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Inter-American Law

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I. Argentina**

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

In September, Argentina reached a debt rescheduling agreement with the International Monetary Fund (IMF). Foreign public opinion viewed this agreement as a key element of the country's recovery and crucial to rebuilding the confidence of overseas investors. The economy has since shown signs of improvement. For example, the inflation rate has dropped to 4 percent from 40 percent in 2002, and in 2003 the country's economy grew by 8.7 percent. Additional encouraging information includes the announcement of public works programs to stabilize the country's economy.

A. GENERAL AND CORPORATE COMMERCIAL PRACTICE: CONTROL OF FOREIGN COMPANIES DOING BUSINESS IN ARGENTINA

1. *Resolution 7/2003*

The *Inspección General de Justicia* (IGJ) established new requirements for foreign companies doing business in Argentina, whether the companies act as shareholders or operate

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via a branch office or permanent representative office. If the IGJ determines that the purported foreign company is in fact operating as a domestic one, it can now request that the foreign company's by-laws comply with the Argentine Company Act, Law 19,550. Failure to comply can result in liquidation of the company and/or fines against members of the local board of directors.

2. *IGJ Resolution 8/2003*

Effective May 2004, real estate transactions in Buenos Aires undertaken by foreign companies not having a branch or permanent representative office in Argentina must be registered with the Real Estate Registry.

3. *IGJ Resolution 12/2003*

Beginning in January 2004, foreign companies that are registered abroad but maintain corporate domicile or conduct their primary business in Argentina may be deemed domestic companies. As a result, the foreign company must comply with the domestic requirements of Argentine law.

4. *Suspension of Certain Provisions of the Argentine Company Act, Decree 1293/2003*

On July 16, 2003, Decree 1269/2003 suspended the application of section 94, subsection 5, and section 206 of the Argentine Company Act until December 10, 2003. This term has now been extended through December 10, 2004. Section 94, subsection 5 of the Argentine Company Act provides for the dissolution of the company upon the loss of corporate capital; section 206 provides that reduction of corporate capital must be reported when losses exceed reserve funds plus 50 percent of total capital.

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

1. *Regulation of the Renegotiation Process of Public Utilities Agreements, Decree 311/03*

The Executive Branch established the Unit for Renegotiation and Analysis of Public Utility Agreements under the Ministry of Economy and the Ministry of Federal Planning to renegotiate public utilities agreements affected by the provisions of Public Emergency Law 25,561.

2. *Regulation of the Renegotiation Process of Public Utilities Agreements, Law 25,790*

Law 25,790 amended Law 25,561 to extend the renegotiation process until December 31, 2004. Government decisions are not limited by the regulatory framework of the public utilities agreements, and interim grants can be established during the negotiation process.

3. *Key Components: Bilateral Investment Treaties and Unit for Assistance with Arbitral Defense, Decree 965/03*

The Executive Branch established the Unit for Assistance with Arbitral Defense to promulgate guidelines for the negotiations arising from a Bilateral Investment Treaty that take place prior to arbitral proceedings.

C. ECONOMIC EMERGENCY RULES

1. *Supreme Court Declares Unconstitutional the Conversion into Pesos of Bank Deposits Originally Made in Dollars*

On March 5, 2003, the Supreme Court, in *Provincia de San Luis v. Federal Government*, declared unconstitutional the compulsory conversion into pesos of bank deposits originally

made in dollars. In its decision, the Supreme Court reiterated the principle that constitutional rights may be regulated, but regulations must meet the standard of reasonableness.

The court held that the transformation of dollar accounts into pesos after a devaluation, in amounts significantly less than the equivalent in dollars originally deposited does not constitute a reasonable regulation of property rights. The Supreme Court held that the conversion violated the property rights protected by the Constitution and that the government exceeded the powers delegated by Congress under Law 25,561. The court ruled that the bank deposits had to be returned in dollars or in the amount of pesos necessary to purchase the relevant amount of dollars in the market. Additionally, the Court decided that Banco de la Nación Argentina was obligated to repay the deposits. However, the Court stressed that its decision should not be automatically extended to other cases.

2. Law 25,820

This law extended the Public Emergency declared by Law 25,561 until December 31, 2004. Further, section 11 of Law 25,561 was modified to state that even debtors who defaulted on their obligations *prior* to the enactment of Law 25,561 were included in pesification.

D. MERGER CONTROL

1. *Antitrust Commission Clears Bayer's Acquisition of Aventis Crop Science Subject to Substantial Divestiture*

On February 27, 2003, Argentina's Antitrust Commission (CNDC) recommended one of the largest asset divestitures in the history of Argentina's merger control regime in the following markets: cotton defoliants, agricultural insecticides, seed treatment, and household insecticides.

2. AIR COMET — AEROLÍNEAS ARGENTINAS FINED FOR LATE FILING OF ECONOMIC CONCENTRATION

On October 2, 2001, Air Comet, S.A. (Air Comet) signed a share purchase agreement with Sociedad Estatal de Participaciones Industriales de España (SEPI) to buy SEPI's shares in Interinvest, S.A., a company which owns 91.93 percent of the capital stock of Aerolíneas Argentinas, S.A. (Aerolíneas) and 90 percent of the capital stock of Austral Líneas Aéreas—Cielos del Sur, S.A. (Austral). Even though this transaction required mandatory disclosure under antitrust laws, the parties did not file notice with the CNDC. Because of this failure to file, the CNDC recommended a fine of AR\$471,000 (approximately US\$147,600).

E. ENTERTAINMENT LAW: LIMITATION OF FOREIGN OWNERSHIP, LAW 25,750

Foreign ownership of a company's capital stock and voting rights is restricted to a maximum of thirty percent in an array of industries, such as content production, internet services, publishing activities, and other media related activities. However, the law does not affect current foreign ownership arrangements. Foreign shareholders may seek relief by falling back on Bilateral Investment Treaties. The law is unlikely to affect U.S. investments in companies engaged in cultural activities since they will receive protection under the Bilateral Investment Treaties between the two countries. However, investment treaties with other countries may not receive the same treatment.

