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## International Investment and Development

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# International Investment and Development

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## I. Introduction

Significant developments occurred in 2012 in the field of international investments.<sup>1</sup> Regarding international investment trends, according to the United Nations Conference on Trade and Development (UNCTAD), in the first half of 2012, global foreign direct investment (FDI) inflows reached US \$668 billion, down from US \$729 billion in the first half of 2011.<sup>2</sup> For the first time, developing countries (without transition economies) absorbed half of global FDI.<sup>3</sup> China became the world's largest recipient of FDI inflows in the first half of 2012, followed by the United States. Regarding investment laws and poli-

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1. For developments during 2011, see Uche Ewelukwa Ofodile et al., *International Investment and Development*, 46 INT'L LAW. 239 (2012). For developments in 2009, see Diego Parravicini et al., *International Investment and Development*, 44 INT'L LAW. 283 (2010).

2. United Nations Conference on Trade & Dev. [UNCTAD], GLOBAL INVESTMENT TREND MONITOR, Oct. 23, 2012, at 1-2, available at [http://unctad.org/en/PublicationsLibrary/webdiaeia2012d20\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaeia2012d20_en.pdf). UNCTAD attributes the decline in FDI inflows in 2012 to the declines in inflows to the United States and to the BRIC countries—Brazil, Russian Federation, India, and China. *Id.* at 2.

3. *Id.*

cies, 2012 witnessed “a significant dichotomy in national investment policy making,”<sup>4</sup> with some countries taking partial liberalization steps in certain sensitive sectors, and other governments taking action to restrict foreign investment. Finally, with respect to international investment rulemaking, several international investment agreements came into being in 2012.

## II. International Investment Agreements

A number of bilateral investment treaties (BIT) and other international investment agreements (IIAs) were either signed or ratified in 2012. BITs signed in 2012 include:

- BIT between the Russian Federation and Zimbabwe (October 7);
- BIT between Morocco and Vietnam (June 15);
- BIT between Gabon and Turkey (July 18);
- BIT between Iraq and Japan (August 7);
- BIT between China and Taiwan, Province of China (August 8); and
- Canada-China Foreign Investment Promotion and Protection Agreement (September 9).<sup>5</sup>

Several free trade agreements and framework agreements were also concluded including:

- Framework Agreement on Trade, Economic, Technical and Investment Cooperation between the Gulf Cooperation Council and United States (September 25);
- Framework Agreement on Trade, Economic, Technical and Investment Cooperation between the Gulf Cooperation Council and Peru (October 1); and
- Chile-Hong Kong, China Free Trade Agreement (September 7).<sup>6</sup>

## III. Africa

### A. CAPE VERDE

On July 11, 2012, Cape Verde published a new Investment Code Law in its Official Gazette (Law 13/VIII/2012).<sup>7</sup> The new Investment Code provides updated rules on foreign investment on a range of issues including: national treatment, expropriation, transfer of capital, and free currency conversion.<sup>8</sup> The new Code replaces Law 90/IV/93 of December 13, 1993 and Regulatory Decree 1/94 of January 3, 1994. The new code is part of

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4. UNCTAD Secretariat, INVESTMENT POLICY MONITOR, Nov. 26, 2012, at 1, *available at* [http://unctad.org/en/PublicationsLibrary/webdiaepcb2012d5\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2012d5_en.pdf).

5. *Id.* at 5, 10.

6. *Id.* at 5, 10.

7. Lei 13/VIII/2012, Código de Investimento, de 11 de Julho de 2012 [Law 13/VIII/2012, Investment Code, July 11, 2012], DIÁRIO OFICIAL DA UNIÃO (Cape Verde).

8. Constance Johnson, *Cape Verde: New Investment Code*, LIBR. CONG. (Aug. 15, 2012), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_1205403284\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205403284_text).

the effort of the government over the past ten years to promote a market-oriented economic model.

## B. ETHIOPIA

On August 27, 2012, Ethiopia adopted an advertisement proclamation that has implications for businesses interested in carrying out advertising activity in the country.<sup>9</sup> The law places a restriction on persons who can undertake advertising activity in Ethiopia. Article 4(1) of the proclamation states: "Any Ethiopian national or a business organization established in accordance with the Ethiopian law and whose capital is not shared by foreign nationals, shall have the right to undertake advertising activity."<sup>10</sup> Article 4(12) goes on to add: "Notwithstanding sub-article (1) of this Article, any foreign national of Ethiopian origin shall have the right to engage in advertising activity."<sup>11</sup> The proclamation addresses a number of other important issues including: Content and Presentation of Advertisement (Article 6), Unlawful or Immoral Advertisement (Article 7), Misleading or Unfair Advertisement (Article 8), Advertisement Requiring Special Certification (Article 9), Advertisements Affecting Minors (Article 10), and Prohibited Advertisement (Article 25). Under Article 25, several types of advertising are prohibited, including cigarette advertising, gambling advertising, advertisement of weapons, and advertisement of narcotic drugs or psychotropic substances.

## C. MOROCCO AND TUNISIA

On May 23, 2012, Morocco signed two instruments of the Organization for Economic Co-operation and Development (OECD):<sup>12</sup> the Declaration on Propriety, Integrity, and Transparency in International Business and Finance<sup>13</sup> and the Declaration on Green Growth.<sup>14</sup> On the same day, Tunisia adopted the same instruments and also adopted the Declaration on International Investment and Multilateral Enterprises.<sup>15</sup> The succession of signings by the two countries is a result of OECD's work with Middle East and North Africa (MENA) countries on investment, governance, education, and other issues of economic policy reform. It is hoped that the instruments will support the transformation process in the MENA countries. According to the OECD Secretary-General, Angel Gurría, "[b]y adhering to the best practices in anti-corruption, good governance and interna-

9. Proclamation No. 759/2012, 59 FEDERAL NEGARIT GAZETA 6521 (Aug. 27, 2012) (Eth.).

10. *Id.* art. 4.

11. *Id.*

12. *Tunisia and Morocco Join Multilateral Business Integrity and Green Growth Instruments*, OECD (May 23, 2012), <http://www.oecd.org/countries/morocco/tunisiaandmoroccojoinmultilateralbusinessintegrityandgreengrowthinstruments.htm>.

13. OECD, *Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance*, C/MIN(2010)3/FINAL (May 28, 2010), available at <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=261&InstrumentPID=261&Lang=en&Book=False>.

14. OECD, *Declaration on Green Growth*, C/MIN(2009)5/ADD1/FINAL (June 25, 2009), available at <http://www.oecd.org/env/44077822.pdf>.

