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CONTRIBUTING FIRMS: ALMEIDA ABOGADOS (WWW.ALMEIDALAW.COM.BR); BRIGARD URRUTIA ABOGADOS (WWW.BU.COM.CO); BRONS & SALAS (WWW.BRONS.COM.AR); CAREY & Cía ABOGADOS (WWW.CAREY.CL); CASTRO LAW GROUP (WWW.CASTROLAW.COM); DUFF & PHELPS (WWW.DUFFANDPHELPS.COM); FERNANDO SOTO & DANIEL ALONSO (WWW.MINEM.GOB.AR); JEMAL TERRENCE HUDSON; MOULON LAW (WWW.MOULONLAW.COM); PAZ HOROWITZ ABOGADOS (WWW.PAZHOROWITZ.COM); PRAGMA LEGAL (WWW.PRAGMA.LEGAL); RIVERO MESTRE LLP (WWW.RIVEROMESTRE.COM)

◇ Argentina

GROUNDBREAKING BILLS HEADED TO THE SENATE IN ARGENTINA

The government of newly elected President Mauricio Macri of Argentina has sent to Congress a series of bills that would substantially modify the country's criminal regime and strengthen the government's tools in the battle against organized crime, money laundering, and other serious crimes. In June and July 2016, the House of Representatives passed three bills discussed below, each of which makes significant modifications to criminal law. Each is also relevant to corporate and white-collar crime practitioners.

The first of these, "La Ley de Los Arrepentidos," enshrines in law an idea very familiar in the United States: plea agreements for cooperating witnesses involved in the offense, allowing grants of leniency in exchange for cooperation. Known as "arrepentidos" (repented ones), such cooperation will now be allowed in cases of money laundering, fraud against the state, conspiracy, drug trafficking, smuggling, terrorism, certain sex offenses, prostitution, child pornography, kidnapping, and human trafficking. The law provides for a sentence reduction of between one-third and one-half of the possible sentence, as well as the possibility of early release, depending on the usefulness of the information provided, the seriousness of the crimes under investigation and the particular point in the prosecution when cooperation is provided. Cooperation credit would be prohibited in impeachment proceedings under the Constitution, or crimes against humanity.

The cooperation bill also provides that (a) cooperators may also receive witness protection (although it is not clear how such program will be implemented), (b) the uncorroborated testimony of a cooperator may not serve as the sole basis for conviction, and (c) the law creates a new

offense of providing false information.

The second bill authorizes police to use undercover agents in investigations of the same crimes listed in the cooperation bill. It also authorizes use of confidential informants to initiate criminal investigations, including a provision protecting their identities and authorizing the possibility of cash payments. Because money laundering and drug trafficking often involve multi-faceted, ongoing criminality across borders, the law allows a judge to delay arrests and seizures, and authorize the continuation of undercover criminal activity, so as not to impede the ultimate goal of these investigations: to identify and charge all of those responsible for the crimes at issue.

Finally, the Deputies passed what will become Argentina's first asset forfeiture law. This bill is crucial to the international fight against money laundering, drug trafficking, and organized crime. It will allow, for the first time, the seizure of assets that represent the fruits of designated criminal activities. Notably, the bill will allow the government to proceed civilly against the owner of property, independently from a criminal action, as long as a criminal action is otherwise pending. Similar to civil forfeiture in the U.S., the government would not necessarily have to connect the criminally derived property to a particular accused defendant. Under the bill, once the property has been preliminarily established to be criminally derived, the title holder will have the burden of demonstrating in a civil court that the subject property is of legal origin.

Contributors: Fernando Soto, Ministry of Security of the Republic of Argentina, Buenos Aires, and Daniel R. Alonso, Exiger, New York. For further information, send an email to Fernando.soto@minseg.gob.ar or dalonso@exiger.com.