F. LABOR LAW: DOUBLE SEVERANCE PAYMENT, AMENDMENT TO PUBLIC EMERGENCY LAW 25,561, AND LABOR AND EMPLOYMENT TERMINATION, DECREE 1351/2003

The Public Emergency Law provided for a 180-day double severance pay period in the event of termination without cause. Decree 1351/2003 extends the law's duration until March 31, 2004. Although the law does not prohibit dismissals, an employer must pay a wrongfully dismissed worker (i.e., one terminated without just cause) twice the severance payments the worker would ordinarily be entitled to collect during a 180-day period.

II. Bolivia*

A. HISTORICAL BACKGROUND

1. *Tax Law*

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

a. Law No. 2493 (Published in the Official Gazette No. 2509)

Laws No. 2493, No. 2509 modify Law No. 843 of the Bolivian Tax Regime. This amendment exempts equity interest transfers in limited liability partnerships and corporations from the standard 3 percent transaction tax in an effort to increase commercial activity.

b. Law No. 2492, No. 2508 (Published in the Official Gazette No. 2508)

The government enacted this law to impose a tax amnesty program for unpaid taxes from 1998 through July 2003 in an attempt to increase revenues to balance the debt.

2. *Administrative Law No. 2341 (Published in the Official Gazette No. 2390)*

This law aims to facilitate accountability and responsiveness among administrative entities by incorporating the concept of "negative administrative silence." As a result, if an administrative agency does not issue a specific administrative order in response to a petition during the prescribed statutory period, the petition will be deemed rejected and the applicant may seek other administrative remedies. In the past, the state had to assert the litigation defense of failure to exhaust administrative remedies.

3. *Labor Law: Supreme Decree No. 26877 (Official Gazette No. 2450)*

Foreign workers no longer have to obtain a Labor Credential in order to work in Bolivia. Foreign workers now must register their employment contract with the Labor Ministry, or, in the absence of an employment agreement, submit a notarized letter describing their work and tax registration with the National Revenue Office. In addition, all employers must detail the citizenship of their employees in the monthly payrolls in order to create a database of foreign workers in Bolivia.

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4. *Banking Law: Law No 2297 (Official Gazette No. 2368)*

Amendments have been introduced to the 1993 Banking Law to increase the powers of the Superintendence with respect to liquidations, mergers and restructurings.

5. *Regulatory and Corporate Law: Supreme Decree No. 27203 (Published in the Official Gazette No. 2529)*

Decree No. 27203 created the the Superintendency of companies. The Superintendency is charged with regulating, controlling and supervising all natural and juridical persons carrying out commercial activities under the Commercial Code and within the System of Financial Regulation (SIREFI) framework. Such matters include: corporate governance, defense of competition, restructurings, and liquidation.

Regulation of voluntary restructurings was instituted in response to companies' demands to introduce flexibility into debt restructuring, particularly within the banking system. Flexibility is a need that became increasingly necessary after the economic crisis.

III. Brazil*

A. THE NEW CIVIL CODE

On January 11, 2003, Brazil enacted a new civil code (the Code), replacing the 1916 Civil Code. Notable changes to the prior code include: (1) minor status ends at eighteen instead of twenty-one; (2) a new property system has been established between spouses; (3) relatives, spouses or companions may claim economic support from one another; and (4) the freedom to enter into contracts is subject to principles of probity and good faith.

The new code also contains significant changes to the Companies Law. Under the new code, limited companies, one of the most frequently used corporate vehicles in Brazil, will now be strictly regulated. The new rules include the requirements that: (1) all resolutions must be made in a shareholders' meeting; (2) a minimum quorum must approve certain resolutions; and (3) the shareholders must hold an annual meeting to approve the officers' accounts and profit allocation.

B. TELECOMMUNICATIONS LAW

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

1. *SFTS Concession Contracts*

The new Switched Fixed Telephony Service (SFTS) Concession Contracts, to be executed in 2006, are now finalized.

2. *SFTS Tariff Adjustment*

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

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3. 1.9 GHz Band Use

The Brazilian Telecommunications Agency (ANATEL) decided, through an administrative process, to maintain the 1.8 GHz band for Personal Mobile Service (SMP), leaving the 1.9 GHz band to provide other services.

4. Regulation on Administrative Sanctions

Through Resolution 344/03, ANATEL approved regulations concerning the application of administrative sanctions. The regulations seek to minimize subjectivity in applying sanctions for violations of laws and regulations in proceedings at the agency.

5. The Agency's Presiding Officers

In 2003, Pedro Jaime Ziller de Araújo was appointed to ANATEL's Board of Directors. Luiz Guilherme Schymura de Oliveira, the Agency's former President, resigned.

6. Digital Communication Service

A new telecommunications service was established in Brazil with the intent of implementing broadband access in schools, universities, and libraries, using resources collected through the Fund for Universalization of Telecommunications Services (FUST). FUST has accumulated approximately R\$3.26 billion to date. The Regulations, General Grant Plan, and General Universalization Goals Plan for new telecommunications public services are already under consideration.

C. ENERGY LAW: NEW ELECTRIC SECTOR PROFILE, PROVISIONAL ACTS 144, 145

Two provisional acts are pending approval. Provisional Act No. 144 establishes the rules for electric power commercialization. Provisional Act No. 145 authorizes the creation of an Energy Research Company, *Empresa de Pesquisa Energética* (EPE), which is charged with estimating the demand for electric power in Brazil. EPE is expected to undertake activities previously abandoned by other entities, including assessing the Brazilian hydrographic basins. It should be noted, however, that these provisions may change due to recent constitutional challenges.

The National Electric Energy Agency (ANEEL) remains responsible for holding energy auctions, but auctions will now be based on the number of megawatts and projects determined by EPE. This provision was criticized by some analysts, who accused the model of being too centralized and of weakening ANEEL and the National Electric System Operator.

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

The MAE has been replaced with the Electric Power Chamber of Commerce (CCEE), which will put together the pool for medium and long-term contracts, but will not regulate short-term pricing for energy. Obtaining environmental permits is a prerequisite for the bidding of hydroelectric companies and transmission lines. Bidding for new hydroelectric projects will be granted to public or private companies based on energy blocks, not on specific projects.

Distributors will now be subject to more comprehensive regulations and are unable to engage in unrelated activities, such as optical fiber cabling and power generation, unless pursued through separate corporate entities.