15. OECD, *Declaration on International Investment and Multinational Enterprises* (May 25, 2011), available at <http://www.oecd.org/dai/internationalinvestment/investmentpolicy/oecddeclarationoninternationalinvestmentandmultinationalenterprises.htm>.

tional investment frameworks, Tunisia and Morocco send a very strong message that they want to adopt best practices in their quest to build more open and inclusive societies.”<sup>16</sup>

#### D. SOUTH SUDAN

On April 18, 2012, South Sudan ratified the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).<sup>17</sup> In accordance with Article 68(2), the ICSID Convention entered into force for South Sudan on May 18, 2012.<sup>18</sup> The ICSID Convention obliges Member States to recognize and enforce ICSID arbitral awards regardless of whether or not they are parties to a given dispute. One hundred fifty-eight countries have signed the ICSID Convention, and 147 of them have also ratified the convention.<sup>19</sup>

#### E. SOUTH AFRICA

South Africa has taken the decision not to renew some existing BITs that have either expired or are now about to expire. The first casualty was the BIT between South Africa and the Belgo-Luxembourg Economic Union.<sup>20</sup> South Africa plans to refrain from entering into BITs in the future, except in cases of compelling economic and political circumstances. South Africa’s changing attitude towards BITs is a direct result of a three-year BIT policy framework review that South Africa’s Department of Trade and Industry (DTI) put in place in June 2009.<sup>21</sup>

#### F. SOUTHERN AFRICAN DEVELOPMENT COMMITTEE

In July 2012, the Member States of the Southern African Development Community (SADC)<sup>22</sup> concluded work on the draft SADC Model Bilateral Investment Treaty Tem-

16. *Tunisia and Morocco Join Multilateral Business Integrity and Green Growth Instruments*, *supra* note 12.

17. Press Release, Intl. Ctr. for Settlement of Inv. Disputes [ICSID], S. Sudan Signs & Ratifies the ICSID Convention (Apr. 18, 2012), <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement105>.

18. *Id.*

19. *Member States*, INT’L CENTRE FOR SETTLEMENT INV. DISPS., [https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates\\_Home](https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ShowHome&pageName=MemberStates_Home) (last visited Jan. 29, 2013).

20. The notice of termination was reportedly contained in a September 7, 2012 letter entitled, “Termination of the Bilateral Investment Treaty with the Belgo-Luxembourg Economic Union,” from Maite Nkoana-Mashabane, Minister of International Relations and Co-operation, to the Ambassador of the Kingdom of Belgium to South Africa, Johan Maricou. See Peter Leon et al., *South Africa Declines to Renew Bilateral Investment Treaties With European Union Member States*, MONDAQ, n.1 (Oct. 5, 2012), <http://www.mondaq.com/x/199586/international-trade-investment/South+Africa+Declines+To+Renew+Bilateral+Investment+Treaties>.

21. Dr. Rob Davies, S. Afr. Minister of Trade & Indus., Remarks at South African Launch of the United Nations Conference on Trade and Development Investment Policy Framework for Sustainable Development (July 26, 2012) available at <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=29391&tid=77861>.

22. See generally S. AFR. DEV. CMTY. [SADC], [www.sadc.int/](http://www.sadc.int/) (last visited Jan. 29, 2013).

plate with Commentary (Model BIT).<sup>23</sup> The Model BIT that Member States are expected to formally adopt later this year is designed to assist states with negotiating development-friendly international investment agreements (IIAs) and with revisiting existing treaties.<sup>24</sup> Part III of the Model BIT deserves the attention of the international investment community as it spells out the obligations of investors. The Model BIT is divided into six parts: (1) Common provisions; (2) Investor rights post-establishment; (3) Rights and Obligations of investors and State Parties; (4) General provisions; (5) Dispute settlement; and (6) Final provisions.

#### IV. Asia

##### A. CHINA

###### 1. *Revised Foreign Investment Industrial Guidance Catalogue Took Effect in January 2012*

On January 30, 2012, the newly revised version of the Foreign Investment Industrial Guidance Catalogue (Revised Catalogue) went into effect.<sup>25</sup> The Revised Catalogue, last updated in 2007, is the fifth edition since 1995.<sup>26</sup> Foreign investment projects are categorized as “Encouraged,” “Restricted,” “Prohibited,” or “Permitted.”<sup>27</sup> The Revised Catalogue specifies lists of industries that fit into the first three of these categories. Industries not listed in the Revised Catalogue fall into the “Permitted” category.<sup>28</sup> The changes in the Revised Catalogue reflect the national priorities, such as upgrading China’s manufacturing industry from traditional to high-end, promoting emerging industries, and encouraging the growth of China’s service industry.<sup>29</sup> Examples of the law’s major changes by category include:

23. For the model see SADC, MODEL BILATERAL INVESTMENT TREATY TEMPLATE WITH COMMENTARY (July 2012), available at <http://www.iisd.org/itn/wp-content/uploads/2012/10/SADC-Model-BIT-Template-Final.pdf>.

24. SADC *Moving Forward on Model Bilateral Investment Treaty Template*, UNCTD (Aug. 6, 2012), [http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=210&Sitemap\\_x0020\\_Taxonomy=Investment%20and%20Enterprise;#607](http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=210&Sitemap_x0020_Taxonomy=Investment%20and%20Enterprise;#607).

25. Zhonghua Renmin Gongheguo Guojia Fazhan he Gaige Weiyuanhui, Zhonghua Renmin Gongheguo Shangwubu Di Shier Hao Ling (中华人民共和国国家发展和改革委员会中华人民共和国商务部第12号令) [Decree No. 12 of the PRC’s Nat’l Dev. & Reform Comm’n] (promulgated by the Ministry of Commerce of China, Dec. 24, 2011, effective Jan. 30, 2012), available at [http://www.gov.cn/flfg/2011-12/29/content\\_2033089.htm](http://www.gov.cn/flfg/2011-12/29/content_2033089.htm).

26. Kelly Buchanan, *China: Revision of Catalog of Industries for Foreign Investment*, GLOBAL LEGAL MONITOR (Feb. 23, 2012), [http://www.loc.gov/lawweb/servlet/loc\\_news?disp3\\_1205402998\\_text](http://www.loc.gov/lawweb/servlet/loc_news?disp3_1205402998_text).

27. Zhidao Waishang Touzi Fangxiang Guiding (指导外商投资方向规定) [Provisions Guiding the Direction of Foreign Investment] (promulgated by the State Council, Feb. 11, 2002, effective Apr. 1, 2002), art. 4 (China), available at [http://www.faic.gov.cn/ztlz/gsbst/zncszy/wqjg/wqgs/201112/t20111227\\_21045.htm](http://www.faic.gov.cn/ztlz/gsbst/zncszy/wqjg/wqgs/201112/t20111227_21045.htm) [hereinafter Provisions Guiding the Direction of Investment].

28. *Id.*

29. Youhua Liyong Waizi Jiegou Cujin Jingji Fazhan Fangshi Zhuanbian (优化利用外资结构 促进经济发展方式转变) [Optimizing the Use of Foreign Investment and Promoting the Transformation of Economic Development Patterns – Q & A Session Hosted by the NDRC Official] (Dec. 31, 2011) (China), [hereinafter “Q & A Session”]; see also *China Revises Foreign Investment Guidance Catalogue*, CONG. EXEC. COMM. ON CHINA (Apr. 10, 2012), <http://www.cecc.gov/pages/virtualAcad/index.php?showsingle=172436>.

