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Colombia

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The following is a review of recent developments in Colombian law regarding taxation, import and export duties and foreign investments.

I. Introduction

Since the beginning of 1985, the attention of foreign observers has been focused on Colombia's foreign debt and on Colombian's efforts to obtain approval from the International Monetary Fund (IMF) for changes in its economic policy. These changes should ensure new credits from public international organizations, such as the World Bank and the International Development Bank (IDB), and from private banks. An IMF mission spent several weeks in Colombia and upon its return to Washington, the mission presented a generally favorable report on the efforts undertaken by the Colombian government. In early April, President Betancur made an official visit to Washington at which time he met with President Ronald Reagan, IMF representatives and World Bank officials. An agreement appears to have been reached with the IMF under which Colombia will pursue the changes in policy already announced under the IMF's supervision. However, neither a document of intention was signed nor a standby obtained from the IMF.

President Betancur signed credits with the IDB and the World Bank for 500 million dollars. For several months, government officials have been in continuous contact with an advisory group of private banks concerning measures which the government envisages in order to improve its external balance and to reform its own finances. On the basis of the understanding reached between the government and the IMF, the private banks agreed during a series of meetings held in New York, to resume their lending operations to Colombia.

President Betancur also signed an agreement with the Overseas Private Investment Corporation (OPIC) which provided that Colombia would accept international arbitration in disputes between Colombian and United States authorities concerning private investment. This is viewed by some jurists as a departure from the

norms of Decision 24 of the Commission of the Cartagena Agreement (Andean Pact).

The government announced a series of measures (some of which have already been adopted) in order to accelerate the pace of daily devaluations of the peso (which is still over-valued with respect to principal world currencies). The purpose of these measures is to stimulate export of goods and to facilitate import of goods deemed essential for the economic recovery of the country. The government also indicated its intention of adopting a series of measures to reduce its expeditures and the budget deficit. These measures include increases in the retail price of petroleum and in certain public services. The special systems of international trade (barter, triangulation and compensation) will be gradually eliminated. All of these measures have already been favorably commented upon by the IMF Mission. Following a decision by the International Trade Commission (ITC) recommending the imposition of countervailing duties against exports of Colombian textiles to the United States, changes were announced in the tax system which grants incentives to exporters.

In this context, the principal preoccupations of observers center around the financial difficulties of the private banking system and on the possible stagnation of the process of dialogue which the government has undertaken with various guerrilla movements.

II. New Foreign Investment in the Banking Sector

In the face of an acute crisis in Colombia's severely undercapitalized banking system, the government has undertaken a major change in its policy on foreign investment in the banking sector. Under Law No. 55 of 1975, no new foreign investment was permitted in banks. In those banks where foreign investors held more than forty-nine percent of capital, a compulsory program of Colombianization was established to lower this percentage.

Decree No. 3159 extends the deadline for the democratization program for bank shareholdings. It also permits exceptions to the program for up to ten years, when the Banking Superintendent establishes that there is a need for an influx of capital which can only be obtained by contravening the limits on individual shareholdings established by the democratization program.

III. Capitalization Program for Banks

When Resolution 30 was adopted by the Monetary Board on April 17, 1985, fifty percent of the resources of the special facility for Central Bank financing and of the capital created by Resolution 60 of 1984 were reserved for those financial institutions ordered to increase their capital. The remaining fifty percent was reserved for institutions which received similar capitalization orders. Generally, eighty percent of the facility is limited to capitalization of banks, fourteen percent is for "corporaciones financieras" and six percent is for commercial finance companies. In all cases, only entities which have notified the Central Bank before April 30, 1985, of their intention of availing themselves of the special facility were eligible to benefit by it. They must also have demonstrated, before October 31, 1985, that all steps necessary to issuing the capitalization certificates financed by the special facility (either in shares or convertible bonds) have been taken. The special facility will terminate on December 31, 1986.

At the end of 1983, the National Planning Department (DNP), the body responsible for overseeing Colombia's foreign investment policy, issued an opinion which effectively reversed the existing interpretation of Law No. 55. The opinion indicated that new foreign investment would be permitted in existing banks provided a forty-nine percent ceiling on foreign participation was maintained.