D. TAX REFORM: CONSTITUTIONAL AMENDMENT 42

This amendment resulted in a number of changes to the tax system, including: (1) the sharing of tax information between tax administrators and the federal, state, and municipal governments; (2) tax incentives for micro- and small-sized companies; (3) the possibility instituting a single collection system for the collection of all taxes whether federal, state, or municipal; (4) *anterioridade* (the principle under which no tax need be paid during the year it was enacted) combined with the *anterioridade* of ninety days from the publication of the law that increases or creates taxes; (5) reduction of the Excise Tax (IPI) on the acquisition of capital goods; (6) a new progressive change of the Rural Land Tax (ITR) to discourage unproductive property; (7) the possibility of collecting the ITR by municipalities; (8) immunity from the Value Added Tax on Sales and Services (ICMS) on export operations of goods and services; (9) exemption from ICMS for certain telecommunication operations using free radio broadcasting; (10) minimum and progressive rates for the Automotive Ownership Tax (IPVA); (11) the transfer of 25 percent of the Economic Domain Intervention Contribution (CIDE) to the states and federal district; (12) extension of the Temporary Contribution on Financial Transfers (CPMF) to December 31, 2007, maintaining the rate of .38 percent; and (13) extension of the term of the Manaus Duty-Free Zone for ten years.

E. SOCIAL SECURITY REFORM:

Constitutional Amendment (EC) No. 41 introduced several changes to the Constitution. The most relevant changes include: (1) the social security system applicable to public servants now receives contributions from the public entity, inactive servants, and pensioners; (2) the worker's contributions to the system will be used to determine pension amounts, rather than the worker's compensation on his or her retirement date; (3) a set ceiling for death benefits; (4) the Federal Supreme Court Justices' subsidies will no longer be mandatory or determined pursuant to a bill of law jointly proposed by Congress, the President, and the Supreme Court Justices, but will be determined by the National Congress, and signed and promulgated by the President; and (5) low income workers now have access to social security benefits via a minimum wage.

IV. Chile*

A number of significant legislative developments occurred in 2003. The following summary highlights the most important changes.

A. UNITED STATES-CHILE FREE TRADE AGREEMENT

The free trade agreement (FTA) was signed on June 6, 2003, and has been ratified by both countries. The treaty improves the commercial position of Chilean products and provides the following:

1. *Trade Liberalization*

All tariffs and quotas expire at the end of the transition period. Tariffs will decline to zero after twelve years.

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2. *Trade in Goods*

The United States will eliminate customs duties on Chilean imports within four years and has agreed to prohibit the creation of future obstacles to free trade.

3. *Impact of the FTA on U.S. Asset Management and Investment Companies, Especially in Relation to the Chilean Private Pension System*

U.S. asset-management firms will be allowed to freely compete with Chilean firms to administer Chile's voluntary and mandatory pension funds.

4. *U.S. Public Purchases*

Chilean companies may now bid to supply the U.S. government with products and services, provided that the contracts are worth at least US\$50,000.

B. LIMITED LIABILITY INDIVIDUAL COMPANIES: LAW 19,857

Law 19,857 authorizes the establishment of Limited Liability Individual Companies (LLIC). The main aspects of the law include: (1) authorization for all capable persons to form an Limited Liability Individual Company; (2) regulation of the formation and modification of Limited Liability Individual Companies using the rules applicable to other corporate entities; (3) establishment of when the corporate veil may be pierced, when the company's officers act outside the scope of employment, and when a contract shall be treated as a sham in fraudulent bankruptcy cases; (4) provision for other corporate entities to become an LLIC when a single shareholder holds 100 percent of the company and for LLCs to be transformed into other types of entities; and (5) subjection of LLCs to the same legal and tax rules applicable to commercial limited liability partnerships.

C. ISSUE OF PUBLIC DEBT AND HEDGE OPERATIONS BY THE PUBLIC SECTOR: LAW 19,908

Law 19,908 provides for the issuance of public debt (issued by private entities) by means other than documentary instruments. As a result of this provision: (1) there is no need to manage, verify, and control certification; (2) the issue of fraud or forgery is decreased; and (3) investors can receive on-line information about their securities.

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

D. COURT OF DEFENSE OF FREE COMPETITION: LAW NO. 19,911

Law 19,911 amends Decree Law No. 211 (the Antitrust Law) as follows:

- (1) The current Resolatory Commission is replaced by a newly created Court of Defense of Free Competition subject to the appellate jurisdiction of the Supreme Court.
- (2) Members of the Court will be remunerated and appointed to the court through public competition.
- (3) The Antitrust Prosecutor and Public Administration will be completely separate. Members of the court may not serve as public officials and may only be removed for cause.

The purpose of the law and examples of anticompetitive behavior are more clearly defined; thus, Court decisions will be more accurate, and criminal sentences are eliminated and

replaced with stiffer fines and joint liability for executives involved in anticompetitive actions.

V. Colombia*

Legislative changes followed the new presidential mandate, which began August 7, 2002. The government lacked sufficient funds for its obligations and has adopted measures designed to restore the confidence of foreign investors.

A. AMENDMENTS TO FOREIGN EXCHANGE LAW

1. *Amendments to General Regulation of Foreign Capital Investments in Colombia and Colombian Capital Investments Abroad, Decree 1844*

The recent amendments to foreign exchange laws offer a flexible mechanism to foreign investors to acquire shares in a business, and manage and transfer of shares in unregistered companies through trusts. The Decree allows all branches of foreign companies to register available capital kept in an account with a parent company in the corresponding year as direct foreign investment in the form of supplemental capital. This registration was formerly available only to branches in the oil and mining sector. The law also simplifies the proceeding for registration of foreign investments.

2. *Amendments to Exchange Regulations*

The Central Bank will now allow foreign companies to transfer different currencies to their branch offices in Colombia for payment of services and as intermediaries in the exchange market to obtain financing in foreign currencies from foreign agents.

3. *Amendments to Exchange Regulation, Instruction DCIN 83 of the Central Bank*

This amendment establishes new rules for registration of exchange operations, including registration of foreign investments and foreign indebtedness operations.

