The Venezuelan Capital Markets Law

As of May 1, 1973 a new Capital Markets Law is in effect in Venezuela.¹ The bill was signed into law on January 31, 1973 in order to encourage the formation of private capital which might then be channeled into productive Venezuelan investments through the Nation's already-existing stock exchanges. Speculation on the new law's future impact has raised hopes that its passage will mean a radical change in the Venezuelan investment market. Some even say a rapid growth in new stock and bond issues could supply the needed financing for a small-scale boom patterned along the lines of what has recently occurred in Brazil.

Yet it is probably safer to say that the passage of the Capital Markets Law at the same time Venezuela takes the necessary steps to enter into the Andean Pact, is more than merely a coincidence. Under Decision 24 of the Cartagena Agreement governing the Andean Pact, as well as under legislation already being proposed in Venezuela to regulate foreign investment, it will be necessary in many cases for a foreign investor to sell a part of its ownership to Venezuela national investors. In most cases this will be between 51 to 80 percent of a company's foreign ownership, and will be sold over a period of up to perhaps 3 to 15 years.² With its new Capital Markets Law, Venezuela now has a means to fulfill its obligations under the Pact.

While it is true that a new capital markets law may have been necessary, in order for Venezuela to abide by the rules after it enters into the Andean Pact, it is also clear that such a law was considered necessary if Venezuela was to

¹The Venezuelan Capital Markets Law can be found in Gaceta Official de la Republica de Venezuela No. 1566 Extraordinario, Jan. 31, 1973.

²Under Decision 24 of the Acuerdo de Cartagena, a company in a member country of the Andean Group, which wishes to participate in the trade benefits of the Pact, must be owned at least 51% by nationals; and if operating in specified areas of the economy, at least 80% of the company must be in the hands of national investors. Recently proposed Venezuelan legislation has contained similar provisions, applicable to all foreign-owned companies, whether they want to participate in the Pact or not.
continue making the great strides in economic development that it has to date. Unlike other developing countries at a similar stage of relative economic development, an adequate financial structure could have brought Venezuela to its present level of development in less time and at less cost.³

Venezuela's problem is not an insufficiency of financial sources, but rather an inadequate use of the sources of capital already available. Both the public and private sectors sometimes have to obtain foreign credit abroad, because of the country's ineffective financial structure. At the same time, existing Venezuelan capital is unable to find the necessary channels within the country so that the available resources may be put to productive means.⁴

The total value of financial instruments in 1969 was almost two times the value of the Venezuelan gross national product. Of this amount of Bs. 73,000,000,000 in financial instruments, more than 55% was represented in mortgages, demand deposits and currency, institutional savings, and securities with fixed income. The remainder consisted of equity securities, unmortgaged loans and consumer commercial credits.⁵ Therefore, it appears that while there has been no lack of sources of Venezuelan capital, the structural composition of the market impedes fluidity and the efficient use of available capital for the country's development.

Moreover, of 3213 new private corporations formed in 1969, only 0.3% had over 50 shareholders. Of these new companies, 94% had six shareholders or less, a majority of them with less than three shareholders. It can be seen furthermore, that little thought was given to small investors in issuing such shares, since more than three-fourths of these shares had a par value of between Bs. 500 and Bs. 1000 each.⁶ That the small investor is unable to acquire such shares becomes more evident when we see that of 1,059,668 savings accounts held at the end of 1968, some 999,550 accounts had an average of only Bs. 542 each.⁷

It becomes increasingly clear, therefore, that the problem faced in Venezuela's financial market have been due more to the need for an adequate legal framework, than to a lack of sufficient funds available for investment. It may be too soon to say whether the new rules will correct the deficiencies, and still more difficult to predict any forthcoming rise in the economy. Nevertheless, if one is now doing business in Venezuela, or plans to do so in the future, the new Venezuelan Capital Markets Law must be taken into consideration.