This reversal of interpretation came at a time when the Colombian banking system was in a grave crisis due in part to insufficient capitalization. Shares of Colombia's few private sector banks are closely held. The government has been attempting to both increase the equity capital of the banks and to broaden their shareholding base by a compulsory program of "democratization."

Invoking the safeguard clause of Decision 24 of the Commission of Cartagena Agreement (Andean Pact), the Banking Superintendent authorized the Bank of Credit and Commerce International (a Luxembourg bank controlled by Arab interests), to acquire almost eighty-five percent of the shares of Banco Mercantil, for a total investment of fifteen million dollars.

Decree No. 3159 of December 28, 1984 has effectively extended the possibility of increased foreign investment to all banks when the DNP accepts that the Decision 24 safeguard clause should be invoked. This would occur where the DNP believes new foreign investment above normally authorized limits are required

in order to save a Colombian bank from imminent bankruptcy.

Under Decree No. 3159, a foreign investor may purchase shares in a Colombian bank beyond the forty-nine percent limit, on the condition that its excess shareholding be sold over time to Colombian interests so that after fifteen years from the initial new investment, foreign participation would be below forty-nine percent.

IV. Colombian Supreme Court Decisions on Incentives for Foreign Investments

In a December 6, 1984, decision, the Supreme Court declared a section of Decree No. 3448 of 1983 unconstitutional. Decree No. 3448's purpose was to provide foreign investors in certain border regions of Colombia an annual reduction of up to fifty percent on their income taxes arising out of industrial or agro-industrial activities in those regions. It was equivalent to the annual amount reinvested in these activities in these regions. This special program was introduced to increase the level of economic activity in certain regions of the country which were particularly affected by massive currency devaluations in Venezuela and Ecuador.

The Court declared Decree No. 3448 unconstitutional because the tax incentives offered to foreign investors were more favorable than the initiatives provided for national investors. The majority held that such preferential treatment violated the principle of equality of treatment between Colombians and foreigners provided for in article 11 of the Constitution of 1886.

The dissenting opinion argued for a less rigid interpretation of article 11. The equality mentioned in article 11 should not be considered a limitation on adopting special measures concerning foreign investments. Rather, it should be understood as a declaration of fundamental equality in matters of civil rights between Colombians and foreigners. It should have no bearing on the power of the authorities to adopt measures of economic policy dealing with or favoring particular sectors. Following the majority's argument to its conclusion denies the possibility of any special measures favoring foreign investment, since Colombians, by definition, cannot be foreign investors in their own country.

This decision of the Supreme Court contributes to the continuing debate on the legal situation of foreign investment and on the meaning of article 11 of the Constitution, and the importance of

the entire Calvo Doctrine.

V. Extension of the Deadline for Resolution 33

The special mechanism for renegotiating the foreign debt undertaken by the private sector, and provided for in Resolution 33 of 1984 of the Monetary Board (Junta Monetaria), had an initial deadline of December 31, 1984, for registration with the Central Bank. This deadline was extended to March 31, 1985, and in the last few months several important companies, such as Cerromatoso and AVIANCA, were able to renegotiate their foreign debt.

Under Resolution 20 of 1985, adopted on March 27th, the Monetary Board extended the deadline to June 30, 1985. However, foreign financial institutions which intended to take advantage of Resolution 33 must have presented information to the Central Bank (Banco de la Republica) detailing their intention to sign renegotiated contracts prior to April 30, 1985. The amount which will be affected by such renegotiation and the details of debt amortization must have been proffered. Presentation of this information is essential in order to take advantage of the extended deadline for registration of renegotiated contracts.

VI. Bank Guarantees Abroad

Resolution 16 of the Monetary Board, adopted on February 27th, gives Colombian financial institutions power to guarantee the operations of their foreign subsidiaries and branches, providing that these guarantees are given in the form of standby credits and that the country in which the subsidiary or branch is operating requires such guarantees.

The credits must be registered with the Exchange Office (Oficina de Cambios). Registration requires the Colombian bank to provide complete information to the Banking Superintendent on the activities of its branch or subsidiary. The Exchange Office must also receive a certificate from the Superintendent to the effect that the bank has fulfilled its obligation of providing such information before it may grant the exchange licenses required to permit the bank to make payments under any registered guarantee. If the Superintendent informs the Exchange Office that the bank has not fulfilled these requirements, the registration of the guarantee will not be renewed.