B. TAX LAW

1. *Amendments to the Tax Code on Transfer Pricing, Law 788*

Law 788 institutes a comprehensive transfer pricing regime between affiliated entities and expressly incorporates the Organization for Economic Cooperation and Development's (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as a tool for interpreting the tax law. The law also regulates payments made to entities located in "tax havens" (as defined by the OECD and Colombia). First, such payments must meet transfer pricing regulations. Second, payments that constitute taxable income under Colombian law are subject to an income and remittance tax withholding in an aggregate amount equivalent to 39.55 percent. Third, payments that are not subject to withholding tax, like foreign indebtedness operations, are only deductible to the payor if they correspond to credits registered before the Central Bank prior to December 27, 2002, or if the transaction has met all transfer pricing criteria.

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2. *Decision C-690*

The Constitutional Court declared on September 29, 2003 that the reference made by Law 788/02 to “tax havens” was unconstitutional. The Court stated that reference to the OECD treaty is unconstitutional.

3. *Law 863*

Law 863 provides that the national government will determine which jurisdictions will be deemed tax havens. The law also provides for a withholding tax of 35 percent on income tax and capital gains, and a 7 percent remittance on payments or transfers that constitute taxable income to a resident of a tax haven. There will be a tax on estates with a net worth greater than three billion pesos (US\$1,050,000), which will be applied at a rate of 0.3 percent. There will be a 10 percent net taxable income surcharge from 2004 through 2007. The outcome of these changes is that, as of December 31, 2003, the applicable income tax rate in Colombia is 38.5 percent.

4. *Decree 1242*

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

C. LABOR LAW

1. *General Pension System*

Independent contractors, individuals receiving income not derived from an employment agreement, must join and contribute to the General Pension System. The minimum amount of weeks that must be contributed to the system was increased from 1,000 weeks to 1,300 weeks as of 2015. The minimum eligibility age will be increased to fifty-seven for women and sixty-two for men as of 2014.

2. *Amendments to Labor Law*

Labor law amendments extended the ordinary day shift from 6:00 A.M. to 10:00 P.M., but the eight-hour work day and the forty-eight-hour work week are maintained as standard working hours. The cost of hours worked in excess of such maximums will be paid with a 25 percent increase for work during a day shift and 75 percent for work during a night shift.

D. CORPORATE LAW: JOINT CONTROL, No. 6271

The State Council confirmed the possibility of joint control by several companies or persons over one or more companies. The issue of joint control has been protractedly debated as it must be distinguished from “*afectio societatis*” (joint cooperation directed towards the achievement of its purpose).

E. CIVIL LAW: STATUTE OF LIMITATIONS, LAW 791

Law 791 reduced all twenty-year statutes of limitations in the Civil Code to ten years. The new law supplemented article 2513 of the Civil Code making statutes of limitation on property title acquisition and foreclosure susceptible to being presented as both a claim and as a defense. Law 791 also reduced the statute of limitations for adverse possession from ten to three years for movable property and five years for real property.

F. FINANCIAL LAW AMENDMENTS

Foreign financial and reinsurance companies are now able to establish a branch office in Colombia with the authorization of the Superintendency of Banks.

VI. Costa Rica*

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

A. COSTA RICAN CONSTITUTION

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

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

Costa Rica and other Central American countries conducted nine rounds of negotiations with the United States to sign an FTA. The negotiations sought agreement on agriculture, market access, intellectual property, government procurement, investment, labor, environmental issues, and dispute resolution procedures. The United States demanded Costa Rica abolish monopolies in the telecommunications and insurance industries and repeal the Law for the Protection of Representatives of Foreign Firms. After the negotiations, Costa Rica

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was the only Central American country not to sign the agreement. Instead, Costa Rica and the United States agreed to extend the negotiations for two more rounds in order to discuss the opening of the telecommunications and insurance markets, the establishment of safeguards regarding palm oil, and negotiations for products such as textiles, pork, chickens, sugar, onions, and potatoes. Negotiations between Costa Rica and the United States concluded on January 25, 2004, with ratification expected within the year.

C. POLITICAL PARTIES LOSE BANKING SECRECY

On May 8, 2003, the Constitutional Chamber of the Supreme Court of Costa Rica held in *Judgment 3483-2003* that political parties will no longer enjoy absolute secrecy of their banking information. Under the ruling, any person may request and receive information regarding the bank accounts of political parties or companies that manage resources linked to political groups and associations. The Chamber held that this information is of public interest and should be accessible to all. The ruling was made after a minority congressman requested that bank accounts be open to the public due to suspicions of illegal contributions made to the two main political parties.

D. OIL CONCESSIONS — HARKEN COSTA RICA HOLDINGS, LLC

The subject of oil exploration resurfaced in Costa Rica in 2003 after Harken Costa Rica Holdings, LLC, filed but then withdrew a request for international arbitration to settle a contract seeking to recover US\$57 billion in claimed investment and damages, a figure that represents about four times Costa Rica's annual gross domestic product. The Costa Rican Government insisted that because the Environment Ministry's Technical Secretariat (SETENA) had rejected the company's Environmental Impact Study, which was required for the project to move forward, the contract was no longer valid. Based on a decision by the Constitutional Chamber holding that SETENA does not have the authority to deal with oil exploration, the company filed a constitutional claim against the government's action that to date is still pending.

VII. Dominican Republic*

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

A. FINANCIAL

On January 7, 2003, seeking to stabilize the exchange rate by obtaining fresh hard currency with indirect foreign investments, President Mejia enacted Law 01-03, authorizing

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the Dominican government to issue a US\$600 million sovereign bond placement in the international capital markets. These bonds were promptly placed and traded in international capital markets at an interest rate of 9.59 percent.

B. JUDICIAL

In September 2003, the Dominican Supreme Court ruled unconstitutional the executive decrees that established a 5 percent tax on exports of goods and services and a 2 percent tax on imported goods. The court held that the taxes violated the principles of separation of powers of state established by articles 37, 99, and 110 of the Dominican Constitution.

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

C. BANKING

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

D. LEGAL

On April 15, 2003, Congress passed a bill that creates independent public prosecutors. Law 78-03 provides the Dominican General Attorney's Office (*Procuraduría General de la República*) with its own budget, disciplinary rules, and a school to train its personnel. Notably, the law prevents prosecutors from being removed from their positions without just cause.

