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COLOMBIA

The following is a summary of recent legislation and regulations concerning foreign debt, investment, and international trade.

I. NEW MEASURES CONCERNING FOREIGN DEBT

Although Colombia's foreign debt situation is much less serious than that of other major Latin American countries, the monetary authorities have intervened to more strictly regulate the terms on which private entities can contract external debt. These same authorities have also intervened to provide a special credit facility to major private companies with foreign debt problems. Special measures have been adopted for commercial banks whose foreign branches or subsidiaries have substantial debt obligations. The following are the most important of these measures.

A. Monetary Board Resolution 33

The Monetary Board (Junta Monetaria) adopted Resolution 33 on May 23, 1984. This resolution provides a special mechanism for servicing foreign currency loans contracted by private entities. The central features of the mechanism are as follows:

(1) Commercial banks which contract with debtors to service their foreign debt will be able to acquire non-negotiable certificates from the Central Bank (Banco de la República). These certificates are exchangeable for dollars which are to be used exclusively for the payment of outstanding principal and interest on foreign debts.

(2) The foreign credits which benefit by the mechanism must meet certain requirements:

i) The term must be at least 6 years with a grace period of at least 3 years from the date on which the commercial bank servicing the foreign debt seeks certification from the Exchange Office that the foreign loan has been registered, prorogued or renegotiated in accordance with the terms set out herein;

- ii) Amortization and interest payments must be by equal quarterly installments;
- iii) Interest must not exceed the rate currently authorized by the Monetary Board (prime rate or LIBOR plus 2.5 percent).

It follows that any existing credits whose terms are more severe than those mentioned above must be renegotiated in order to benefit by the mechanism. It is also important to note that the mechanism is available only for loans which were signed and registered with the Central Bank before May 23, 1984. Loans which were subsequently renegotiated or prorogued will benefit if the original loan was registered before May 23, but new credits will not be covered.

(3) The sale of certificates by the Central Bank to the commercial banks will be on the basis of installments in an amount and for a term and amortization equivalent to the foreign debt which the certificates are to be used to service. The commercial banks will thus be acquiring only those dollars which they require quarterly to service principal and interest payments on foreign debt as they become due.

The Central Bank will fix the amount in pesos which must be paid quarterly as installments by the commercial banks to acquire the certificates. The formula to fix the amount will use an interest rate equivalent to Colombian three month certificate of deposit (CD) rates plus 3 points. In practice these rates are linked to the rate that the peso is devaluated against the U.S. Dollar. The Central Bank will also calculate the peso equivalent of the dollar amounts paid from time to time by the commercial banks. Any difference in these amounts, as determined quarterly, will be capitalized on a three-month basis at the CD rate plus 3 points.

If at the end of the foreign debt service period the amount paid to the Central Bank is less than the peso equivalent of the dollars paid by the commercial bank to service the foreign debt, the commercial bank must within one year make up the difference by quarterly installments at the CD rate plus 3 points. In the reverse situation, the capitalized difference will be paid by the Central Bank to the commercial bank. Any such difference must be paid by the receiving commercial bank to the debtor.

(4) The mechanism does *not* constitute an assumption of private foreign debt by the government of Colombia. The debtor is ultimately responsible for repaying from time to time to the Colombian commercial bank with which it contracts an amount in

pesos equivalent to the amount paid by the bank to acquire the dollars necessary to service the foreign debt plus a commission of 3/10 percent on outstanding principal of the foreign debt. Should the debtor fail at any time to meet its obligations to the commercial bank, such bank will be able to resell its outstanding certificates to the Central Bank, thereby ending the dollar facility for the corresponding foreign debt. A dollar facility under this resolution so terminated cannot be revived and the Colombian debtor would be obliged to seek the necessary foreign exchange to service its debt directly from the Central Bank.

(5) The sale of certificates by the Central Bank to participating commercial banks will only take place up to December 31, 1984.

The Minister of Finance and Public Credit declared that the companies which could benefit by the new facility are estimated to have foreign debts totalling around US \$1.2 billion. It is expected, however, that the facility will be used to cover around US \$600 million of those debts.

B. Monetary Board Resolution 31

This resolution adopted on May 3, 1984 (replacing an earlier measure, Resolution 26 of April 28, 1984) provides that Colombian commercial banks will be entitled to access reserve dollars in order to finance new foreign credits obtained by them to cover loans made by their subsidiaries or branches abroad. The debts to be financed are those connected with financing of loans made to Colombian residents, including corporations. The dollar facility can also be used where foreign subsidiaries or branches of Colombian banks have participated in syndicated foreign credits to Colombian entities, up to the amount of the participation in the syndication by such subsidiaries or branches.