In Resolution 7 of January 30, 1985, the Monetary Board authorized the Exchange Office to grant licenses for repayment in foreign exchange of amounts paid by a foreign guarantor regarding obligations involving a Colombian resident who utilized a national financial institution. The guarantee must have been previously registered with the Exchange Office. These exchange licenses are also available to pay commissions to the guarantor according to the prevailing scales in international markets.

VII. Changes to Trade Regulations

Several measures have been adopted with a view toward facilitating exports and imports of products which are deemed necessary for the export drive. The government has declared that these measures were adopted entirely on its own initiative, yet these measures were recommended by the IMF. The same view has been expressed respecting changes in the special systems of international trade.

A. *New Regulations for the Plan Vallejo*

The Plan Vallejo is a special import-export system which permits Colombian enterprises to import, free of duty, materials and equipment which are to be used either exclusively or essentially in the production of goods for export. This plan has been in force since the adoption of Decree No. 444 of 1967, which provided for the establishment of a comprehensive system of exchange control. Decree No. 631 of February 28, 1985, and Resolution 0768 of March 18, adopted by the Colombian Institute of Foreign Trade (INCOMEX), are designed to facilitate the use of the plan and to establish clear rules with respect to its operation. For example, importers which do not meet their obligations contracted with INCOMEX in the context of a Plan Vallejo operation will not be eligible to participate in other operations of this kind. Imports made under the plan must be financed by credits in foreign exchange. The financing must conform to rules provided for in Resolutions 83 and 84 of 1984, which were adopted by the Monetary Board in connection with amortization schedules.

An important exception to the above stated principles is provided for in Resolution 13 of the Monetary Board of February 27, 1985. The resolution provides that imports financed by foreign governmental entities or by international financing agencies will

not be covered by Resolution 83 of 1984, and that amortization of any such financing will be made according to the terms and conditions provided for in the contract.

B. *Elimination of CERTS for Special Systems of International Trade*

Decree No. 187 of 1985 provides for the elimination of CERTS (Certificate of Tax Reimbursement) for the special systems of international trade (barter, triangulation and compensation). The government discovered abuses committed by enterprises concerning their obtaining and utilizing CERTS. To eliminate these abuses, the IMF Mission recommended the total abolition of the special systems. The Colombian government has announced its intention of ending these special systems in the near future.

The CERT itself has been the center of a controversy between Colombia and the United States. In a decision rendered in December 1984, the International Trade Commission considered the CERTS in force at the time to be an illegal subsidy as defined in article XVI of GATT. The CERT is a negotiable certificate given to the exporter which permits the holder to reduce his taxes up to a specified percentage of the value of the CERT. The taxes which may thus be reduced are freely determined by the government.

As a result of the ITC's decision, the U. S. Department of Commerce and representatives of the Colombian textile industry signed an agreement, limiting the value of the CERT to nine and a half tax points for fabrics and to six points for clothing. The CERT was equivalent to twenty tax points in the textile sector. The parties also agreed to increase interest rates applicable to export credits accorded by the export promotion fund (PROEXPO). Resolution 06 of March 15, 1985, issued by PROEXPO adjusted these rates up to 22.6%. This is an increase of four points over the previous level. For rediscount operations undertaken by PROEXPO concerning credits to exporters by banks or other Colombian financial institutions, Resolution 07 of March 15 requires a 25.6% interest rate charged on such credits.

C. *Investment by PROEXPO in Exporting Companies*

Decree No. 597 of February 27, 1985, authorizes PROEXPO investment in companies operating in the agro-industrial and fish-

eries sectors exporting a minimum of fifty percent of their production. PROEXPO participation is limited to twenty million Colombian pesos per enterprise and to 100 million Colombian pesos per product. Any company receiving such investment must have at least four partners or shareholders who cannot control more than thirty percent of its capital.

VIII. Suspension of Credit for Colombian Investment Abroad

Resolution 29 of the Monetary Board, adopted on April 17, 1985, indefinitely suspended the funding of financing facilities for Colombian investment abroad which were provided for in Resolution 16 of 1984.

