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THE 1970 AMENDMENT TO THE VENEZUELAN COMMERCIAL BANKING LAW

ALFREDO MORLES-HERNÁNDEZ*

BANKING LAW IN LATIN AMERICA

There are no provisions in the old commercial codes of the Civil Law System dealing with banks and banking. However, a general statement in the codes declaring the commercial nature of banking transactions or contracts brought banking operations within the scope of these codes. In 1882 the Italian Commercial Code dealt partially with the matter but it is worth noting that the first commercial code in the world to include normative regulations on the current account (bank deposits) was the Chilean Commercial Code of 1865.¹ The Chilean norms were adopted by other Latin American countries and the influence of the Chilean code was felt in subsequent legislation especially in Ecuador, Colombia, Venezuela, Panama, Nicaragua, El Salvador, Honduras and Guatemala.² A noted scholar affirms that the influence of the Chilean Commercial Code was felt even in Europe through the Italian Commercial Code of 1882 and the Portuguese Commercial Code of 1889.³

A modern code of the Civil Law System which put an end to the traditional distinction between "civil matters" and "commercial matters" was the Italian Civil Code of 1942. This code was the first to regulate banking transactions or contracts in depth. It should also be noted that in 1932 the Mexican *Ley General de Títulos y Operaciones de Crédito*, still in force, dealt with the subject in a very effective manner. This statute has influenced extensively the legislation of other Latin American republics, i.e., the commercial codes of Honduras (1950), Guatemala (1970) and El Salvador (1971) follow the Mexican model especially in the field

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Dr. Morles dedicates this work to Professor and Mrs. A. J. Thomas, Jr. of the Faculty of Law of Southern Methodist University.

of negotiable instruments and banking. In Venezuela, a draft has been prepared shaped after the Mexican prototype.⁴

Considering their sources, the banking regulations of the Latin American countries may be classified as follows:

1. Countries where provisions relating to banking transactions or contracts are found in the commercial codes. These codes do not deal at depth with this important subject, but it is the situation in the majority of the countries.
2. Countries where the commercial code deals at depth with banking transactions or contracts. This is the case in Honduras, Guatemala and El Salvador.
3. Countries where a special law dealing with banking operations has been passed by Congress: Mexico.

In addition to covering banking operations or contracts in the codes or in special laws, all the Latin American nations have promulgated statutes regarding the establishment of a Central Bank. Legislation also exists on the organization and functioning of commercial banks with emphasis on financial structure, supervisory agencies, administrative control and lending techniques. Specialized credit, such as that required for housing, industry and agriculture is covered separately by other laws enacted whenever a new credit institution is created. Collateral legislation includes, among others, monetary laws and legislation on exchange controls, stock exchanges, securities, and foreign investments.

AMERICAN INFLUENCE ON LATIN AMERICAN BANKING LAW

The influence of the United States on Latin America is not significant in the legal field. However, certain influence does exist and has become manifest in both public and private law.

The most important institution of the common law recognized in some Latin American countries is the trust, but this is generally considered a banking transaction and thus is usually reserved to banks and bank-like institutions.⁵ The concept of the investment company and the holding company has also been adopted in some of the leading Latin American republics.⁶ Likewise the U. S. Securities and Exchange Commission Act has served to guide the establishment of *Comisiones Nacionales de Valores* in certain countries and the planning for such *Comisiones* in others. No par value shares are recognized in Mexico and Panama. Further, it is well known that Panama in 1917 and Colombia in 1923 adopted the Negotiable Instruments Act of the United States. This step was widely criti-

cized because the Latin American version reflected a poor translation and the use of a strange terminology, but more importantly because it highlighted the incompatibility between foreign legal norms and the local legal system. It seems that in Colombia the previous tendency by scholars to favor a foreign transplant has been recently reversed as evidenced by the debate on the *Proyecto de Ley Uniforme de Titulos Valores para América Latina*.⁷

