

Latin America*

I. Argentina

A. FOREIGN INVESTMENT

Argentina has joined the Multilateral Investment Guaranty Agency (MIGA). Unlike the United States' Overseas Private Investment Corporation, MIGA protects investments originating from any member country. Among the risks insured by MIGA are exchange control restrictions, expropriations, breach of contract by the government, and revolutions.

The Central Bank of Argentina, through Communication C 5537, clarified that there are at present no restrictions on the transfer of profits or the repatriation of investments in foreign currency to registered or nonregistered foreign investors.

B. PRIVATIZATION

The privatization of ENTEL, the state-owned telephone company, was completed on November 8, 1990. The awardee for the northern zone, a consortium headed by Manufacturers Hanover and Bell Atlantic, had difficulties obtaining the required public debt instruments and was replaced by a consortium comprised of the Italian company Stet, France Cable et Radio, Pérez Companc, and Morgan Bank. The awardee for the southern zone is a consortium comprised of Telefonica de España, Techint, and Citibank. Each of the two consortia now owns 60 percent of the shares of a newly formed corporation. The total purchase price consisted of U.S. \$214 million in cash and U.S. \$4.952 billion in public debt instruments.

The privatization of Aerolineas Argentinas was completed on November 11, 1990. The new owner is an Argentine corporation held principally by the Spanish airline Iberia and the local group Pescarmona (Austral Airlines). The employees of the newly formed corporation indirectly own 10 percent of the shares, and the Argentine Government maintains a 5 percent veto participation. The consideration paid for the 85 percent share participation consisted of U.S. \$260 million (with one-half of that amount to be paid over a ten-year period), public debt instruments representing U.S. \$2.010 billion, and a commitment to make long-range investments totalling U.S. \$683 million.

Further privatizations are expected to take place in 1991. The principal targeted companies include: Segba, the state-owned electricity company; Gas del

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Estado, the state-owned gas company; and Obras Sanitarias, the state-owned water company. Other potential privatization targets include: YPF, the state-owned oil company; ELMA, the national maritime line; and Somisa, Argentina's largest steel producer. The new rounds of privatizations are expected to take place in June or September of 1991.

C. TAX REFORM

A recent tax amendment increased the value added tax (VAT) rate from 13 percent to 15.6 percent. In addition, the applicable scope of VAT was extended to cover most services (for example, advertising, tourism, warehousing, and audit, legal, and computer services).

II. Bolivia

On September 18, 1990, the Bolivian Senate enacted a new Foreign Investment Law. The law grants foreign investments treatment equal to that granted to national investments. The law permits foreign investors to repatriate profits, dividends, and capital. The law explicitly prohibits the Bolivian Government from endorsing or guaranteeing domestic or foreign credit agreements between private parties.

III. Brazil

A. IMPORTS

On October 30, 1990, the Secretariat of Science and Technology (SCT) issued Ordinance No. 20. Under this ordinance Brazilian consumers will be able to purchase imported computer products, with the exception of forty-seven products that will remain under market reserve until January 1992. The ordinance removes facsimile machines, electronic scales, optic fibers, ABS car brakes, and electronic scanners from the forty-seven-item controlled product list. Applications for import licenses may be filed directly with the Trade Department (DECEX) and no longer need to be reviewed by the SCT's Informatic Department (DEPIN) prior to approval. The Treasury should shortly publish new import duties to be applied to computer products. They are expected to be in the range from 55 percent to 65 percent.

B. SOFTWARE

The executive branch is expected to submit a bill for a new software law to Congress to replace the current Software Law (Law No. 7,646 of December 18, 1987). Under the proposed bill, foreign computer product suppliers will no longer be required to appoint a local representative in order to sell their products in Brazil. The bill also will establish a copyright protection period of twenty-five

years for computer products, and will liberalize the computer product market by eliminating two requirements of the prior Software Law.

First, the software enrollment requirement, which requires software products developed or marketed in Brazil to be registered with DEPIN, will be eliminated. In order to balance the lack of governmental control that will result from the elimination of this requirement, the Brazilian Central Bank is expected to establish a procedure to control the remittance abroad of royalties related to software products, and the executive intends to create mechanisms to protect the consumers of such products. Second, the new software bill will eliminate the similarity test that results in the denial of enrollment to any foreign software product if a national company is determined to have enrolled a similar software product.

If Congress approves the new software bill, Brazilian software will face foreign competition before 1992. The hardware market reserve is scheduled to be abolished in 1992.