IX. New Tax Reform

Law No. 55 of June 18, 1985, is the most recent of a series of tax reforms proposed by the Betancur government. The purpose of the new measure is to simplify the tax system by abolishing the requirement of presenting an income tax declaration for small-salary earners whose taxes are deducted at source, and by redirecting tax resources which are specifically destined for certain state bodies. For example, PROEXPO will have to set aside in 1985 at least twenty percent of the receipts from a five percent tax on the CIF value of imports in order to finance CERT. This percentage will be increased over the next few years until it reaches a limit of fifty percent in 1989. Other reassignments of revenue will be made in favor of road construction, mining exploration and research, technical and artisan training, and family health programs.

Law No. 55 authorizes the government to increase its internal debt by up to sixty billion pesos and to issue national savings bonds (TAN) up to fifty billion pesos. A special issue of "Bonds for Peace" of up to ten billion pesos is also planned. The government has authorized the issuance of foreign debt bonds up to $500 million. The Central Bank will be allowed to intervene in the market in order to repurchase the bonds if the Monetary Board (Junta Monetaria) believes that the financial and monetary situation of the country justifies such a policy. Both the purchase and sale of these bonds will be exempt from Colombian taxes. The new reform extends the exemption from the special eight percent tax on imports to fertilizers and their basic components, provided that importation is made by a company engaged in the manufacture of

such fertilizers.

The government and the Central Bank are authorized to consolidate the debt which the nation has contracted with the Bank, except for certain treasury credits. The debt thus consolidated will bear interest of one half percent per year. Finally, municipalities will be permitted to tax buildings belonging to public establishments, industrial and commercial enterprises of the State, and the so-called mixed companies, which have both state and private participation.

Further changes to the tax system were made when Decree No. 1512 became effective on June 7. This decree, which regulates aspects of Law No. 50 of 1984, increases the rate of deduction at source for national source dividend and interest income. In addition, it extends the system of deduction at source to all payments of at least 20,000 pesos which might give rise to taxable income in the hands of the recipient. This includes purchases of raw materials, insurance policies, real estate rentals, and subscriptions and membership fees. Among the exceptions to the system are payments made to persons or to entities not considered taxpayers for legal purposes, repayment of debt or capital, and the granting of credits when service of such credits is not considered to constitute Colombian source income. In this category are also the service of public foreign debt and foreign debt contracted by private companies operating in the industrial and agro-industrial sectors as well as in services such as health and tourism.

X. Measures to Stimulate the Capitalization of Financial Sector Institutions

Resolution 52 of August 7, 1985, adopted by the Monetary Board, amended by Resolution 58 of August 29, 1985, aims to strengthen the capital base of banks and financial corporations (corporaciones financieras) on a short-term basis by permitting them to refinance certain receivables from companies in financial difficulties. A long-term solution will be created by the Financial Institutions Guarantee Fund.

Resolution 52 allows banks and financial corporations to obtain credit from the Central Bank on the strength of their own receivables. When the refinancing of these receivables, as part of a formal refinancing plan, a debtor is subscribed to by all financial institutions which have accounts receivable from such debtor, then

a commercial bank must capitalize all or part of such accounts. The Central Bank will then grant a credit equivalent to twenty percent of the amount so capitalized.

If the bank or financial corporation refinances all or part of its receivables from a debtor as part of a refinancing plan, over a period of at least five years, with at least a two years grace period, the Central Bank will provide the commercial bank or financial corporation with a credit ranging from three to seven percent of the amount refinanced. The credit is determined by an inverse proportion to the interest rate provided for in the refinancing agreement between the bank or corporation and its client. The maximum rate of interest permitted in such refinancing is that which is applicable to term deposit certificates less five points. Credits granted by the Central Bank under this heading have the same amortization period as that provided for in the corresponding refinancing, with an upper limit of twelve years. To the extent that the bank or financial corporation receives payments from its clients, it must respond by making payments to the Central Bank. Credits from the Central Bank to the financial institutions for this purpose bear interest at 2.5% per year.

Resolution 58 of August 29 also provides that if a financial institution capitalizes amounts owed to it by subscribing bonds convertible to shares, the Central Bank may accord additional credits to such institution. Such credits range from eight to twelve percent of the value of the bonds subscribed to by the institution according to the deadline for conversion of the bonds to shares. Bonds may bear interest at a rate not exceeding the CDT rate less five points.