The Central Banking System of Latin America follows the pattern of the Federal Reserve System of the United States (Federal Reserve System Act of December 23, 1913). This came about through the advice of several American economic missions or counselors. Among these the most relevant was the Kemmerer Mission whose recommendations influenced the central bank laws of Bolivia, Colombia, Chile, Ecuador, Peru and Venezuela.⁸ The first Latin American central bank was created in Colombia in 1923, followed by Chile (1926), Ecuador (1927), Bolivia (1928) and Peru (1931).⁹ Besides Kemmerer, other consultants contributed to the drafting of the central bank legislation, among them Niemeyer in Argentina and Brazil (1935), Powell in El Salvador (1934) and Hermann Max in Costa Rica (1936), Venezuela (1939) and Nicaragua (1940).¹⁰

THE VENEZUELAN BANKING LAW

Venezuela may be classified as one of the countries where banking transactions have had limited treatment in the commercial code.¹¹ Paragraph 14 of Article 2 of the code considers banking operations (*operaciones de banca*) to be commercial in nature (*actos de comercio*). Articles 489 to 494 refer to checks,¹² and Articles 521 to 526 deal, in part, with banks deposits (*cuenta corriente bancaria*).¹³ For many years the provisions of the code were felt to be inadequate vis-à-vis the progress made, and a new text was prepared. Sent to Congress in 1963 by the Ministry of Justice, the draft has not been officially considered and at present there is no indication when this will take place.¹⁴

What has been said so far regarding the lack of appropriate legislation in the banking area applies only to the rules governing the contracts entered into by banks (*contratos bancarios*), which in the Civil Law System are considered to be a special group of contracts. It does not apply to the organization and functioning of banks. Detailed legal provisions, most of them of an administrative nature, regulate the subjects of banks and banking. In some instances these statutes include references to particular aspects of banking contracts, such as rates of interest and secured transactions, among others.

The Venezuela banking legislation comprises the statutes listed below. Only the first two will be reviewed in this study.

1. The Central Bank Law
2. The Commercial Bank Law
3. The Law of the Savings and Loan Associations System
4. The Specialized Credit Laws
5. The Collateral Statutes

THE CENTRAL BANK

The Central Bank of Venezuela was created by the Central Bank Law (*Ley de Banco Central*) of September 8, 1939. This law was drafted by the *Comisión Organizadora del Banco Central de Venezuela* "which based its resolutions on the intensive study of other banking systems, and on the counsel of the Kemmerer Commission in the setting up of the Colombian banking system."¹⁵ The Central Bank Law was substantially amended by a law of June 10, 1943 and superseded by a law of December 5, 1960 now in force. The bank has been organized as a corporation with half the stock being owned by the National Government and the other half by the general public.

With the exception of the National Government no person is entitled to own more than 100 shares. Nominal value of each share is 100 *bolivares*.

The Central Bank is the National Government's financial agent in the latter's domestic and foreign credit operations, and performs, among others, the following functions:

1. Exercises the exclusive right to issue banknotes.
2. Regulates the amount of money in circulation.
3. Regulates the credit operations of banks and other credit institutions.
4. Centralizes the international monetary reserves of the country.
5. Regulates trade in gold and foreign exchange.
6. Promotes liquidity and solvency of banking institutions.
7. Discharges the obligations of the country and exercises its right with regard to the International Monetary Fund.
8. Undertakes all banking operations which are compatible with its role as a central bank.

The Central Bank is authorized to deal with the National Government, with other banks and with the general public within the limitations set forth in its own law.

The bank may grant loans to the National Government for the purpose of covering temporary cash shortages. As agent for the Government it controls the placing and servicing of any loans contracted, national or international, and it also acts as the depository for the National Treasury. It cannot guarantee governmental obligations of any kind.

Even though the Bank has the power to accept demand, time or savings deposits from any person and to grant loans and discounts to the general public, these commercial banking operations are seldom performed so as to avoid competition with private banking organizations. The bank reserves such powers for emergencies and for appropriate occasions.

