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CHILE

The following is a review of legal and economic developments in Chile.

I. LEGISLATIVE AND ADMINISTRATIVE DECISIONS

Foreign Capital Investment Funds

Law 18,657, published in the Official Gazette of September 29, 1987, authorized the creation of "Foreign Capital Investment Funds." These funds are set up outside Chile, for the purpose of investing in certain Chilean securities, principally publicly-quoted and government securities and in those issued by banks. The funds must be represented in Chile by a "sociedad anonima" (corporation). At least US\$1 million must be invested in Chile by each fund. Shares in the fund may not be redeemed, and the capital invested may not be repatriated in less than five years. These funds are granted tax advantages, because all remittances not representing a return on the capital invested are subject to a single tax of 10%. Additionally, the remuneration of the "sociedad anonima" for managing the fund's portfolio was exempt from First Category income tax.

Changes in the Insurance Legislation

Law 18,660, published in the Official Gazette of October 20, 1987, made very substantial changes in the insurance legislation of Chile. Among the many new provisions were the following: the Superintendency of Securities and Insurance was given broader powers to control the investments of insurance companies and the classification of those investments; insurance policies were made subject to subsequent, rather than prior, approval by the Superintendency; it was expressly provided that, with certain exceptions, insurance may freely be contracted outside Chile with a Chilean insurer (however, foreign insurers are prohibited from contracting insurance *in* Chile); foreign reinsurers were authorized to operate in Chile, in accordance with detailed provisions respecting their authorization and functioning; limits were set on the indebtedness which may be incurred by insurance companies; there were de-

tailed provisions as to technical reserves and the assets which may constitute those reserves; and there were now provisions as to the financial rehabilitation, liquidation, and bankruptcy of insurance companies.

Changes in the Securities Legislation

Law 18,660 also added two new Titles to the Law on the Securities Market. New Title XIV on the Classification of Risk contained provisions concerning those entities which classify publicly-quoted securities for the purpose of investment by pension funds, insurance companies, etc. New Title XV on Corporate Groups, Controllers and Related Persons contained definitions and provisions as to affiliated and subsidiary corporations and persons. The Superintendency of Securities and Insurance was given broad powers to require information about such corporations and persons, and corporations subject to the overview of the Superintendency were obliged to supply information about operations with related persons.

The same law added article 69 to Law 18,046 on corporations. This amplified the right of dissident stock-holders to require the corporation to purchase their stock (appraisal rights), extending that right to the case of "open" in general, publicly-quoted corporations in which the state has a controlling interest and whose stocks classification is downgraded from first class on certain grounds.

Changes in the Tax Legislation

Law 18,682 (Official Gazette of December 31, 1987) made numerous changes in the tax laws, including the following:

The withholding tax on branch profits, dividends, and other income, for non-resident persons and entities, was reduced from 40% to 35%.

A withholding obligation was established for those remitting abroad, to non-resident persons and entities, the proceeds of sale of stocks and other assets which may give rise to a taxable capital gain. The withholding is to be 5% of the gross remittance, or, if the amount of the capital gain is ascertained, 10% of the gain.

A new withholding tax of 4% was imposed on interest payments to non-residents, when the interest was earned on deposits

in local banks and on foreign loans.

Insurance premiums paid to foreign insurers for Chilean risks became subject to a withholding tax of 22%. The withholding for reinsurance premiums became 2%.

Professionals who incorporate themselves may opt to pay First Category instead of Second Category tax.

Losses on dividends, interest and certain capital gains income may be set off against the income from such investments for tax purposes.

A new tax deduction was permitted, consisting of a percentage of certain dividends and capital gains.

Foreign Investment

Law 18,692 also provided that foreign investors may opt for a tax rate of 40%, fixed for a ten-year or twenty-year period. There would be a supplementary tax to the extent that the remittances to the foreign investor over a five-year period exceed 40% of the average capital over that period.

Devaluation and Lowering of Import Tariffs

On January 4, 1988 the Minister of Finance announced a 4% devaluation of the peso, and a reduction in the general import tariffs to 15% from 20%. The former measure was in part intended to offset the potentially prejudicial effect of the latter on Chilean manufacturers.

New Maritime Code

Law 18,680, published in the Official Gazette of January 11, 1988, completely replaced Book III of the Commercial Code "On Maritime Commerce." It represented a much-needed update of Chilean maritime law, replaced antiquated provisions such as references to "bottomry," and added new ones required by modern conditions. Thus, there are now detailed provisions regarding the arrest of vessels; a telex or telegram can constitute a written document; provision is made for the U.N. Convention on Maritime Transportation of Goods of 1978 to prevail over the provisions of the Commercial Code regarding the shipowner's liability; the outdated Naval Mortgages Law was replaced; provisions were added

concerning arbitration, limitation of liability, shipping agents, deck cargo, transshipment, towage, and combined transportation; and the provisions as to charterparties and bills of lading were modernized. Amendments were also added to the Navigation Law. The new law came into effect six months after its publication in the Official Gazette.

