assimilation, as well as the concession of salary increase or benefits to civil servants.<sup>53</sup> Notwithstanding the existence of these prohibi-

45. See S.T.F.J.- Ação Direta de Inconstitucionalidade (ADI) No. 3934, Relator: Ricardo Lewandowski (Brazil); see also S.T.F.J.-Recurso Extraordinário (RE) No. 583955/RJ, Relator: Ricardo Lewandowski (Braz.).

46. See ADI No. 3934, *supra* note 45.

47. See RE No. 583955/RJ, *supra* note 45.

48. Lei No. 12.016, de 10 de agosto de 2009, D.O.U. de 07.08.2009 (Braz.).

49. Lei No. 1.533, de 31 de dezembro de 1951, D.O.U. de 31.12.1951 (Braz.).

50. Constituição Federal [C.F.] art. 5, § LXIX.

51. Lei No. 12.016, *supra* note 48, art. 7, § III.

52. See S.T.F.J.-Ação Direta de Inconstitucionalidade (ADI) No. 4296, Relator: Marco Aurélio Mello (Braz.).

53. Lei No. 12.016, *supra* note 48, art. 7, § 2.



tions in the current law, the unconstitutionality of such a legal provision is flagrant because it is evident that legislation, not within the ambit of the Constitution, cannot circumscribe the exercise of the writ of mandamus, which is a legal action actually prescribed by the Federal Constitution, given that such condition deviates from its higher purpose, that is, the wide guarantee to the individual and collective rights of citizens.

Finally, it is worth observing that the new legislation also has meritorious aspects. For instance, the regulation of the collective writ of mandamus, an issue which the previous legislation was silent on, but which seeks to protect homogeneous collective and individual rights, similar to the instrument of a public civil action in Brazil.<sup>54</sup>

#### D. THE APPLICATION OF ARBITRATION BY THE BRAZILIAN LABOR COURT

According to the Brazilian Labor legislation in force, conflicts pertaining to labor relations can be solved by a special court, the Labor Court, through judicial decisions.<sup>55</sup> Also, such legislation allows employers and employees to subject their individual labor conflicts to a specific committee, denominated the Previous Internal Reconciliation Committee, which is formed by representatives of the employees and employers alike, as a means to try to settle disputes in this ambit.<sup>56</sup>

Nevertheless, in recent years, employers' inclination to rely upon arbitration tribunals has been seen as an alternative to the above-mentioned legal means to settle labor disputes in some cases.<sup>57</sup>

In Brazil, arbitration tribunals, which have been recognized as the most efficient dispute resolution system, in fact, contributing to relieve the overcrowded Judiciary Branch, are regulated by Law No. 9.307/96.<sup>58</sup> Pursuant to the current legislation, through arbitration the parties may settle conflicts related to rights passive of waiver; however, labor rights are defined as rights that cannot be waived.<sup>59</sup> Moreover, the Brazilian Federal Constitution establishes that the use of arbitration in labor matters is permitted only in the resolution of collective labor conflicts.<sup>60</sup>

In this sense, the Labor Court and the Public Labor Attorney's Office have resisted arbitration to solve individual labor conflicts. Accordingly, the use of arbitration in individual labor conflicts requires special attention, in light of the above-mentioned terms of the Federal Constitution and the impossibility of waiver of labor rights issue, at the risk of the settlement reached by the arbitration tribunal being set aside by the Labor Court.

A recent decision by the 3rd Panel of judges of the highest Brazilian Labor Court, the Superior Labor Court, set aside a decision reached by an arbitration tribunal ordering a given settlement in a dispute between a multinational corporation and an employee, who, believing he was prejudiced, requested dismissal of the arbitration decision and sought

54. *See id.* arts. 21-22.

55. Decreto No. 5452, de 1 de maio de 1943, Leis Trabalhistas Consolidadas, art. 643 (Braz.).

56. *Id.* art. 625-A.

57. According to this author's practice and studies of this area of the law, such is the trend that has been observed in the Brazilian labor dispute ambit.