IV. Chile

A. LABOR

The Chilean legislature amended the Labor Code by Law No. 19.010, published in the *Diario Oficial* of November 29, 1990. This law effects several changes to the existing code, including the elimination of certain causes for just termination by an employer. The maximum duration of individual labor contracts was also shortened.

V. Colombia

A. EXCHANGE CONTROLS

On January 16, 1991, Colombia enacted Law 9 to Regulate the Exchange and Investment of Foreign Currency. Law 9 liberalizes exchange controls, the gold market, and futures and options trading. The possession and negotiation of foreign currency by Colombian residents is permitted. Banks and exchange houses are designated as authorized foreign currency intermediaries. Any Colombian resident with an interest in assets located abroad is permitted to retain such interest if it existed prior to September 1, 1990. Prior governmental approval is no longer required for foreign direct investment in nonrestricted sectors.

B. FINANCIAL INSTITUTIONS

On December 19, 1990, Colombia enacted Law 45 on Financial and Insurance Institutions. Law 45 permits certain financial institutions to purchase equity interests in financial intermediaries and other service companies. Brokerage firms must adopt a corporate form. Credit establishments may provide new services without prior governmental authorization. New minimum capital rules are es-

tablished for new financial institutions. Law 45 also expands the liberalization of direct foreign investment in financial entities, begun by Law 74 of 1989.

C. IMPORTS

Colombia's General Directorate of Customs, under the authority of articles 7 and 14 of Decree 2011 of 1973, is requiring certain importers to adjust the values of goods that are declared to customs officials for the purpose of determining import duties. The adjustment is based on the assumption that importers affiliated with foreign suppliers do not set prices on a free-market, competitive basis. An importer that is a subsidiary, branch, or exclusive distributor of a foreign person will be asked to meet with customs officials to agree on a percentage increase to be applied to the value of all future imports. If an importer fails to cooperate with customs officials in determining this percentage increase, the value of the imported goods may be set unilaterally by the General Directorate of Customs.

D. LABOR

On December 28, 1990, Colombia enacted Law 50, amending Colombia's labor legislation. Employers have greater flexibility in giving fringe benefits to employees. It is expected that this flexibility will reduce the costs of employers, which in turn is expected to promote an increase in hiring and salaries. The law expands the number of patterns of contractual arrangements that may be used when hiring new personnel. It also facilitates the procedure for negotiation between employers and unions.

E. TAX

On December 28, 1990, Colombia enacted Law 49 on Taxes and Customs. Law 49 establishes incentives for the repatriation of capital held abroad, and for investment in the stock market. The law progressively reduces the dividend tax for foreign investors, and the remittance tax on the profits of local branches of foreign corporations, both from 20 percent in 1990 to 12 percent in 1996. Dividends that result from new foreign investments made after 1990 will immediately be entitled to the reduced 12 percent rate. The law also establishes a new 12 percent sales tax and grants broad powers to the government to amend existing customs procedures.

VI. Ecuador

A. ACCOUNTING—CORPORATIONS

By Resolution published in the *Registro Oficial* of August 29, 1990, the Superintendency of Corporations of Ecuador issued a new regulation setting

forth the general accounting principles that Ecuadoran corporations must follow in their accounting methods and procedures. The regulation seeks to achieve more control over and uniformity in the accounting practices used by Ecuadoran corporations.

B. CONSUMER PROTECTION

In the *Registro Oficial* of September 12, 1990, Ecuador published its Consumer Protection Law, designed to protect consumers and end-users by defending their legitimate interests and guaranteeing their safety and health. The Consumer Protection Law: (1) sets forth the fundamental rights of consumers; (2) establishes control mechanisms to ensure that the advertising of products and services strictly adheres to and is consistent with their nature, characteristics, conditions, uses, and purposes; (3) establishes price, quality, and quantity control mechanisms to protect the interests of consumers; (4) promotes consumer information and the establishment of consumer associations; and (5) establishes fines to be imposed upon violators of the law.

C. CORPORATIONS

By Resolution published in the *Registro Oficial* of September 11, 1990, the Superintendency of Corporations of Ecuador issued a new regulation governing the imposition of fines for violation of the Corporate Law of Ecuador. The regulation subjects Ecuadoran corporations, their directors, and legal representatives to fines for failure to comply with certain provisions of the Corporate Law or information requests by the Superintendency. The regulation also establishes sanctioning procedures.

D. EXCHANGE CONTROLS

The Monetary Board of Ecuador, pursuant to Regulation No. 593-90, of September 18, 1990, established the time periods within which exporters must sell to the Central Bank of Ecuador all foreign currency obtained from their export activities. Depending on the type of products and on the payment terms, the periods vary from fifteen to one-hundred-fifty days from the date of shipment of the products.