³"Exposición de Motivos y Proyecto de Ley de Mercado de Capitales," a Report prepared by the Special Government Commission for the study of Capital Markets, at 1-3 (hereinafter referred to as Exposición de Motivos).
⁴Ibid.
⁷Ibid. p. 11.
Scope of the Article

The purpose of this article is to try to familiarize the reader with the new Venezuelan Capital Markets Law, and hopefully show what are its objectives. It is not the writer’s intention to compare, evaluate or comment upon the law, except where it may aid in understanding how the law will function. Since the new law is extensive and covers in one piece of legislation what other countries have done through various laws and agencies, it will not be possible in an article of this type to delve into any particular facet of the law.

It was intended by the Venezuelan Congress that the law was to be supplemented by regulations drafted by the National Securities Commission. As of this writing, these regulations have not been published, and it is expected that many questions left unanswered will be covered in the regulations. Likewise, it should be remembered that the entrance of Venezuela into the Andean Pact was one important reason for the passage of the Capital Markets Law, and how this new law is applied may depend to a large degree upon the Cartagena Agreement, and any implementing legislation which Venezuela may pass in the future.

In a broad manner, the Venezuelan Capital Markets Law does these things:

(i) brings the entire workings of the securities industry almost entirely under the control of a single law and one administrative agency, the National Securities Commission;

(ii) introduces new concepts and entities into Venezuelan commercial law, to allow a more varied financial structure so that both companies and investors in Venezuela need not go abroad, either to secure needed investment capital or to be able to find a dependable investment return;

(iii) provides protection for minority shareholders, accurate financial information for investors, and other market safeguards to instill public confidence in the securities market as a form of investment;

(iv) offers a means to encourage companies to raise capital by making a public offering, preferably through the widely held shares of the Open Capital Corporation;

(v) sanctions violators of the law, including both public and private officials, with either fines or imprisonment.

I. The National Securities Commission

The Presidential Commission appointed to draft the Venezuelan Capital Markets Law recognized not only that the small investor was likely to find it difficult to invest his money in securities or bonds, but also that this investor was skeptical and hesitant about making such an investment when it was available. Therefore, it was recognized that “The functioning of the Capital Markets requires a legal organization that inspires the confidence of the public investor
and promotes a greater acceptance of the securities issued." The cornerstone of such confidence, as well as the organism created to carry out the present law, is the National Securities Commission (Comisión Nacional de Valores).

The National Securities Commission is an arm of the executive branch under the Ministry of Finance (Ministerio de Hacienda), consisting of a President and four Directors appointed by the President of the Republic. The President of the Commission serves a term of four years and the other Directors three years each. The President of the Commission also has the power, under Chapter I of the Law, to appoint an Executive Secretary, as well as any other functionaries required to carry out the Commission's work.

The Law provides, under Article 5, that the members of the Commission possess the necessary experience in financial, economic and commercial matters to carry out their functions. In order that there not be any conflict of interests nor outside political pressures, other qualifications are also required of each member of the Commission, in order to insure its independence and impartiality.

The first article states that the Law regulates any public offering of title securities, except for short-term notes (less than one year), public debt securities and those issued under the Banking Law which are already extensively regulated. Articles 10 (8) and 17 also bring intangible property or assets within the control of the Commission. Intangibles may have been included in order to regulate the chain sale of franchises by which each buyer has the right to sell to third parties, which sale, in turn, benefits all the participating owners along the chain. This recent financial phenomenon in Venezuela has been difficult to control, creating many of the same dangers that have arisen in the United States, when franchises to sell certain products are sold in a multiplying chain-like fashion.

Article 10 sets forth the powers and duties of the new National Securities Commission. Even though these powers are already made broad and varied, the last paragraph of Article 10 provides that they may be extended still further through additional laws or regulations. Among the twenty-two powers and duties listed under Article 10 are the following: 1) the regulation of all public offerings in Venezuela, as well as any offerings made abroad by Venezuelan companies; 2) the issuing of regular reports on the capital markets to keep both the investing public and the National Executive fully informed; 3) the

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*See Exposición de Motivos, op. cit., supra note at 3 at 14.
Recio, Marino y Suarez, Max, The Capital Markets Law: Text and Preliminary Comments." This booklet was published by a Caracas stock brokerage firm in January 1973, and is one of the few helpful sources available in understanding the new law. Recio and Suarez have followed the history of the law carefully, often working closely with the Presidential Commission which drafted the proposed law, and later with the legislators. While admittedly not a profound legal analysis of the law, the comments give a fairly good idea of the problems foreseen and how the draftsmen proposed to solve them, at 55 (hereinafter referred to as Recio and Suarez, Comments).
standardization of financial statements and accounting procedures to be used by companies; and 4) the authorization to publish any prospectus being issued.