New Adoption Law

Law 18,703 made fundamental changes to Chilean adoption law. Previously, the relevant provisions were contained in Laws 7,613 and 16,346. Law 7,613 permitted adoption for certain limited purposes only.

Law 16,346 provided for a court procedure whereby the adoptive child became the legitimate child of the adoptive parent for all legal purposes.

In recent years, Chile has become a popular country for foreign, particularly European and North American, couples to adopt children. Accompanying this trend have been allegations of abuse of the legal process and baby trafficking. One of the main objectives of Law 18,703 was to reduce the possibility of such abuses.

In the first place, the new law creates two types of adoption: simple adoption ("adopción simple") and full adoption ("adopción plena"). The effect of simple adoption was not unlike that of adoption under Law 7,613. In effect, it gave the adoptive parent the status of a foster parent who is obliged to take care of the adoptive child. It can be granted only in cases of children in a state of poverty who require aid and protection.

With respect to full adoption, some of the requirements of time and age are changed, as compared with Law 16,346; thus, the age-range for the adoptive parents is now 25-60, instead of 30-70. Further, the judge is given discretion to reduce or increase the relevant time-periods by up to five years.

The categories of children that may be adopted were extended somewhat. For example, a child may now be considered "abandoned" and therefore may be adopted, even if it lived with its parents, if it had not been cared for personally, emotionally or economically by them for a year (six months if the child is less than two years old).

If the adoptive child was not already under the legal guardian-

ship of the adoptive parents, the court would first grant them such guardianship for one year, before declaring the adoption.

The effect of full adoption was that the adoptive child becomes for all legal purposes the child of the adoptive parents, as was the case under Law 16,346.

Perhaps the most interesting part of the new law is Title IV, "Of the Exit of Minors for their Adoption Abroad." This title is entirely new, and endeavors to regulate by law what was previously largely a matter of practice.

Title IV describes in detail the documents which must be provided by the foreign adoptive parents together with the adoption petition. These include: social reports on the adoptive parents, issued by the appropriate authorities in their home country; certificates as to their economic situation; certificates by the relevant Chilean Consul certifying that the adoptive parents comply with the requirements for adoption of their own country; and certificates as to the requirements to be fulfilled by the adoptive child in order to enter the country.

The "Servicio Nacional de Menores" (National Service of Minors) receives the petition and supporting documents and coordinates the procedure for the purpose of ensuring that the judge (who, as under the previous procedure, is the Judge for Minors of the place of residence of the adoptive child) has all necessary information. It issues a report to the judge as to whether or not the adoption should be permitted.

The adoptive parents appear personally before the court. However, the court may authorize only one of them to appear, provided he or she has a power of attorney from the other.

One major change in the new law is that once the adoptive child leaves Chile pursuant to the court's authorization, the child is to be adopted according to the adoption procedures of the country of the adoptive parents. Under the previous law, the adoption procedure continued in Chile. This requirement was frequently ignored, since, once the child left Chile, the Chilean authorities had no effective control over the child and its adoptive parents. Now, as before, the adoptive parents are entrusted with the care of the child and are authorized to remove it from Chile; but the completion of the adoption procedure takes place according to the laws of the foreign country. This is a much more realistic requirement. The Chilean Consuls are entrusted with the duty of ensuring that

the adoption effectively takes place, and of sending to the Chilean authorities a copy of the adoption order, to be registered in Chile.

Sanctions are provided for public officials who reveal to third parties details about an adoption procedure and for those who use fraud to obtain an adoption.

The immigration authorities are obliged to register the departure from Chile of all those under twenty-one years of age and to report thereon to the National Service of Minors.

Law 16,346 is repealed, but procedures previously begun or completed under that law are not affected.

Refund of Customs Duties to Exporters

As part of its policy of promoting exports, the Chilean government enacted Law 18,708 (Official Gazette of May 13, 1988). This permits exporters to obtain a refund of customs duties paid on imported raw materials or parts which are used in the manufacture of exported goods. The period between the relevant importation and exportation must not exceed eighteen months. This law complements Law 18,480, which also provides for a refund of taxes on certain exported goods.

Changes in Banking Legislation

Law 18,707 (Official Gazette of May 1988) makes several changes, mainly of a technical nature, in the banking legislation.

In particular, it is quite clear that banks may own subsidiaries that trade in securities (legislation of the Glass-Steagall type is not realistic in an economically limited country such as Chile); and detailed provision is made for the sale or transfer by Corporación de Fomento de la Producción (the Production Development Corporation) of shares acquired by it in the banks intervened in January 1983.

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