IMPORTS AND FINANCIAL REFORM IN ARGENTINA

The Argentine Central Bank (BCRA) has issued Communication A 6011, effective as from July 12, 2016, which provides as follows:

Imports

Among other highlights, Comunicé “A” 5850 (and other related resolutions) now:

- The Communication has rendered ineffective the requirement to the effect that there should be no delays in submitting evidence of customs clearance of imported goods or of the reentry of funds transferred abroad in order to make advance payment of imports. Therefore, the prohibition against transfers with overdue advances does no longer exist.
- Since July 12, 2016, importers may access the local foreign exchange market to pay imports in advance of the due date, either in full or in part. So far, payment was not allowed until the fifth business day prior to the due date.

Foreign financial debts

- Section 4.3 of Communication A 5265 (as amended by Communication A 5890) is amended. At present, proceeds from foreign borrowings entered in Argentine before December 17, 2015 may be prepaid without the need to fulfill any requirements provided that the applicable minimum repayment term is met, i.e. 120 days for borrowings after such date and 365 days for borrowings before such date. At present, “fresh” funds were needed to prepaid “old” borrowings.
- The Communication provides that trading of the funds will not be required for subsequent access to the Argentine FX Market for service of debts (principal and interest) if the funds obtained from fresh borrowings are allocated directly

abroad to the repayment of the resident borrower’s own debts for which it had access to the FX market for repayment purposes. The minimum term for repayment (120 days) will be counted in these cases as from the date on which the funds are allocated.

- Specific regulations are provided for the issue of bonds and other debt securities by two or more issuers acting together as joint and several debtors for the entire amount of the issue. Basically, it is provided that the debt will be recorded in the survey under Communication A 3602 in the proportion for which each issuer is liable but, if any issuer breaches its obligations, the others may access the FX market to settle the other issuers’ unpaid liabilities.

Formation of foreign assets

- Argentine residents may access the FX market, **without any amount limitation**, to make contributions into and/or purchases equity interests in companies qualifying as direct investments abroad, provided that such companies are organized in countries or territories that contribute to fiscal transparency (Decree No. 589/13, section 1) and are directly or indirectly intended for production activities involving non-financial goods and services. It should be noted that this concept was always subject to the maximum monthly limit for formation of foreign assets, i.e. USD 5,000,000 at present.

Purchase and sale by local financial institutions of portfolio securities

- Section 23 d) of Communication A 5850 incorporated by Communication 5910 is amended to allow access to the FX market for the following transaction:

“Initial underwriting of bonds and other debt securities denominated and underwritten in

foreign currency to the extent the transaction is also eligible for application of the lending capacity of local deposits denominated in foreign currency consistently with the credit policy regulations”

Contributor: Roberto Mahmud Gettor, Brons & Salas Abogados, Buenos Aires. For further information, please send an email to rgettor@brons.com.ar

◇ Brazil

BRAZILIAN VISAS AND THE OLYMPIC GAMES

Brazil expects to welcome thousands of tourists during the upcoming Olympic and Paralympic Games, starting on August 5, 2016, in the city of Rio de Janeiro.

To encourage visitors to come to the country, Brazil changed its visa policy for the Games, waiving the visa requirement for a large group of potential tourists.

According to Ruling (Portaria Conjunta) No. 216/2015, the Brazilian Government determined that tourists coming from the United States, Japan, Australia and Canada will be exempted from the existing tourist visa requirements between June 1, 2016 and September 18, 2016. The waiver will be valid for 90 days and is available only to tourists. Visitors coming from most of the other countries expected to visit Brazil (e.g. Latin American countries and European countries) are already exempted from the tourist visa requirement.

Furthermore, journalists belonging to one of the 80 countries with which Brazil has a visa exemption agreement (VITEM II),^[1] will not need a visa to cover the Games. In addition, journalists duly registered with the Olympic Committee will be exempted from presenting an entry visa during the period between July 5, 2016 and October 28, 2016, in accordance with Article 2 of Law No. 12,035/2009 (Olympic Act).