The main credit transactions of the Central Bank with other banks concern the buying, selling and discounting of negotiable instruments and other commercial paper. The bank also receives deposits from other banks payable at sight and holds the cash reserves required of the members of the system. Terms and conditions for these transactions, as well as other banking operations are specified in the corresponding statute. In addition to its supervisory and credit control functions, the Central Bank acts as a clearing house for other banks in accordance with specific provisions of law. For this purpose the bank uses the time deposits and cash reserves of member banks.

THE 1970 AMENDMENT TO THE COMMERCIAL BANKING LAW

The first *Ley de Bancos* of Venezuela is dated May 7, 1895 but it has been superseded by others adopted on May 27, 1896; April 18, 1904; June 25, 1910; November 9, 1911; June 26, 1913; June 27, 1918; July 19, 1926; July 1, 1935; July 20, 1936 and January 24, 1940.¹⁶ The law in force at the present time was adopted on February 13, 1961 and was amended partially on December 30, 1970. The reforms brought about by this amendment will be considered next.

The contents of the *Ley General de Bancos y Otros Institutos de Crédito* are divided into 16 titles and 168 sections (*artículos*). The titles read as follow: Title I, Preliminary Provisions; Title II, Promotion and Opening of Banks and Other Credit Institutions; Title III, Deposits; Title IV, Commercial Banks; Title IV (I) General Provisions; Title IV (II) Special Provisions; Title V, Urban Mortgage Banks; Title V (I), Mortgage

Loans; Title V (II), Mortgage Bonds; Title V (III), Other Urban Mortgage Bank Transactions; Title VI, Finance Companies; Title VI (I), Finance Companies Transactions; Title VI (II), Finance Companies Bonds; Title VII, *Sociedades de Capitalización*, Title VII (I), *Sociedades de Capitalización* Transactions; Title VII (II), *Sociedades de Capitalización* Investments; Title VIII, Trust and Other Fiduciary Transactions; Title IX, Money Exchange Houses; Title X, Bookkeeping, Statements and Reports; Title XI, Superintendency of Banks; Title XII, National Banking Council; Title XIII, General Provisions; Title XIV, Criminal Law Provisions; Title XV, Temporary Provisions; Title XVI, Final Provisions.

The changes are related to Title I (art. 1); Title II (art. 10 and 12); Title III (art. 15, 18 and 20); Title IV (I) (art. 24, 25, 26, 27, 28, 29 and 30); Title IV (II) (art. 31, 32, 33, and 34); Title V (art. 35); Title V (I) (art. 36 and 37); Title V (III) (art. 60); Title VI (I) (art. 66); Title VI (II) (art. 67, 68, 70, 72 and 77); Title VIII (art. 98); Title XII (art. 132); Title XIII (art. 134 and 135); Title XIV (art. 149); Title XV (art. 149, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163 and 164). All numbers refer to the banking law as amended unless otherwise indicated.

The impact of the amendment is directed at foreign banks, chartering of new banks, nature of charters, the banks' financial structure, trusts, interest and usury, secured transactions, negotiability of certificates of deposit, finance companies and farm credit.

Foreign Banks and Chartering of New Banks

A bank is considered to be a foreign bank (Art. 31) if more than 20% of its stock is owned by:

1. foreign individuals,
2. juridical persons having their domicile abroad with the exception of international institutions in which the Venezuelan Government is a stockholder,
3. juridical persons having their domicile in Venezuela where more than 20% of the stock is owned by foreign individuals, or
4. juridical persons having their domicile in Venezuela where more than 20% of the stock belongs to juridical persons domiciled abroad, or to juridical persons in 3 above.

The 20% rule also applies to urban mortgage banks (Art. 35). There is a different restriction for finance companies (*sociedades financieras*)

in which foreign participation may reach 40% (Art. 65, 2). The *Sociedades de Capitalización* have not been affected by these restrictions and neither have the *Casas de Cambio* (Money Exchange Houses). The *Sociedad de Capitalización* is a special type of institution under which the client undertakes to deposit a fixed sum at regular intervals for a determined period of years at the end of which he is paid the principal plus accrued interest. An unusual feature of this type of institution is that there is a periodic drawing (lottery) which pays to the winner the principal sum plus accrued interest prior to the maturity date.