E. INTELLECTUAL PROPERTY

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

F. FAMILY LAW

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

VIII. Ecuador*

Ecuador had quite a year in 2003. General elections placed a center-left coalition into the executive branch, which steadily veered to the right. Economically, the year was stable. At year's end, annual inflation was at 6 percent. Ecuador improved its import-export balance and lowered its deficit by 80 percent, despite four years of a U.S.-dollarized economy, a decrease in the volume of petroleum exports, and increased import expenditures.

A. ENVIRONMENT

Ecuador unified and harmonized its environmental legislation Decree No. 3516 in many areas, including: forestry, biodiversity, coastal resources, environmental quality, and the special regime regarding the Galapagos Archipelago. In particular, the legislation established various dispositions to optimize industrial activities and improve environmental controls over those activities. Despite these efforts, the text contains form and content errors that have made application of the law ineffective.

B. INTELLECTUAL PROPERTY

For the last several years, Ecuador was the only country in South America considered by the United States Trade Representative (USTR) to have complied with and enforced the WTO intellectual property agreement (TRIPs). In 2003, the USTR put Ecuador back on the Special 301 List, which designates countries that should be watched for non-compliance, because Ecuador was required by Andean Community law and Andean Tribunal and Secretariat Decisions, on pain of economic sanctions, to reject a "second-use" pharmaceutical patent.¹ Ecuador is now included in the list of Patent Cooperation Treaty countries in which inventions can be registered.

C. FAMILY LAW

Significant changes were made to the law, including an important change in terminology. Reference is no longer made to minors, but rather to adolescents and juveniles, who now formally receive more protection from the court system than they did from an administrative agency.

D. NON-GOVERNMENTAL ORGANIZATIONS (NGO)

In 2003 the Secretary General of Administration took over regulation of local branches of foreign NGOs. Notification and governmental/NGO agreement requirements also changed and should be reviewed with local counsel.

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1. See http://www.ustr.gov/Document_Library/Reports_Publications/2003/2003_Special_301_Report/Section_Index.html (last visited Sept. 9, 2004).

E. ELECTRONIC COMMERCE

In 2003, closely following the New Electronic Commerce Law of 2002, regulations were passed dealing with employee privacy, electronic contract, electronic signatures, the use of electronic communications as evidence in civil and criminal cases, and other similar issues.

F. TRADE

Ecuador became a member of the Group of 12 Latin American states opposing further liberalization of the WTO Agreements unless the United States and European nations agreed to stop subsidizing and dumping their agricultural products. Soon after, however, Ecuador began negotiations on a bilateral free trade agreement with the United States. These talks broadened to include the Andean Community and negotiations on the Free Trade Area of the Americas (FTAA).

G. WAR CRIMES AND CRIMES AGAINST HUMANITY

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

H. TAXATION

While 2003 saw many fiscal modifications in the tax arena, the most salient changes were: (1) new rules on the drawback rights of exporters for customs duties paid for goods used in the production of exported products;² (2) new income tax tables for individuals and undivided estates³ plus new withholding percentages; (3) IRS rulings on national taxes on financial markets,⁴ the transportation⁵ and electric sectors,⁶ and free trade zones activities;⁷ and (4) new rules on invoicing formalities.⁸

IX. El Salvador*

In 2003, the *Farabundo Martí para Liberación Nacional* (FMLN), a left-wing political party, became the largest party in parliament. Free trade negotiations between the United States and all Central American nations took center stage.

A. CIVIL LAW

In order to separate, define and limit the property or possession in *de facto* joint-tenancy situations, a special temporary law to limit the property and possession rights of undivided

2. Decree 653, published in Official Register 144, Aug. 11, 2003.

3. Res. NAC-0069, published in Official Register 22, Feb. 14, 2003.

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

5. Res. No. NAC-0179, published in Official Registry 49, Mar. 27, 2003.

6. Decree 348, published in Official Registry 78, May 9, 2003.

7. L. No. NAC-CON-0960, July 24, 2003.

8. L. No. NAC-CON-0405, Apr. 15, 2003.

*Prepared by Lilian Zelaya and Roberta Gallardo, F.A. Arias & Muñoz, San Salvador, El Salvador (<http://www.ariaslaw.com>).

real estate was enacted. This law addresses numerous existing joint tenancy cases, both registered and unregistered.

B. COMMERCIAL LAW

Amendments to the Regulating Law for the Deposit, Transportation and Distribution of Petroleum Products were published in the Official Gazette on January 24, 2003. The Hydrocarbons and Mines Bureau is now entrusted with all proceedings regarding this law.

In 2000, the Commerce Code was significantly amended, including an increase in the minimum capital of mercantile corporations to 100,000 Salvadoran colones (US\$11,428.57). Companies were granted a three-year term to adjust their capital to the amendment. As of April 2, 2003, mercantile corporations were granted an additional year to adjust their capital in accordance with the law.

An executive branch regulation has established the minimum requirements for labeling cigarettes sold in El Salvador. Primary and secondary packages must clearly identify, in Spanish, the name of the product, its quantity, origin or source, and contain the following information: registered trademark, precautionary legend, nicotine and tar net content, identification of the date of manufacture or expiration, and the name or corporate name of the manufacturer and importer.

C. LABOR LAW

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

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

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

D. LITIGATION

On September 2, 2003, Executive Decree No. 65 was published in the *Official Gazette*. The decree implements the Mediation, Settlement and Arbitration Law enacted in August 2002, establishing the Ministry of the Interior's powers to supervise, control, and oversee Arbitration Centers, as well as the requirements regarding arbitrators.

E. ADMINISTRATIVE LAW

1. *Legislative Decree No. 1216*

The law regulates the generation, transmission, distribution, and commercialization of electric energy. The amendment defines the penalty regimes, access to information, the quality of services, and the relation of the authority with the system's operator and market's

administrator. The amendment also grants the Superintendency with powers to prevent anti-competitive behavior and to temporarily impose market offerings that reflect a competitive market.

2. *Legislative Decrees: Amendments to Transportation Security*

The law regulates land transport, transit, and traffic security. The amendment allows for interest of 4 percent for fines unpaid thirty days after issuance with the possibility to appeal the final resolution issued by the Transit Procedures Unit via e-mail. The amendment also provides for the appointment of the Transport Vice Ministry and the Police Department's Land Transit Unit, as entities empowered to follow the legal procedures and remedies.