All stock exchanges and brokers fall within the Commission's control, as well as any transfer agents, and the associations of investors. The latter, as explained under Article 36, are representatives authorized by the Commission and temporarily designated by a company, to look after the interests of any bondholders until all the bonds issued have been sold, and the bondholders then elected their own representative.

As could be expected, the Commission exercises a tight control over any company making a public offering, whether the company is composed of Venezuelan capital or foreign capital. Articles 114 to 116 cover the authority given to the Commission to regulate the issuing of financial statements, profit and loss statements, balance sheets and other information. In some cases the requirements are clearly set forth, but the Commission is given broad authority to promulgate additional rules as it may deem necessary.

At one time, it was thought the Capital Markets Law might be used to regulate the accounting profession in Venezuela, but this idea was discarded and any such regulation of professions is confined solely to stockbrokers. Nevertheless, balance sheets and other financial statements must be certified by independent public accountants, all of whom come within the penal sanctions provided under Title VIII of the law. It is expected this will aid a great deal in standardizing information available to investors, as well as upgrading the accounting profession.

The chief method of making all information about a company accessible to the public will be through the National Securities Registry, provided for under Articles 14 to 16. All documents, reports, data and other acts required under the law will be registered and accessible to anyone who solicits the information. It should be pointed out, however, that the Commission has the power to designate any of this information as confidential, and a fine of between Bs. 2,000 and Bs. 20,000 will be levied against anyone giving this classified information to the public. While making the unclassified information available to the investing public is a vital necessity, as might be expected, it is presently a major drawback to some foreign companies considering the possibility of including Venezuelan capital in their operations.

II. The Title Securities Under the Control of the National Securities Commission

Title II of the Law begins by stating in Article 17 that "All securities and intangibles which are publicly offered under the terms of this Law are subject to

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10Recio and Suarez, Comments, p. 62.
11Under Article 146(3), independent auditors may be fined between 10,000 and 40,000 bolivares for making false statements concerning the financial situation of a company.
the control of the National Securities Commission." Article 18 then continues to define "securities" as meaning "the shares of companies and other instruments issued in large numbers which possess identical characteristics and grant the same rights within their class."\textsuperscript{12}

And finally, Article 19 states that a "public offer of securities and intangibles" shall mean "any offer made to the public or to sectors or to determined groups by any means of advertising or publicity." Any doubt as to whether a particular issue is a public offering is left up to the Commission. Article 20 requires a company requesting authorization to make a public offering, to submit, among other things, the following information:

a) Name, domicile, corporate capital, names of directors and their remuneration, names of "Comisarios" (the corporate official required by law to be elected by the stockholders in order to protect their interests), and percentage of the capital stock held by the principal shareholders.

b) Copies of Articles of Incorporation and By-laws.

c) Balance sheet, statement of profit and loss, and statements as to movement of surplus and working capital accounts, certified by an independent public accountant.

d) The number and price of the securities to be offered and information as to how the price was arrived at.

e) Disclosure of any discounts and commissions to be paid to the distributors of the securities.

f) The text of the prospectus to be used in the public offering, which must contain information as to the end-use of the funds being raised, financial data for the previous five years, professional experience of the company's directors and information as to the manner in which the securities are to be distributed.

The Commission may require additional information, and is authorized to carry out inspections of company books if it is deemed necessary. Under Article 23, the Commission must rule upon a petition to make a public offering within 30 days, with a possible extension of another 30 days. The offering must then be made within six months from the date of approval and registration of the issue in the National Security Registry, unless this period is extended for another three months by the Commission.

Companies considered to have made a public offering, must notify the National Securities Commission of any subsequent proposals for a merger increase or reduction of capital, change in corporate purpose, or substantial transfer of assets.