58. *See Lei* No. 9.307, de 23 de setembro de 1996, D.O.U. de 24 setembro de 1996 (Braz.).

59. *Id.* art. 1. ("[P]arties capable of entering into agreements will be able to use Arbitration to settle conflicts related to rights passive of waiver.")

60. *C.f.* art. 114.

payment of his labor rights.<sup>61</sup> Despite the position taken by the 3rd Panel of judges of the Superior Labor Court, other panels of judges on the Superior Court have ruled that individual labor conflicts can be settled by arbitration.<sup>62</sup> A final resolution on whether individual labor conflicts can be settled by arbitration is expected when the Superior Labor Court holds its next full session.

#### IV. Chile

##### A. ACCESSION TO THE OECD

In the context of Chile's now imminent accession to the Organization for Economic Co-operation and Development (OECD), the OECD's Council adopted a "Roadmap for the Accession of Chile to the OECD Convention".<sup>63</sup> This Roadmap provided certain recommendations for Chile's accession to the OECD, including legislative changes to improve corporate transparency and further develop capital markets. The following legislative developments were part of the measures taken by Chile to comply with the Roadmap:

##### 1. Amendments to Laws Regarding Corporate Governance

Law No. 20,382 was enacted on October 20, 2009,<sup>64</sup> and enters into force on January 1, 2010.<sup>65</sup> The new law encourages corporate transparency and minority shareholder rights within a corporation (e.g., by means of new rules of disclosure and regulation of board of directors' decision making) and in the capital market in general (e.g., by means of a stronger supervision and evaluation of registered corporations.) A remarkable rule aimed at protecting minority shareholders, and thus fostering investment by small-size investors, is the corporation's obligation to make certain periodic information available to the shareholders on the relevant corporation's website.<sup>66</sup>

Law No. 20,382 introduces multiple amendments to Securities Act No. 18,045,<sup>67</sup> the Corporations Act No. 18,046,<sup>68</sup> and the Commerce Code,<sup>69</sup> such as:

- It amends the definition of *sociedad anónima abierta* (public corporation), by defining it as an issuer of securities (as opposed to a prior definition, which included a test in connection with the number of shareholders), and further provides that a corporation that is statutorily required to register with the Securities and Insurances Commission (SVS) is also deemed as a *sociedad anónima abierta* in terms of regulation and

61. See T.S.T., Ação No. E-ED-RR-795/2006-028-05-00.8, Relator: João Batista Brito Pereira (Braz.).

62. See T.S.T., Ação No. AIRR-1475/2000-193-05-00.7, Relator: Pedro Paulo Manus (Braz.).

63. Organisation for Economic Co-operation and Development [OECD], *Roadmap for the Accession of Chile to the OECD Convention*, (2007)100/FINAL 2 (Dec. 3, 2007), available at [http://www.olis.oecd.org/olis/2007/doc.nsf/LinkTo/NT00005856/\\$FILE/JT03237375.PDF](http://www.olis.oecd.org/olis/2007/doc.nsf/LinkTo/NT00005856/$FILE/JT03237375.PDF).

64. Ley No. 20,382 (Oct. 20, 2009), [39,490], Diario Oficial, 3 (Chile).

65. Transitory art. 1, Law No. 20,382 (Oct. 20, 2009), [39,490], Diario Oficial, 11 (Chile).

66. *Historia de la Ley N. 20.382: Introduce perfeccionamientos a la normativa que regula los gobiernos corporativos de las empresas*, Biblioteca del Congreso Nacional de Chile, 4-7, 20 de octubre, 2009, available at <http://recursoslegales.bcn.cl/jspui-rl/bitstream/10221.3/3860/2/HL20382.pdf>.