Foreign banks now operating in Venezuela cannot, under Articles 33 and 34:

1. increase their capital,
2. open new branches,
3. receive demand or time deposits in amounts exceeding six times their paid-up capital and reserve funds,
4. receive savings deposits from residents of Venezuela,
5. receive deposits from the National, State or Municipal Government and from other governmental agencies (*Institutos Autónomos, Empresas del Estado, Organismos del Sector Público*),
6. issue negotiable certificates on time deposits, nor
7. sell foreign exchange controlled directly or indirectly by the Central Bank.

From now on, branches of foreign banks may not be established in the country. Charters will be granted only to Venezuelan nationals, but on the basis of reciprocity a charter may be granted to nationals of other Latin American countries (Art. 32).

Foreign participation in banks' stock may not be increased even in cases where the foreign percentage is less than 20%, and where there is presently no participation, future foreign participation will not be permitted. An exception is allowed in both these instances in cases of inheritance (Art. 32). In order to control effectively the enforcement of these provisions, all banks now operating in Venezuela are under the obligation to disclose information regarding shareholders and their stock ownership (Art. 158). All stock transfers have to be communicated to the Superintendent of Banks and will be valid only when approved by him (Art. 12).

Foreigners are not allowed to become presidents of banks in Venezuela. Seventy-five percent of the number of Vice-Presidents, Members of

the Board of Directors, Managers and other Executive Officers must be Venezuelan citizens living in the country (Art. 135). The latter does not apply to foreigners who have been residents of the country for a period of more than 15 years (Art. 164).

Foreign banks now operating in Venezuela have an option to become domestic banks and thus be subject to the general rules applicable to such banks. This may be accomplished either by reducing foreign stockholders' participation to the 20% maximum permitted by the law and transferring to Venezuelan nationals ownership of the remaining 80%; or by increasing the bank's capital by an amount which will reduce the foreign participation to the allowable 20%. A two-year period has been set for this purpose. However, interested banks must give notice of intent within a period of 90 days after the Superintendent of Banks has made public the resolution listing all foreign banks. During the two-year term, foreign banks intending to shift to domestic bank status and which have manifested this intention, will be accorded equal treatment with domestic banks. Fines for noncompliance are established (Art. 159).

A regulation dealing exclusively with this matter was adopted by the Executive on February 17, 1971 (*Reglamento No. 2 de la Ley General de Bancos y Otros Institutos de Crédito*). According to this regulation, the capital increase has to be made during the 90-day period following the Superintendent of Banks' resolution listing the foreign banks (Art. 1 of *Reglamento No. 2*). This regulation is a flagrant contradiction of the law it intends to clarify since the law clearly provides a period of two years within which to change the capital structure, after due notice (Art. 159).

A rather ambiguous provision is contained in *Parágrafo Unico* of Article 159, which states that banks which have not given notice of their willingness to change their capital structure within the 90 day term will be able to shift to domestic bank status whenever they present adequate proof that they have effected the required changes in their capital structure. Thus the rest of Article 159 is rendered ineffective; its terms meaningless. Moreover *Reglamento No. 2* of February 17, 1971 is even more difficult to understand. In any case, the interpretation given to the law by the Executive through *Reglamento No. 2* will prevail unless ruled unconstitutional by the Supreme Court.

The resort to bank financing by business associations with 40% of their stock in the hands of foreigners, as defined by Art. 31, is limited to the amount of their paid up capital and reserves (Art. 29). Savings deposits in convertible foreign currency will no longer be accepted by the

banks; they may only accept time and demand deposits on such currency (Art. 26). However, investments by banks in foreign stocks are still limited. At present this investment cannot exceed 5% of bank deposits in national currency. (Art. 30, 4). However, this limit may be changed to permit investments in Latin American banking companies up to 20% of paid up capital and reserves of the investor bank (Art. 30, 4).

