International Investment, Development, and Privatization

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After a number of tumultuous years, 1999 was a period of relative stability and prosperity in international finance, development, and privatization. Past trends of financial market integration, diminishing regulation and barriers to competition, and the ongoing push to private, rather than public, ownership continued at a modulated pace in an atmosphere of greater economic confidence worldwide. Financial integration saw the introduction of the Euro as well as enhanced "dollarization" of the international economy. The move to deregulation and open markets was punctuated by the elimination of restrictive banking laws in the United States and the U.S.-WTO agreement with China. Privatization continued as the focus shifted geographically from Europe to the rest of the world, and structurally from telephony to remaining public assets, particularly in transportation. Finally, international development work in Kosovo, and efforts to promote transparency and reduce money laundering, completed an interesting year—one not challenged, for the first time in recent memory, by a world-class financial crisis.

This article seeks to provide a brief and selective overview of the developments in this exciting intersection of the law and international finance during 1999.

I. Financial Market Integration

A. THE "EURO" AND EUROPEAN INTEGRATION

What was projected to be the year's biggest development, the introduction of the Euro, was, rather surprisingly, a decided non-event. Launched on January 1, 1999, at a level of U.S.$1.16675, the Euro exchange rate dropped by year-end to virtual parity with the dollar (and now below), leading many to speculate that a far simpler measure would have been to embrace the *de facto* "dollarization" present in international financial markets for some time.[1] More subtly, however, the adoption of the Euro may have given impetus to the

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1. *See* Steve H. Hanke, *Point of View: Euroflop*, FORBES, Dec. 27, 1999, at 98.

unprecedented acceleration in the rate of acquisition and integration of European companies in 1999. Merger and acquisition deals in Europe more than doubled to $1.2 billion in 1999, up from $582 billion in 1998. Corporate debt rose eighty-two percent to $707 billion, and corporate equity offerings rose sixty percent to $86 billion.[2]

B. "Dollarization"

As the Euro was launched, a number of other nations in other areas of the world began to openly consider the difficulties of maintaining sovereign currencies. A number of countries are actively considering "dollarization," i.e., the replacement of a national currency with that of another country, usually the U.S. dollar, as legal tender in response to financial crises around the world. Twenty-eight countries currently use non-indigenous currency.[3]

True dollarization, i.e., replacement of local currency with the dollar, is significantly different from "pegging" a currency, i.e., maintaining a fixed-rate of exchange against the dollar, and has led to mixed results. Hong Kong expended very significant amounts of foreign reserves to maintain its peg against speculators, including George Soros. Brazil's failure to hold its peg against the dollar led to significant uncertainties in Latin American economies;[4] while Argentina has maintained its peg and is arguably the greatest success story to date.[5]

Legislation was introduced this year by Senator Connie Mack, Chairman of the Joint Economic Committee, to facilitate dollarization by compensating foreign governments for a portion of the interest foregone when dollars are issued from national reserves to replace local currencies. This is the primary economic cost of dollarization.[6] In January 2000, Equador announced its intention to dollarize its economy.[7]

II. Deregulation and Diminished Barriers to Competition

A. The Repeal of Glass-Steagal: The Gramm-Leach-Bliley Act of 1999

The Glass-Steagal Act, passed in 1933, has been central to the operation of the U.S. banking industry since the Great Depression. The limitations imposed by this legislation had worldwide repercussions in limiting U.S. banks from combining commercial banking with investment and merchant banking. U.S. banks were competitively handicapped as a result in their operations abroad as well as domestically in areas typically considered the domain of foreign commercial banks, including insurance, securities underwriting, and merchant banking.[8]

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2. *See Best of the Best: Our Second Annual Investment Banking Deals of the Year Awards Reflect the Most Profound Shift in Some Years*, Investment Dealers' Digest, Dec. 13, 1999.

3. Panama uses the U.S. dollar, Monaco uses the French Franc, etc.

4. *See Bottom Line (Adoption of U.S. Dollar by Other Countries to Stabilize Their Banking Systems)*, The Banker, Apr. 1, 1999, at 120(1).

5. The Council on Foreign Relations, however, issued a September 1999 report arguing against fixed exchange rates. *See Sick Patients, Warring Doctors*, Economist, Sept. 18, 1999, at 81.

6. *See* Asia Wk., Feb. 4, 2000.