67. Ley No. 18,045 (Oct. 22, 1981), [31,096], Diario Oficial, 1 (Chile).

68. Ley No. 18,046 (Oct. 22, 1981), [31,096], Diario Oficial, 6 (Chile).

69. Código de Comercio [Commercial Code], 23 noviembre 1865 (Chile).

compliance (as opposed to the former definition, according to which such corporations were deemed to be close corporations);

- It includes a new obligation of issuers of securities to implement policies applicable to securities transactions entered into by their officers or directors;
- It broadens the definition of inside information to now include information regarding decisions about acquisition, transfer and acceptance or rejection of specific offers made by institutional investors in the securities market;<sup>70</sup>
- It includes a new chapter concerning corporate external auditors where, among other matters, it clarifies the auditors' liability for damages caused to the corporation due to their auditing services, establishes new auditing procedures, and provides new rules regarding auditors' independence.
- It provides new rules and requirements regarding independent directors,<sup>71</sup> such as the requirement that publicly-traded corporations having a market capitalization (*patrimonio bursátil*) equal to or greater than 1.5 million *Unidades de Fomento*<sup>72</sup> and with at least 12.5% of voting shares held by shareholders who individually hold less than ten percent of the company's capital stock, include at least one independent director in their board committees;
- It provides a new mechanism for the approval of related party transactions, applicable only to public corporations, consisting essentially of (i) the directors' duty to declare their interest in the relevant transactions and (ii) prior authorization of the relevant transaction by a board resolution approved without the interested director's vote;
- It grants minority shareholders of a public corporation appraisal rights (*derecho a retiro*) if the controller acquires ninety-five percent of the equity interest of the company. In addition, it provides that, under certain circumstances, the bylaws of the corporation may authorize the controlling shareholder to squeeze out shareholders who did not exercise their appraisal rights;
- It allows and regulates the creation of local branches or *agencias* of foreign non-corporate entities; and
- It provides new rules regarding shareholder meetings (*e.g.*, shareholder meetings of close corporations may be attended by all shareholders registered in the company Shareholder Registry on the date of the meeting<sup>73</sup>), board meetings (*e.g.*, board resolutions may be carried out if so resolved unanimously by the directors present at a meeting, without the need for prior approval of the relevant minutes), and approval

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70. The definition previously in force referred to "transactions" instead of "decisions" and included only the information related to transactions of "acquisition and transfer," but not to "acceptance or rejection of offers."

71. Essentially, a director is deemed independent if he or she does not have any relationship whatsoever with the company, other entities of the same holding, the company controller, or the main executives of any of the foregoing, which may deprive a reasonable individual of a reasonable degree of autonomy, or interfere with the performance of an objective and effective work, or create a potential conflict of interest, or interfere with such individual's independent judgment.

72. Chilean Peso inflation-indexed unit. As of December 4, 2009, the value of one U.F. was equivalent to approximately US\$42.00.

73. The former provision stated that only the holders of shares recorded in the Shareholders' Registry five business days prior to the relevant meeting could speak and vote in the meeting.

of related party transactions (*e.g.*, in close corporations only related party transactions exceeding certain thresholds must be previously approved by the Board.)

## 2. *Criminal Liability of Legal Entities*

Law No. 20,393 entered into force on December 2, 2009, setting forth criminal liability for legal entities.<sup>74</sup> Under this new law, legal entities are criminally liable for certain conduct, provided that the relevant criminal conduct:

- Constitutes crimes of asset laundering, terrorism financing, or bribery of local or foreign government officials;
- Is perpetrated in the entity's own interest, directly or indirectly by its owners, representatives, main executives, or other individuals in charge of carrying out the relevant entity's business; and
- Results from the entity's non-compliance with certain specific direction and supervision obligations provided in Law No. 20,393.

The penalties provided in Law No. 20,393 include (i) fines, (ii) partial or total loss of benefits or privileges granted by the State, (iii) temporary or perpetual prohibition to engage in contracts with State-owned entities, and (iv) dissolution of the legal entity.