\textsuperscript{12}According to the Exposicióen de Motivos, op. cit., at 20, this definition of securities was taken from the Law of Public Offering of Securities in Argentina (No. 17811) which enlarges upon the classic definition, and relies upon the two fundamental characteristics of: (a) an issuance in large numbers, and (b) fungibility within the class of security issued.
A. Bonds

Bonds, both ordinary and convertible, may be issued as provided for under Articles 26 to 35 of the Law. Debenture bonds may be issued up to the amount of the company's paid-in capital, undistributed surplus and unrestricted reserves; but this restriction does not apply to mortgage bonds or Government-guaranteed securities, which are only required to have a collateral asset of at least 150% of the value of the bond issue.13

Any bond issue must be approved by a majority of the stockholders at a meeting at which at least three-fourths of the registered capital is present. Capital may only be reduced in proportion to the bonds redeemed. If there is a reduction of capital because of loss, profits may not be declared until the capital is once again equal to the amount of outstanding bonds.

In the case of convertible bonds, during the conversion period the company may pay dividends only out of net profits acquired since the date of the bond issue. During this same period, moreover, any increase in capital must be by means of a cash payment, for which stocks must be issued at a value at least equal to that of the conversion value of the bonds into shares.

Other actions may require the prior approval of either the National Securities Commission or the bondholders. A bondholder representative is elected to execute decisions and to attend shareholder meetings. This representative must look after the bondholders' interests and call meetings as required under the Law. A bank, finance company, insurance company or an authorized association of investors must act as the bondholder representative, and is responsible to each bondholder for any negligence on its part.

B. Treasury Shares

Another new concept under Venezuelan law is the opportunity for a company to issue treasury shares, provided for under Articles 117 to 122. There are special measures governing the manner in which a company may acquire its own shares. In general, such action must be approved at a shareholder's meeting, the shares acquired out of undistributed profits and fully paid, and the public offering first made to the shareholders of the Company. While held by the company, treasury shares may not participate in the distribution of profits nor exercise any of their other inherent rights.

13The new Venezuelan Capital Markets Law makes important changes in the existing Venezuelan Commercial Code, which is based on the 1873 Napoleonic Code. One of these changes allows unsecured bonds to be issued upon the net worth of a company, rather than the paid-in capital. Another allows the issuance of convertible bonds for the first time under Venezuelan Law. Other changes have also been made in existing Venezuelan legislation, such as the penal and income tax laws.
III. Institutions Subject to the Control of the National Securities Commission

Prior to the passage of the new Venezuelan Capital Markets Law not only the securities, but also companies and the greater part of the securities industry were regulated by the Venezuelan Commercial Code of 1873. The new law not only regulates the stock exchange, brokers, transfer agents, mutual funds and other parts of the securities industry; it also establishes three new corporate forms under which a company may choose to operate.

A. The Authorized Capital Corporations (SACA)

The first, called a “sociedad anonima de capital autorizado” (authorized capital corporation), must have at least Bs. 1,000,000 of subscribed capital. As provided in Articles 48 to 55, SACA corporation shareholders may authorize the directors of the corporation to increase the corporation’s capital stock up to a determined amount. The directors have a period of two years within which they must act. This amount of increase decided upon by the shareholders is designated as authorized capital until subscribed.

Capital may be increased one or more times, as long as the directors do not exceed the pre-determined amount and the newly issued shares are common stock with the same characteristics as the authorization may not exceed paid-in capital at the time of shareholder approval. And during the two-year period the authorization may not be revoked once the issue and placement of shares have been decided upon by the directors.

While similar to the Common Law concept of authorized but unissued shares, it is important to note the Venezuelan law does not use the term “authorized” in the same manner as the U.S. corporate lawyer might. Authorized shares is an entirely new concept under Venezuelan law. Even under the new legislation the authorized capital may not be represented by shares, nor included in the general corporate balance sheet, until the new issue is fully subscribed. Thus authorized capital is never considered as capital stock until subscribed, though it must be listed, along with the amounts of subscribed capital and paid-in capital, on all the announcements and publications of a SACA corporation.