- 1) the inclusion into the “Encouraged” category of venture capital businesses, intellectual property right services, and domestic services as well as production of environmentally friendly materials, certain waste management and pollution control equipment, and key components of new energy vehicles;
- 2) the removal from the “Encouraged” category of the production of motor vehicles;
- 3) the removal from the “Restricted” category of franchises, financial leasing companies, medical treatment facilities, and the production of carbonated beverages;
- 4) the inclusion into the “Prohibited” category of domestic express mail delivering services and villa construction and management; and
- 5) the removal from the “Prohibited” category of the importation of written publications, digital publishing, and audio products.<sup>30</sup>

The Revised Catalogue governs foreign investment in the form of direct investment, joint venture, mergers and acquisitions, etc.<sup>31</sup> Foreign investors should review the Revised Catalogue to determine whether and how any potential or existing project will be affected.

## 2. *The Ministry of Foreign Commerce (MOFCOM) Issued Interim Provisions on Equity Contribution of Foreign-Funded Enterprises*

On September 21, 2012, MOFCOM promulgated Interim Provisions on Equity Contribution of Foreign-funded Enterprises (Interim Provisions).<sup>32</sup> The Interim Provisions, which took effect on October 22, 2012, provide procedural guidance on equity contribution concerning foreign-funded enterprises.<sup>33</sup> Under the Interim Provisions, foreign or domestic investors can contribute equity interests they hold in domestic Chinese enterprises to establish new foreign-funded enterprises or to change the equity structure of an existing enterprise.<sup>34</sup>

## B. INDIA

Important tax and regulatory developments that have had a significant impact on India’s investment environment were witnessed in 2012. The year started with the celebrated decision of the Indian Supreme Court, which held that India could not tax the US \$11.1 billion Vodafone-Hutch transaction.<sup>35</sup> The transaction involved the acquisition of shares

30. Waishang Touzi Chanye Zhidao Minglu (外商投资产业指导名录) [Foreign Investment Industrial Guidance Catalogue] (promulgated by the Ministry of Commerce of China, Dec. 24, 2011, effective Jan. 30, 2012), §§ 3(5)(v), (6), 5(2), 10(2- 3, 8), <http://www.ndrc.gov.cn/zcfb/zcfbl/201111ing/W020111229379511927834.pdf> (China) [hereinafter Revised Catalogue].

31. Provisions Guiding the Direction of Investment, *supra* note 27, art. 2.

32. Shang Wu Bu Ling 2012 Nian Di Hao Shang Wu Bu Guan Yu She Ji Wai Shang Tou Zi Qi Ye Gu Quan Chu Zi Di Zan Xing Gui Ding (商务部令2012年第8号《商务部关于涉及外商投资企业股权出资的暂行规定》) [Interim Provisions on Equity Contribution in Foreign-funded Enterprises] (promulgated by the Ministry of Commerce of the P.R.C., Sept. 21, 2012, effective Oct. 22, 2012) (China), available at <http://english.mofcom.gov.cn/column/print.shtml?policyrelease/buwei/201211/20121108415381>.

33. *Id.* art. 1.

34. *Id.* art. 2.

35. Vodafone Int’l Holdings B.V. v. Union of India, (2012) 341 I.T.R. 1, ¶ 188, available at <http://supremecourtindia.nic.in/outtoday/sc2652910.pdf>; see also Pooja Rangaprasad, *A Setback in Fighting Tax*



in a Cayman Islands based company by a Dutch subsidiary of Vodafone, from another company resident in the Cayman Islands. The company that was acquired indirectly held a 67 percent interest in a major Indian telecom company through a number of downstream subsidiaries.<sup>36</sup> The Supreme Court held that an offshore transaction of this nature could not be construed as an indirect transfer of underlying interests and subsidiaries in India.

The government responded by introducing a retroactive amendment to override the Supreme Court's decision. The new rule imposes a tax on the sale of foreign securities the value of which is directly or indirectly derived substantially from assets situated in India.<sup>37</sup> The government also introduced comprehensive General Anti-Avoidance Rules (GAAR) into India's domestic law, effective April 1, 2012.<sup>38</sup> The GAAR provisions are broadly worded and may potentially target most tax mitigation structures for investment into India.

The uncertainty generated by the retroactive tax legislation and ambiguous GAAR provisions coupled with a "policy paralysis" is reported to have led to a drop in FDI of about 65 percent in the first quarter of the fiscal year.<sup>39</sup> As a response, the government formed a high profile Committee chaired by Partharathy Shome, a renowned economist, to hear investor concerns and recommend changes to the new tax rules. After intense deliberations, the Committee proposed significant changes to the retroactive tax and the GAAR provisions to ensure a more targeted approach and provide key safeguards for taxpayers and investors. The government is considering the Committee's proposals, and it is expected that necessary amendments shall be introduced during the winter session of Parliament.

Aimed at boosting investor sentiments, the government also pushed forward a number of important regulatory reforms in the last quarter, including the opening of India's multi-brand retail, aviation, insurance, and pension sectors.<sup>40</sup> Although opposition parties have expressed some reservations, it is clear that India is determined to turn the tide and take necessary steps to bolster its position as a preferred investment destination. At the time of writing this piece, the Indian stock markets closed at a nineteen-month high.<sup>41</sup>

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*Avoidance in India: Vodafone Vs. Union Of India*, TASK FORCE FIN. INTEGRITY & ECON. DEV. (Mar. 9, 2012), <http://www.financialtaskforce.org/2012/03/09/a-setback-in-fighting-tax-avoidance-in-india-vodafone-vs-union-of-india/>.

36. *Id.* ¶ 2.

37. The Finance Act, No. 23 of 2012, INDIA CODE (2012), § 9(a), explanation 5.

38. *Id.* chs. X-A.

39. Anant Vijay Kala & Mukesh Jagota, *India Foreign Direct Investment Slumps 78%*, WALL ST. J. (Aug. 24, 2012, 4:16 AM), <http://online.wsj.com/article/SB10000872396390444358404577608842493260320.html>.

40. Sonia Luthra, *Toward an Economic Overhaul: Assessing India's "Big Bang" Reforms*, NAT'L BUREAU OF ASIAN RES. (Oct. 29, 2012), <http://www.nbr.org/research/activity.aspx?id=289>.

41. *Overjoyed Stock Markets Soar to 19-Month High*, INDIAN EXPRESS (Nov. 29, 2012, 10:29 PM), <http://www.indianexpress.com/news/overjoyed-stock-markets-soar-to-19month-high/1038183/>.