7. *See* Xinhua News Agency, Feb. 24, 2000. Despite the fall of the government in a military uprising, the new government presented new legislation to implement dollarization on February 14, 2000. *See id.*

8. *See* Jim McLaughlin, *There's More to "Financial" Than Meets the Eye (Gramm-Leach-Bliley Act Regulates Banking, Insurance and Securities Industries)*, ABA Banking J., Dec. 1, 1999, at 12. On this legislation, see also the report of the International Banking and Finance Committee contained in this survey issue.

New legislation, the Gramm-Leach-Bliley Act of 1999 (GLBA), permits banks to insure, guarantee, or indemnify against loss or harm as a principal, agent, or broker (insurance powers); underwrite or deal in securities; issue or sell interests in a pool of assets; conduct activities outside the United States (including travel agencies); and acquire equity ownership in connection with underwriting or financing activity with intent to ultimately sell.[9] This last power may be the greatest innovation, as large U.S. commercial banks can once again acquire stakes in operating companies that have been off-limits for the past sixty-six years.

One example of the new opportunities created by the new legislation is the holding company for Chase Manhattan Bank. Its Chase Capital Partners business contributed twenty-six percent of Chase's total operating profit last year,[10] yet they were required by law to share investments with unaffiliated companies and to forego lucrative underwriting fees on the public offering of some of their most successful investments.[11] These limitations were removed by the new law, yielding unparalleled new opportunities for profits at large U.S. financial institutions.

The new legislation is also a significant departure from prior regulation, which permitted a "basket" authorization for a limited amount of otherwise prohibited activities. While initially present in the draft legislation, the final bill avoids the basket limitations and permits U.S. bank holding companies to engage in all activities that are complementary to a financial activity so long as the safety and soundness of the company and the depository institutions it controls are not substantially affected.[12]

Importantly, the listed activities set out above can be entered into without prior Federal Reserve Bank approval. Additional activities may be permitted by the Federal Reserve and the U.S. Treasury Department based on: (1) the financial services marketplace; (2) technology for delivering financial services; and (3) whether an activity is necessary or appropriate to allow a financial service holding company to compete effectively.[13]

B. China and the WTO Agreement

The U.S.-China trade deal announced on November 15, 1999 is expected to pave the way for China's admission to the World Trade Organization (WTO) after a thirteen-year process.

The changes in the Chinese economy as a result of the agreement and on WTO accession will be profound. Under the deal with the United States, agricultural tariffs on wheat, maize, and other bulk commodities must be reduced to 14.5 percent by 2004.[14] Tariffs on imported automobiles must fall from current levels of eighty to 100 percent to twenty-five percent, allowing foreign car makers to offer direct financing for auto purchases. After WTO accession, foreigners may hold up to forty-nine percent of telecom and Internet companies, with a fifty percent stake and management control in two years. Foreign banks may engage in the local currency business with Chinese enterprises within two years of accession and with Chinese individuals within five years. According to many experts, banking competition

9. *See id.*

10. *See* Bethany McLean, *Chase's Venture Capital Elite, They're Not Rock Stars; They're More Like a Hot Studio Band. Chase Capital Partners Keeps the Hits Coming*, FORTUNE, Feb. 7, 2000, at 129.

11. *See id.*

12. *See* McLaughlin, *supra* note 8, at 12.

13. *Id.*

14. *See* F. T. McCarthy, *The Real Leap Forward*, ECONOMIST (U.S.), Nov. 20, 1999, at 25.

"is among the boldest moves of China's reformers, because it raises the odds of a systemic banking crisis when China's state banks are forced to bring their dirty washing out in the open."[15]

On accession, foreigners may own up to fifty percent of life insurance companies. Fifty-one percent ownership on non-life and reinsurance companies is permitted on accession and wholly-owned after two years.[16]

WTO membership will also have important ramifications in China's development of a consistent, open legal and administrative framework. Under WTO rules, all members must make and apply trade laws "in a uniform, impartial and reasonable manner."[17] Most laws and legal systems in China are created and enforced at the local level, creating widely divergent results.[18] It is hoped that the WTO process will lead to significant strides in implementing the "rule of law" in China.

It should also be noted that, at the end of 1999, at least twenty-four of the WTO's 135 members, including the European Union, have yet to sign agreements for WTO entry with China.[19] These deals may lead to greater openness, as well as China's required compliance with WTO rules regarding intellectual property and health standards.