B. The Open Capital Corporation

In looking at the new Capital Markets Law, one soon realizes that the most important of these new corporate entities is the “sociedad anonima inscrita de capital abierto” (open capital corporation) described under Articles 56 to 61. This corporation must have a minimum paid-in capital of Bs. 1,000,000 with a minimum of 50 shareholders for each one million bolivars of capital. Described in Articles 56 to 61, the SAICA corporation is designed to put a large part of the capital stock in the hands of many different investors.

To accomplish this goal, at least 50% of the capital stock must be held by a
determined number of stockholders, arrived at by multiplying each Bs. 1,000,000 of capital by fifty. Of this group of 50% of the shareholders, no group (while undefined in the law, the regulations should make this term clear) may control more than 10% of such capital stock. For these purposes a spouse and relatives are considered as a single shareholder. 14

The Commission, moreover, may require this group of widely-held SAICA stock to be gradually increased from 50% to a maximum of 75%. Thus, it appears that through the "democratization of capital" in the SAICA corporations, Venezuela hopes to be able to encourage the development of new entrepreneurial capitalists and small investors, while at the same time marshalling the needed financing for economic development.

To aid the SAICA corporation in establishing itself within the rules set forth, Article 56 of the Law allows the Commission to grant up to five years to such a corporation in order that it may come within the above-mentioned capital distribution. And the percentage of widely-held ownership may fall to as low as 40% over a three-month period, as long as the average is at least 50% over one year's time.

C. The Mutual Fund and Mutual Fund Management Company

The third innovative legal entity now permitted in Venezuela as a result of the recently passed Capital Markets Law is the "sociedad de capital variable" or "fondo mutuo" (mutual fund) and its partner, the "sociedad administrador de fondos mutuos" (mutual fund management company). The latter is required because a mutual fund under Article 66 is not permitted to invest directly, any earnings derived from the sale of its shares. Both the mutual fund and the management company must have a minimum paid-in capital of Bs. 2,000,000, and Article 67 states that none of the management company's stock may be owned by a mutual fund.

Mutual funds are controlled by the Commission under Articles 62 to 67. The percentage of assets which such funds may invest in the stocks or bonds in any single company is limited. They may not invest in any company not listed on the Venezuelan stock exchange. Likewise, only juridical persons domiciled in Venezuela may invest in a mutual fund. 15

14As pointed out in the Comments of Recio and Suarez, at present there are some 12 companies in Venezuela that could conceivably become SAICA corporations. Of these, Electricidad de Caracas and Banco Venezuela are the largest with the former having the greater number of stockholders at around 5,000. With Bs. 105 million of subscribed capital and some 2,000 stockholders, Banco Venezuela would require 5,250 shareholders, La Electricidad de Caracas would have to raise its number of shareholders to 23,000 in order to qualify as a SAICA corporation, and has already taken steps to increase its number of shareholders. To make the task still more difficult, the law also states, in Article 56(3), that none of these investors may be more closely related than second cousins.
15Article 62 uses the term "personas juridicas" which usually means corporations or companies, when used in Venezuela. Presumably nondomiciled natural persons may invest in a Venezuelan mutual fund.
D. The Security Exchanges and the Transfer Agents

The securities exchanges, brokers and transfer agents are also regulated under the new law. Although each security exchange is constituted as a corporation under Article 78, the management of the exchange is structured under Article 83, so that it will be under the control of the participating brokers.

Individual brokers are regulated not only by their board of directors and the Commission, but also under specific and extensive provisions of the Law. Transfer agents, which must be either credit institutions or insurance companies, are likewise regulated under Article 104 to 110.

IV. Protection of Minority Shareholders and Fiscal Incentives

Since the cornerstone of this new legislation will be the SAICA corporation, the bill strives to both encourage companies to become SAICA corporations, and to entice the investor to buy SAICA shares.

In order to increase public confidence in SAICA shares, Articles 123 to 128 provide for the protection of SAICA minority shareholder rights. Those shareholders who participate in the election of a majority of the Board of Directors (a minimum of 5 members who hold office for one year) of such a SAICA corporation cannot participate in the election of the remaining Board members who represent the minority. Also provided for is the election of two Comisarios, each to be elected separately with each shareholder allowed to vote only once unless the vote is unanimous.