BRAZILIAN VISAS

According to Law No. 6,815/80, foreigners interested in entering the Brazilian territory can be granted the following visas: (i) transit; (ii) tourism; (iii) temporary; (iv) permanent; (v) courtesy; (vi) official; and (vii) diplomatic, all of which are granted individually with the possibility of being extended to family members. The three main types of visas requested by foreign citizens before Brazilian authorities are: the tourist visa (VITUR), the temporary visa (VITEM) and the permanent visa (VIPER).

The tourist visa, the most requested one, will not be discussed in this article. Nonetheless it is important to note that it must be applied for by foreigners who are natives of countries from which Brazil demands visas, such as the United States, Canada, United Kingdom, Australia and India.

The temporary visa, also known as VITEM, is the most requested one by foreigners with economic interests in Brazil. There are several types of VITEMs:

VITEM I - Must be requested by foreigners wishing to undergo educational exchange programs, scientific research, social or religious aid activities, health treatment and training by athletes under 21 years of age.

VITEM II - Also known as the “business visa”, it is the most requested type of visa by foreigners wishing to do any business in Brazil. It should be requested by foreigners coming to Brazil to visit national companies with the purpose of signing contracts; performing due diligence activities, either financial, legal or administrative; acquiring products and services, and exploring business opportunities in Brazil. It is also the appropriate visa for journalists traveling with the intention of producing reports, with or without images, as well as people undergoing adoption processes involving Brazilian children.

VITEM III - For sports and artistic performances in Brazil.

VITEM IV - For studies or internships in Brazil.

VITEM V - Also known as the “technical visa”, it must be requested by individuals visiting Brazil to perform technical assistance work, with or without an employment contract with a Brazilian company. It is also the kind of visa used by employees coming to Brazil to work for Brazilian companies under an employment contract; for training in Brazilian companies; and by cruise ship crew members.

VITEM VI - For foreign press correspondents.

VITEM VII - For religious missionaries.

VIPER

The permanent visa (VIPER) is applicable to foreigners visiting Brazil for purposes of (i) family reunification; (ii) relocating to the country after retirement; and (iii) interested in investing in the country.

The most requested type of VIPER is related to foreign investments in Brazil. For the VIPER there are two basic rules (Normative Ruling).

Normative Ruling (RN) No. 62/04 enacted by the National Council for Immigration established that companies (usually Brazilian subsidiaries) may appoint a foreign individual to act as a company’s administrator, manager, director or executive officer in Brazil. Thus, the Brazilian subsidiary may request a permanent working visa provided that such company (i) makes an investment, in Brazilian national currency, equal to or higher than US\$ 50,000.00 (fifty thousand US dollars) or the equivalent amount in another currency and creates at least 10 new jobs in Brazil within the two years following the company’s establishment in Brazil or the admittance of the foreigner in the company’s administration; or (ii) invests an amount equal to or higher than US\$ 200,000.00 (two hundred thousand US dollars) or the equivalent in another currency, in this case without the need for job creation in the country. In both cases, the invested amounts may also be contributed through a transfer of technology or assets.

In addition, RN No. 118/15 refers to foreign investors’ visas. It provides that a foreign individual interested in investing in a Brazilian company, either a new company or an already existing one, may request the VIPER if he/she invests R\$ 500,000.00 (five hundred thousand Reais) or more. In this case, the visa will be granted to the investor individually (him/herself). The National Council for Immigration may also analyze a VIPER request that involves an investment lower than R\$ 500,000.00 (five hundred thousand Reais), but never lower than R\$ 150,000.00 (one hundred and fifty thousand Reais), should the purpose of the investment be innovation, basic or advanced research, of a scientific or technological nature. In both cases, it is mandatory to present an investment plan.

The temporary visa may in certain cases be converted into a permanent visa subject to further analysis by the competent authorities.

1. <http://www.portalconsular.mre.gov.br/estrangeiros/quadro-geral-de-regime-devistos>

Contributor: Maria Carolina La Motta Araújo Aniz, Almeida Advogados, São Paulo. For further information, please send an e-mail to maraujo@almeidalaw.com.br.