Banks and corporations must devote the amount of credits received from the Central Bank to financing their receivables. They must also increase their capital before December 31, 1988, by the amount of credit received from the Central Bank. This obligation only applies to financial institutions in the private sector. The Central Bank will rediscount credits accorded by commercial banks to commercial finance corporations in order to refinance their receivables. Such operations must conform to the same criteria applicable to all refinancing undertaken by the banks and financial corporations.

An important aspect of this plan is its applicability to the refinancing undertaken by Colombian companies of their debts in foreign currency, provided such refinancing takes place through a Colombian commercial bank through the Resolution 33 system.

Under this system, the foreign creditor must have notified the Central Bank before April 30, 1985, of its intention of using the Resolution 33 system. The refinancing scheme must also have been approved by the Central Bank prior to September 30, 1985.

Resolution 52 applies to debts whose value is accrued in Colombian pesos as of June 30, 1985, rates. In order to take advantage of Resolution 52, the National Planning Department (DNP) must have been notified of such an intention prior to October 31, 1985. Refinancing plans drawn up by banks or financial corporations with their clients must be in force before April 30, 1986, and in each case must have received the prior approval of the DNP.

Resolution 53 of August 7, 1985, issued by the Monetary Board, creates a refinancing system for a period of up to three years, for debts undertaken by small enterprises and financial institutions. Resolution 54 of August 7, 1985, (amended by Resolution 59 of August 29, 1985) created a three year extension for the rediscounting of the Central Bank for credits granted by financial institutions to steel, engineering and textile enterprises. This extension is applicable to debts in foreign currency refinanced through a Colombian bank using the Resolution 33 system. The same conditions as provided for in Resolution 52 for this purpose are applicable to operations undertaken by means of Resolution 54. The applicable rediscount margin is eighty percent and the interest rate is twenty-four percent. Refinancing operations provided for in Resolutions 53 and 54 must in each case be justified to the Central Bank.

XI. Foreign Credits to the Private Sector - Payment of Default Interest

Resolution 50 of 1985, adopted on July 31, 1985, by the Monetary Board, grants exchange licenses for the payment of default interest provided for in external loan agreements which have been duly registered by the Exchange Office of the Central Bank. The resolution specifically refers to private sector debts contracted in accordance with Sections 128, 131, and 132 of Decree No. 444 of 1967, regarding credits for investments undertaken or local costs incurred in Colombia for the construction of factories or other projects of economic and social importance or for financing of imports.

Interest payments may not exceed the limit provided for in

Resolution 60 of 1983. The applicable rates may be LIBOR, or the New York prime lending rate plus 2.5 points.

XII. New International Trade System

The $300 million credit signed by President Betancur with the World Bank is designed to finance the importation of raw materials and equipment which Colombia needs to increase and diversify its exports. The IMF has recommended a greater degree of flexibility in import policy. Decree No. 1280 of April 30, 1985, aims at making certain types of imports easier to obtain. Such imports will be paid for from the proceeds of the World Bank credit.

The Import-Export System (SIEX) was created in Decree No. 1280 to permit "fast and sufficient access to raw materials of foreign origin necessary for the production of exportable goods" or of goods which will be used by third parties for the production of exportable goods. Colombian enterprises availing themselves of the system must provide guarantees to the National Institute of Foreign Trade (INCOMEX) ensuring that the raw materials imported will be used for the purposes provided for in the decree.

The operation of SIEX is under the authority of INCOMEX, which determines what products may be imported, the level of Colombian value-added tax required, and which enterprises to authorize to participate in the system. Imports made under the SIEX system do not require prior import licenses. Importers still have to pay the customs duties and other financial charges applicable to such imports. SIEX applies only to raw materials which are not already covered by the Special Import-Export System provided for in Decree No. 444 of 1967.

The Monetary Board (Junta Monetaria), through Resolution 38 of June 5, 1985, authorized payment of imports made under either SIEX or Plan Vallejo through the importer's creation of a "creditors' account" at the Central Bank. This account must be made up of foreign currency deposited with the Central Bank. In accordance with Decree No. 444 of 1967, these deposits must result from earnings due to export profits from resold SIEX or Plan Vallejo imported goods. If an importer does not wish to open such an account, he may pay for imports by obtaining exchange licenses from the Central Bank. The two mechanisms, creditors' accounts and exchange licenses, are mutually exclusive and an importer is not permitted to shift from one system to the other. The only ex-

ception is when the creditors' account is insufficient to pay for imports already made and this insufficiency results from circumstances beyond the reach of the importer. In these cases, an importer may request the exchange licenses necessary to pay for his imports even though he has chosen the system of creditors' accounts. The payments of imports under both these systems must be made in accordance with the conditions and interest patterns determined by the Monetary Board.