## C. INDONESIA

With more than 240 million people and abundant natural resources,<sup>42</sup> Indonesia saw significant growth in 2012, fueled by foreign and domestic investors alike.<sup>43</sup> Indonesia also has attracted long overdue investment in its infrastructure. The Indonesian Capital Investment Board (BKPM) has estimated that approximately US \$40 billion a year is needed to revitalize Indonesia's ports, airports, power grid, and roads. Significant investments are now beginning to be made as the government has made several legal moves to encourage such investment.<sup>44</sup> The BKPM Chairman estimates that approximately US \$92 billion of new investments are in the pipeline, consisting principally of manufacturing and infrastructure investments.<sup>45</sup>

Still, the future is not pristine. The Indonesian Government has adopted a number of measures in recent years that appear generally anti-investment and particularly anti-foreigner and could discourage investment over the long run.<sup>46</sup> Whether these regulations have been adopted because the government believes it can go it alone now that the economy is booming, because national elections are scheduled in 2014 and can be expected to bring with them a resurgence in economic nationalism, or because of these and a variety of other reasons in combination, is not known. But, these measures could be ominous signs for the future. Among the measures are the following:

1. *Hard Rock Mining and Coal—New 2012 Rules:* A new mining regime was adopted in 2009, substituting mining business licenses (IUPs) for long-term contracts of work.<sup>47</sup> One key feature of the new law is that work contracts will continue in effect for their terms and then be converted to IUPs. Existing work contract holders are encouraged to convert to IUPs. A 2010 regulation provided that IUP holders would only be required to divest 20 percent of their shares,<sup>48</sup> but in 2012, the Indonesian Government reversed this rule to provide for divestment of 51 percent of their shares within ten years, stunning the mining investment community.<sup>49</sup>

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42. Aubrey Belford, *After Years of Inefficiency, Indonesia Emerges as an Economic Model*, N.Y. TIMES, Aug. 5, 2010, at B7.

43. Eric Bellman & I Made Sentana, *Foreign Investment Jumps in Indonesia*, WALL ST. J. (Apr. 23, 2012, 8:56 AM), <http://online.wsj.com/article/SB10001424052702303592404577361672344559982.html>.

44. Belford, *supra* note 42.

45. *Id.*

46. See Muhamad Al Azhari, *S&P Attacks Indonesia's 'Ad Hoc' Policy That Hurts Investment*, JAKARTA GLOBE (Oct. 19, 2012), <http://www.thejakartaglobe.com/business/sp-attacks-indonesias-ad-hoc-policy-that-hurts-investment/551081>.

47. Law No. 4/2009, on Mineral and Coal Mining, STATUTE BOOK OF THE REPUBLIC OF INDONESIA SUPP. NO. 4959, Jan. 12, 2009 (Indon.); PRICEWATERHOUSECOOPERS, MINING IN INDONESIA INVESTMENT AND TAXATION GUIDE 29 (4th ed. 2012), available at <http://www.pwc.com/id/en/publications/assets/Mining-Investment-and-Taxation-Guide-2012.pdf>.

48. See *Game-Changing Amendments to Mining Regulations Issued!*, BAKER & MCKENZIE (Mar. 2012), [http://www.bakermckenzie.com/files/Publication/4081f3d4-b88a-49e0-8fe5-fbe41b4ded35/Presentation/PublicationAttachment/2a748a27-96a8-49cb-828c-0a5a9adbf2a/al\\_ap\\_miningregulations\\_mar12.pdf](http://www.bakermckenzie.com/files/Publication/4081f3d4-b88a-49e0-8fe5-fbe41b4ded35/Presentation/PublicationAttachment/2a748a27-96a8-49cb-828c-0a5a9adbf2a/al_ap_miningregulations_mar12.pdf).

49. Government Regulation Regarding Amendment of Government Regulation Number 23 Year 2010 Regarding Implementation of Mineral and Coal Mining Business Activities, No. 24/2012, art. 97(1), STATE GAZETTE SUPP. NO. 5282, Feb. 21, 2012 (Indon.).

2. *Import Restrictions:* Due to a Supreme Court decision invalidating a Ministry of Trade regulation that permitted manufacturing companies to import products of their affiliates manufactured abroad, the Ministry of Trade adopted a regulation in 2012<sup>50</sup> that severely limited what products a manufacturing entity could import and, in effect, required them and distributors in general to set up separate distribution entities on a product-by-product basis, if they could not meet rigid rules showing a special relationship between Indonesian manufacturers and their offshore affiliates. To its credit, and as a constructive response to industry concerns, the Ministry of Trade released a regulation that went far in reducing some of the more objectionable features of its original regulation.<sup>51</sup>

3. *Franchise Regulation:* The Ministry of Trade has released a draft regulation that would severely curtail foreign ownership of Indonesian franchisees (i.e., franchisor-owned stores through Indonesian subsidiaries), limit the number of franchise locations, and impose other constraints. Serious objections have been put forward by international franchisors, and some features of this regulation may be under review.<sup>52</sup>

4. *Increase of Capital Investment Requirements:* BKPM has increased the minimum capital investment requirements from US \$250,000 to US \$1.2 million, though this is a combination of issued capital and loans.<sup>53</sup> To its credit, the government has made it much easier to invest in Indonesia, with significant reductions in red tape.

Indonesia faces an uncertain political future as the present leadership prepares to step down after ten years in power. To be sure, these are disturbing trends and troubling uncertainties, but it would be wrong to paint a bleak future. The truth is that there continues to be enormous opportunities in Indonesia for those who invest and have the patience and resources to stay the course.

#### D. KAZAKHSTAN

The Law of Republic Kazakhstan On Investments No. 373-II (in force from Jan. 8, 2003) was amended in February 2012.<sup>54</sup> New clauses exempt manufacturing equipment, component and spare parts, raw and other materials from custom duties when they are imported for exclusive use on the territory of the member states of the Customs Union for the investment project implementation. Provisions on creating an investment contract with the Committee on Finance and Budget, the authorized body, are now different, as

50. See Ministry of Trade, Regulation Regarding Provisions on Importer Identification Number (API), No. 27/M-DAG/PER/5/2012, May 1, 2012, effective May 2, 2012 (Indon.).

51. Ministry of Trade, Regulation Concerning Amendment of Regulation of Minister of Trade No. 27/M-DAG/PER/5/2012 Concerning Provision of Importer Identification Number (API), No. 59/M-DAG/PER/9/2012, Sept. 21, 2012 (Indon.).

52. See Tito Summa Siahaan, *Indonesian Govt Plans New Franchise Rules in Boost for Local Businesses*, JAKARTA GLOBE (Aug. 27, 2012), <http://www.thejakartaglobe.com/business/indonesian-govt-plans-new-franchise-rules-in-boost-for-local-businesses/540428>.

53. *Minimum Inv. Requirement for Foreign Inv. Co. (PMA) Raised to IDR 10 Billion*, EUR. BUS. CHAMBER COM. INDON. (Jan. 27, 2012), [http://www.eurocham.or.id/index.php?option=com\\_content&view=article&id=269:minimum-net-asset-requirement-for-foreign-investment-company-pma-raised-to-idr-10-billion&catid=39:policy-and-business-news&Itemid=124](http://www.eurocham.or.id/index.php?option=com_content&view=article&id=269:minimum-net-asset-requirement-for-foreign-investment-company-pma-raised-to-idr-10-billion&catid=39:policy-and-business-news&Itemid=124).

