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TRADE AND LEGAL REGULATIONS AFFECTING THE CONDUCT OF A FOREIGN BUSINESS IN CHILE

JOHN M. DYER*

The increase of trade between the United States and Latin-America has stimulated the interests of American businessmen and investors in the regulations affecting the conduct of business in and with the republics south of the border. In 1938, the 130 million people in Latin-America bought about 18% of our exports and furnished almost 25% of our imports. In the same year, the twelve million people of Canada alone took over 15% of our exports and supplied over 13% of our imports, our dollar volume of exports to Latin-America being roughly 0.5 billion.¹ This relatively small trade had caused some students of the Latin-American market to refer to the existing trade between them and the United States and the potential trade that could be developed between these two areas as "The Myth of the Latin-American Market."

Today, however, the picture has changed. The war and the domestic economy of the United States have been felt in Latin-America as its demands for raw material assume a faster and faster tempo.² To capitalize on this expansion of trade activity between the two hemispheres, of what factors should an American businessman be aware in order to establish a business in one of the Latin-American republics?

Operations in the field of international trade and investment are complicated by the fact that two legal systems are involved. None of the Latin-American nations have the common law system which we use, but have a civil law system. It is reasonable to assume that much of the increasing business and investments in Latin-America will be done within the respective Latin-American republics and will therefore be subject to local law. Generally, the civil law of Latin-America provides four alternatives for business organizations, namely:

- 1) *Sociedad Colectiva*—A simple partnership or an association of two or more partners, whose liability is unlimited;
- 2) *Sociedad en Comandita*—A limited partnership or an association of partners, some of whom have managerial rights and unlimited liability, while others have liability limited to the amount of their contribution to the capitalization of the partnership, with no rights of management;
- 3) *Sociedad Limitada*—Counterpart of the limited liability company,

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1. HORN AND RICE: LATIN-AMERICAN TRADE AND ECONOMICS 182 (1949).
2. U. S. Department of Commerce, WORLD TRADE NEWS, Sept. 1951.

with liability for all partners limited to the amount contributed to the partnership; or

4) *Sociedad Anonima*—Civil law counterpart of the corporation.

An American firm wishing to engage in business in Latin-America will find that there are three alternatives:

1) It may register the existing American company to conduct the business in the country in question;

2) A subsidiary company may be organized under the laws of the country involved; or

3) It may organize an American subsidiary to engage in business in the country under consideration.

Of these alternatives the most popular one is that of organizing an American subsidiary which would then register to engage in business in the country selected. Several advantages substantiate this selection: first, favorable tax treatment; second, directors' and stockholders' meetings can be held at the subsidiary's home office in the United States; and third, diplomatic protection is afforded by the United States.

In applying these general principles as set out above, and the outstanding requirements of Chilean law as considered in the rest of this article, it must be made evident that the consulting of legal counsel is necessary with regard to any one particular investment or business concern contemplating doing business in Chile.

IN GENERAL

Article 10 of the Chilean Constitution guarantees equality before the law to all inhabitants of the country. Besides this constitutional provision, Article 57 of the civil code reads: "The law recognizes no difference between a Chilean and a foreigner in regard to the acquisition and enjoyment of the civil rights governed by this code." There are, however, certain restrictions based upon the nationality of persons. For example: only Chileans and aliens domiciled in Chile may fish in the territorial waters of the Republic;³ the practice of law is restricted to Chilean citizens;⁴ and the right to import, distribute, and sell oil is reserved to the state.⁵

Chilean business organizations are similar to those of the United States, comprising the familiar forms of partnerships and corporations. For the purpose of this article, a survey of the civil law counterpart of the corporation will suffice since it is the most popular and satisfactory business form to use. To organize a Chilean corporation (*sociedad anonima*)⁶ a notarial instrument (*escritura pública*) must be submitted. This instrument must include the following information:

- 1) Names, addresses, and occupations of the promoters;
- 2) Domicile of the corporation;

3. CODIGO CIVIL, Art. 611.

4. Ley No. 6985 de 10 de julio de 1941 (D.O. 19,032), Art. 62.

5. Ley No. 5124 de 16 de mayo de 1932 (D.O. 16,276), Art. 1.

6. CODIGO DE COMERCIO, Art. 424-469.

- 3) Duration of the corporation;
- 4) Capitalization of the corporation;
- 5) Powers of the directors, shareholders and management;
- 6) Method of dissolution;
- 7) The amount of profits which must be used as reserves;
- 8) The nature of the business to be engaged in and the source from which the corporate name is derived; and
- 9) Any other agreements that the founders may make.

To charter the corporation, three copies of the notarized instrument and a prospectus must be submitted to the Superintendent of Insurance Companies, Corporations and Commercial Exchanges of the Ministry of the Treasury.⁷ After this is approved, the corporation is granted its charter by the Chilean president. No application for the formation of a corporation will be approved if it is not signed by stock subscribers representing at least one-third of the shares and accompanied by attested copies of the notarized instrument as approved by a general shareholders' meeting. The decree of the president authorizing the corporation must be recorded in the commercial register for the place where the new enterprise is to be domiciled within 60 days of the date of the presidential decree.⁸ In addition, these same documents must be published once in the "*Diario Oficial*."