## 3. *Exception to Banking Secrecy in Tax Crime Investigations*

Law No. 20,406 was enacted on December 5, 2009.<sup>75</sup> The law allows courts and tax authorities to lift the banking secrecy in connection with the investigation of tax crimes. Tax authorities will be able to require commercial banks to provide information from specific individuals when such information is essential to verify the existence of a tax crime, whether due to the lack of truthfulness and accuracy of the relevant tax statements, or due to the lack of such tax statements. This new law enters into force on January 1, 2010 and will apply to banking transactions performed after that date.

## B. STATUTE OF THE INTERNATIONAL CRIMINAL COURT RATIFIED

After extensive debate in Congress,<sup>76</sup> on August 1, 2009, the Chilean Official Gazette published the ratification as domestic law of the Rome Statute of the International Criminal Court.<sup>77</sup> A constitutional reform was necessary to allow the Chilean State to approve and accept the jurisdiction of the International Criminal Court (ICC) over individuals otherwise subject to the jurisdiction of Chilean courts.<sup>78</sup>

74. Ley No. 20,393, Dec. 12, 2009, [39,526], Diario Oficial, 3 (Chile).

75. Ley No. 20,406, Dec. 5, 2009, [39,529], Diario Oficial, 3 (Chile).

76. The motion to enact the Rome Statute of the International Criminal Court as Chilean law entered Congress more than ten years ago, on January 6, 1999, by Bulletin No. 2293-10 of the President of the Republic.

77. Promulga el Estatuto de Roma de la Corte Penal Internacional, Decreto No. 104, Ministerio De Relaciones Exteriores de 01-09-2009, -2, available at <http://www.leychile.cl/Navegar/?idNorma=1004655&idVersion=2009-09-01&idParte>.

78. On March 4, 2002, thirty-five Congressmen petitioned the Constitutional Court to declare that the enactment as Chilean law of the Rome Statute violated the Chilean Constitution. On April 8, 2002, by decision No. 346, the Constitutional Court granted the petition and declared the unconstitutionality of the Rome Statute. Consequently, on April 16, 2002, by bulletin No. 2912-07, the President of the Republic filed

Chile signed the Rome Statute in September of 1998 and ratified it on June 29, 2009, thus becoming the 109th State Party to the Rome Statute. On May 20, 2009, the Chilean Congress approved the constitutional amendment required to recognize the ICC's jurisdiction.<sup>79</sup> The foregoing notwithstanding, Chile has not yet acceded to the Agreement on the Privileges and Immunities of the Court (APIC),<sup>80</sup> which provides ICC employees and personnel with certain privileges and immunities necessary to perform their duties in an independent manner.<sup>81</sup>

## V. Ecuador

### A. CONSTITUTIONAL LAW

Ecuador's National Assembly enacted the Jurisdictional Guarantees and Constitutional Control Law to establish the procedural regulations needed to enforce constitutional rights, including *habeas data*<sup>82</sup> and actions to protect constitutional rights.<sup>83</sup>

### B. CORPORATE LAW

The Companies Law Reform Act requires foreign shareholders in Ecuadorian companies to reveal specific information (such as name, nationality, and domicile) about their shareholders and to appoint an attorney-in-fact in Ecuador.<sup>84</sup>

The Superintendence of Companies now requires foreign shareholders in local companies to also provide a list of all of their shareholders and to submit a certificate of good

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in Congress a bill to amend the Constitution and authorize the Chilean State to enact the Rome Statute as domestic law. The bill was disregarded in 2004. Two new motions to amend the Constitution to approve the Rome Statute were filed by two Congressmen on April 7, 2004, by bulletins No. 3491-07 and 3493-07 of the Chilean Senate. As of January 10, 2007, all bulletins were reviewed by a joint commission on defense and foreign affairs and they were brought before Congress for open debate. As a result, on May 30, 2009, Law 20,352 was enacted, amending the Constitution to authorize the Chilean State to approve the Rome Statute as domestic law. See generally Ley No. 20,352 (Chile) available at <http://www.leychile.cl/Navegar/?idNorma=1002776&idVersion=2009-05-30&idParte>.