54. The law of Republic Kazakhstan No. 373-II, On Investments (2003) (amended Feb. 20, 2012), available at <http://www.mfa.kz/upload/userfiles/file/зрк%20об%20инвестициях%20англ.pdf>.

well as the articles on control over contract implementation by that body.<sup>55</sup> The amendments aim “to bring legislation into line with international treaties of Kazakhstan and improve the investment activity.”<sup>56</sup>

Throughout this year, Kazakhstan has been participating in several business forums resulting in bilateral agreements. On March 27, ten agreements were signed because of the Kazakh-Korean business forum.<sup>57</sup> On May 4, eleven documents were signed during the Hungarian Prime-Minister’s visit to Kazakhstan, including an agreement on exchange of information in taxation and a memorandum of understanding between Kazakhstan’s National Agency for Export and Investments and Hungary’s Investment and Trade Agency.<sup>58</sup>

A Kazakhstan-Austrian economic forum held in Vienna in October 2012 resulted in the signing of nineteen documents.<sup>59</sup> The signed documents include a memorandum on the establishment of a Kazakhstan-Austrian Business Council; a memorandum of understanding on cooperation in joint oil and gas exploration and production in Kazakhstan; and seven memorandums signed by the Kazakhstan National Agency for Export and Investments.<sup>60</sup>

Kazakhstan has surpassed twenty countries in the rating of competitive countries and ranks fifty-first according to the Global Competitiveness Report 2012-2013, issued by the World Economic Forum.<sup>61</sup>

## V. Europe

### A. RUSSIA\*

On January 1, 2012, Federal Law No. 335-FZ “On the Investment Partnership” entered into force.<sup>62</sup> The law introduces a new business structure: the investment partnership based on the investment partnership agreement. The law aims to overcome the absence of effective legal arrangements for group investments in risky venture projects in Russia and provides legal grounds for joint corporate investments into such projects. The law allows a broad scope of participants to take part in investment partnership agreements,

55. See *Kazakh Parliament Adopted Amendments to the Law on Investment*, AAKON.KZ (Jan. 18, 2012, 12:03 PM), <http://www.zakon.kz/4468059-parlament-rk-prinjal-popravki-v-zakon.html>.

56. *Kazakh President Signs Amendments into Investment Legislation*, KAZINFORM (Feb. 20, 2012, 1:47 PM), <http://www.inform.kz/rus/article/2442315>. <http://www.inform.kz/rus/article/2442315>.

57. *As a Result of the Kazakh-Korean Business Forum 10 agreements on Projects Worth About U.S. \$7 billion Were Signed*, INVEST KAZAKHSTAN (Mar. 27, 2012), <http://www.invest.gov.kz/?option=news&itemid=29>.

58. *11 Documents are Signed under Visit of Prime-Minister of Hungary, V. Urban*, INVEST KAZAKHSTAN (May 4, 2012), <http://www.invest.gov.kz/?option=news&itemid=35>. <http://www.invest.gov.kz/?option=news&itemid=35>.

59. *Kazakhstan and Austria Signed Agreements Worth 170 Million Euro*, TENGRI NEWS (Oct. 25, 2012, 1:25 PM), [http://en.tengrinews.kz/politics\\_sub/Kazakhstan-and-Austria-signed-agreements-worth-170-million-Euro-13972/](http://en.tengrinews.kz/politics_sub/Kazakhstan-and-Austria-signed-agreements-worth-170-million-Euro-13972/).

60. *Id.*

61. *Kazakhstan has Reached the 51st Place in the Rating of Competitive Countries*, INVEST IN KAZAKHSTAN (Sept. 5, 2012), <http://www.invest.gov.kz/?option=news&itemid=50>.

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62. Об инвестиционном партнерстве [Federal Law on Investment Partnership], SOBRANIE ZAKONODATEL’STVA ROSSKOI FEDERATSII [SK RF] [Russian Federation Collection of Legislation] 2011, No. 49, Item 7013 (Russ.).

namely domestic and foreign commercial and non-commercial organizations, as well as registered individual entrepreneurs. The number of partners cannot exceed fifty.<sup>63</sup>

Entering into an investment partnership agreement does not create a legal entity. Hence, partners pay tax on profit (for a legal entity) or income (for an individual entrepreneur) in proportion to their contribution. There is no need to register the investment partnership agreement with the state. The only requirement is that the agreement be notarized. Additionally, the law provides the flexibility of investment partnership agreements. Participants may include specific provisions in the agreement concerning the size and type of the contributions, distribution of profit, management and decision-making procedures, exit rules, and other matters. No partnership agreement may exceed fifteen years.<sup>64</sup>

## B. BELARUS

Since 2001, the Investment Code, a comprehensive set of rules that applies to investment activity in Belarus, has set the legal framework for foreign and domestic investment in Belarus.<sup>65</sup> Belarus is known as the only post-Soviet country that has a codified legal act on investments. On June 27, 2012, the Belarusian Parliament passed a draft law “On Investments” in the first reading.<sup>66</sup> Adoption of this law will cancel the legal force of the Investment Code. As a result, the specific status of “organizations with foreign investments” will be abolished.

Generally, the draft law sets the major investing principles, such as equality of investors, full protection and security of investments, prohibition of arbitrary interference in private business, and transparency of investment regulations. The draft law confirms significant guarantees for foreign investors in Belarus, particularly, the right to transfer abroad profits and other earnings received from investment activities in Belarus and the right to receive timely and full compensation of the cost of the property in the event of nationalization.<sup>67</sup> Moreover, the legal procedure for nationalization will be more complicated: if there is a need for nationalization, this shall be approved by corresponding law.

The provisions of the Investment Code that are not included in this law will be transferred to other legal acts. For instance, the Chapter on “Concessions” will form a separate law, whose project is already under consideration.”<sup>68</sup>

63. *Russian Investment Partnerships: A New Flexible Investment Vehicle*, SQUIRE SANDERS, 2 (Mar. 2012), <http://www.squiresanders.com/files/Publication/76b9cc97-5b78-4d74-b096-ac7caa1a9e65/Presentation/PublicationAttachment/611ba7ee-cc73-4aa4-82d1-ad682a227ac4/Russian-investment-partnerships-a-new-flexible-investment-vehicle.pdf>.

64. *Id.* at 3.

65. Kodeks Respubliki Belarus' ot 22.06.2001 N 37-2 [Investment Code of the Republic of Belarus of June 22, 2001], Natsional'nyi Reestr Pravovyykh Aktov Respubliki Belarus' [National Register of Legal Acts of Belarus] 2001, No. 2/780 (Belr., available at <http://president.gov.by/en/press29508.html>).

66. Press Release, Ministry of Economy, Republic of Belarus, Belarus to Remove Restrictions Regarding Foreign Investors (June 27, 2012), [http://www.economy.gov.by/en/news/belarus-to-remove-restrictions-regarding-foreign-investors\\_i\\_0000001681.html](http://www.economy.gov.by/en/news/belarus-to-remove-restrictions-regarding-foreign-investors_i_0000001681.html).

67. Investment Code of Belarus, No. 2/780; see also *Belarus to Ease State Control over Investments*, FPS RES. CENTER (June 27, 2012, 4:04 PM), <http://forsecurity.org/belarus-ease-state-control-over-investments>.

68. *February 2012 Newsletter*, GLIMSTEDT L. FIRM I (Feb. 2012), [http://www.glimstedt.by/uploads/files/dir34/dir1/13\\_0.php](http://www.glimstedt.by/uploads/files/dir34/dir1/13_0.php).