E. FOREIGN CORPORATIONS—BRANCHES

Pursuant to Resolution No. 90.1.1.3.011, of September 12, 1990, the Superintendency of Corporations of Ecuador issued a new regulation governing the cancellation of business permits granted to Ecuadoran branches of foreign corporations and the procedure for their dissolution and liquidation. The regulation establishes the procedure that must be followed to cancel the operating permit of a branch if it falls within any of the provisions of article 49 of the Corporate Law

of Ecuador (for example, the parent company ceases business; the branch does not have a duly appointed representative in Ecuador; the branch has losses exceeding 50 percent of its assigned capital; the branch fulfills the purpose for which it was created or said purpose is rendered impossible; or the branch fails to comply with any applicable law or regulation).

F. GOVERNMENT PROCUREMENT

In the *Registro Oficial* of August 16, 1990, Ecuador published a new Law on Government Procurement Contracts. This law regulates the bidding procedure for individuals or entities wishing to contract with the Government of Ecuador or any of its public entities. The law also creates the National Registry of Contractors, in which any contractor that breaches any of its obligations to the Ecuadoran Administration will be registered.

VII. Mexico

A. TELMEX

On December 9, 1990, the Mexican Government announced the winning bid for the controlling interest of Telefonos de Mexico, S.A. de C.V. (Telmex). A joint venture group composed of Mexican investors, France Telecom, and Southwestern Bell offered the winning bid. This group offered U.S. \$1.73 billion for 51 percent of the voting stock of Telmex.

B. FOREIGN INVESTMENT

On September 14, 1990, the Foreign Investment Commission (FIC) published in the *Official Gazette* the fourth resolution regulating the Foreign Investment Regulations. Provided that certain conditions are met, under this resolution foreign investors who have agreed to investment commitments with the FIC prior to the effective date of the Regulations (May 16, 1989) are relieved of these commitments.

C. PATENTS—TRADEMARKS/TRANSFER OF TECHNOLOGY

In December 1990 the executive branch submitted to the Mexican Congress a draft bill of the new Law for the Promotion and Protection of Industrial Property. This bill would revamp the prior legislation related to patents, trademarks, and the protection of industrial property. The bill establishes criminal penalties, including imprisonment, for the unauthorized disclosure of trade secrets and confidential know-how, and lengthens the protection period for patents and trademarks. The bill as currently drafted would also abrogate the Transfer of Technology Law and its Regulations. Congress is expected to enact this bill into law in the spring of 1991.

VIII. Peru

A. ANTITRUST

On November 5, 1990, the legislature of Peru published Supreme Decree (SD) 296-90-EF. This Decree establishes regulations designed to promote free competition in the manufacture and sale of goods and services. SD 296-90-EF prohibits companies from engaging in the abusive exploitation of a dominant position in the Peruvian market. The Decree defines the abuse of a dominant position to include: (1) pricing strategies that reduce free competition; (2) any limitations on the production of goods or rendering of services that have a negative effect on free competition; (3) certain restrictive conditions imposed on the sale of goods or rendering of services; (4) the fixing of prices or conditions of sale between manufacturers or distributors; and (5) any other acts that eliminate, restrict, or obstruct free competition. The Peruvian Government also established the National Commission for the Protection of Free Competition, which has been granted the power to investigate and rectify any practices that reduce free competition in the Peruvian market.

B. IMPORTS

The 10 percent import tariff surcharge established by SD 257-90-EF of September 21, 1990, has been abrogated.

SD 294-90-EF, published on November 7, 1990, authorizes the importation of used capital assets without any prior governmental authorization. This exception for capital assets does not apply to automobiles and certain other assets whose importation is to be regulated by the Ministry of the Economy.

SD 295-90-EF, published on November 5, 1990, authorizes the temporary admission of raw materials into Peru, without payment of any import tariffs, when these raw materials will be used in the manufacture of products bound for export.

C. LABOR

By SD 70-90-TR, published on November 17, 1990, the Peruvian Government regulated the ability of certain essential public employees to call a strike. Under this Decree public services deemed to be essential must at all times maintain a certain minimum number of employees. The public services specified as essential by the decree include: hospital and health services; cleaning and sanitation services; utility services; and public transportation and communications.

The Peruvian Government, through SD 26-90-TC and SD 27-90-TC, both published on October 1, 1990, has liberalized the ability of shipping companies to contract workers. Under previous law, shipping companies were forced to contract with designated "harbor employees." The liberalization of the employee contracting process is expected to reduce costs for shipping companies.