79. Corte Suprema de Justicia de la Nacion [CSJN] 3/7/2009, "Candy S.A. v. A.F.I.P. y otro s/acción de amparo," C.S. C.866 L.XLII. (Arg.); Law No. 20,352 (Chile).

80. COALITION FOR THE INT'L CRIMINAL COURT, RATIFICATION/ACCESSION AND SIGNATURE OF AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE COURT (APIC) BY REGION 1-2 (2009), available at [http://www.iccnw.org/documents/APIClist\\_updated\\_en\\_7\\_OCT\\_2009.pdf](http://www.iccnw.org/documents/APIClist_updated_en_7_OCT_2009.pdf).

81. Please note that, in addition, Chile has not yet signed a Bilateral Immunity Agreement with the United States of America aimed at ensuring the non-surrender of United States' personnel—including both United States' nationals and foreign contractors working for the United States—to the International Criminal Court. See COALITION FOR THE INT'L CRIMINAL COURT, CHILE (2009), <http://www.iccnw.org/?mod=country&iductp=13&iduct=35&order=authorasc>.

82. Constitución de la República del Ecuador, art. 92. *Habeas data* is a constitutional protection that allows individuals to know, obtain, authorize, rectify, eliminate, or annul their personal data in the Country's various registries. *Id.*

83. Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional [Jurisdictional Guarantees and Constitutional Control Law] (Ecuador).

84. Ley Reformatoria de la Ley de Compañías art. 11 [Companies Law Reform Act] (Ecuador).

standing for each one.<sup>85</sup> Local companies that fail to comply with these provisions will be subject to forced dissolution.<sup>86</sup>

### C. EMPLOYMENT LAW

The Reserve Fund and Severance Payment Act requires employers to pay reserve funds (equal to 8.33% of their monthly salaries) directly to employees on a monthly basis, rather than depositing them in a reserve fund at the Ecuadorian Social Security Institute (IESS).<sup>87</sup> The employees, however, are free to elect to continue to have these monies deposited in the reserve fund.<sup>88</sup>

### D. FINANCIAL INSTITUTIONS

The Financial Security Network Law gives the government's Banking Commission the power to set bank fees on a quarterly basis.<sup>89</sup> This law also prohibits private banks from charging fees for "basic services" (*e.g.*, monthly savings and checking account maintenance charges; charges for opening and closing accounts; account balance inquiry fees; credit card and account cancellation charges, etc.)<sup>90</sup> Moreover, it requires private banks to allot at least ten percent of their annual profits to a reserve fund to ensure that they have enough liquidity to cover deposits.<sup>91</sup>

The Government established the Ecuadorian Social Security Institute Bank to provide investment banking services in order to manage IESS funds and provide additional financial services to its members.<sup>92</sup> The new bank allows IESS to invest in the Ecuadorian stock market, as well as to finance public and private infrastructure projects, such as airports and roads.<sup>93</sup>

### E. INTELLECTUAL PROPERTY

Ecuadorian President Rafael Correa decreed the issuance of compulsory patent licenses for drugs needed to treat certain serious diseases.<sup>94</sup> Ecuador's Intellectual Property Institute shall determine the royalties that current patent holders will receive as compensation for such measures.<sup>95</sup>

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85. Superintendencia De Compañías, Resolución No. SC.SG.DRS.G.09.02, Sep. 30, 2009 (Ecuador).

86. *See id.*

87. *Ley para el Pago Mensual del Fondo de Reserva y Régimen Solidario de Cesantía por Parte del Estado* [Reserve Fund and Severance Payment Act], Oficio No. T. 4295-SGJ-09-1818, July 28, 2009 (Ecuador).

88. *Id.*

89. *Ley de Creación de la Red de Seguridad Financiera* [Financial Security Network Law] art. 11, Dec. 31, 2008 (Ecuador).

90. *Id.* art. 40.

91. *Id.*

92. *See El Legislativo Aprobó la Creación de Banco de IESS*, EL DIARIO DE MANTA, July 4, 2009, <http://www.eldiario.com.ec/noticias-manabi-ecuador/114589-el-legislativo-aprobo-la-creacion-de-banco-del-iess/>.