China is also moving aggressively toward "privatization" (in China, the term is "corporatization"). For example, in August 1999, Great Wall Technology, a Chinese computer products manufacturer, was sold in a very successful $144 million initial public offering, which was ninety-seven times oversubscribed.[20] The company is indirectly controlled by China's Ministry of Information Industry. The next three big privatizations are projected to be China National Offshore Oil Corp., China National Petroleum Corp. (potentially a $10 billion corporation), and China Petroleum Corp. Unicom, China's second largest telecommunications company, is also considered a leading "privatization" candidate.[21]

III. Privatization, Development, and Transparency

A. Privatization

Following the success of last year's Brazilian telecom privatization, there were few high-profile privatizations to capture public attention in 1999. Brazil once again dominated in terms of proceeds, with 1999-2000 estimated proceeds projected to equal the approximately $36 billion raised in 1998.[22]

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15. *Id.*; *see also* James Kynge, *China's Entry Into World Trade Organization Could Spell Trouble for Country's Banks*, FIN. TIMES, Nov. 17, 1999, at 16.

16. *See* James Kynge, *Doubts Grow Over China's WTO Access*, FIN. TIMES, Nov. 19, 1999, at 14; *see also* Grant R. Johnson, *Finally! Chipmakers Applaud China's WTO Acceptance*, ELECTRONIC NEWS, Jan. 10, 2000, at 12 (discussing the applicability of the Information Technology Agreement to China on accession, eliminating tariffs on a wide variety of high tech products).

17. Stanley Lubman, *China, the WTO and the Rule of Law: The Newest Entrant to the World Trade Organization Must Adopt a New Legal Framework*, FIN. TIMES, Dec. 8, 1999, at 19.

18. *See id.*; *see also* Richard Bruner, *China Maps Telecom Investor Plan for March*, ELECTRONIC NEWS, Jan. 24, 2000, at 14. ("China's legal and legislative framework is not very compatible with international standards right now.").

19. *See* F. T. McCarthy, *The Remaining Hurdles*, ECONOMIST (U.S.), Nov. 20, 1999, at 26. Since then, the EU and China have concluded their agreement.

20. *See* PRIVATISATION INT'L, Sept. 1999.

21. *See id.*

22. *See Brazil and Privatisation*, OECD OBSERVER, Summer 1999, at 86.

The newest industry to become subject to privatization is the world's airports and air traffic control (ATC) systems. Currently more than 100 airports worldwide have been shifted to the private sector through sale or long-term lease.[23] Surprisingly, the United States has been relatively slow to move toward privatization in this area. In 1996, Congress enacted an airport privatization pilot program, under which up to five U.S. airports could be exempted from obligations under Federal Aviation Administration (FAA) grants in order to facilitate privatization. The FAA promulgated implementing rules in the fall of 1997, but as of late 1999, only two applications had been filed.[24]

Privatization of air traffic control (ATC) systems is similarly slow moving. Current discussions have resulted in considerably "more air than light."[25] Other nations, however, have seen successful privatization of this important function. Canada, for example, has improved service while reducing user fees by twenty-seven percent since it established the ATC function in a nonprofit corporation.[26] Other countries with privatized ATC systems include Australia, Germany, South Africa, Thailand, and the United Kingdom.[27]

B. Regional Development in the Kosovo Post-Conflict Phase

On June 3, 1999, the Federal Republic of Yugoslavia agreed to accept the principles of peace proposed by the G-8 Statement on Regional Issues Regarding Kosovo, and active hostilities abated.[28] Yugoslav troops withdrew and bombing ceased. The U.N. Security Council authorized the creation of a U.N.-managed Interim Mission in Kosovo for civilian administration of the region, with the goal of its eventual replacement with local, self-governing, democratic institutions.[29]

The damage to Kosovo and the most affected neighboring countries (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, FYR Macedonia, and Romania) was severe. The coordinated response of the international community was immediate. Plans started being implemented, not only to facilitate short-term solutions for the overwhelming humanitarian needs created by the conflict and to rebuild Kosovo economically (as a means to encourage a long-term democratic, political solution for the *de facto* state); but, also to advance the larger goal of regional development and integration. These aims were to stabilize the entire Southeast European region, less through *ad hoc* and bilateral means, and more through integrated, coordinated means on the part of the international institution donor community, including the leveraging of international financial institution resources with private investment. Economic development, reconstruction, and civil society building would be supported to encourage the creation of a solid economic base. This base would include financing for institution enhancement, infrastructure, industry sector development, and the

23. *See* Privatisation Int'l, Oct. 1999.

24. *See id.* Stewart International Airport in New York State and San Diego's Brown Field. Niagara Falls (New York) International Airport is expected to become a third participant. *See id.*

25. Jane Levere, *A Private Concern (Privatising U.S. Air Traffic Control)*, Airline Bus., Jan. 1, 2000, at 54.

26. *See id.*

27. *See id.*

28. *See World Bank Group Response to Post-Conflict Reconstruction in Kosovo: General Framework for an Emergency Assistance Strategy* (visited Apr. 17, 2000) <http://www.worldbank.org/html/extdr/Kosovo/Kosovo_st.htm>.