The new foreign credits obtained under this scheme must have conditions at least as advantageous as the original credits as far as the term and amortization are concerned. The interest rate may not exceed that which is presently authorized by the Monetary Board which has been fixed at prime rate or LIBOR plus 2.5 percent.

This facility is available for loans made to the Colombian public sector. The terms of the new credit must comply exactly with the specific executive resolution of the Council of Ministers which

will be required in each case.

C. Monetary Board Resolution 20

By virtue of this resolution adopted on March 21, 1984, Colombian banks and financial corporations (corporaciones financieras) may not globally guarantee foreign credits beyond 100 percent of their paid-up capital and "legal reserve" (an accumulated amount of undistributed profits which they are obliged by law to set aside as a reserve). This limit may be exceeded in the case of guarantees given for i) credits to PROEXPO, the government's export development agency, ii) approved credits to universities or other institutions of higher learning, iii) financing or refinancing of normal purchases by the public sector, iv) credits to finance multinational projects involving participation by the Colombian public sector, v) authorized credits for the importation of equipment by non-profit foundations, vi) authorized foreign credits to mining enterprises and vii) credits obtained abroad by the bank's foreign subsidiaries or branches.

In the case of guarantees for credits to foreign branches or subsidiaries, authorization by the Monetary Board will only be given where it can be demonstrated that the branch or subsidiary does not have the resources necessary to meet its obligations without the bank's guarantee. The amount guaranteed by the bank must be set aside before any distribution of profits can take place. The bank must also provide the Exchange Office of the Central Bank with a guarantee in favor of the Treasury equal to 100 percent of the amount guaranteed to foreign creditors on behalf of its branches or subsidiaries.

D. Monetary Board Resolutions 15 and 16

Under these resolutions issued on March 14, 1984, private entities will be entitled to have their authorized foreign credits renewed or prorogued, provided the rate of interest does not exceed the limit of prime or LIBOR plus 2.5 percent fixed by the Monetary Board. This facility is distinct from that provided by Resolution 33 discussed above. Credits will also be available to finance investment abroad by Colombian entities where such investment has been duly authorized by the National Planning Department. The credit must be for at least 4 years with a grace period of 2 years and amortization by equal semi-annual installments. The ap-

plicable interest rate may not exceed the level fixed by the Monetary Board. A credit facility is provided to meet the case where the amount received as profits by the Colombian investor is insufficient to cover amounts payable under the credit to finance his foreign investment.

II. MORE CHANGES IN FOREIGN INVESTMENT RULES

As indicated in earlier memoranda the Colombian government is in the process of substantially revising its policy concerning foreign investment. Foreign investment is now welcomed as a source of technology and employment, as well as a potential earner of foreign exchange and a contributor of risk capital. It is now seen to be more attractive than foreign loans, especially at prevailing and expected interest rates. Among the important new changes are the following:

A. *CONPES Resolution 39*

This resolution adopted by the National Council on Economic and Social Policy (CONPES) on June 14, 1984, deals with so-called "limbo earnings". These earnings are profits in the hands of foreign investors in excess of amounts which may be remitted abroad or reinvested in accordance with decision 24 of the Andean Pact. Under decision 24, annual remittances could not exceed 20 percent of registered capital and reinvestment was limited to 7 percent of such capital. Under previous legislation any authorized reinvestment above the 7 percent limit had to be accompanied by purchase of an equal amount of bonds issued by the Industrial Development Institute (IFI).

Resolution 39 permits the National Planning Department (DNP) to authorize reinvestment above the 7 percent limit without any obligation to purchase IFI bonds where:

- i) The amount reinvested is to be used exclusively in the production of goods for export, in new export projects, or in expansion of existing export-oriented facilities;
- ii) That any such new projects or facilities be at least 40 percent financed by new foreign risk capital or long term foreign credits;
- iii) That at least 80 percent of the goods produced in the new or expanded facilities are in fact exported.

The effect of authorized reinvestment is to increase the investor's registered capital on which remittance rights are calculated. Increased remittances due to such authorized reinvestment will not be permitted until the new or expanded facilities are actually in operation. Failure to comply with any of the conditions fixed by Resolution 39 will result in loss of remittance rights concerning the amount of authorized reinvestment.

B. New Investment in Banks and Financial Institutions

In a recently published legal opinion issued on November 16, 1983, the National Planning Department declared that new foreign investment may be permitted in existing banks and financial institutions provided the proportion of foreign capital in any particular institution does not exceed 49 percent.