The Monetary Board has eased conditions benefiting foreign suppliers. Resolution 37 of June 5, 1985, amends Resolutions 83 and 86 of 1984 by reducing the minimum amortization term for financing the cost of imported equipment or capital goods from three years to two years. Resolution 37 establishes the following new amortization schedule:

First six months	up to 15% of the value of the imported good
First 12 months	50%
First 18 months	75%
First 24 months	100%

In the case of intermediate products, the minimum amortization period is reduced from eighteen to eleven months. Resolution 41 of June 18, 1985, establishes a minimum three month period for payment of sulphur, phosphate, and borate imports.

Resolution 49 of July 31, 1985, provides that the conditions already mentioned apply to imports of goods financed by reciprocal credit or compensation agreements. Colombia has signed reciprocal credit and compensation agreements with some Latin American and communist countries.

XIII. The Continuing Saga of Decree No. 222

Since the adoption of Decree No. 222 over two years ago, the provisions of this statute concerning the selection of governing law in foreign loan agreements have been a source of controversy and problems for bankers and their counsel. Section 239 of Decree No. 222 of 1983 provides that while the performance (ejecución) of an external loan granted to the national government or its agencies is governed by the foreign lender's law and courts, the execution (celebración) of the loan is governed by Colombian law. Colombian courts must also have exclusive jurisdiction over disputes arising out of the due execution of the loan.

In 1983, this division of jurisdiction resulted in the refusal of some banks to participate in a syndicated loan to Colombia. In 1984, there was resistance by the German and Spanish private banking consortia in financing the Medellin metro project even though Decree No. 222 did not apply. Colombia is now anxiously seeking a new $1 billion credit for coal and oil development to be extended to its private banking sector, and the terms of Section 239 have once again proved to be a considerable obstacle.

Attempting to assuage banks' fears without altering the terms of Decree No. 222, the government tacked on to the new tax reform legislation (Law No. 55 of June 18, 1985) a provision (Section 59) allowing the Colombian government to request the Council of State (the highest administrative law tribunal) to rule on the legality of foreign loans entered into by the national government, territorial governments or the so-called "decentralized bodies" such as utilities or government-controlled enterprises. Currently, the Council of State rules on the legality of other types of contracts governed by Decree No. 222. Under the new provision, the Council rules on the validity of the authorizations to sign the loan, the faculties of the signatories on behalf of the borrower and the lender, the legality of the various provisions of the agreement, the fiscal consequences of the contract and all matters relating to its execution.

A decision by the Council of State declaring a loan to have been valid is not subject to further proceedings and is considered permanently binding. Yet, since the law is unclear, it is possible that if a loan is found invalid, that some safeguards would exist. The contract would either have to be amended to conform to the Council's requirements or be approved by Congress. Although a foreign party might attempt to take the matter to their courts, Section 239 of Decree No. 222 restricts jurisdiction to the Colombian courts; and Colombian courts are unlikely to overturn a Council of State decision.

The new legal provision does not specify when the Council of State is either required to or allowed to rule on the matters submitted to it by the government. Government officials have assured bankers that they intend to submit new credits to the Council of State after the loan agreement is signed but before it is drawn down.

XIV. The Supreme Court Will Rule on International Treaties

The Colombian Supreme Court has broken with its traditional policy of not ruling on the constitutionality of international treaties which have been duly ratified by Colombia and approved by Congress. In a June 6, 1985, decision regarding the alleged unconstitutionality of the extradition treaty between Colombia and the United States, the Court stated that if proceedings were taken challenging the constitutionality of international treaties, it would rule on them, provided the proceedings were undertaken prior to the exchange of instruments between Colombia and the other contracting parties, which implement Colombia's obligations under the treaties. The Colombian Constitution recognizes the right of any citizen to ask the Supreme Court to rule on the constitutionality of laws or decrees.