## C. UKRAINE

The Ukrainian Law “On Industrial Parks,” one of the key elements of Ukraine’s Investment Reform, entered into force on September 5, 2012.<sup>69</sup> Industrial parks are defined as areas used for purposes of industrial development where the members investing in construction and land development may perform business activities in industrial production, research, information, and telecommunication. The law supports the members of industrial parks by allowing them to obtain interest-free loans and non-refundable financing out of the Ukrainian state budget. Additionally, supplies, materials, and equipment of foreign origin necessary for designing the industrial park can be imported into Ukraine free of import duty. Also, the law significantly simplifies access to land in industrial parks. The time for obtaining land with the necessary engineering and technical infrastructure is reduced from two to three years to six to nine months. In general, the law is supposed to “stimulate investment, job creation, development of modern production, and market infrastructure,” as well as create safeguards and protect investors.<sup>70</sup>

## VI. North America

### A. CANADA

#### 1. *Changes to Telecommunications Act*

On June 29, 2012, the Canadian Parliament passed amendments to the Telecommunications Act to relax foreign ownership restrictions on telecommunications carriers in Canada.<sup>71</sup> Before the amendments, the Telecommunications Act imposed a cap of 46.67 percent on foreign ownership of voting shares of all Canadian telecommunications carriers and prohibited foreign “control in fact” of such carriers.<sup>72</sup> The amendments permit non-Canadians to acquire control of Canadian telecommunications carriers that account for less than a 10 percent share of overall Canadian telecommunications services revenues, as determined by the Canadian telecommunications regulator.<sup>73</sup> The amendments also permit foreign-controlled telecommunications carriers who later grow their revenues above the 10 percent share threshold to continue to benefit from the exemption from foreign ownership restrictions in certain cases.<sup>74</sup> The amendments reflect the Canadian government’s plan to promote domestic competition by providing foreigners greater scope to invest in the Canadian telecommunications sector.

69. Law On Industrial Parks, No. 5018-VI, June 21, 2012 (Ukr.), available at [http://investukraine.com/wp-content/uploads/2011/10/Law\\_On\\_Industrial\\_Parks\\_ENG.pdf](http://investukraine.com/wp-content/uploads/2011/10/Law_On_Industrial_Parks_ENG.pdf).

70. *President of Ukraine Has Signed the Law “On Industrial Parks”, which Will Drastically Increase the Investment Attractiveness of Ukraine*, INVEST UKR. (Aug. 15, 2012), <http://investukraine.com/5874-president-of-ukraine-has-signed-the-law-on-industrial-parks-which-will-dramatically-increase-the-investment-attractiveness-of-ukraine>.

71. See Telecommunications Act, S.C. 1993, c. 38, s. 16 (Can.); Act to Implement Certain Provisions of the Budget Tabled in Parliament on March 29, 2012 and Other Measures, S.C. 2012, c. 19 (Can.) [hereinafter *Jobs, Growth and Long-term Prosperity Act*].

72. *Telecommunications Act*, S.C. 1993, c. 38, s. 16(2)s. 2(1) (prior to 2012 amendments) (Can.).

73. *Jobs, Growth and Long-term Prosperity Act*, *supra* note 71, ss. 595-600.

74. *Id.*

## 2. *Changes to Investment Canada Act*

The Canadian government also introduced a number of proposed amendments to Canada's foreign investment review process under the Investment Canada Act (ICA). The changes would, among other things, authorize the Minister who conducts the foreign investment review process to provide greater public disclosure of interim reasons and notices issued pursuant to ICA.<sup>75</sup> ICA already permits the Minister to disclose final notices sent to an investor indicating whether or not the Minister is satisfied that the investment is likely to be of net benefit to Canada, along with any reasons for the finding.<sup>76</sup> The objective of the proposed amendments is to increase the level of transparency for ICA-related decisions.

The Canadian government has also proposed changes to the financial threshold used to determine whether acquisitions of Canadian businesses by (or from) investors from World Trade Organization (WTO) member countries will be subject to review under ICA.<sup>77</sup> Although there are other review thresholds under ICA, the threshold applicable to WTO member country investors is the most frequently applied in practice. The amendments propose a new basis for calculating whether the threshold that triggers a review is reached, introducing the concept of "enterprise value," rather than the current approach of using the book value of the Canadian businesses' assets.<sup>78</sup> The likely effect of the proposed changes would be to further limit the number of acquisitions subject to ICA review. This reflects the Canadian government's continuing desire to focus its foreign investment review process on only the most significant transactions in Canada.

## 3. *State-Owned Enterprises (SOEs)*

Another major focus in 2012 has been the Canadian government's approach to review of the acquisition of control of Canadian businesses by foreign SOEs. Two proposed acquisitions of Canadian energy companies, one by a Malaysian government-controlled entity and the other by a Chinese government-affiliated entity, have brought this issue into the limelight. Although the Canadian government issued guidelines in 2007 on the application of the ICA review process to SOEs, there remains significant uncertainty on how the government will assess such transactions.<sup>79</sup> In October 2012, shortly after the Malaysian transaction received an unfavorable interim decision from the reviewing Minister,

75. *Id.* ss. 479-80.

76. *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), s. 36(4).

77. Regulations Amending the Investment Canada Regulations, Regulatory Impact Analysis Statement, C. Gaz. Part I, Vol. 146, No. 22, 1409, 1456 (June 2, 2012) (Can.). Since the article was written Canada approved the acquisitions by both the Malaysia government-controlled entity and the Chinese government-affiliated entity. See Ian Austen, *Canada Clears \$15 Billion Chinese Takeover of an Energy Company*, N.Y. TIMES, Dec. 7, 2012, <http://dealbook.nytimes.com/2012/12/07/canada-clears-15-billion-chinese-takeover-of-an-energy-company>.

78. *Id.*

79. See INDUSTRY CAN., INVESTMENT CANADA ACT GUIDELINES: INVESTMENT BY STATE-OWNED ENTERPRISES — NET BENEFIT ASSESSMENT (2012), available at <http://www.ic.gc.ca/eic/site/ica-lic.nsf/eng/1k00064.html#p2>. Since the article was written Canada approved the acquisitions by both the Malaysia government-controlled entity and the Chinese government-affiliated entity. See Austen, *supra* note 77.

Canada's Prime Minister stated that the government intends to issue a "clear and new policy framework regarding [SOE] transactions" in the "not too distant future."<sup>80</sup>

## V. South America

### A. ARGENTINA

Since late 2011, the Argentine Government has put in place a variety of increasingly tighter restrictions on the ability of its residents to hold and undertake transactions in foreign currency.<sup>81</sup> Such measures are only the latest in a series of actions that the Argentine Government has taken in the last few years<sup>82</sup> in an effort to protect Argentina's shrinking Dollar reserves and bolster the Argentine Peso's diminishing value.<sup>83</sup>

The most recent changes in 2012 have generally come in the form of (1) ongoing revisions to Communication "A" 5085, which was issued in June 2010 by the Argentine Central Bank and set forth a series of rules governing access to the currency exchange market;<sup>84</sup> (2) additional regulations, initially set forth in Communication "A" 5264, restricting the use of foreign currency in the context of services, income and certain cross-border transfers;<sup>85</sup> and (3) informal restrictions arising from communications between the Argentine Central Bank and financial institutions since 2011.