This view is in line with article 4 of Andean Pact Decision 24 (replaced by article 3 of decision 103); it represents, however, a substantial change of policy by the DNP in its interpretation of law 55 of 1975. The new policy appears to prohibit all new foreign investment in banks and financial institutions and obliges existing institutions to transform into "mixed" enterprises, i.e., with majority Colombian participation.

The Council of State had issued an opinion on September 21, 1981 at the request of the DNP. In that opinion the Council declared that article 4 of decision 24 constituted an exception to the prohibition of law 55. The council also stated that new foreign investment could be admitted in existing institutions at the discretion of the DNP where its effect would not be to substantially change the proportion of capital in the hands of national and foreign investors. This opinion was specifically limited to the case of banks.

In a subsequent opinion dealing with insurance companies and other financial intermediaries, the Council of State appeared to take the opposite view. The DNP thus worked on the assumption that while new foreign direct investment would be possible in banks, it could not be permitted in insurance companies and other financial intermediaries.

The new opinion of the DNP is based on the fact that article 42 of decision 24 prohibits all new foreign investment in the financial sector. At the same time, however, article 4 permits new foreign investment in existing enterprises in any sector where the

effect is not to substantially change the national/foreign investment ratio in the capital of the enterprise. The two opposing views can be explained on the basis that the prohibition on new foreign investment is designed to avoid the removal of control of national financial institutions from national hands. In addition, the restriction does not prohibit all investment, which would not be consistent with article 4. The prohibition of law 55 is essentially identical with article 42 of decision 24, and it is, therefore, not inconsistent with article 4 of the same decision.

Thus, the DNP concludes that new foreign investment may be permitted in existing enterprises in the financial sector provided such enterprises do not lose their "mixed" character.

It should be emphasized that although this opinion by the DNP is authoritative, the final word on the subject rests with the courts. In other recent opinions on the same subject, the DNP declared that new foreign investment will not be permitted in insurance brokerage firms since they are deemed to belong to the distribution rather than the financial sector. It also declared that new unauthorized investment in the financial sector made before the opinion of November 16, 1983, could not subsequently be legitimized. No profit remittance or reinvestment rights could thus be created on the basis of such unauthorized investment.

III. PROTECTION OF NATIONAL INDUSTRY AND EMPLOYMENT

In the new statute for central government contracts (decree 222) adopted in 1983, an entire title is devoted to the protection of national industry and employment. The essential aspects of this system have now been applied to contracts made by departments, municipalities, and the so-called "decentralized agencies" such as publicly owned utilities (decree 1356 of June 5, 1984). The essential elements of the system are:

- i) National producers or entities may not be excluded from participation in calls for tender;
- ii) Where a public entity intends to open calls for tender in which national producers could participate, it must first inform the Foreign Trade Institute (INCOMEX). INCOMEX keeps a register of national producers, in order to determine if there are any such producers available. Where such producers exist they must be given the opportunity to submit bids;
- iii) In any investment project involving the use of foreign equip-

ment, the public entity must "break down" the elements of the investment so as to identify those portions which could be offered to national suppliers. This break down must be done before a call for tender is made. After a call for tender is issued, a national supplier may, within the five day period immediately following, request that it be amended so as to permit bidding of similar national products. National suppliers may also request that the bid be broken down so as to permit national bids for part of the project opened for tenders;

iv) Where foreign credits are offered for feasibility studies concerning public investment projects, it may not be a condition of such credits that the consulting or supervising work be contracted abroad or with foreign entities.

v) Foreign loans other than supplier credits or loans by foreign governmental or intergovernmental agencies, may not be made conditional on the purchase of goods or services in a particular country.

vi) In comparing bids, the sales tax on national goods will not be taken into account. Foreign goods will be presumed subject to a minimum customs tariff of 25 percent. Goods originating in member countries of the Andean Pact or the Latin American Integration Association (ALADI) will be assessed by including the tariff actually provided by the regulations of those organizations.

vii) Other things being equal, preference will be given among offers by foreign entities to those which have the largest national participation. As between national producers, preference will be given to those with the highest national added value.

With certain exceptions, "national" products are defined in decree 1356, as well as decree 1355 of June 5, 1984, on government purchases, as being those in which the FOB value of foreign inputs is 50 percent or less than the total value of the product. Goods assembled in Colombia in accordance with legal norms governing such operations will also be considered to be of national origin.