XV. Resolution 33 - Changes and a New Deadline

Resolution 43 of June 19, 1985, adopted by the Monetary Board (Junta Monetaria), provides for the extension of the deadline for approval of refinancing schemes for external debts in the private sector under Resolution 33 of 1984 until September 30, 1985. Resolution 33 of 1984 provides for the creation of a special facility at the Central Bank under which a private sector entity may refinance its foreign debt through a Colombian bank. The bank will service the debt directly to the foreign lender in foreign currency payments, purchased from the Central Bank in the special facility. In turn, the commercial bank would simultaneously be reimbursed with an equivalent amount in pesos by the Colombian debtor.

Several major companies, including AVIANCA and Cerro Matoso, have already taken advantage of this mechanism to refinance part of their foreign debt. Other large institutions, such as Fundacion Santa Fe and Industrias y Inversiones Samper, are in the process of negotiating refinancing schemes. Resolution 43 provides that the new deadline applies only to foreign lenders who, under Resolution 20 of 1985, have notified the Central Bank prior to April 30, 1985, of their intention to use the Resolution 33 mechanism.

Resolution 57 of the Monetary Board, adopted on August 21,

1985, introduced several changes to the amortization system provided for in Resolution 33. Under this plan, a Colombian debtor may make prepayments in pesos, provided that the foreign creditor undertakes to re-lend those pesos to the Central Bank at a lower rate of interest than that provided in the refinanced foreign credit scheme. The amortization schedule will not be affected by any prepayments made by the debtor. Resolution 57 authorizes the assignment of credits being refinanced under Resolution 33, and payments in foreign exchange in the amount paid by creditors to their debtors under Resolution 33 amortization.

XVI. Government Proposes New Financial Institutions Fund

Since the collapse of Banco Nacional in 1982 and subsequent financial problems throughout the banking sector, the government has been under pressure to provide deposit insurance and a permanent mechanism for ensuring adequate capitalization of the banking system. A new bill designed to achieve these aims has been proposed in Congress.

The bill provides for the creation of a Financial Institutions Guarantee Fund, known as Fondo de Garantias de Instituciones Financieras (FGIF), which offers capital to the financial sector, aids in the recovery of the system's outstanding receivables, organizes a scheme of deposit insurance, and takes over financial institutions on a temporary basis in order to save them from collapse. Unlike the Central Bank, the FGIF will not be a source of liquidity for the banking system. It is a means of ensuring that Colombian financial institutions have sufficiently strong capital bases.

All Colombian commercial banks, financial corporations (corporaciones financieras), and commercial finance corporations are affiliated with the FGIF. Shares will be divided into three classes: Class A shares - held by the Central Bank and public sector commercial banks; Class B shares - held by private sector banks; Class C shares - held by other private sector financial institutions. The Board of Directors is composed of the Manager of the Central Bank, the President of the National Securities Commission and members elected by the different classes of shareholders. The FGIF is under the supervision of the Banking Superintendent and is subject to the Monetary Board's directives concerning the use of its line of credit at the Central Bank, any securities which the

FGIF may issue, or limits on the amount of its borrowing.

The FGIF lends money to banks, purchases shares of financial institutions, purchases receivables of such institutions from a particular debtor in order to attempt to stave off the debtor's bankruptcy, and participates in the liquidation of financial institutions. The final section of the bill gives the Banking Superintendent the power to order the merger of financial institutions where he believes an institution must be absorbed by another in order to prevent its collapse.

XVII. Financing of Colombian Investments Abroad

Resolution 29 of April 17, 1985, of the Monetary Board disallows financing of Colombian investments abroad where such financing was undertaken by means of foreign credits. Resolution 36 of June 5, 1985, reopened the door to financing of such investments provided the following conditions are met:

> (i) that the investment is authorized by the National Planning Department;
> (ii) that the amount of the investment does not exceed a limit set by the National Planning Department;
> (iii) that the credit agreement stipulates that service of the debt will be made to the extent that the Colombian investor provides the Central Bank with sufficient foreign currency generated by the authorized investment to permit such service;
> (iv) that the interest rate applicable to the credit does not exceed the maximum provided for by the Monetary Board at the present LIBOR or New York prime plus 2.5 points. This maximum also applies to default interest on any such credit.