One of the most noteworthy adjustments made in 2012 relates to the ability of Argentine residents to acquire foreign currency for purposes not explicitly enumerated in the currency exchange rules. The non-specific purpose provisions set forth in Communication "A" 5085 had enabled Argentine residents to obtain foreign currency for a range of activities, including making a broad spectrum of foreign investments—foreign direct investments, real estate investments, and portfolio investments by legal entities, to name a few—and personal savings in Argentina.<sup>86</sup> In late 2011, the ability to acquire foreign cur-

80. Shawn McCarthy, *Petronas, Progress Push to Save Deal*, THE GLOBE AND MAIL (Oct. 22, 2012), <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/petronas-progress-push-to-save-deal/article4628162/>.

81. See Banco Central de la Republica Argentina, Comunicación "A" 5264, Mar. 1, 2012; Banco Central de la Republica Argentina, Comunicación "A" 5295, Mar. 9, 2012; Banco Central de la Republica Argentina, Comunicación "A" 5314, June 14, 2012; Banco Central de la Republica Argentina, Comunicación "A" 5318, July 5, 2012; Banco Central de la Republica Argentina, Comunicación "A" 5330, July 26, 2012; Banco Central de la Republica Argentina, Comunicación "A" 5335, Aug. 2, 2012; see also Administración Federal de Ingresos Públicos [Federal Tax Authority], Resolución General 3333 (May 23, 2012).

82. See, e.g., Banco Central de la Republica Argentina, Comunicación "A" 5085 (June 6, 2010), "A" 5126 (Sept. 21, 2010), "A" 5198 (Apr. 4, 2011), "A" 5236 (Oct. 27, 2011), "A" 5245 (Nov. 10, 2011); see also Administración Federal de Ingresos Públicos [Federal Tax Authority], Resolución General 3210 (Oct. 31, 2011) (Arg.).

83. See Matt Moffett, *Dollars Become Scarce as Argentina Cries Peso*, WALL ST. J., June 13, 2012, at C1.

84. Banco Central de la República Argentina, Comunicación "A" 5085 (June 6, 2010).

85. Banco Central de la República Argentina, Comunicación "A" 5264 (Jan. 3, 2012).

86. See KPMG, Buenos Aires, *Argentina-New Foreign Currency Restrictions Imposed*, FLASH INT'L EXECUTIVE ALERT (July 23, 2012), <http://www.kpmg.com/US/en/IssuesAndInsights/ArticlesPublications/flash-international-executive-alert/Documents/flash-international-executive-alert-2012-139-july.pdf>.



rency for such non-specific purposes was curtailed through the imposition of a government validation process.<sup>87</sup> But, the right had generally remained intact until July 2012.

On July 5, 2012, the Argentine Central Bank suspended the ability of Argentine residents to acquire foreign currency for non-specific purposes altogether.<sup>88</sup> While foreign currency has remained accessible to Argentine residents for certain specific activities, including payments to non-resident service providers, travel and tourism abroad, and payments of rents to non-resident owners of real property in Argentina, the list of activities is rather limited and includes a substantial number of conditions and requirements that continue to shift in an increasingly restrictive direction.<sup>89</sup>

The new tightened regulations are expected to have an impact on individuals and businesses alike. For instance, if an Argentine resident has privately contracted to undertake a transaction that involves payment for goods or services in a foreign currency, the resident would no longer be able to fulfill such obligation in the relevant foreign currency, unless he or she were able to draw on foreign currency reserves accumulated before the regulations came into effect. Similarly, while Argentine residents previously had to get prior approval to obtain foreign currency in cash for travel abroad, there were no restrictions on charges made on a credit or debit card. Under the new measures, however, the Argentine Government is expected to charge up to 15 percent in taxes on all foreign purchases made through a credit or debit card, including for electronic transactions through Amazon and eBay and will also levy a 50 percent customs duty on goods brought from abroad back to Argentina.<sup>90</sup> Beyond restricting leisure travel, the rules are creating serious uncertainty for business travelers and study abroad programs.<sup>91</sup>

In addition, foreign companies, which previously offered equity-based incentives and compensation to employees in their subsidiaries or affiliates based in Argentina, would find it difficult to get reimbursed by such local entities for the cost of such programs from an Argentine bank account. The limited ability to transfer funds overseas also will dissuade companies from implementing new employee stock purchase plans in Argentina, and the status of existing plans will have to be reviewed in light of the new regulations.

Although some of the restrictions can be overcome through planning and creative structuring, the overall impact of the tightened regulations will most likely prove to be a deterrent for both Argentine residents and foreign entities undertaking to do business in Argentina in the near future.

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87. Banco Central de la República Argentina, Comunicación "A" 5245 (Nov. 10, 2011); Administración Federal de Ingresos Públicos [Federal Tax Authority], Resolución General [General Resolution] 3210 (Oct. 31, 2011).

88. Banco Central de la República Argentina, Comunicación "A" 5318 (July 5, 2012).

89. See, e.g., Banco Central de la República Argentina, Comunicaciones "A" 5330 (July 6, 2012), "A" 5335 (Aug. 2, 2012).

90. Michael Warren, *Argentines Feeling Trapped by Currency Controls*, YAHOO FIN. (Sept. 4, 2012, 1:38 PM), <http://finance.yahoo.com/news/argentines-feeling-trapped-currency-controls-163002211.html>.

91. See Dan Thomas, *Argentina Money Laws Impact on Market*, PIE NEWS (Nov. 11, 2011), <http://thepienews.com/news/argentina-money-laws-impact-on-market/>.

## B. BOLIVIA

1. *Nationalizations*

Following the nationalization of oil, telecom, and power generation companies, 2012 saw the Bolivian government completing the nationalization process of state companies that were privatized during the capitalization process.<sup>92</sup> For example, it ordered the transfer to ENDE (*Empresa Nacional de Electricidad Bolivia*), the state owned Electricity Company, of the shares issued by Transportadora de Electricidad S.A. (TDE),<sup>93</sup> the company in charge of transmission of electrical energy from power generation plants to distributors around the country. The government also ordered the completion and signature of the settlement contract with the former shareholders of AIR BP BOLIVIA S.A.-ABBSA,<sup>94</sup> the company in charge of supplying aviation fuel in airports around the country, which was nationalized in 2009.<sup>95</sup>

2. *Statute of Limitations on Tax Debts Extended*

The Bolivian Tax Code was amended by extending the statute of limitations on tax debts.<sup>96</sup> It is noted that the amendment is made through the “Law on amendments to the General State Budget,”<sup>97</sup> a temporary law that only has legal effect for one year because a new state budget is approved through law each year.

The new time limits are as follows: charges by the Tax Administration are barred after four years during 2012, five years in 2013, six years in 2014, seven years in 2015, eight years in 2016, nine years in 2017, and ten years beginning in 2018. The time limits pertain to monitoring, investigating, verifying and supervising taxes, determining the tax liability, and imposing administrative sanctions.

The time limits for each year mentioned above will be about tax obligations maturing, and tax violations that had occurred in that year. The statute of limitations will be extended for three additional years if the taxpayer or responsible party fails to comply with the obligation to register with the relevant registry or join a different tax regime to which it belongs. As for computing the term for the statute of limitations, it shall be counted from the first day of the month following that in which the deadline of the respective payment occurred or tax violation was committed.