Equally important for the minority shareholder are Articles 126 and 127. Applying to any company making a public offering, whether it be a SAICA corporation or not, the provisions require a company to distribute 50% of its net

While the Law has extensive provisions governing these areas (Articles 78 through 110), it is considered that a detailed discussion of these regulations is not warranted. Nevertheless, in attempting to correct the deficiencies of the 1873 Commercial Code by regulating the securities exchange mechanisms, Venezuela has passed the Capital Markets Law, which might well serve as a model for solving problems which have arisen under such legislation in even the most developed nations.

While the majority of securities exchanges in the developed nations operate as mutual or professional associations, it seems that this type of arrangement was not possible in the opinion of the Venezuelan legislators, due to the confines of the Venezuelan civil-law system.

A comisario is an elected official, provided for under the Venezuelan Commercial Code, who is supposed to look after the shareholders' interest. Up until the present, this official has been of almost no importance, since the board of directors and the shareholders for all practical purposes have been almost always one and the same. It may happen that the Comisario under the new law will serve much the same function, since the minority shareholders are already given some protection. However, the provisions protecting minority shareholders have been weakened to a large degree since the law was first introduced into Congress, and it is more likely in the future that the Comisarios will begin to play a much more active role.
after-tax profits annually, of which at least 25% must be paid in cash. Like-
wise, any profit participation of the directors may not exceed 10% of these
profits, and may only be paid after the required cash dividends to shareholders
have been decreed.

To stimulate trading in SAICA stock, Articles 129 to 132 allow the National
Executive to allow tax exonerations up to a maximum of ten years. These
exonerations may apply to the income tax on a capital gain if all the capital is
reinvested in SAICA stock. They may apply, as well, to the tax on interest or
dividends earned on SAICA securities.

The new legislation also recognizes that companies considering making a
public offering should be encouraged to form SAICA corporations. Therefore,
under Article 130 the National Executive may exonerate up to 15% of the tax
payable on the total net income of a SAICA corporation, such amount to be in
proportion to the number of shareholders in the corporation. The National
Executive may also require a company to be a SAICA corporation if it is
receiving concessions, credits, import licenses, tax exonerations or other
measures used by the Government in applying its development policy.
According to the Law, moreover, a SAICA corporation shall receive tariff
preferences from the National Executive.

To further increase the liquidity of the market, there is a provision under
Article 135 for the creation of a special fund, not to exceed 15% of the total
amount of securities in circulation. This fund will be financed by the Central
Bank in order to provide the needed support for a liquid market.

*Article 26 as it reads is ambiguous. It is unclear whether the 25% is 25% of
the net after-tax profits or 25% of the 50% of the net after-tax profits. It is quite likely this question will be answered
in the regulations to the law, but which way the regulations go may be decisive for a company
planning to make a public offering, and not wishing to be limited as to how much of its profits may
be reinvested.

*While these provisions may raise many questions in the minds of those familiar with the U.S.
securities markets, it should be remembered that, on the whole, the Venezuelan stock investor is
not yet so concerned with such things as capital gains from the sale of stock. Instead, it is considered
that a Venezuelan investing in stock looks more to the dividend paid than to the price-earnings
ratio.

*In a speech before the American Chamber of Commerce of Venezuela on April 24, 1973, the
recently appointed President of the National Securities Commission, Dr. Carlos Emmanuelli
Llamozas, gave particular mention and importance to the special fund to be established under
Article 135 for the support of the capital markets. Noting that such a fund was also used in the
securities markets of Brazil and Japan, Dr. Emmanuelli said that such a fund was essential in a
country like Venezuela, where the investor's confidence in the continued liquidity of the market may
depend on government backing.

Another reason for such a fund, as pointed out in the report of the Permanent Finance
Commission which studied the Capital Markets Law in Congress, is to insure that all other securities
will be able to compete with the bonds of the National Mortgage Bank (Cedulas hipotecarias), which
already have the backing of public funds through the Central Hipotecaria.