93. *Id.*

94. *See Decreto Ejecutivo No. 118 art. 1* (Oct. 23, 2009) (Ecuador) (Esthetic medicine is specifically excluded).

95. *Id.* art. 4.

## F. MINING

Ecuador issued its new Mining Law in January of 2009 providing the government more control over the industry and requiring mining companies to initiate social responsibility and environmental protection measures to benefit local communities.<sup>96</sup>

Ecuadorian President Rafael Correa signed the Regulations to the Mining Law on November 4, 2009.<sup>97</sup> The regulations allow the resumption of mining activities because almost all concessions were either cancelled or suspended by the State in 2008.<sup>98</sup> The government may now begin contract negotiations with private and state-run mining companies for the exploration and exploitation of minerals.<sup>99</sup>

## G. PUBLIC CONTRACTING

President Correa issued an executive decree that prohibits companies with shareholders registered at tax havens, as stipulated by the Ecuadorian IRS, to contract with public institutions or entities.<sup>100</sup> These companies shall be immediately disqualified from public procurement processes.<sup>101</sup> Private companies with state contracts must now obtain governmental authorization before they can assign twenty-five percent or more of their shares to third parties.<sup>102</sup>

The Government issued regulations for the application of the National Public Contracting System Law that was implemented in August 2008.<sup>103</sup> These regulations clarify the law and harmonize it with the Country's existing public procurement framework.<sup>104</sup>

## H. SECURITIES LAW AND COMMERCIAL PAPER

The Codification of Securities Council Resolutions Reform Act was enacted to regulate the registration of invoices as securities on the Country's stock exchanges.<sup>105</sup> It also regulates negotiable commercial paper, whether or not these instruments have been registered on the stock exchanges.<sup>106</sup>

96. See generally *Ley de Minería* [Mining Law] Ley No. 126. RO/Sup. 695 of May 31, 1991 (Ecuador).

97. Mercedes Alvaro, *Ecuador's President Signs Regulations For Mining Law*, DOW JONES NEWSWIRES, Nov. 5, 2009.

98. *Id.*

99. *Id.*

100. Decreto Ejecutivo 1793 art. 1, Publicado en Registro Suplemento 621, June 26, 2009 (Ecuador).

101. *Id.*

102. *Id.*

103. Decreto Ejecutivo 170 [Executive Directive 1700 [Suplement to the Official Registry 588] (Apr. 20, 2009), Suplemento del Registro Oficial 588 (Ecuador).

104. *Id.*

105. *Reformas a la Codificación de Resoluciones del Consejo Nacional de Valores* [Amendments to the Codification of Securities Council Resolutions Reform Act] (May 15, 2009), Registro Oficial 630 (Ecuador).

106. *Id.*

## I. TAX

The Reform Act to the Regulations for the Application of the Internal Tax Law requires individual residents having over US\$200,000 in total assets (or married couples with over US\$400,000 in assets) to file an annual declaration of patrimony.<sup>107</sup>

Faced with the global financial crisis of 2009, the Government sought to reduce capital flight by raising the tax on remittances abroad from 0.5% to 1%.<sup>108</sup> This tax applies to wire transfers and credit card purchases abroad.<sup>109</sup> Imports are also subject to this tax even if they are made through accounts located in Ecuador.<sup>110</sup>

## J. TELECOMMUNICATIONS

The country's three mobile telecommunications companies implemented the constitutional mandate allowing users to keep the same cellular phone number when they change service providers.<sup>111</sup> Ecuador's telecommunications regulator dictated that cell phone number portability shall be free of cost.<sup>112</sup>

## VI. Mexico

Developments during 2009 in Mexico are included in the year in review article for Mexico.<sup>113</sup>

## VII. Venezuela

In 2009, the government of President Hugo Chavez continued its march toward the creation of a socialist, autocratic state.