Nature of Charters

The legal nature of the charters granted to banks was intended to change if credence is to be given to what the drafters stated in the *Exposición de Motivos* and what the lawmakers expressed in the *Informe de la Comisión de Finanzas de la Cámara de Diputados*. The drafters and lawmakers were of the opinion that banks render a public service (*servicio público*) and therefore the authorization given to them in order to function was a *concesión* (concession, license or franchise subject to revocation at any time).

It is submitted that the wording of the law cannot reasonably be interpreted as set forth above and that the courts will ultimately have to settle the matter. Even in countries where the word *concesión* is used in statutory law in the above context, e.g., Mexico, the opinion of the Venezuelan drafters has been challenged.¹⁷ This particular amendment can have reaching consequences, depending on the ruling of Supervisory Agencies or the courts in specific cases. If they concur with the opinion of the lawmakers, the Venezuelan banking system has in fact been nationalized.

Financial Structure

Some changes have been made as to capital requirements and deposits. For example, the capital required to operate a commercial bank has been increased, and this will apply to banks to be established as well as to banks presently established. Also, the limit on bank deposits has been increased. The minimum capital required to operate a bank in the Federal District or in the Sucre District of the State of Miranda (where Caracas, the capital, is located) is 20,000,000 *bolívares*, paid in cash. The minimum capital required to operate a bank in one or several other States is 10,000,000 *bolívares* paid in cash (Art. 24). Lesser amounts were required before the amendment.

Commercial banks not having at the present time the minimum capital limits fixed by Article 24 are required to draw up a plan which will bring them in line with the new requirements within a period of three years. Notice of the plan had to be given to the Superintendent of Banks

within a 90-day period which ended March 30, 1971 and his approval was mandatory (Art. 153). Commercial banks in which governmental participation exceeds 50% of the capital and which have to comply with the minimum capital requirements are allowed to present the plan at a time to be announced by the Government (*Parágrafo Unico*, Art. 153).

In the future, commercial banks may receive deposits up to an amount not to exceed 8 times their paid up capital and reserves (previous ratio of 6 to 1). An additional cash reserve of 40% for new deposits over that figure will have to be set aside in the Central Bank (Art. 30). The relationship between deposits and capital plus reserves may be increased by the Central Bank on the grounds of credit policy and economic development without asking for the additional cash reserve of 40%. This could result in a maximum ratio of 10 to 1 between deposits and paid up capital and reserves (Art. 30).

The changes in capital requirements constitute a sound measure intended to strengthen the system and to protect the public. The liberalizing trend in the relationship between capital plus reserves and deposits is not an exaggerated one. The previous ratio was rather conservative for a growing economy and for a banking system under tight and effective controls exercised by the supervisory agencies. The fact that bank scandals have seldom occurred in Venezuela is not a coincidence.

Trusts

In Venezuela, only banks, finance companies and insurance companies may act as trustees,¹⁸ except in cases concerning alimony where anyone enjoying legal capacity may act as such.¹⁹ For this reason, the commercial banking law deals partially with the matter.

The amendment concerning trusts is intended to facilitate the use of the trust by eliminating the requirement of one of the two additional cash reserves under the previous law. Cash reserves of 3% of the value of properties in trust required by former Art. 88 are no longer required (Art. 98). A deposit of 50,000 *bolívares* with the Central Bank, however, is still needed to get a license to act as a trustee (Art. 97).²⁰

The use of the trust has not spread in Venezuela and the requirement for additional cash reserves has increased the reluctance of banks to be involved in this type of transaction. Future reforms are necessary to develop this useful institution.

Interest and Usury

The Central Bank has the power to fix the maximum or minimum rates which banks may charge on all loans and pay on deposits (Art. 57 of the Central Bank Law). The amendment reaffirms that provision (Art. 134, 10). A further provision (Art. 134, 9) requires that interests be computed on the balance due in order to avoid usury.