BRAZILIANS FALL BEHIND VENEZUELAN IN INVESTOR VISA PETITIONS IN SPITE OF POLITICAL TURMOIL

Because of its lax currency remittance policies and large population, Brazil became a strong target for developers, business groups, funds and franchises intending to offer investment opportunities suitable for an EB-5 investment; however, Brazil has disappointed by falling behind Venezuela in the number of investment visas submitted to the United States Citizenship and Immigration Services (USCIS).

In 2015, a total of 34 Brazilians were approved for green cards through the EB-5 program, while a total of 72 cases were approved for Venezuelans. This comes as a surprise as the interest for Brazilian capital has grown exponentially in the past few years, and a

possible impeachment of President Dilma Roussef overshadows the country's robust economy.

Brazilian investors are particularly troubled with committing to an EB-5 investment due to unfavorable exchange rate, along with a lackluster real estate market. However, a rise in EB-5 applications from Brazilians is expected, given the recent political movement in the country that brought a substantial reduction in the cost of the dollar. Moreover, Brazilians have spiked in student visa filings, which frequently results in EB-5 investors' giving the students the desire to remain in the US after their graduation.

Contributors: Renata Castro, Castro Law Group, Florida. For further information, please send an e-mail to renata@renatacastrolaw.com.

◇ Chile

APOSTILLE CONVENTION

On March 24, 2016, the Convention Abolishing the Requirement of Legalization for Foreign Public Documents adopted by the Hague Conference on Private International Law (the "Apostille Convention") was published in the Official Gazette. Such convention had been ratified by Chile on December 2, 2015.

The Apostille Convention eliminates the requirement of legalizing any public documents executed within the territory of a member State and that must be produced in the territory of another member State. Accordingly, it will no longer be necessary for diplomatic or consular authorities of the member State where the documents must be produced to certify: (i) the authenticity of the signatory's signature; (ii) the capacity under which such signatory acted; and/or (iii) the identity of the stamp or seal set onto the document.

Pursuant to the Apostille Convention, the only formality allowed to certify all matters

described above is affixing an Apostille, i.e. a stamp set onto the public document, or in an annex thereto, that adjusts to the model provided by the Apostille Convention. The Apostille procedure is free of charge, carried out electronically (by means of an advanced electronic signature, or *firma electrónica avanzada*), and any bearer of a document is entitled to request that an Apostille be affixed thereto by a relevant authority. In Chile, such relevant authorities are: (i) the Justice Undersecretary (*Subsecretario de Justicia*); (ii) Regional Justice Ministry Undersecretaries (*Subsecretarios Regionales Ministeriales de Justicia*), (iii) the General Director of Consular and Immigration Affairs of the Chilean Ministry of Foreign Affairs (*Director General de Asuntos Consulares y de Inmigración del Ministerio de Relaciones Exteriores*); (iv) Regional Education Ministry Undersecretaries (*Subsecretarios Regionales Ministeriales de Educación*); (v) Regional Health Ministry Undersecretaries (*Subsecretarios Regionales Ministeriales de Salud*); (vi) Health Services Directors (*Directores de Servicios de Salud*) or Health Services Providers Managers (*Intendente de Prestadores de Salud*); and (vii) the National Director or Regional Directors of the Civil and Identification Registry Service (*Director Nacional o Directores Regionales del Servicio de Registro Civil e Identificación*).

The Apostille Convention will enter into force in Chile on August 30, 2016.

Contributors: Patricio Laporta and María José Martínez from Carey y Cía. Ltda. For further information, please send an email to plaporta@carey.cl or mmartinez@carey.cl.

NEW CASINOS' LICENSES REGULATION

On April 4, 2016, Decree No. 1,722 issued by the Finance Ministry that sets forth the New Casinos' Licenses Regulation (the "Regulation") was published in the Official Gazette and entered into force.