### A. NEW ELECTORAL LAW

Principally with a view toward the elections for the National Assembly (Venezuela's congress) and state and municipal legislative councils, scheduled for September 2010, the National Assembly promulgated a new Law of Electoral Procedures.<sup>114</sup> With the popularity of President Chavez declining and concerns about the possibility of losing the gov-

107. Reforma al Reglamento para la Aplicación de la Ley Orgánica de Régimen Tributario Interno [Reform Act to the Regulations for the Application of the Internal Tax Law] (Mar. 23, 2009), Registro Oficial 554 (Ecuador).

108. Reforma a la Ley Orgánica de Régimen Tributario Interno y a la Ley Reformativa para la Equidad Tributaria del Ecuador [Reform Act to the Tax Law and the Equitable Tax Law of Ecuador] (Dec. 30, 2008), Registro Oficial 497 (Ecuador).

109. *See id.*

110. *See id.*

111. *Portabilidad Numérica Inició Ayer*, EL TIEMPO, Oct. 13, 2009, available at <http://www.eltiempo.com.ec/noticias-cuenca/25687-portabilidad-numa-rica-inicia->.

112. *See* Res. 327-13-CONATEL (Oct. 5, 2009) (Ecuador).

113. Mark E. Wojcik, et al., *Mexico*, 44 INT'L LAW. (forthcoming Spring 2010).

114. Organic Law on Electoral Procedures, Extraordinary Official Gazette No. 5.928 (Aug. 12, 2009) (Venez.).



ernment party's supermajority in the National Assembly, the New Electoral Law enacts three fundamental changes.

First, the New Electoral Law further dilutes the traditional system of proportional representation. In addition to eliminating the legal guarantee that the most significant minority parties would be granted congressional seats via the party slate voting system, under the New Electoral Law at least seventy percent of the legislators (up from fifty percent under the previous law) must be elected individually, as opposed to by party slate, with the remainder being elected by party slate.<sup>115</sup> The significance of this change has to be understood in the context of the second fundamental change enacted by the New Electoral Law: the provision permitting the National Electoral Council, which regulates elections and is dominated by the current government's representatives, to aggregate the votes of "alliances" of parties and electoral groups.<sup>116</sup> Whereas the governing party, the United Socialist Party of Venezuela, is relatively monolithic, the political opposition to the socialist government of President Chavez has traditionally been pluralistic and fragmented, so this change will require the opposition to unite behind single candidates in all electoral districts. But even this option is being made more difficult by the third basic change brought by the New Electoral Law, which is to permit the National Electoral Council to redraw electoral districts, based on its sole criteria and without a time limitation as to when this has to be done prior to any election.<sup>117</sup>

#### B. NEW CENTRAL BANK LAW

By virtue of the government's increased spending and its subsequent need to borrow heavily to cover budget deficits, and given the fact the Venezuela is encountering increasing difficulty to borrow internationally,<sup>118</sup> the National Assembly has modified the Central Bank Law<sup>119</sup> to permit the Central Bank to directly finance spending programs of the central government and certain state entities,<sup>120</sup> such as *Petróleos de Venezuela, S.A.* and the activities managed by the *Corporación Venezolana de Guayana*. This new authority is a departure from the traditional independence of central banks and will permit the government to expand the monetary base without corresponding international currency reserves.

#### C. EXPROPRIATION OF URBAN LAND

Complementing the government's policies of expropriation of rural, agricultural lands, on the grounds of eliminating large private estates and nationalizing activities related to the food chain, and of stimulating adequate housing for the poorer segments of the popu-

115. *Id.* arts. 14-15.

116. *Id.* art. 18. The decision as to which alliances will be recognized corresponds only to the National Electoral Council.

117. *Id.* art. 19.

118. Venezuela's high country risk rating and related political and economic factors have made Venezuelan sovereign borrowing increasingly expensive; Venezuela has thus reverted to non-traditional financing sources, such as Chinese and Russian governmental loans that will be repaid with future Venezuelan oil sales.

