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Colombia

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The following is a brief summary of recent developments in Colombian Law which affect banking, taxation, import regulations and the foreign debt refinancing systems.

I. The New International Monetary Fund Report and the Colombian Response

The deterioration of Colombia's foreign currency reserves and its enormous budget deficit continue to be sources of national and international concern. The International Monetary Fund (IMF) has condemned Colombian attempts at economic recovery, including the stimulatory measures taken by the Government, as insufficient. The IMF expressed concern about the accelerating decline in Colombia's international reserves, which are now at about US $1.5 billion, in comparison to the official foreign debt, which has reached nearly US $12 billion. The latter figure does not account for unregistered Colombian bank and business debts that are estimated at US $1.8 billion.

Although rejecting the substantial devaluation recommended by the IMF, the Colombian Government has already ordered increases in utility rates and public transportation fares. It has also presented Congress with a series of measures to remedy Colombia's budgetary difficulties, including a bill to replace the Extraordinary Decree 294 of 1973, which deals with the budgetary process. Specific measures have been taken to facilitate the refinancing of the private sector foreign debt and to promote the capitalization of the banking system which has been hard hit by the stagnation in economic activity in Colombia and by the considerable foreign debt. Contrary to the recommendations of the IMF, the Government has reinforced restrictions on imports but has taken other measures that promote foreign investment.

II. New Tax Measures

On December 16, 1984, the Colombian Congress approved a new series of fiscal measures proposed by the Government in order to reduce the deficit. Among the more important measures are the

following:

i) The institution of an obligatory investment in an issue of budgetary financing bonds (Bonos de Financiamiento Presupuestal).. This investment is compulsory for all corporate taxpayers and for individuals whose taxable income exceeded COL $2 million (US $20,000 approx.) in 1983. Corporate taxpayers must invest the equivalent of 20 percent of their 1984 income taxes in the new bonds (in the case of individuals the amount is calculated on 1983 taxes). The bonds so issued have a maturity of 5 years and will be redeemed by the government for 130 percent of their nominal value in pesos. These bonds can only be used to meet tax payments. They are negotiable and tax-free while held by their original purchaser, i.e., the taxpayer obliged to invest in them by virtue of the new law;

ii) The annual ceiling for deducting interest and monetary correction paid on loans for the purchase of a dwelling is fixed at COL $700,000 (US $7,000 approx.). This figure, however, will be adjusted in line with inflation;

iii) An amnesty has been declared for merchants who failed to declare inventories held prior to December 31, 1983, thus evading the sales tax. If such inventories are declared for the 1984 fiscal year, merchants will not be obliged to pay wealth tax on them for 1984 or for previous years. Merchants will be obliged to pay a special tax of 15 percent on the value of the amnestied inventories declared for the 1984 fiscal year;

iv) The stamp tax imposed on official documents and on certain categories of contracts is increased by 50 percent from January 1, 1985, and the tax will be increased annually in line with inflation in Colombia;

v) An 8 percent tax is imposed on the C.I.F. value of all imports, except for food, fertilizers, and fertilizer materials which are imported by public sector entities in such a way that the exemption accorded will favor consumers. After 2 years, i.e. January 1, 1987, the Government is authorized to reduce the tax uniformly on all imported products;

vi) Commencing January 1, 1985, the value added tax (IVA) will be applied to a range of products hitherto exempt. These products include capital goods, equipment and vehicles for public and private transport, and consumer goods including soft drinks and books, except books of a scientific or cultural character. The IVA rate is 10 percent;

vii) Measures have been taken to strengthen municipal finances by broadening the base of industry and commerce taxes

and by ceding to municipalities of less than 100,000 inhabitants the product of the tax on real estate;

viii) The status of non-profit organizations will be more strictly regulated. These organizations must register with the tax authorities and maintain records in accordance with standards laid down by the Finance Ministry.

The Government hopes that these measures will produce additional revenues of COL $65 billion. This would make a significant dent in the budget deficit which is expected to be around COL $190 billion.

III. Capitalization of the Banking System

Resolution 60 of 1984, adopted by the Monetary Board on August 29, 1984, authorizes the Central Bank to rediscount loans made by credit institutions to national investors for purchase of new issues of shares or convertible bonds issued by banks, financial corporations (corporaciones financieras), or commercial credit companies. Although this discount facility is available for investment in closed financial institutions, it is limited to the financing provided to a person or a group of persons in accordance with their permitted limit of participation in a financial institution provided by the decrees on the democratization of financial institutions. The financing thus accorded may not exceed 90 percent of the value of the shares or bonds to be purchased by the borrower. The loans are repayable over a period of 3 years with 1 year's grace period at an interest rate of 18 percent. The rediscount rate at the Central Bank is 15 percent.

In order to finance such investments by their clients, while retaining access to the rediscount facilities of the Central Bank, the financial institutions must purchase financial capitalization certificates (titulos de capitalizacion financiera) from the Central Bank. These certificates are negotiable between the banks. They have a maturity of 6 months and bear interest at 18 percent. They are reimbursable at par by the Central Bank even before their maturity if the Banking Superintendent certifies that the financial institution has liquidity problems. The certificates are part of the reserves that the banks are obliged to maintain against their immediate and short-term liabilities (up to 30 days).

The convertible bonds are not part of the banks' liabilities. They are, however, considered part of their assets and reserves

which are the basis of their permitted indebtedness under Decrees 3663 of 1962 and 990 of 1983. These bonds have virtually the same status as shares under the income tax law (Law 9 of 1983).