D. TAX

Peru's Income Tax Law was modified by Legislative Decree 618, published on November 30, 1990. The modifications to the Income Tax Law are effective as of January 1, 1991. Under the new Decree, the corporate income tax rate is reduced to 30 percent from its previous level of 35 percent. The progressive rates for individuals now range from 8 percent to 37 percent, as opposed to the previous range of 8 percent to 45 percent. The dividend withholding tax was reduced to 10 percent from its previous level of 30.8 percent. The tax on royalties remitted abroad was reduced to 28 percent from its previous level of 45 percent. Foreign natural persons not domiciled in Peru are subject to progressive tax rates ranging from 8 percent to 37 percent.

Legislative Decree 619, published on November 30, 1990, established an enterprise net worth tax of 2 percent to be applied on the net worth of enterprises in Peru. Legislative Decree 620, published on November 30, 1990, established a 1 percent personal net worth tax to be applied to an individual's net worth in excess of U.S. \$15,000.

Legislative Decree 622, published on November 30, 1990, reduced the tax on foreign currency brought into Peru as a result of exportation of certain goods to 5 percent of the FOB value of the invoice. A 10 percent rate will be applied to foreign currency generated by certain mining operations in Peru. SD 294-90-EF, published on November 7, 1990, reduced the rate of the consumption tax applied to goods and services used in Peru.

IX. Puerto Rico

A. SALES REPRESENTATIVES

On December 5, 1990, the legislature of Puerto Rico enacted Act 21, which extends to commission sales representatives protection analogous to that afforded to distributors under Puerto Rico's dealer protective legislation. Act 21 purports to apply to any independent party that establishes an exclusive representation or sales agreement with a principal for a defined territory or market in Puerto Rico.

In the event that a principal unilaterally terminates a sales representative without "just cause," as this term is defined in Act 21, it will incur certain statutorily defined termination indemnities. Act 21 defines three categories of termination indemnities. In the event of an "unjust termination" the sales representative will be entitled to recover all expenses incurred and investments made on behalf of the principal, to the extent that they cannot be reasonably used by the sales representative in another activity. The sales representative will also be entitled to compensation for the goodwill it has established in Puerto Rico on behalf of the principal. In determining the value of the goodwill, the courts will consider factors such as the number of years of service of the sales representative, the volume of goods or services represented, the proportion of the Puerto

Rican market that this volume represents, and any other factors that may be useful in determining the value of the goodwill. Finally, the sales representative will be entitled to a termination payment equal to the value of the profits it has obtained over the past five years in representing the principal's goods or services. In the event that the sales representative agreement between the parties has been in effect for less than five years, the sales representative will be entitled to five times its average yearly profit.

Act 21 also gives local courts the power to grant a broad range of temporary injunctive remedies. Local courts have the power to order any temporary injunctive relief deemed necessary for the protection of the interests of the sales representative. This broad injunctive power permits a court to prohibit the principal from entering into a representative agreement with a new sales representative in Puerto Rico.

The substance of Act 21 is considered to be a matter of public policy and, therefore, may not be contractually waived by the parties. Act 21 also explicitly purports to be retroactive in its application.

X. Venezuela

A. BIDDING

The Venezuelan legislature, pursuant to Decree No. 1247 of November 8, 1990, published in *Official Gazette* No. 34,591 of November 9, 1990, enacted a series of special regulations governing the procedures for the selection of contractors by Petroleos de Venezuela, S.A. (PDVSA) and its affiliates. The special regulations exempt most of PDVSA's contractors from the general provisions of Venezuela's Bidding Law. Under the special regulations the majority of PDVSA's contractors will be chosen under a selective bidding process. The new special regulations are expected to grant PDVSA greater freedom in the selection of its contractors.

B. ENVIRONMENT

On November 11, 1990, Venezuela's Chamber of Deputies approved, after substantial modification, a draft of Venezuela's new Criminal Law of the Environment. This draft has been submitted for discussion to the Venezuelan Senate.

C. INDUSTRIAL PROPERTY

Venezuela's Ministry of Development has submitted a draft bill to Congress that would establish a new Industrial Property Law. The bill as drafted would result in the following changes to the current law: (1) the exclusive rights granted by a patent would be extended from ten years to fifteen years; (2) the licensing of certain patents would become obligatory; (3) patent protection would be extended to "utility models"; (4) three new categories of protectable marks (service marks, collective marks, and marks of origin) would be created; (5) the