Secured Transactions

Existing legislation dealing with security interests (*garantías*) in personal property and fixtures is not extensive in Venezuela. This is in contrast to the wide variety of security devices which exist in the United States. The traditional *prenda* (pledge) still requires possession by the creditor and only in exceptional cases is the debtor allowed to retain possession (Art. 1842, Venezuelan Civil Code). Aside from these, the Conditional Sales Act partially covers the subject (*Ley de Ventas con Reserva de Dominio* of December 26, 1958).²¹

The growing complexity of financial transactions renders mandatory the enactment of a comprehensive scheme for the regulation of the varied situations concerning secured transactions. This was recognized by the legislators in Article 163, ordering the application to banking transactions of several laws relating to the *prenda agraria e industrial* (agrarian and industrial pledges) "while a special act dealing with pledges without dispossession and chattel mortgage is enacted."²²

The amendment will permit obtaining credit with collateral securities on raw materials, manufactured products, machinery and equipment, wood, industrial products in general, crops, equipment, farm products, automobiles and other means of transportation related to industrial or agricultural activities. The debtor will keep possession of secured products and a register is set up to protect creditor's rights.

Negotiability of Certificates of Deposit

Formerly, certificates issued by banks to substantiate time deposits were denied negotiability, but this position has been reversed. In the future only certificates of time deposits will be considered negotiable, thus adding a sound commercial paper to the financial market. Depositors may prefer a non-negotiable certificate and, of course, this also will be available. Certificates may be nominal or to bearer and transfer of nominal paper can be accomplished simply by endorsement (Art. 15). Banks cannot issue certificates of deposits on demand deposits. As it is known, in the U.S. under the Uniform Commercial Code (UCC) both types of

certificates of deposits (time or demand) may be issued by banks (UCC 3-104).

The Central Bank is authorized to regulate the amount of negotiable certificates in circulation and the conditions for transfer (Art. 15).

Finance Companies

Finance companies (the Venezuelan equivalent of investment banks) have been granted a more liberal regime by the new law. The only new restriction limits their ownership in the stock of business associations promoted by them to 25% of the paid up capital and reserves. This limit was cut down from 50% (Art. 66, 1).

Loan terms have been extended to 15 years in some cases (Art. 66, 5) and to 20 years in others (Art. 66, 8); the amount of loans available to a single person has been raised (Art. 134, d). The field of tourism is now open to finance companies (Art. 66, 6) and the transactions they may enter into are those "compatible with their nature as finance companies" (Art. 66, 13). Finance companies may now issue different types of bonds depending on how they are guaranteed (Art. 67, 68, 70, and 72). Lastly, finance companies are permitted liabilities not to exceed 15 times their paid up capital and reserves.

Miscellaneous

Commercial banks have been authorized to issue savings bonds (Art. 23, k) a privilege only enjoyed before by urban mortgage banks (Art. 60, 4). However the privilege was seldom exercised because of the popularity of mortgage bonds (*cédulas hipotecarias*), by far the most important security in the Venezuelan financial market. There is no apparent reason for the extension of this privilege to commercial banks. It is submitted, however, that the successful use of this credit device by commercial banks could weaken the savings and loan associations which rely largely on savings.

In a move intended to channel resources to industry and the farming sectors, commercial banks may, in the future, grant mid-term loans (up to 5 years) in these areas (Art. 28, h). Additional cash reserves may be represented in commercial paper coming out of farm credit financing (Art. 30). Maximum term for advances (*anticipos*) is now two years instead of one (Art. 28, g).

Urban mortgage banks may now grant mortgage secured loans for a maximum period of 25 years (Art. 37). A restriction has been imposed

on this type of credit institution in that they will not be allowed to make certain types of loans which exceed three times their paid up capital and reserves (Art. 37, 3). Depositors in urban mortgage banks may be parties to a plan under which the banks may sell their own mortgage bonds to the depositor and administer same for his benefit (Art. 60, 3).

CONCLUSION

If the financial power of banks is used as a standard to measure the economic development of a nation, that of Venezuelan banks compares favorably with that of other countries. The same cannot be said about Latin American banking as a whole.