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92. The capitalization was performed during the government of Gonzalo Sanchez de Lozada to promote foreign investment and inject capital to strategic companies. It consisted of the sale of 51 percent of the share package of key state companies to international investors, and the remaining package was transferred in favor of all Bolivian citizens 21 years of age or older as of December 31, 1995. Law No. 2492, Apr. 15, 1994, G.O. 1824.

93. See Supreme Decree No. 1214, May 1, 2012, G.O. 369.

94. See Supreme Decree No. 1149, Feb. 29, 2012, G.O. 347.

95. Supreme Decree No. 0111, May 1, 2009, G.O. 26 (nationalizing ABBSA).

96. Bolivian Tax Code, Law No. 2492, Aug. 2, 2008, G.O. 2508 (Bol.).

97. See Law No. 291, Sept. 22, 2012, G.O. 422 (Bol.). This law modifies the General State Budget. See Law No. 211, Dec. 23, 2011, G.O. 328 (Bol.).

### 3. *Promotion of Tourism*

On September 25, 2012, the new tourism law, "Bolivia Awaits You," was enacted.<sup>98</sup> The Bolivian government also recently launched a promotional campaign called "Bolivia Awaits You." The law and the campaign seek to boost community-based tourism in Bolivia and have the State as the main protagonist. Under this law, the State is responsible for economic investment and generation of policies for the development of the tourism sector. The government plans to invest about US \$19 million over the next five years in order to boost community-based tourism.<sup>99</sup> In addition, the State will provide maintenance to the main tourist attractions of the country, such as the Salar de Uyuni, Lake Titicaca, Madidi National Park, Tiwanaku, and Los Yungas of La Paz. The Act also implements the Tourism Regulatory Administration Fee (TART) that provides for service providers to be paid annually.

## C. VENEZUELA

### 1. *Venezuela Joins Mercosur*

Effective on August 12, 2012, Venezuela became a member of the regional trade bloc Mercado Común del Sur (Mercosur or Southern Common Market).<sup>100</sup> Founded in 1991 by the Treaty of Asunción (as amended by the Protocol of Ouro Preto), Mercosur is an economic and political agreement among Argentina, Brazil, Paraguay (which is currently suspended), and Uruguay.<sup>101</sup> The decision to admit Venezuela into the trading bloc may still be subject to challenges; on June 22, 2012, Paraguay was suspended from the trade bloc for an alleged violation of the Democratic Clause of Mercosur.<sup>102</sup> It is foreseen that Venezuela would begin a gradual harmonization of a set of regulations to match those of the other members of the bloc, including the adoption of a common nomenclature, common external tariff, and the elimination or reduction of tax bases or rates to products from the other State Members.<sup>103</sup>

### 2. *Venezuela Withdraws from ICSID Convention*

On July 25, 2012, Venezuela's withdrawal from the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Conven-

98. See Law No. 292, Sept. 25, 2012, G.O. 423 (Bol.).

99. *Bolivia: New Video Campaign Seeks to Boost Tourism*, GLOBAL VOICES (Aug. 9, 2012, 1:20 PM), <http://globalvoicesonline.org/2012/08/09/bolivia-new-video-campaign-seeks-to-boost-tourism/>.

100. Decision No. 27/12 art. 1 (Jul 31, 2012), <http://www.mercosur.int/>.

101. Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, March 26, 1991, 30 I.L.M. 1044.

102. The government of Paraguay, whose suspension from the block was necessary to admit Venezuela, has claimed that such decision is null and void. See Guido Nejamkis & Ana Flor, *Mercosur Welcomes Venezuela, Suspends Paraguay*, REUTERS (June 30, 2012, 2:04 AM), <http://uk.reuters.com/article/2012/06/30/uk-mercosur-idUKBRE85T01620120630>.

103. *Tax Revision Suggested upon Venezuelan Entry into Mercosur*, THE UNIVERSAL (Aug. 13, 2012, 11:55AM), <http://www.eluniversal.com/economia/120813/tax-revision-suggested-upon-venezuelan-entry-into-mercosur>.

tion) became effective, in accordance with Article 71 of the ICSID Convention.<sup>104</sup> The implication of this withdrawal is under debate,<sup>105</sup> especially concerning whether ICSID could exercise jurisdiction over disputes arising out of BITs that exclusively provide for ICSID arbitration.<sup>106</sup>

### 3. *OECD Guidelines on Transfer Pricing*

A Venezuelan court confirmed the application of the guidelines of the Organization for Economic Co-operation and Development (OECD) regarding transfer pricing,<sup>107</sup> which is set out in Venezuelan Income Tax Law.<sup>108</sup> The ruling is significant because although Venezuela is not a member of the OECD, Venezuelan tax authorities appear to follow the methods and standards endorsed by the OECD Guidelines.

### 4. *Foreign Exchange Controls*

Foreign exchange control continues with some variations. With some limitations, individuals and corporations may now hold accounts in foreign currency in local banks in foreign currency.<sup>109</sup>

104. Venezuela sent a written notice of denunciation of the Convention to the World Bank on January 24, 2012. See News Release, Int'l Centre for Settlement Inv. Disputes, Venez. Submits a Notice under Article 71 of the ICSID Convention (Jan. 26, 2012), available at <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Announcements&pageName=Announcement100>.

105. See Sergey Ripinsky, *Venezuela's Withdrawal from ICSID: What It Does and Does Not Achieve*, INT'L INST. SUSTAINABLE DEV. (Apr. 13, 2012), <http://www.iisd.org/itm/2012/04/13/venezuelas-withdrawal-from-icsid-what-it-does-and-does-not-achieve>; see also Emmanuel Gaillard, *International Arbitration Law; The Denunciation of the ICSID Convention*, 237 N.Y.L.J. 122 (2007).

106. See e.g., Agreement Between the Republic of Venezuela and the Government of the Argentine Republic for the Promotion and Reciprocal Protection of Investments, Venez.-Arg., May 14, 1996, available at [http://www.sice.oas.org/BITS/Argven\\_s.asp](http://www.sice.oas.org/BITS/Argven_s.asp); see e.g., Agreement Between the Republic of Venezuela and the Government of the Republic of Chile for the Promotion and Reciprocal Protection of Investments, Venez.-Chile, Apr. 2, 1993, available at <http://www.sice.oas.org/BITS/VNCHTOCS.ASP>.

107. Fourth Superior Tax Court of the Judicial Circuit of the Metropolitan Area of Caracas, Mar. 29, 2012, "VENEASISTENCIA, C.A." (Venez.).

108. ORGANISATION FOR ECON. CO-OPERATION & DEV. [OECD], TRANSFER PRICING GUIDELINES FOR MULTINATIONAL ENTERPRISES AND TAX ADMINISTRATIONS (July 2010).

109. See The Exchange Convention No. 20, GACETA OFICIAL DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [OFFICIAL GAZETTE OF THE BOLIVARIAN REPUBLIC OF VENEZUELA] No. 39.968, 395.147 (July 19, 2012) (Venez.).