3. *Drug Activity Regulating Law*

This law creates the National Anti-Drug Commission as the entity in charge of planning, coordinating, supervising, and evaluating government plans, strategies, and policies directed at preventing and combating the traffic, sale, and use of illegal drugs. This law also creates new criminal causes of action regarding drug-related activities.

X. Guatemala*

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

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

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

A. ENERGY

On October 28, 2003, Congress approved the Incentives for the Development of Renewable Energy Projects Law. The law aims to promote the development of renewable energy projects and to establish the tax, economic and administrative incentives to promote the same. The incentives granted include exemptions from: import duties and VAT; income tax payment for a ten year term; and Commercial and Agricultural Companies Tax payment for the same ten year term.

B. INTELLECTUAL PROPERTY: RATIFICATION INSTRUMENT TO THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) COPYRIGHT TREATY (WCT); ADHESION INSTRUMENT TO THE WIPO PHONOGRAMS AND PERFORMANCES TREATY (WPPT)

On May 23, 2002, the President executed the Instrument of Ratification to the WCT, and on June 10, 2002 executed the Instrument of Adhesion to the WPPT. These two

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treaties, which were approved by Congress through Decree No. 13-2002, adapt copyright law to the digital age. The treaties set out the legal framework to safeguard cyberspace interests and open new horizons for composers, artists, writers, and others to use the Internet with confidence to create, distribute, and control the use of their works in the digital environment.

C. CONSUMER PROTECTION

On February 18, 2003, Congress enacted the Consumer and User Protection Law. This law was enacted to promote, divulge, and defend the rights of customers and users and to establish fines, sanctions, and proceedings applicable to consumer protection complaints.

D. INVESTMENT

Congress, in Decree No. 42-2003, approved the Agreement between the Republic of Guatemala and the Kingdom of Spain for the reciprocal promotion and protection of investments. On November 15, 2003, the President executed the Instrument of Ratification of the Agreement between the Republic of Guatemala and the Republic of Cuba for the Reciprocal Promotion and Protection of Investments, which was approved by Congress through Decree No. 63-2000.

On July 24, 2002, the President executed the Instrument of Ratification for the ICSID Convention, approved by Congress through Decree No. 50-96. Guatemala made the following declarations. First, Guatemala does not accept the jurisdiction of ICSID in conflicts resulting from armed movements or civil disturbances. Second, Guatemala shall request the use of an administrative proceeding prior to consenting to an ICSID arbitration. Third, the Judicial Branch shall be competent to enforce the arbitration award.

E. EMPLOYMENT

On September 17, 2003, Presidential Decree No. 528-2003 issued the Rules for the Authorization of Employment of Foreign Employees in the Private Sector.

F. AIR TRANSPORTATION

On May 29, 2001, the President executed the Instrument of Ratification of the Agreement between the Republic of Panama and the Republic of Guatemala with respect to the air services between both territories, which was approved by Congress through Decree No. 12-2001.

XI. Honduras*

In 2002 and 2003, the Honduran government attempted to simplify antiquated regulations and procedures that deterred badly-needed foreign investment and reduced the requirements necessary to do business in Honduras. The goal of these actions was to prepare

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for the country's accession to CAFTA. Some of the most important changes introduced to Honduran laws are as follows.

A. COMMERCIAL LAW: AMENDMENTS TO THE COMMERCE CODE, DECREE NO. 255-2002,
LAW OF ADMINISTRATIVE SIMPLIFICATION

The procedure for the incorporation of companies has been simplified by reducing the minimum number of stockholders required from five to two, eliminating the requirement that there be a judicial review of the articles of incorporation prior to a company's registration in the Mercantile Registry, and recognizing electronic media as a tool for storage of accounting records.

B. IMMIGRATION LAW: DECREE NO. 255-2002

The policy for granting residency permits to foreigners who temporarily relocate to hold management positions in companies operating in Honduras has been liberalized. Authorizations are no longer subject to validation by the government. Instead, the award of permits is now a purely ministerial matter.

C. ADMINISTRATIVE LAW: DECREE NO. 255-2002

Afirmativa Ficta (Implied Affirmation) was enacted due to delays in responses from the administrative board. Governmental authorities have a period of forty days to respond to petitions presented to them, after which time the law deems the petitions granted.

D. TELECOMMUNICATIONS: DECREE NO. 159-2003, TELEFONÍA PARA TODOS

This decree ends the monopoly in the telecommunications sector (HONDUTEL). The national telecommunications company may now enter into contracts with private operators. The decree opens a once-closed market to the private sector under free market conditions.

XII. Nicaragua*

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

A. INVESTMENT LAW: LAW FOR THE PROMOTION OF FOREIGN INVESTMENT AND ITS
REGULATION

Foreign investors now have the same rights as national investors. The rights granted to registered foreign investors include the right to buy and sell foreign currency, the ability

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to freely convert foreign currency, and the right to freely distribute profits and repatriate capital to shareholders and investors abroad. Foreign investment is subject to the general tax regime and dispute resolution, and may be subject to local or international arbitration as provided for pursuant to international treaties.

B. TRADEMARK LAW

Nicaragua has a relatively new Trademark Law that came into force in 2001, which replaced the Central American Trademark Convention. Nicaragua passed Law No. 380 to comply with new international regulations and has signed and ratified the Paris Convention for the Protection Industrial Property. In addition, Nicaragua established new regulations concerning Commercial Names and Trademarks.

C. TAX LAW

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

Income tax for individuals is calculated through a progressive tax rate as income increases up to a maximum rate of 30 percent. Corporations and other associations pay a flat tax rate of 30 percent. Taxable income is based on Nicaraguan source income. The consumption tax is applicable to non-essential items and is based on the producer's sales price. For imports, the consumption tax will be levied on the CIF price and any other tariffs on the imported product excluding the value added tax and is levied only once.

The VAT, at 15 percent, is applicable to sales of goods and services. However, the law has exempted the sales of several primary goods such as school materials, medicines, and essential food staples.

