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CHILE

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

I. RENEGOTIATION OF THE FOREIGN DEBT

At the end of February, Chile reached an agreement in principle with its creditor banks on the rescheduling of \$10.6 billion of its \$21.4 billion total foreign debt. Included in the terms of the agreement is a provision that from 1988 to 1990, interest payments will be made every twelve months instead of every six months. This provision provides Chile with \$445 million that it otherwise would have had to pay out as interest.

II. AMENDMENTS TO BANKRUPTCY LAW

On February 5, 1987, the Bankruptcy Law was substantially amended. One such amendment encourages the continuation of the troubled business by a committee of creditors, or the sale of the business as a going concern. Chilean bankruptcy law now comes a little closer toward introducing the concept of a Chapter 11 reorganization of the debtor's business that exists in the United States.

III. INCREASE IN THE "CUOTAS DE VIAJE" (TRAVEL FOREIGN CURRENCY ALLOWANCES)

At the beginning of January, the foreign currency allowances for Chilean residents traveling abroad was increased to \$1,000 for those traveling to Latin America, and to \$3,000 for those traveling elsewhere. The previous figures had been \$750 and \$2,250 respectively.

IV. 1986 STATISTICS

Significant statistics for 1986 included the following: Exports: \$4.4 billion; Imports: \$3.1 billion; Balance of trade: \$1.084 billion (favorable to Chile); Inflation: 17.4%; Increase in GDP: 5%; Foreign currency reserves: approximately \$1.7 billion.

V. NEW MINING REGULATIONS

It is not surprising, in view of Chile's economic dependence on mining activities, and the controversy surrounding the expropriation of copper mines by the Allende Government, that one of the most discussed provisions of the 1980 Constitution was that concerning mining activity and expropriation (article 19 No.24). The military government decided that the State should continue to be the absolute owner of all mines with the right to grant mining concessions. The Constitution further provides that mining concessions are constitutionally guaranteed property rights, and the concession holder has the right to compensation in the case of expropriation of the concession. In this way a balance was achieved between the interests of the State and those of the concession holder.

VI. POLITICAL PARTIES LAW

Introduction

On March 23, 1987, the Organic Constitutional Law of Political Parties was published. An Organic Constitutional Law can be altered only by a vote of three-fifths of the senators and deputies in Congress (for the present, the military junta performs the functions of Congress). This law, the subject of much controversy, is one of a series of political laws enacted by the Government (others being the laws on electoral tribunals and on registration of voters), paving the way for the 1989 elections.

General Aspects

The law contains requirements and restrictions as to the policies that political parties may or may not adopt. The parties "shall always advocate the defense of the sovereignty, independence and unity of the Nation and contribute to preserve national security, the essential values of the Chilean tradition and social peace" (article 2, paragraph 4). On the other hand, parties may not be subject to foreign influence, nor may they intervene in the activities of government officials, senators, deputies, labor unions or business associations ("asociaciones gremiales") (article 2, paragraphs 4 and 5, and articles 21, 32, 47 and 49). Parties may not use "flags, uniforms, images, words or phrases of Chilean or foreign origin,

recognizably representative of parties, groups, movements or ideologies contrary to the Constitution or to the Law" (article 8(d)). Further, they may not receive financial contributions from foreign sources (articles 33 and 49).

The government, by these provisions, was concerned with excluding the Communist Party, even though the law does not mention it by name. The Communist Party was already, in effect, proscribed by Article 8 of the Constitution, which outlaws "any act of a person or group destined to propagate doctrines which are directed against the family; espouse violence, or promote a concept of society, the State, or the legal order of a totalitarian character or based on the class struggle."

Geographic and Numerical Requirements for Political Parties

To be permitted to function, a political party must exist in at least eight regions, or three contiguous Regions (Chile is divided administratively into thirteen regions, including the Metropolitan Region)(article 3). The party membership must consist of at least 0.5% of the registered voters who voted in the last periodical election of deputies in each region in which the Party functions (article 6). Transitory article 2 provides that, until December 31, 1987, voters may participate in the formation of a political party without being registered in the Registers of Voters. This article is necessary because the process of registration in the new Register is still very incomplete. The law also provides that a political party must be dissolved if it fails to obtain at least 5% of the votes in a periodical election of Deputies, in each of the requisite eight (or three, as the case may be) regions (article 42 No. 2).

Procedure for the Formation of Political Parties

The procedure begins with the signing of a public deed (*escritura pública*), which contains certain information about the party, by at least a hundred registered voters. This document is delivered to the Director of the Electoral Service. An extract thereof is then published in the Official Gazette, within five days. From that time, the party may act provisionally, publicizing itself, and calling for members. It then has 210 days in which to obtain the minimum membership of 0.5% of the voters in the relevant regions referred to above.

Other Important Provisions

The law provides that a political party must have a central directorate, a general council, regional councils and a supreme tribunal (title IV). It also provides that a party must have been registered for four months before taking part in any elections (article 16). This aspect may be important in the context of the 1989 elections. Further, a voter may not be a member of more than one party (article 19); and lastly, there are potentially severe sanctions, including dissolution for breach of the law, and in particular, for breach of the rules referred to above (title VIII).