The Regulation maintains the maximum limit of 24 casinos that may be authorized in the

Chilean territory at one time (this limitation does not include the borough of Arica, which is subject to special requirements), and amends the procedure to obtain a new casino operation license or renew an existing license (the “Procedure”), repealing Supreme Decree No. 211.

The Procedure includes the following stages: (i) between 48 and 36 months before the expiration of an existing license, the Casinos Superintendencia (*Superintendencia de Casinos de Juego*, “SCJ”) must issue a ruling declaring the commencement of the Procedure, preparing and approving the relevant technical terms; (ii) applicants must submit a technical and economic offer to the SCJ, in compliance with all requirements set forth in the Regulation and in Act No. 19,995 regarding the Authorization, Operation and Supervision of Casinos; (iii) within the next 120 days, the SCJ will assess all technical offers and request reports from the Regional Authority (*Intendencia*) and borough of the casino’s location, the Tourism National Service (*Servicio Nacional de Turismo*) and the Ministry of Internal Affairs (*Ministerio del Interior*), and other authorities, as necessary; (iv) a Technical Assessment Committee will assess each technical offer and issue a founded report including their agreements; (v) the SCJ must issue an assessment proposal regarding each technical offer; (vi) the SCJ will submit such assessment proposal to its Resolution Council, for such council to ratify the assessment proposal, request a review of the assessment process, or terminate the Procedure; (vii) if the assessment proposal is ratified by the Resolution Council, the SCJ shall issue an assessment resolution, and summon applicants who obtained at least 60% of the total score to a public hearing where their economic offers will be opened and where the Resolution Council will grant, deny or renew the relevant license by means of an SCJ resolution that must be issued within 5 days as from the public hearing.

Further, the Regulation amended the terms set forth for the start of a casino’s operations. Once a new license is granted or an existing license is renewed, the operating

company must perform the project works in compliance with the Regulation, within the term set forth in the operational plan (offered by the operating company). This plan shall not exceed two years as of the publication of the resolution whereby the SCJ granted the license. This term may be extended by the SCJ, subject to a prior request for extension submitted by the operating company, for an additional 12 months for works related to the casino itself, or 18 months for works related to the additional works and facilities. The casinos that are currently operating at the time of the Regulation will not lose existing licenses, but will be subject to the Regulation upon their renewal.

Contributors: Patricio Laporta and María José Martínez from Carey y Cía. Ltda. For further information, please send an email to plaporta@carey.cl or mmartinez@carey.cl

BILL THAT SETS MANDATORY PRE-MERGER CONTROL

On June 1, 2016, the Chilean Senate approved a bill that amends Decree No. 1 of 2004 (the “Antitrust Act”), by setting, among other things, a mandatory pre-merger control (the “Bill”). Currently, the Bill’s latest amendments are pending approval by a mixed commission composed of members of the House of Representatives and the Senate. In this respect, Colombia has advanced to produce several pieces of legislative measures and programs addressing both, climate change and the introduction of renewable energies to Colombia’s energy matrix, therefore achieving to foster “green development”.

The Bill’s main objectives regarding merger control are: (i) filling the current pre-merger control legal vacuum of the Antitrust Act; and (ii) providing legal certainty regarding concentration operations that must be notified to the National Economic Prosecutor (*Fiscalía Nacional Económica*, “FNE”).

Accordingly, the Bill proposes, among other matters, a mandatory filing before the FNE

regarding any “integration transaction” (as such term is defined in the Bill, and that refers to all acts that result in the ceasing of competition of two independent competitors, in regard to any of their activities) that must comply with certain thresholds, and that will be checked by the Head of the FNE. The filing will be analyzed by the FNE to determine if the transaction may or may not reduce market competition substantially.

The parties of the relevant “integration transaction” are the ones obliged to notify the FNE before the transaction is closed, by submitting the documents that will allow the FNE to identify the type of transaction (e.g. mergers, acquisitions, joint ventures, minority interests acquisitions), and determine if said transaction could potentially reduce market competition substantially. The relevant transaction will be suspended from the date of the filing to the date of the final resolution or judgment by the FNE. After the filing is made, the FNE has a ten business day term to determine if the filing is complete, in which case the merge control analysis will begin.