XVIII. Reorganization of the Enterprise Capitalization Fund

Resolution 55 adopted by the Monetary Board on August 7, 1985, is designed to consolidate various previously adopted legal provisions concerning the Enterprise Capitalization Fund and to make certain amendments in order to handle the difficult situation presently facing the Colombian private sector. The purpose of the FGIF is to facilitate the capitalization of companies organized as Sociedades Anonimas (S.A.) which operate in the industrial, agro-industrial, internal or foreign commerce and air transport sectors. The FGIF will be available to finance the issuing of shares or of

bonds convertible to shares at the option of their holder. Such financing is available by means of a rediscounting facility at the Central Bank for loans made by financial corporations (corporaciones financieras) for the purchase of shares or convertible bonds. The resources of the Central Bank for such rediscount operations come from foreign credits to Colombia and other sources.

Financial corporations may finance the purchase by Colombian individuals or corporations of new issues of shares or convertible bonds undertaken by Colombian enterprises operating in the sectors already mentioned. Financial corporations may also purchase such shares or bonds on their own account and may avail themselves of the rediscount facility of the Central Bank for such purposes.

Financing operations which may benefit by this rediscount facility must meet the following criteria:

1. In the case of share or bond issues made by "open" S.A.'s, up to 80% of the value of such issue may be financed by loans to investors of five years, with a one year grace period, with an interest rate of 19.5% annually on 90% of each such loan. The balance will be financed at the rate applicable to term deposit certificates (CDT) plus three points;
2. If the issue is made by an S.A., up to sixty percent of its value may be financed from the fund. Such credits must have an interest rate of twenty-six for eighty-five percent of their value, the balance being financed at the applicable CDT rate plus 3 points;
3. A limit of 300 million Colombian pesos is imposed on loans to a particular individual or company, or to a group of such persons as defined in Resolution 55. This limit does not apply to public sector entities, to social insurance funds, to employee funds, to employee mutual investment funds and to trade union investment funds;
4. A limit of 800 million Colombian pesos is fixed to any particular issue of shares or of convertible bonds to be made by an open S.A. In the case of closed S.A.'s, this limit is fixed at 600 million pesos. These limits apply to the amounts due at any time to financial corporations for such financing. When loans made by financial corporations for the purchase of shares and bonds are repaid by the borrowers, the amount of the credit available for financing the company in question will be increased up to the limits already mentioned;
5. Issuance of shares or bonds of companies covered by Resolution 55 may be made directly or by means of an underwriting agreement made with financial corporations or brokerage

houses;
6. The facilities of Resolution 55 may not be used by a shareholder who owns more than thirty percent of the shares of an open S.A. In the case of shareholders having between three and thirty percent of the shares of a company, the facility may be used in order to exercise preferential purchase rights attached to shares already held by them but not to increase their participation in the company. Where a shareholder has less than three percent participation in a company he may use the facility in order to increase his participation up to three percent. These limits apply both to the purchase of shares or convertible bonds. The facility may not be used in order to permit a shareholder to obtain more than three percent participation in a closely-held S.A.

A Resolution 55 facility applies to the financing of those "mixed" or foreign enterprises (as defined in Andean Pact Decision 24), established in Colombia. The same criteria applicable to national enterprises governs financing of foreign and mixed enterprises. The facility may not be used in order to convert a mixed enterprise (with more than fifty percent Colombian participation) into a foreign enterprise (with less than fifty percent of such participation). If the enterprise is already foreign according to Andean Pact criteria, financing the new issue of shares or bonds must not result in dilution of the level of national participation, unless the enterprise has already signed an agreement with the government under which it transforms itself into a mixed enterprise over a set period of time.

Resolution 55 also provides temporary and exceptional measures for financing enterprises through the capitalization fund. Any enterprise, no matter what its sector of activity, which is in the process of restructuring its debts with financial institutions in accordance with the terms of Circular 043 of 1985, may use the fund to increase its capital by up to 800 million pesos, if it is an open S.A., or 600 million pesos if it is a closed S.A. The amount rediscounted by the Central Bank may not exceed thirty percent of the total new capitalization of such enterprises in virtue of their restructuring plans.

Banks and financial corporations have recourse to the rediscount facility to finance 100 percent of a share or bond issue through five year loans with a 2-½ years grace period with a sixteen percent interest rate. Only new shareholders may benefit by these loans. Their shares may not be sold to existing shareholders

within one year from the date of purchase. Companies which wish to benefit from this facility must implement a plan for restructuring their debts prior to April 30, 1986.

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