D. CRIMINAL LAW: NEW CRIMINAL PROCEDURE CODE

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

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

The new Criminal Procedure Code provides for a preliminary investigation stage carried out by the Public Ministry and the National Police—a period to determine whether a trial is needed, during which the defense can also be involved. The preliminary investigation is followed by an oral stage, which includes the right to trial by jury, followed by an appeal or annulment phase. For cases that reach a trial, a twelve member citizen's jury may be convened if the defendant wishes.

XIII. Panama*

Significant legal developments occurred in 2003, primarily in the telecommunications, aviation, taxation, international trade, financial crimes, petroleum, and anti-terrorism sectors.

A. TELECOMMUNICATIONS

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

B. AVIATION

Through Laws 21, 22, and 23 of January 29, 2003, the Republic of Panama adopted new regulations for civil aviation in its territory. Law 21 entered into force on April 1, 2003, and introduced important changes, including: (1) the creation of the Civil Aeronautic Registry; (2) modification of the limits of civil liability on international and national flights; (3) provisions regarding aircraft insurance; (4) provisions on violations and penalties incurred by the owner, operator, and charterer of the aircraft; and (5) the addition of four articles to the Criminal Code.

Law 22 created the Civil Aeronautics Authority as an autonomous entity of the State empowered to manage and regulate air transport services. The law sets forth the regulatory framework to enable the government, through state-owned companies, to provide the services to the public.

C. TAX REFORM

The Tax Code was reformed by Law 61 and regulated by Executive Decrees Nos. 18, 19, and 20. Some of the most relevant changes produced by this law include: (1) new annual tax rules for Panama corporations and foundations; (2) introduction of services tax; (3) banking and exchange houses licenses; (4) personal income tax exemptions; and (5) investment tax exemptions.

D. PETROLEUM FREE ZONES

Cabinet Decree 36 created the legal framework necessary to establish a petroleum policy and the market liberalization of all products derived from petroleum in Panama. The law superseded all prior legislation in the field, though it embraced many previous provisions.

E. FINANCIAL CRIMES

In Law 45, Panama updated its criminal legislation by incorporating title XII, chapter VII of the Second Book of the Criminal Code, named "Financial Crimes." This chapter

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established that persons and/or corporations that perform or participate in these crimes will be subject to a prison term of three to ten years. Punishable conduct includes: possession, unlawful use or illegal transfer of financial resources; falsification of accounting and financial information; fraudulent approval of credits; illegal exercise of financial activities; disclosure of confidential information; and illegal purchase and sale of securities.

F. TERRORISM

Law 50 created a new chapter VI in the Criminal Code titled "Terrorism," and implemented prison penalties of up to fifteen to twenty years for such crimes.

G. INTERNATIONAL TRADE

The Treaty for Free Trade in Central America, signed in El Salvador, was ratified by the Republic of Panama by Law 24. The Bilateral Free Trade Agreement between Panama and the Republic of China was approved by Law No. 62.

XIV. Peru*

During 2003, the most significant legislative act was the amendment of the tax regime. National budgetary concerns prompted the internal revenue authorities to develop regulations to reduce tax evasion, increase taxes paid, and increase the tax base. Last year also saw an end to complaints regarding the validity of the Constitution of 1993 and the affirmation of the concession contract for fixed telephone service.

A. AMENDMENTS TO TAX LEGISLATION

1. *Increase of the General Sales Tax Law 28033*

By means of Act 28033, Congress increased the VAT from 16 percent to 17 percent. Combined with the 2 percent Municipal Promotion Tax, the effective sales tax is now 19 percent. The increase, which was only temporary to address the unexpected deficit, was effective from August 1, 2003, through December 31, 2004.

2. *Delegation of legislative powers to the Executive Branch to legislate in tax matters, Law 28079*

Law 28079 delegates tax legislation matters to the executive branch for a ninety-day period. The law seeks to improve tax collection and increase revenues. The powers granted to the executive branch include the power to: (1) modify the income tax, sales tax, and other tax regimes; (2) eliminate exemptions; (3) expand the tax payer base; and (4) modify the tax regime applicable to state entities.

3. *Measures aiming to reduce tax evasion Legislative Decree No. 939*

Pursuant to the delegation by Congress on December 5, 2003, the executive branch introduced a series of measures to reduce levels of tax evasion, including requiring certain money operations, to be determined by the Ministry of Economy, be consummated through

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financial institutions. They also created a .15 percent Financial Transaction Tax (ITF), which affects all operations carried out through financial institutions. ITF is applicable from March 1, 2004 through December 31, 2006.

B. MODIFICATIONS TO LIMITS ON PENSION FUND INVESTMENTS: INCREASE OF LIMITS FOR INVESTMENTS BY PERUVIAN PENSION FUNDS IN FOREIGN INSTRUMENTS

The Central Bank has increased the limit imposed on local pension funds with respect to investments in foreign securities from 7.5 percent to 9 percent. Pursuant to Law 27988, the maximum percentage that the Central Bank can allow for investments in foreign securities is 20 percent.

C. DECENTRALIZATION: NEW LEGAL FRAMEWORK FOR THE PROMOTION OF INVESTMENTS IN PERUVIAN REGIONS, LAW 28059

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

D. RESOLUTIONS OF THE CONSTITUTIONAL COURT

1. Resolution that denied an action that questioned the validity of the Constitution of 1993

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

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

2.. Resolution that denied a constitutional claim raised against the contract executed between Telefónica del Perú and the Peruvian State with respect to the fixed telephone system concession

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

The Constitutional Court declared the action groundless and held that it was only authorized to resolve matters related to the constitutionality of laws, not the alleged unconstitutionality of private contracts. The Court also held that its decisions were not retroactive; thus, no decision could affect a contract executed in 1994.

Finally, the Court stated that considering that prior to the contract with *Telefónica*, the telephone sector was controlled by one state-owned company; therefore, the *Telefónica* con-

tract should not be considered the creation of a monopoly, but a temporary step towards complete liberalization of the market.

E. OTHER IMPORTANT PUBLICATIONS: FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION

On August 28, 2003, the "Truth and Reconciliation Commission" presented its final Report to President Alejandro Toledo's Congress, the Judiciary, and the Attorney General's Office. This commission was appointed in 2001 to investigate the effects of terrorism on Peruvian citizens, especially on the poorest sectors of the population. The Report details the extent of the human rights violations of *Sendero Luminoso* and MRTA, as well as the conduct of the armed forces in their fight against such movements.