A subsequent resolution, number 65 of September 7, 1984, extended access to the credit facilities provided by Resolution 42 to citizens and corporations of other member states of the Andean Pact (Bolivia, Ecuador, Peru, and Venezuela) provided such persons are deemed "national investors" according to the criteria of article 1 of decision 24 of the Commission of the Cartagena Agreement as replaced by Colombian Decree 170 of 1977.

IV. Foreign Investment in Brokerage Companies

In its communication of November 16, 1983, the National Planning Department (Departamento Nacional de Planeacion) (DNP), the body responsible for applying legal norms governing foreign investment, announced a significant change in its interpretation of decision 24 of the Andean Pact Commission and Law 55 of 1975 on the Colombianization of the financial sector. According to the DNP, these measures permit new foreign investment in existing financial institutions *provided* that foreign participation in such institutions does not exceed the limit of 49 percent for foreign participation in a mixed enterprise as fixed by decision 24. The DNP specifically mentioned banks, insurance companies, credit establishments, and financial intermediaries in its communication.

In a subsequent memorandum of March 21, 1984, the DNP declared that new foreign investments would not be permitted in insurance brokerages because such enterprises are part of the distribution sector rather than the financial sector. The DNP's new interpretation of decision 24 extends to the financial sector but not to the distribution sector which, in principle, remains closed to new foreign investment.

In a communication published in September of 1984, the DNP authorized the National Securities Commission (Comisión Nacional de Valores) to allow new foreign investment in brokerage houses. Such investment may not exceed the 49 percent limit and is conditioned on the National Securities Commission's belief that the brokerage sector is in need of such new capital. The Securities Commission declared that foreign investment would be able to provide needed new technology. It should be noted that dealings in equities on the Bogota Stock Exchange have declined seriously in

recent years and that this phenomenon has become a source of great concern in financial circles.

V. New Controls on Payments for Imports

Monetary Board Resolution 83 of 1984 has fixed new conditions for the payment of imports. Where consumer goods are imported, payments may be scheduled over a period of at least six months. For imports of capital goods and equipment, payments may be scheduled according to the following scheme:

First 6 months .....up to 15% of the value of the import
First 12 months .....up to 30%
First 24 months .....up to 60%

The balance is payable prior to the end of the third year. The deadlines are tolled from the date of the bill of lading. This resolution does not apply to imports from Latin American countries that Colombia has a compensation agreement with, provided that Colombia has a surplus in the compensation account with the country in question.

Resolution 86 of November 29, 1984 amended Resolution 83 for financing imports of semi-finished products. In such cases the following schedule is provided:

First 6 months .....up to 30% of the value of the import
First 12 months .....up to 60%
18 months .....the balance

A different schedule is provided for goods imported CKD in the context of assembly programs authorized by the government. In such cases up to 40 percent of the value of the import may be paid during the first six months. The balance is to be paid during the following six months.

Neither Resolutions 83 nor 86 apply to imports financed by governmental or intergovernmental financial entities by means of credits signed before the entry into force of Resolution 83. In such cases the imports are payable according to the schedule provided for in each contract.

VI. Applicable Law in Loan Agreements with the Public Sector

With the adoption of Decree 222 of 1983, Colombia modified considerably its traditional position on the question of applicable

law in loan agreements signed by the national public sector with foreign private banks. Section 115 of Decree 150 of 1976 (which was replaced by Decree 222) provided that only Colombian law would apply to such contracts, while article 239 of Decree 222 permits the stipulation of foreign law for the *performance* of the contract, even though it insists that only Colombian law may apply to the *execution* of the contract. The *dèpeçage* introduced by article 239 has begun to give rise to serious problems of interpretation because it applies not only to the question of applicable law but also to that of the competent courts.

An escape mechanism from this problem is available through the system applicable before Decree 222 of 1983's force. The prior foreign debt authorization statutes voted by Congress (including Law 74 of 1981) provided the possibility of stipulating foreign law and foreign courts for all aspects of international loans of the national government or its agencies or guaranteed by the government. The most recent debt authorization statute, Law 63 of 1983, does not contain any similar clause. Thus, for loans governed by Decree 222, there is no alternative to *dèpeçage* except stipulation of Colombian law and Colombian courts.

The transitional provisions between Decree 150 and Decree 222 have thus become a source of considerable interest to the banks. Article 300 of Decree 222 provides that contracts in "process" ("tramite") when Decree 222 entered into force, i.e., February 2, 1983, shall continue their process by virtue of the provisions in force prior to Decree 222. This, according to the interpretation accepted by the Finance Ministry, includes the substantive provisions dealing with the applicable law.

Given the considerable uncertainty surrounding the question of when a contract begins its process under Decree 222, the government adopted Decree 2271 of September 14, 1984. According to Decree 2271, a contract is in "process" for the purposes of article 300 of Decree 222 from the moment that any document legally necessary for the adoption of the governmental authorization required to permit negotiation of the contract is presented to the Finance Ministry. If such a document was presented by the borrower before February 2, 1983, then Decree 150 applies to the loan agreement. This creates the possibility of stipulating a foreign law and foreign courts for all aspects of the contract as long as Law 74 of 1981 is also applicable. In the contrary case, Decree 222 applies,

so that a choice must be made between *dèpeçage* or the exclusive application of Columbian law and Columbian courts.