While the National Banking Association of Venezuela stated in Issue No. 17 of its Carta Bancaria
(Sept. 1972), that the Central Bank of Venezuela may not legally participate in the buying and
selling of private securities, it seems quite clear from Article 79 of the Central Bank Law that 25% of
V. Appeal of Decisions, Sanctions and Other Provisions

Decisions of the National Securities Commission may be reconsidered within 10 days after notification under Article 12. Administrative sanctions, including fines of Bs. 1,000 to Bs. 40,000 are first appealed to the Finance Ministry. Final appeal in all cases is to the Political-Administrative Chamber of the Supreme Court of Justice.22

Besides the fines levied against violators under Articles 136 to 147, there are also provisions under Articles 148 to 150 for imprisonment of corporate officials, and those connected with the securities exchanges, for periods of from one to six years. Mandatory suspension may also follow for certain unlawful acts committed by brokers.

Present securities exchanges will have two years to come within the Capital Markets Law, and corporations with existing public offerings must conform to the law within one year. The initial chairman of the Commission will be appointed for four years, two directors for three years, and two directors for two years. The Commercial Code of 1873 will continue to apply in all matters not covered under the Law, except where mutual funds are concerned and the General Law on Banks and other Credit Institutions is to be given preference.

Some Final Observations

No doubt the Venezuelan Capital Markets Law derived some of its provisions from similar legislation passed in recent years in Brazil. Both countries have provided for the "open capital company," tax incentives, protection of minority shareholders, mutual funds, etc. Most important, like the Brazilian legislation, the Venezuelan Capital Markets Law is designed to encourage two things, each of which is indispensable in the formation of a viable capital market:

1. to create a primary market for securities by making it advantageous for a company to go public and offer a new issue; and
2. to stimulate a secondary market for investors in which these new issues will be actively traded and their liquidity assured.

Certainly many have been looking at the Brazilian experience with the hope that Venezuela will have a similar "Stock Boom" and the same increased rate of economic growth as has occurred with her southern neighbor. However, one

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Footnotes:
22It appears that in this instance it was considered better to allow an immediate appeal to the highest court of the Republic, since lower-court commercial judges might not have enough expertise to be able to reach decisions concerning the new law.
must remember that the present Brazilian legislation does not consist solely of
the initial Capital Markets Law passed in Brazil in 1965. This was followed by
additional decrees, regulations and resolutions, of which one of the most
important is Decree 157. It is more than likely that Venezuela, like Brazil, will experience certain
growing pains in developing a significant securities market. In criticizing the
new Venezuelan law, one confidential report to management has stated: "The
changes which Congress made at the last moment emasculated at least 90% of
the benefits which would have helped create confidence in the investing public
to participate in purchasing Venezuelan securities." Whether such criticism is
justified or not, it seems clear that the creation of a secondary market will be a
major obstacle.

But it is important to note also that conditions in Venezuela differ from those
in Brazil. Brazil has been faced with a problem of heavy inflation. Government
exchange controls have limited investments by Brazilians abroad. What has
happened in Brazil may not, and perhaps should not, also occur in Venezuela.

The new Venezuelan Capital Markets Law, therefore, should be looked upon
neither as a panacea for present ills nor the harbinger of a future boom. Venezuela's entrance into the Andean Pact may require less incentive for a
company to make a public offering, since Decision 24 of the Cartagena
Agreement already obligates many companies to acquire local capital.

Moreover, when taken together with the tariff reform, export incentive laws,
the reorganization of the merchant marine, and other legislation now being
considered in Venezuela, the new capital markets law could be an important
step in the development of the Venezuelan economy. Much will depend on the
broad powers given to the National Securities Commission and the regulations
to the law which follow.

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23Decree 157 has been responsible for creating a "forced savings" system that serves to direct
funds into the Brazilian securities market. The Brazilian taxpayer is given the choice of 1) either
paying his full income tax; or 2) applying up to 12% (recently raised to 24% for persons with an
income of $2,500 or less) of his income tax to a "157 Fund" in lieu of payment.

These "157 Funds," used chiefly by Brazilian business firms, compete for the investor's money
which they then use to buy stock on the market. The investor's return on his investment, really
another form of a tax credit, depends on what the Fund buys and how well it is managed. But in the
last analysis the investor has nothing to lose and very likely much to gain. Moreover, the individual
is educated as an investor because the propensity to hold stock is increased. And because an investor
risks no loss when he pays part of his income tax to a "157 Fund," there is more incentive to file a
return and pay taxes.