29. *See id.*

creation of small and medium businesses—areas of focus for the World Bank, European Investment Bank, European Bank for Reconstruction and Development, and related donor programs. The recent experiences of these institutions in the newly independent states of the former Soviet Union and Eastern Europe, and their demonstrated institutional commitments to privatization (and, more generally, to the developing and transitioning world), put them in good stead to assist.

Accordingly, this post-conflict phase is viewed by the international community as an opportunity to transform the countries of Southeast Europe—with their struggling, agricultural-based, underperforming economies—into transparent, market-oriented, economically viable, and democratic ones. The ultimate goal is the full-fledged political and economic integration of these economies into the first-tier of Europe's community of nations. Included in this vision is membership in what would become an expanded European Union,[30] and bestowal of the other rewards of national advancement, such that the specter of historically devastating bouts of ethnic strife, and the severe political and economic dysfunction that has plagued the region, would become a memory.

Regional political activities are being conducted through the Stability Pact for South Eastern Europe, with economic activities being advanced through the High Level Steering Group. The Stability Pact was adopted on June 10, 1999, by twenty-nine nations, with the support and active participation of international donor community institutions.[31] The Pact represents the political commitment of the signatories to a comprehensive, coordinated, and strategic approach for Southeast Europe.

The economic approach was equally comprehensive. At the April 1999 meeting of the Bretton Woods institutions, the IMF and the World Bank presented an initial review of the damage done to the region. At this time, the European Commission and the World Bank were given a special mandate to coordinate donor economic assistance. On July 13, 1999, an organizational meeting of the High Level Steering Group was held in Brussels, followed by its first international donors meeting on July 28, 1999.[32] In attendance were

30. *See, e.g.*, *Stability Pact Information Note* (visited July 10, 2000) <http://www.seerecon.org/News/ETSP/SPC.htm>; *G-8 Statement on Regional Issues, Kosovo* (Cologne, June 20, 1999) (visited Apr. 17, 2000) <http://www.seerecon.org/keyspeeches/kss-1999062501.htm>.

31. "The Stability Pact for South Eastern Europe was adopted at a special meeting of Foreign Ministers," and members of the international financial institution and donor community on June 10, 1999 in Cologne, Germany. *Stability Pact Information Note*, *supra* note 30. In attendance were representatives from the Member States of the European Union, the European Commission, the Foreign Ministers of Albania, Bosnia, and Herzegovina, Bulgaria, Croatia, Hungary, Romania, the Russian Federation, Slovenia, the former Yugoslav Republic of Macedonia, Turkey, the United States, the OSCE Chairman in Office, and the representative of the Council of Europe. Also present were the Foreign Ministers of Canada and Japan, representatives of the United Nations, UNHCR, NATO, the OECD, the WEU, the IMF, the World Bank, the EBRD, and the EIB, as well as representatives of the Royaumont Process, the BSCE, CEI, SCEI, and SEECP. For activities and status under the Stability Pact, see *Special Co-Ordinator of the Stability Pack for South Eastern Europe* (visited Apr. 17, 2000) <http://www.stabilitypact.org>.

32. *See* Economic Reconstruction and Development in South Eastern Europe, *High Level Steering Group Meeting*, Press Release (last modified July 13, 1999) <http://www.seerecon.org/PressReleases/press990713.htm> [hereinafter *Steering Group Meeting*]. Among the participants at the July 13, 1999 meeting were the finance ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and Finland (representing the presidency of the European Union), the managing director of the IMF, the president of the EIB, and the president of the ERBD, the Special Coordinator of the Stability Pact for South Eastern Europe,

high-level representatives from more than 100 countries and international organizations, under the joint chairmanship of the European commissioner for economic and monetary affairs and the president of the World Bank.

At this meeting, approximately U.S.$2.1 billion was pledged.[33] The bulk of the money, estimated at $1.5 billion, was allocated for humanitarian needs, including economic development, reconstruction of certain civil society functions, and the winterization of housing, to be spent both within and outside of Kosovo. The remaining $500 million was set aside for peace implementation activities, reconstruction, and repair. By this time, the European Union and the United States had each pledged at least U.S.$500 million in assistance.[34] The focus of the second International Donors Conference, held in Brussels on November 17, 1999, was the announcement of the Medium-Term Reconstruction and Recovery Program. Donors pledged over one billion U.S. dollars to initiate the program's first phase for recovery needs through December 2000.[35]

In late 1999, a comprehensive development strategy for Kosovo and its most affected neighbor countries was still being formulated and implementation was underway.[36] The World Bank, the European Bank for Reconstruction and Development, the European Investment Bank,[37] non-governmental organizations (NGOs), and other international donors were developing capital investment, infrastructure development, and civil society building programs for the region.