In the United States there is a total of 35,121 banks and branches with a capital and surplus of \$34.5 billion and deposits amounting to \$543.5 billion. Due to the peculiarities of the American dual banking system (national and state), national banks (4,657) are outnumbered by state banks (9,431). This last figure includes trust companies.²³

Latin American countries in LAFTA²⁴ have a total of 16,059 banks and branches with a capital and surplus of \$3.6 billion and deposits amounting to \$20.3 billion. Due to the highly developed system of branch banking, of the total 16,059 only 667 are principal banks, the other 15,392 are branches.²⁵ As illustrated, LAFTA countries have about 10% of the American banks' capital and surplus and approximately 4% of the American banks' deposits.

Of the total amount of capital and reserves of LAFTA countries, Brazil owns 36%, Venezuela 20%, Mexico 18% and Argentina 13%. As to deposits, 85% of them are concentrated in the same countries.²⁶

Foreign banks are preponderant in Paraguay where they represent 70% of the entire system. Also, they account for an important percentage of the banks in Bolivia and Uruguay (26%) each, Peru (24%) and Colombia (22%).²⁷

Foreign banking investments in this area have a common feature. Generally, foreign banks have been established through a branch, with no actual transfer of money, simply by filing the articles of incorporation of the parent banking company. Nevertheless they have been allowed to repatriate profits on "capital" invested, practically without restrictions. What has been said, therefore, renders foreign banking investments one of the primary targets of rising nationalism in Latin America. At least this has been the case in Venezuela where the first important restrictions imposed on foreign investments relate to foreign banks and to the use of

bank credit by foreign business associations. Other statutes are being drafted to regulate securities and stock exchanges through a *Comisión Nacional de Valores*, the Latin American version of the American Securities and Exchange Commission. Legislation is also expected to establish a control regime for foreign investments.

The rising tide of nationalism in Latin America, however, should be placed in proper perspective. The words of Dr. Antonio Ortiz Mena, the new President of IDB, are considered pertinent in this connection. Speaking before the Bankers' Association for Foreign Trade at Boca Raton, Florida on April 28, 1971 he said:

Even though economic nationalism in a variety of forms is on the rise throughout the region it can hardly be doubted that external financing will continue to play a prominent role in most of the countries. Of course, the relative importance of loans from external public and private sources and equity investment will vary among them.

From the standpoint of statutory techniques, the amendment to the Commercial Banking Law of Venezuela is not a model to be emulated. The wording of the new provisions is poor and at times inappropriate. Some of the deficiencies follow: errors in the text; incomplete citations; frequent referral to other laws, and repetition of clauses already appearing in statutes in force. In an unprecedented fashion, two partial regulations instead of the usual all encompassing regulation have been released by the Executive in a short period of time dealing with very limited aspects of the law. It is expected that more regulations will follow.

The 1970 amendment was obviously drafted and promulgated too hurriedly. The law as amended will have to suffer modifications in order to bring the Commercial Banking Law of Venezuela in line with the economic developments of the country and the legal framework within which a matter of such transcendental importance must operate. It is hoped that these modifications will not be too long in coming and that legal scholars will be permitted to make their contributions to the subject.

FOOTNOTES

¹Julio Olavarría-Avila, *Los Códigos de Comercio Latinoamericanos* 106 (Santiago Chile 1961).

²Idem 268, 269. On the recent Guatemalan Commercial Code of 1970, S. A. Bayitch, *Guatemala: Commercial Code 1970*, 3 *Law. Am.* 27, 40.

³Julio Olavarría-Avila, *Idem* 274, 275.

⁴*Exposición de Motivos y Proyecto de Ley de Títulos-Valores y Operaciones Bancarias*, (Caracas 1967). There also exists a previous 1963 draft. Both have been

prepared by the same Commission and edited by the Ministry of Justice. On the subject: Roberto Goldschmidt, *La Reforma del Derecho Mercantil Venezolano en Materia de Títulos-Valores y Operaciones Bancarias Nuevos Estudios de Derecho Comparado* 283, (Caracas 1962).

⁵Jorge Barrera-Graf, *El Derecho Mercantil en la América Latina* 78, 79, (Mexico 1963). Any person having legal capacity may be a trustee in Panama and Puerto Rico. Only banks in Mexico, Honduras and El Salvador; banks and other credit institutions in Guatemala; banks, investment companies and insurance corporations in Venezuela.