IV. INTERNATIONAL TRADE REGULATIONS

As part of the national policy to promote exports and restrain imports, several new regulations have been adopted in recent months. Among such regulations are:

a) Decree 636 of March 15, 1984, regulating the issuance and use of CERT's (Certificados de Reembolso Tributario) provided for in the foreign trade statute (law 48 of 1983) which was discussed

in a previous memorandum. The same decree also provides for the establishment of an advisory committee whose task will be to advise the government on ways of increasing exports, promoting the adoption of new technology, increasing employment, maintaining international price competitiveness and stabilizing the international value of the peso.

b) Resolution 18 of the Monetary Board issued on March 14, 1984, provides for prior deposit by importers of the peso equivalent of 95 percent of the value of goods to be imported. The importation of practically all consumer goods has been stopped, while imports of almost all other goods require specific authorization by INCOMEX in each case.

c) Resolution 19 of the Monetary Board issued on March 21, 1984, limiting Colombians travelling abroad to an allowance of US \$180.00 per day with a cap of US \$3,000 per year. So-called "special travellers" have daily allowances of US \$200 with a yearly limit of US \$10,000. In order to obtain the necessary dollars the intending traveller must, in addition to the official exchange rate, pay a premium of 65 pesos per dollar to the Central Bank. This premium is refundable with proof of having journeyed abroad, of having used the dollars obtained on such journey and of having repaid unused dollars to the Central Bank.

d) Decree 370 of February 15, 1984, authorizing the Foreign Trade Institute (INCOMEX) to regulate what the foreign trade law (48 of 1983) describes as "special trading systems", including barter, compensation (set-off) and triangulation. A further decree, number 1517 of June 11, 1984, specifies that both goods and services may be the object of such special systems.

e) Decree 1518 of June 19, 1984, provides that suppliers of national goods (as defined in decrees 1355 and 1356 discussed above), whether natural persons or Colombian corporations, are favored in international calls for tender held by the Colombian public sector. These same suppliers whose acquisition is financed by credits from foreign governmental or intergovernmental institutions, will be able to obtain CERTS (Certificados de Reembolso Tributario). These certificates which can be used to offset payments of income tax and other levies are normally issued only to exporters of Colombian products and services. The "Colombian corporations" referred to in the decree are those constituted under Colombian law and include corporations so constituted even though they may be considered to be "foreign enterprises" under Decision 24 of the Andean Pact and Colombian Decree 1900 of 1973.

f) Decree 1519 of June 19, 1984, regulating "Sociedades de

Comercialización”, whose functions bear a remote resemblance to Domestic International Sales Corporations (DISCS) in United States law. The decree provides that these corporations must be national or “mixed” under Andean Pact Decision 24 definitions. Their functions include the promotion of new markets, the channeling, diversification and consolidation of exportable goods, especially those of small and medium-sized enterprises, counselling of national producers and providing information on foreign markets.

The “comercializadoras” are regulated by a special body, the “Junta de Comercializadoras”. This body is formed by representatives of various government departments and agencies involved in international trade, including the Foreign Trade Institute (INCOMEX), the Export Promotion Fund (PROEXPO) and the customs service.

Where capital gains are invested in a comercializadora, they will receive favorable tax treatment as will investments by other corporations, provided the comercializadora is organized as a “Sociedad Anónima”.

The comercializadoras will be entitled to special lines of credit from PROEXPO to export by way of consignment sales and to establish warehouses abroad. They will also be entitled to use the so-called “special system of imports and exports” (Plan Vallejo) under which certain foreign materials are admitted duty-free to Colombia if they are to be used exclusively in the manufacture of goods for export. The value of imported goods must for each year be less than the value of goods exported by the comercializadora. The comercializadoras will also be able to use the “special trade systems” of barter, compensation (set-off) and triangulation.

Where exports are made through a comercializadora, the exporter will be entitled to 90 percent of the corresponding CERT and the comercializadora to 20 percent; however, where the exporter is a shareholder in the comercializadora, he will not be entitled to a share of the CERT unless certain requirements are met. The Junta de Comercializadoras must be satisfied that the comercializadora in question is formed by national producers too small individually to export effectively. The Junta must also be satisfied that it is designed to consolidate the export potential of its member firms and that the producer of the goods being exported has less than 30 percent of the total capital of the comercializadora.

Where domestic goods are placed by a producer in the hands of a comercializadora, they are presumed to have been

exported and the producer will be entitled to the corresponding tax benefits. The comercializadora must in fact export the goods within 90 days (180 days if the goods are brought to a free zone or customs warehouse belonging to the comercializadora). Where the goods are not exported within the specified deadlines, the comercializadora will be obliged to pay (with default interest) the value of all export promotion benefits received by it and by the producer. No Colombian sales tax will be payable on goods for export sold to comercializadoras provided such goods are actually exported.

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