C. Transparency and Money Laundering

In our review last year, we predicted greater interest in efforts to fight corruption and money laundering. This was in fact an important initiative on a number of fronts. The IMF promulgated a "draft code of good practices in financial transparency" for governments.[38] In the United States, a two-day Senate hearing coincided with a forty-page Clinton administration bill to improve the 1986 legislation criminalizing money laundering, while

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and the deputy secretary general of the United Nations. *See id.*; *see also Rebuilding Kosovo Takes Important Step Forward*, News Release No. 20000/006/ECA (visited Apr. 17, 2000) <http://www.worldbank.org/htm.extdr/extme/006.htm>.

33. *See First Donor Conference for Kosovo*, News Release No. 2000/018/S (visited Apr. 17, 2000) <http:www.worldbank.org/html/extdr/extme/018.htm>.

34. *See Steering Group Meeting, supra* note 32; Alliance Wkly News Dispatch (U.S. Chamber of Commerce, Washington D.C.), Aug. 16, 1999.

35. *See Steering Group Meeting, supra* note 32.

36. *See European Commission/World Bank Program for Reconstruction and Recovery in Kosovo* (visited Nov. 3, 1999) <http://www.seerecon.org/Kosovo/KosovoReconstruction/Reconstruction-Kosovo.htm>; World Bank Working Paper No. 19 (Nov. 5, 1999).

37. The European Investment Bank (EIB) was organized in 1958 to finance capital projects furthering the objectives of the European Union, in particular, regional development, trans-European transport, telecommunications and energy networks, industrial competitiveness and integration, small and medium enterprise enhancement, and environmental protection. The EIB also operates outside the EU, in over 120 countries, in furtherance of EU objectives. EIB has pledged extensive resources for development in South East Europe. *See Objectives* (visited Apr. 17, 2000) <http://www.eib.org/obj.htm>.

38. Michael Blander, *More Transparency, Please*, The Banker, May 1999, at 23.

39. *See* Scott Barancik, *Laundering Bills Would Aid Prosecutors But Might Put Unequal Burden on Banks*, Am. Banker, Nov. 12, 1999, at 1. For further discussion of money laundering developments, see the report of the International Banking and Finance Committee contained in this survey issue.

separate bills were introduced by Senators Levin and Spector,[39] and by Congressman Leach in the House.[40]

Commitment to the World Bank's anti-corruption efforts continued.[41] At least nine companies and individuals were permanently disbarred from engaging in business with the Bank.[42] Five companies were suspended on a temporary basis.[43] The offenders, who were allowed an administrative process that permitted response to the allegations against them, were found in violation of the fraud and corruption provisions of the Bank's *Procurement Guidelines* or the *Consultants Guidelines*.[44]

Corrupt practices were addressed through a variety of other means, including governance reforms, assistance in strengthening borrower institutional structures, and adjustment in lending practices to allow for greater transparency and supervision.[45] Financial management and audit procedures were strengthened in the Bank's field offices and headquarters. An oversight committee, reporting directly to the Bank's president, addressing internal fraud issues, was also created.[46]

IV. The Year to Come

Likely initiatives in the year 2000 will focus on greater integration of regulation and deference to the law of other countries. Expect to see greater efforts at multi-jurisdictional securities laws and regulation, particularly of banks and other financial institutions. Privatization efforts in Asia should pick up as investors forget, or choose to ignore, the recent economic crisis in that region. Mergers and acquisitions in Europe should continue at a record pace, with increased interest from European companies in making acquisitions in Latin America. Expect very little from the United States, as the presidential election cycle tends to make initiatives of any kind difficult. And never, ever, try to predict the future.

40. *See* Scott Barancik, *Laundering Hearing Seen Making Case for New Law*, AM. BANKER, Nov. 10, 1999, at 1.

41. *See, e.g., id.* at 2.

42. *See World Bank Listing of Ineligible Firms, Fraud and Corruption* (visited Nov. 2, 1999) <http://www.worldbank.org/htm/opr/procure/debarr.html>.

43. *See id.*

44. *See id.* (citing *Guidelines for Procurement under IBRD Loans and IDA Credits*, §§ 1.15, 1.25).

45. *See id.* at 12.

46. *See id.*