⁶Idem 76.

⁷*Revista del la Federación Latinoamericana de Bancos* 163, (Bogota 1970).

⁸Barrera-Graf, Idem 81. Also Roberto Goldschmidt, *El Fideicomiso en América Latina. Nuevos Estudios de Derecho Comparado* 144, (Caracas 1962).

⁹Barrera-Graf, Idem 82.

¹⁰Barrera-Graf, Idem 82.

¹¹The Commercial Code in force in Venezuela at the present time is that of June 29, 1919 as amended July 7, 1938; August 17, 1942; September 19, 1945; and July 26, 1955.

¹²The Venezuelan regulations on checks are taken from the Italian Commercial Code of 1882. About the origin and development of the legal provisions concerning negotiable instruments in Venezuelan Commercial Codes, see José Muci-Abraham (h), *El Estatuto Cambiario Venezolano*, (Caracas 1966). On checks, Roberto Goldschmidt, *Algunos Aspectos de la Legislación Venezolana sobre el Cheque*, (Caracas 1964). On the approach of intended reforms on checks, Francisco Hung-Vaillant, *El Cheque en el Proyecto de Ley de Títulos-Valores y Operaciones Bancarias*, (Caracas 1964).

¹³On bank deposits see Valmore Acevedo-Amaya, *Los Depósitos Bancarios*, (Caracas 1955) and on bank current accounts (*cuenta corriente bancaria*) José Muci-Abraham (h), *Cuenta Corriente Bancaria*, (Caracas 1970).

¹⁴*Reforma Mercantil, Anteproyectos*, (Caracas 1962); *Reforma Mercantil, Anteproyectos II*, (Caracas 1966). These drafts are mainly the work of Prof. Roberto Goldschmidt. On the main features of this see: Roberto Goldschmidt, *La Reforma de la Legislación Mercantil en Venezuela. Nuevos Estudios de Derecho Comparado* 241, (Caracas 1962). Also Gert Kummerow, *Noticia Preliminar sobre los Anteproyectos de Unificación de las Obligaciones Civiles y Mercantiles en Venezuela. 4 Boletín Mexicano de Derecho Comparado* 44, (Mexico 1969).

¹⁵Helen L. Clagett, *A Guide to the Law and Legal Literature of Venezuela* 86. The Library of Congress (Washington 1947).

¹⁶Helen L. Clagett, Idem 86.

¹⁷Gustavo R. Velasco, *Sobre la Naturaleza Jurídica de la Concesión Bancaria. 74 Revista de la Facultad de Derecho* 303. *Universidad Nacional Autónoma de México*, (Mexico 1969).

¹⁸*Ley de Fideicomisos* of July 26, 1956,

¹⁹*Ley de Protección Familiar* of December 22, 1961.

²⁰Regarding trusts in Venezuela see: Antonio Stempel Paris, "Trust" y *Fideicomiso*, (Caracas 1955) and Roberto Goldschmidt, *El Fideicomiso en los Países de América Latina. Nuevos Estudios de Derecho Comparado* 129, (Caracas 1962).

²¹On this legislation: Roberto Goldschmidt, *La Legislación Venezolana sobre Ventas con Reserva de Dominio de 1955 y 1958. 17 Revista de la Facultad de Derecho* 68. *Universidad Central de Venezuela*, (Caracas 1959),

²²*Ley de Banco Agrícola y Pecuário, Ley de Banco Industrial* and *Reglamento de la Ley de la Corporación Venezolana de Fomento*. It should be noted that *Ley de Banco Industrial* does not cover this subject.

²³All figures to December 31, 1969. Source: Rand McNally International Bankers Directory, (1970).

²⁴Latin American Free Trade Association (LAFTA) includes the following countries; Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

²⁵Most figures to December 31, 1969. Source: *Guta Bancaria de los Países de la ALALC*, (Bogota 1971).

²⁶Idem.

²⁷Idem.