The directors need not be residents of Chile and the corporate by-laws may provide for any number. Directors are usually elected by having each stockholder vote for a single person, the required number of directors being those who obtain the greatest number of votes. If there is a change in directors, this information must be communicated to the Superintendent of Insurance Companies, Corporations and Commercial Exchanges.⁹

FOREIGN CORPORATIONS

Foreign corporations may not establish agents in Chile without presidential authorization. The corporation's application for authorization must be accompanied by:

- 1) A copy of the corporate by-laws in Spanish, authenticated by a Chilean consul;
- 2) Documents proving that the corporation was legally formed at its place of domicile;
- 3) A general power to a person in Chile to act in behalf of the foreign corporation;
- 4) Authenticated copy of the last balance sheet; and
- 5) Inscription in the Commercial Register and publication once in the "*Diario Oficial*" and three times in a local newspaper.¹⁰

7. Decreto No. 4705 de 30 de noviembre de 1946 (D.O. 20,669).

8. CODIGO DE COMERCIO, Art. 440.

9. Ley No. 4657 de 24 septiembre de 1929 (D.O. 15,481).

10. Decreto No. 4705, Art. 47.

TAXATION

The Chilean tax system is extremely complicated and there is no annual codification of tax legislation. This, coupled with multiplicity of rates and kinds of taxes, makes it impossible to determine in advance the probable total taxation on any one business venture. To present a full picture of the Chilean tax structure would be too lengthy for this article, so for the sake of brevity only the highlights of the system will be touched upon.

Income taxes apply both to natural and juridical persons resident in Chile for more than six months during any year on all their income from both domestic and foreign sources.¹¹

Title IV of the Income Tax Law divides income into six categories:

- A) Income from real property;
- B) Income from interest, dividends and pensions;
- C) Income from commercial or industrial activity, agricultural activities, all income not taxes under the other categories;
- D) Income from mining and metallurgical activities;
- E) Income from wages, salaries, premiums and donations; and
- F) Income from professional and other remunerative occupations not included in the other categories.¹²

There is an additional tax on foreigners¹³ which amounts to 10% on profits on income from all operations or investments which they carry out or maintain in Chile.

An excess profits tax¹⁴ is levied on excess profits from industry or commerce. The first 80,000 pesos of income are exempt from this tax. Profits over 80,000 pesos are deemed excess where they exceed more than 15% of the capital and enterprise. The excess profits tax is as follows:

- 1) 13% on profits in excess of 15% but not in excess of 20% of capital;
 - 2) 26% on profits in excess of 20% but not in excess of 25% of capital;
- and
- 3) 39% on profits in excess of 25% of capital.

TAX EXEMPTIONS

In general, those new industries which the president determines to be using national raw materials, or producing products new to Chile, or which fulfill a national consumers' need will be exempt from the excess profits tax.¹⁵ Other tax exemptions may be granted to new Chilean companies producing or processing copper, iron or steel, and which use Chilean ores. Examples of these exemptions are:¹⁶

11. Ley No. 8419 de 27 de marzo de 1946 (D.O. 20,427), as amended by Ley No. 8311 de 3 de febrero de 1949 (D.O. 21,270).

12. *Id.* at Title 4.

13. *Id.* at Title 6.

14. Ley No. 7144 de 31 de diciembre de 1941 (D.O. 19,151).

15. Ley No. 7747 de 23 de diciembre de 1943 (D.O. 19,741), Art 16, as amended by Ley No. 9311 de 3 de febrero de 1949 (D.O. 21,270).

16. *Id.* at Art. 16.

- 1) Total exemption from realty taxes for a period of 20 years; and
- 2) Total exemption from all export taxes affecting their product.

TRADE RESTRICTIONS

Import licenses are required for most goods entering Chile. Licenses are good for the year in which granted and may be renewed if goods are shipped before December 31.¹⁷ The official rate is 60 pesos to an American dollar with variations in this rate depending on the type of imports deemed necessary to the Chilean economy.¹⁸ Neither certificate of origin nor consular invoice is required, but exporters must present a "Certificate of Import Permit" to a Chilean consulate at the port of shipment.¹⁹ Besides this, a commercial invoice including a signed statement by the exporter showing the country of origin and two copies of the bill of lading filed with the Chilean consul for certification is required.²⁰

CONCLUSION

In conclusion, passing reference should be made to the Western Hemisphere trade provisions of the Revenue Act of 1942.²¹ These provisions exempted corporations trading solely in the Western Hemisphere from the excess profit tax and surtax. To qualify under the law as a Western Hemisphere Trade Corporation:²²

- 1) The corporation business must be within the Western Hemisphere and outside the United States.
- 2) 95% of the gross income of the corporation must be from Western Hemisphere sources.²³
- 3) 90% of the corporation's gross income must be derived from the active conduct of a trade or business.²⁴

Emphasis must again be made that this article is a survey of the more important considerations facing a person or firm investigating the possibilities of doing business in Chile. The refinements and details of Chilean law have obviously been ignored or glanced over quickly. But it does provide a panorama of the major factors which must be studied before an intelligent decision can be reached as to the feasibility of locating in Chile.

17. The Chase National Bank, *Import and Exchange Regulations of the Principal Countries of the World*, BULLETIN No. 403, May 1, 1951, p. 3.

18. *Ibid.*

19. Roesenthal, Morris S.; *TECHNIQUES OF INTERNATIONAL TRADE* 201 (1950).

20. *Id.* at 202.

21. I.R.C. §109, 15(a) (1); 26(i); see HORN AND RICE, *op. cit. supra* note 1 at 436.

22. *Ibid.*

23. *Ibid.*

24. *Ibid.*