XV. Venezuela*

The principal legal developments in Venezuela in 2003 were largely in the political realm, reflecting the continuing political turmoil since Hugo Chavez assumed power in January 1999. By virtue of the sharply divided unicameral National Assembly, the legislative output in 2003 was slight. Likewise, an evenly divided supreme court (Supreme Tribunal of Justice or STJ) issued few judicial decisions of significance. The main legal focus during 2003 was the continuing struggle for control of the few remaining quasi-independent public institutions and the implementation of the recall referenda involving President Chavez and one-third of the members of the National Assembly.

A. ELECTORAL MATTERS

The national strike that began in December 2002, with the intention of provoking the government to resign did not end until February 2003, causing the year to begin on a tumultuous note. On January 22, the STJ declared that the term of the members of the National Electoral Council (NEC), an equal branch of government that is to supervise all elections, had expired and that new members had to be elected by the National Assembly before any new elections could take place. In defiance, the end of the strike was highlighted by a one-day petition drive for a non-binding referendum asking the president to resign, which was signed by over four million citizens (3.2 million valid signatures, about a third of the electorate). After six months of fruitless efforts by the Assembly to select the new members of the NEC, the STJ declared an "institutional vacuum" and held that it would designate the new NEC members itself on a provisional basis, which it then proceeded to do on August 25, 2003. Despite a constitutional provision that the NEC is to be composed of individuals who are not affiliated with any political movement, three of the five principals are identified with the government and the other two with the opposition.

In August 2003, the opposition filed the 3.2 million signatures that had been collected in February, but on September 16, 2003, the new NEC held that the signatures were invalid for purposes of the recall referendum against President Chavez. Then on September 26,

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2003, the NEC issued regulations for the recall referenda, viewed as complex, bureaucratic, and open to manipulation. At the same time, the NEC determined that the official sector could collect signatures for the recall of certain opposition National Assembly members, and that the opposition could do the same for President Chavez and the Assembly members supporting the government during two successive weekends at the end of November 2003.

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

B. CONSTITUTIONAL LAW

As a result of the STJ's decisions, the right to a recall referendum for all popularly elected officials is now enshrined in Venezuelan law. The right to the recall referendum was set forth in article 72 of the Constitution of 1999. This article was a new development for Venezuelan law. The 1961 Constitution did not provide for recall referendums. Article 72 states that all elected public officials are recallable. In order to recall an official, one-half of the official's term has to have elapsed and at least 20 percent of the registered electorate in a particular circuit must sign a petition to hold a recall referendum. For a recall to be valid, the constitution requires that 25 percent of the registered electorate participate in the recall and an equal or larger number of voters than the number that elected the public official vote in favor of the recall. Notwithstanding, the STJ later added the criterion that the number of votes to recall must also be greater than the number of votes to confirm. When these requirements have been met, the elected official's mandate is revoked.

C. COMMERCIAL TRANSACTIONS: EXCHANGE CONTROL DECREE

Pursuant to this decree, the Ministry of Finance, together with the Venezuelan Central Bank, issued the Exchange Agreement 1, which sets forth measures to control the stability of the currency through exchange control and a fixed exchange rate. The Exchange Agreement states that the controls were instituted because of the decrease in the supply of currency generated by oil and from an extraordinary demand for currency negatively affecting the level of the country's international reserves. The agreement further states as its *raison d'être* the substantial reduction of the national oil industry's exports, which negatively affected the nation's accounts and the adaptation of measures to control the stability of the currency and to pay off the country's international debt. Five other Exchange Agreements of a similar nature to Agreement 1 were published in 2003. Exchange Agreement No. 2 fixed the official exchange rate at US\$1 to 1,600 Venezuelan bolivars (Bs). The Exchange Control Decree was presented as a temporary measure; however, after one year, multiple changes and new additions to the Agreements have been published.

The coordination, administration, control, and establishment of the requirements, procedures, and restrictions necessary for the execution of the Exchange Agreements are the responsibility of the Commission for the Administration of Foreign Currency (CADIVI), created by Presidential Decree 2. During 2003, CADIVI enacted many provisions regulating currency exchange. Theoretically, the decisions of CADIVI regarding the exchange of currency are discretionary. In practice, the exchange of currency is limited by its availability and priority level of the request. With regard to foreign currency creditors, requests for foreign currency to pay private external debt were accepted until November 28, 2003. If a debtor failed to register its debt before that date, the debtor will not have access to the exchange market to pay his creditor; however, the registry of the debt does not guarantee the availability of currency and many unfilled requests are still pending before CADIVI.

D. LABOR LAW

1. *The Organic Law on Labor Procedures (OLLP)*

The OLLP's innovations, most of which became effective in 2003, include new Labor Courts and substantial changes to judicial procedures. As a result of the OLLP, employers should conduct a labor audit to verify the status of the documents, procedures, and evidence that verifies their compliance with legal obligations.

2. *The Last Reform of the Minimum Wage*

The new standard set the general minimum wage at 247,104.00 Bs.

E. LAW AGAINST CORRUPTION

The Law Against Corruption is a reform of the Organic Law for the Safeguard of Public Patrimony. Like its predecessor, the law aims to safeguard the public patrimony and guarantee adequate and transparent management of public resources. The law includes specific procedures to impose sanctions on public officials and designates a specific governmental body that handles corruption matters. Although directed toward state and public administration, the law includes sanctions on private persons or entities that utilize corrupt practices in dealing with public officials and the public administration.

F. INTERNATIONAL AGREEMENTS

1. *Frame Agreement CAN—MERCOSUR*

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

2. *The Inter-American Convention against Terrorism became Effective on July 10, 2003*

The purpose of this Convention is the prevention, punishment, and elimination of terrorism. As a result, Member States committed themselves to adopt necessary measures and strengthen their cooperation in accordance with the terms of the agreement.

G. OTHER LEGAL EVENTS: STJ DECLARES UNCONSTITUTIONAL THE DISARMAMENT OF THE CARACAS METROPOLITAN POLICE BY THE MILITARY

Even though the government eventually complied with the decision of the STJ by withdrawing the military, the police department's principal armaments have not been returned.