The FNE has 30 days to analyze the relevant “integration transaction”, after which it must: (a) approve the relevant transaction; (b) approve the relevant transaction provided that certain conditions are met; or (c) extend the investigation term for 90 additional days. This extension must be published by means of a resolution.

During the additional 90 day period, the FNE shall request the relevant authorities, individuals or entities that may have an interest in the analyzed transaction to submit any relevant related information to the FNE. Third parties interested in such transaction may also submit information within 20 days after the publication of the resolution that extends the investigation term.

The records of the FNE’s analysis will be available to the public once the time extension resolution is published, unless the FNE is requested to keep the documents confidential.

Only when the investigation term has been extended for 90 additional days, will the FNE be authorized to prohibit the relevant transaction, in case it concludes it will reduce market competition. The Bill also sets forth a revision appeal before the TDLC for transactions that were prohibited by the FNE. Such appeal may be filed within ten days after the notification of the resolution that prohibits the transaction and the TDLC must decide on the appeal within a 30 days’ term.

Contributors: María José Villalón and Andrés Bellagamba from Carey y Cía. Ltda. For further information, please send an email to mjvillalon@carey.cl or abellagamba@carey.cl.

LAW REGARDING PROBITY IN THE PUBLIC SERVICE AND PREVENTION OF CONFLICTS OF INTEREST

Decree No. 2, issued by the Ministry General Secretariat of Government (the “Regulation”) and published on June 2, 2016, sets forth the regulatory provisions of Law No. 20,880 published on January 5, 2016, regarding probity in the public service and prevention of conflicts of interest (the “Law”).

The main objective of the Law is to regulate strictly certain probity aspects in the public sector, regarding the discharge of public officers’ duties and the prevention and sanction of conflicts of interest. Accordingly, the Law and the Regulation govern the following obligations applicable to certain public authorities:

Statement regarding the public authority’s interests and assets (the “Statement”). The Law provides the obligation of certain authorities (such as the Chilean President, ministries, ambassadors, judges, among others) to issue a public Statement (having the same legal effect as an affidavit) that must mainly contain the following information: (i) the professional, labor and economic activities performed by such authority within the last 12 months; (ii) a list of real estates, registered chattels, equity interests, securities and shares owned by such

authority; and (iii) public authority's liabilities over certain amount (approximately USD 6,500). The Regulation further provides that all entities supervising the granting of these Statements must make such Statements publicly available by means of an electronic system.

Limited power of attorney granted by the public authority for the management of its securities (the "Limited PoA"). This Limited PoA must be executed by certain public authorities owning shares of publicly traded corporations (including acquisition rights over such shares), bonds, debentures and any other publicly traded securities issued by Chilean entities that are registered in the Securities and Bank Regulators' public registries, provided that the total value of such securities exceed the amount of approximately USD 930,000. The Law also forbids any communication between the public authority and the legal entity appointed as manager of such securities. These authorities may choose between executing the Limited PoA or transferring their securities exceeding the mentioned threshold.

Transfer of assets by public authorities. The Law provides a list of public authorities that are obliged to transfer all interests held in entities that: (i) provide goods or services to the Chilean State; (ii) provide services subject to regulated rates; and (iii) exploit concessions granted by the Chilean State.

Finally, the Law also provides penalties for breaching the abovementioned obligations, which include fines amounting to approximately USD 70,000 and the dismissal of the relevant authority.

Contributors: Marco Antonio Muñoz and Fernanda Anguita from Carey y Cía. Ltda. For further information, please send an email to mamunoz@carey.cl or fanguita@carey.cl.

NEW DIGITAL PROCEDURE SYSTEM

Act No. 20,886, that amended the Chilean

Civil Procedure Code (*Código de Procedimiento Civil*) and the Court Statutory Code (*Código Orgánico de Tribunales*) by establishing a digital procedure system, entered into force on June 18, 2016 (the "Act"). The Act replaces the current paper format procedure by a digital procedure system, and will be applicable to the vast majority of civil and criminal cases before Chilean courts.