119. Law to Partially Reform the Law of the Central Bank of Venezuela, Official Gazette No. 39.301 (Nov. 6, 2009) (Venez.).

120. *Id.* arts. 48, 56 & 58.

lation, the National Assembly promulgated the Law of Urban Land (the New Expropriation Law).<sup>121</sup> The New Expropriation Law applies to all urban land that is “not being used,” or rather considered of “public utility and social interest.”<sup>122</sup> Urban land not being used is defined in the law as land (i) that has been abandoned by the owner, (ii) on which there is no construction, or (iii) determined as such based on any other criterion determined by the central government.<sup>123</sup> The New Expropriation Law further establishes a preferential right on the part of the nation to acquire “urban land,” without this necessarily being limited to urban land not being used.<sup>124</sup> The State may acquire such urban land via any means of expropriation established by law,<sup>125</sup> including the state’s prior occupation of the land being expropriated.<sup>126</sup> Moreover, the new expropriation law permits “organized communities” to denounce the existence of urban land not being used and to take custody of such land, but does not grant such communities the right to use or benefit from such land in any way.<sup>127</sup>

#### D. LAW OF THE BOLIVARIAN NATIONAL ARMED FORCES

The National Assembly again modified the armed forces law,<sup>128</sup> principally with respect to expanding the authority of the president of the republic to establish Strategic Regions of Integral Defense and Commands of Strategic Regions of Integral Defense, as well as regarding the formation and role of the Bolivarian Militia.

This new law effectively permits the President of Venezuela to militarize regions of the country whenever he deems that there is a threat to the national defense.<sup>129</sup> The president shall designate the commanders of such regions,<sup>130</sup> who will be under the command of the president.<sup>131</sup> The regional commanders have broad authority to control the areas under their command.<sup>132</sup>

The newly formed Bolivarian Militia is intended to complement the regular armed forces and is directly under the command of the President of the Republic.<sup>133</sup> In addition to certain military activities, the Bolivarian Militia shall work with the communal councils of organized citizens to carry out public policies, to strengthen the integral defense committees of the communal councils, and generally collaborate with the concepts of civic-military unity, national development projects, and national mobilization.<sup>134</sup>

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121. Law of Urban Land, Extraordinary Official Gazette No. 5.933 (Oct. 21, 2009) (Venez.).

122. *Id.* art. 3.

123. *Id.* art. 6.

124. *Id.* art. 17.

125. *Id.* art. 18.

126. *Id.* art. 30.

127. *Id.* arts. 22-23.

128. Law to Partially Reform Decree No. 6.239 with Rank, Value and Force of Organic Law of the Bolivarian National Armed Forces, Extraordinary Official Gazette No. 5.933 (Oct. 21, 2009) (Venez.).

129. *Id.* art. 23.

130. *Id.* art. 25.

131. *Id.* art. 6.

132. *Id.* art. 26.

133. *Id.* art. 43.

134. *Id.* art. 46.

## E. EDUCATION LAW

The National Assembly promulgated a new education law,<sup>135</sup> based on the concept of absolute control of the educational system by the state. The State shall establish national curricula of studies through the eleven years of elementary and high school education,<sup>136</sup> including mandatory military education.<sup>137</sup> The State shall control private schools by regulating the cost of their students' registration and tuition,<sup>138</sup> and by requiring their teachers to be licensed by the government.<sup>139</sup> In the case of higher education, university authorities shall be elected by the university community consisting of professors, students, employees at all levels, and alumni.<sup>140</sup> Subject to special laws that must be enacted in the future, the State shall regulate university admission, the evaluation of students, and the hiring and evaluation of professors.<sup>141</sup>

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135. Organic Education Law, Extraordinary Official Gazette No. 5.929 (Aug. 15, 2009) (Venez.).

136. *Id.* art. 6(3)(g).

137. *Id.* art. 30.

138. *Id.* art. 6(2)(f).

139. *Id.* ch. IV.

140. *Id.* art. 34(3).

141. *Id.* art. 35.