The Decision of the Constitutional Tribunal

On February 24, 1987, the Constitutional Tribunal upheld certain provisions of the law and invalidated others. In particular, the Tribunal upheld the 0.5% of voters requirement, and the law's regulation of the internal procedures of the parties. However, the Tribunal invalidated the following provisions of the draft law: sanctions for non-compliance with the requirements as to policy; a provision that a party could not act as such until thirty days after the initial publication; a provision that a dissolved party's name could not be used for eight years after dissolution; a provision that a party could not receive donations from corporate entities; and certain provisions as to a party's internal regulation.

Final Comments

Already, several parties have formed through publication in the Official Gazette. As of the end of May, however, none of the major parties, such as the Christian Democrats or the Socialists have complied with the requirements. It remains to be seen whether the Communists or other similar parties attempt to form themselves under the law.

VII. FOREIGN INVESTMENT

Introduction

In 1969, five countries (Colombia, Ecuador, Peru, Bolivia and Chile) entered into the Cartagena Agreement, generally known as the Andean Pact. The object of this agreement was to create a uni-

fied trade zone consisting of the member countries. In 1973, Venezuela joined the Andean Pact, and, in 1976, Chile left it.

Decision 24

One of the earliest pieces of legislation made by the Andean Pact Commission was Decision 24, which contained rules regulating and restricting foreign investment. The main features of Decision 24 (as later amended) included the following:

(a) applications for foreign investment had to be approved in advance by the competent national authority;

(b) foreign investors were limited to a maximum investment of forty-nine percent, without which they had to reduce their shareholding to that amount, within fifteen years (twenty years in the case of Ecuador and Bolivia);

(c) foreign investors were not entitled to acquire shares in existing corporations, unless the corporation was in danger of bankruptcy;

(d) foreign investment was prohibited in certain areas, such as insurance, banking, domestic transportation, advertising, radio and television stations, newspapers, and domestic marketing;

(e) remittance of profits was limited to twenty percent annually;

(f) reinvestment of profits was limited to seven percent annually;

(g) foreign corporations were not allowed access to local long-term credit (i.e. of three years or over);

(h) technological transfer agreements required prior approval by the competent national authority, and their content was strictly scrutinized.

Recent Changes in the Legislation of Member Countries

Gradually the Andean Pact countries viewed Decision 24 as too restrictive of badly needed foreign investment. This opinion became particularly prevalent after the "debt crisis" began in 1982. Therefore, some of the member countries began, on their own initiative, to enact changes in their foreign investment regulations to make their own regulations more liberal than those contained in the guidelines of Decision 24.

1987 Changes in the Andean Pact

As a result of the widely held idea that the Andean Pact was not effective in promoting free trade within the member countries, discussions were held for several years, culminating in the *Protocolo Modificadorio del Pacto Andino*. By this agreement, the member countries made sweeping changes to the terms of the Pact. The negotiations centered on the free trade aspect, the opening of the member countries' markets to each other's goods. Finally, in May 1987, in Quito, the Protocolo was signed, including a new Decision 220, to replace Decision 24. All that remained then was ratification by the Parliaments of the member countries.

Important Features of Decision 220

The following are the major aspects in which Decision 220 differs from its predecessor, Decision 24:

(a) national legislation may authorize foreign investment to be subject to subsequent registration, rather than prior approval;

(b) foreigners may now own a majority interest in the foreign investment, subject to point (c) below;

(c) foreign-owned companies that wish to enjoy the benefits of the Andean Pact free trade program must agree to transform themselves into mixed companies, those in which a foreign investor has a minority interest, within thirty years (thirty-seven years in the case of Ecuador and Bolivia);

(d) the member countries may now authorize the direct acquisition of shares in local corporations;

(e) each member country may now determine for itself which sectors of economic activity are reserved for national investors;

(f) the guideline for remittance of profits remains at twenty percent, however, the member countries may authorize higher percentages, without the need to communicate this action to the Andean Pact Commission;

(g) there is no limitation on reinvestment of profits;

(h) there is no longer any limitation on the access of foreign corporations to local long term credit. Further, there is no longer any limitation as to the interest rate payable between a parent and subsidiary corporation;

(i) accrued royalties payable under technological transfer contracts may be capitalized;

(j) subsidiaries may now pay royalties to their parent companies, after receiving approval from the competent national authority;

(k) contracts related to foreign investment may now contain a reference to international arbitration or to the jurisdiction of a foreign country, provided the legislation of the relevant member country permits this.

Final Comments

Decision 220 is considerably shorter than Decision 24 and, to a large extent, leaves foreign investment to the laws of the member countries. This step was simply a recognition of what had already happened in practice, namely, that the member countries were already stretching the limits of Decision 24 so as to encourage foreign investment. Decision 220 is also a recognition that the Andean Pact countries require new foreign investment as a means of fomenting local industry and exports, and of providing a partial solution to the debt crisis.

STEBBINGS & SKYDELL, P.C.