The Act entered into force on June 18, 2016 for all cases held in the jurisdictional territories of the Courts of Appeals of Arica, Iquique, Antofagasta, Copiapó, La Serena, Rancagua, Talca, Chillán, Temuco, Valdivia, Puerto Montt, Coyhaique and Punta Arenas; and will enter into force on December 18, 2016 for all cases held in the jurisdictional territories of the Courts of Appeals of Santiago, San Miguel, Valparaíso and Concepción. The rules set forth by the Act are applicable to all cases initiated after its entry into force.

The main objectives of the Act are: (i) to change the way judicial proceedings are currently handled by reducing the constant visits to courts, and limiting said visits exclusively to actions that demand personal appearances; (ii) improving the judicial information integrated system to promote interoperation between different courts and with other public services; (iii) reducing litigation costs by eliminating mandatory photocopies or certified copies of judicial files and avoiding mailing costs towards superior courts; (iv) increasing the access to judicial files and the safety of said access; and (v) improving the notification system.

The Act contemplates the following principles, among others, for the new digital procedure system: (i) *Functional equivalence between paper and electronic files.* Jurisdictional actions and other judicial actions executed and signed electronically shall produce the same effects as if they were executed on paper; (ii) *Fidelity.* The proceedings shall be registered and integrally preserved in successive order on the electronic file, which will replace the

material file; and (iii) *Publicity*. Courts' computer systems will guarantee full access to electronic files to every person in conditions of equality. However, some lawsuits, interim measures -including pre-judicial measures- and matters requiring confidentiality, shall be made available only to the relevant applicant before the notification of the relevant resolutions.

The most relevant modification introduced by the Act is that every court filing, including complaints, briefs and other documents shall be submitted through the Virtual Office, which is the digital platform provided by the Judiciary especially for the purpose of filings and the follow up on cases. Every person - lawyer or not- can have access to this platform by acquiring a personal password from the Civil Registry Department. Filings in paper format before courts are only authorized in exceptional cases. Regarding the notification system, every resolution and action from courts must be included in the relevant court's digital website. Further, the Act also allows parties to elect their own notification preferences, as long as they are approved by the judge.

Contributors: Andrés Lafuente and Andrés Bellagamba from Carey y Cía. Ltda. For further information, please send an email to alafuente@carey.cl or abellagamba@carey.cl.

◇ Colombia

NEW REGULATION TO TACKLE CLIMATE CHANGE AND FOSTER RENEWABLE ENERGIES IN COLOMBIA

Colombia is considered to be one of the most vulnerable countries to global warming effects. Being a megadiverse country, due to its location and climatic regime, the country is expected to face great challenges associated to natural disasters linked to the changes of climatic conditions. In this respect, Colombia is already facing droughts, floods, and displacement of population, as well as dramatic changes in the hydrological regime and air temperatures in several parts of the

Colombian territory. Thus, mitigation and adaptation to climate change are considered as key cornerstones of Colombian policy to date.

In this respect, Colombia has adopted several legislative measures and programs addressing both climate change and the introduction of renewable energies to the Colombia's energy matrix, intended to foster the so-called "green development".

Act 1753 of 2015 - National Development Plan Act for 2014-2018, introduced the "green development" imperative for the very first time in Colombian history. According to the green development imperative, Colombia shall implement measures and plans that ensure the materialization of sustainable development within the country. The latter implies the enactment of pieces of legislation, plans and programs that address the need to protect Colombian biodiversity, whilst promoting economic development for the population. The latter includes the need to promote mitigation and adaptation to climate change, as well as promoting the effective diversification of the Colombian energy matrix, in order to make use of renewables.

In the context of "green development" and COP21, Colombia voluntarily assumed a mitigation goal of 20% of its GHG emissions by 2030. In order to comply with this obligation, and anticipating a major challenge to address adaptation of the country to the inevitable effects of climate change, Colombia enacted the "National Climate Change System Act - SISCLIMA" - Decree 298 of 2016 by means of which the country defined an administrative coordination system, aiming at establishing the rules that shall apply to national entities to coordinately work on the mitigation and adaptation to climate change. As such, the SISCLIMA Act establishes the following:

- The SISCLIMA shall have the following purposes:
 - Coordinate all efforts and obligations assumed by the national, regional, local

and international entities in charge of dealing with climate change;

- To ensure that all strategies aiming at tackling climate change effects are defined and implemented in the light of the economic, environmental and social development of Colombia, emphasizing on the need to eradicate poverty and ensure sustainability of the use of natural resources;
 - To ensure coordination of all private and public initiatives of mitigation and adaptation to climate change;
 - To identify and make use of the opportunities associated to mitigation and adaptation to climate change that effectively promote sustainable development;
 - To reduce vulnerability of the population to climate change effects;
 - To foster public participation in the decision-making process related to climate change;
 - To promote the implementation of adaptation and mitigation measures within the country;
 - To harmonize criteria and mechanisms to evaluate and surveil the responsibilities and commitments assumed Colombia with respect to adaptation and mitigation to climate change.
- The SISCLIMA will be coordinated by the new Inter-sectoral Commission of Climate Change (“CICC in Spanish”) composed by delegates of the Ministry of Environment and Sustainable Development, the Ministry of the Interior, the Ministry of Finance, the Ministry of Agriculture and Rural Development, the Ministry of Mines and Energy, the Ministry of Transportation, the Ministry of Foreign Relations and the Director of the National Planning Department.
 - In addition to de CICC, the SISCLIMA Act created the so-called “Regional Nodes of Climate Change”, as regional instances responsible for promoting and supporting the enforcement of policies, strategies,

plans, programs, projects and actions related to climate change within the regions.

In addition to the previously mentioned regulation, Colombia has already enacted the Colombian National Adaptation Plan (PNACC in Spanish), the National Risk and Disasters Management Act (Decree 308 of 2016), and it is currently working on the National Strategy of REDD+ (ENREDD in Spanish) and the Colombian Strategy to Achieve Low Carbon Development (ENDBC in Spanish). With the previously mentioned regulatory framework, Colombia expects to foster sustainable development in a climatic-responsible way, whilst adapting to its negative effects.

Regarding renewable energies, Colombia enacted Act 1715 of 2014 by means of which Colombia expects to boost renewable energies within the country. According to the definitions set by Act 1715 of 2014, renewables in Colombia comprise energy recovery from non-recyclable waste materials, energy recovery from biomass wastes, solar energy, wind energy, geothermic energy, small-scale hydroelectric energy and the use of waves, tides and ocean thermal difference.

Act 1753 of 2014 has the following objectives:

- Promotion of self-generation of energy at small and large scale and distributed generation of electricity;
- Gradual replacement of diesel generation in Non-Interconnected Areas of the country;
- Creation of the “Fund for Efficient Energy Management and Non-Conventional Energy” and financial aids to facilitate the energy provision in Non-Interconnected Areas;
- Design of mechanism to encourage energy efficiency and development of energy generation from non-conventional sources (renewable energies);

- Provision of tax and tariff incentives to investors carrying out non-conventional energy projects.

On February 2016, Resolution 45 of 2015 of the Colombian National Energy Planning Unit (UPME in Spanish) was enacted in order to define the rules to grant the economic incentives to foster renewables. With the aforesaid legislation, Colombia expects to enter the renewable energy path, helping both to achieve sustainable development and tackle climate change, as well as diversifying the energy matrix of the country.

Contributor: Guillermo Tejeiro Gutierrez, Brigard Urrutia Abogados, Colombia. For further information, please send an email to gtejeiro@bu.com.co.

COMPANIES IN COLOMBIA TO FACE SANCTIONS IN CASES OF LOCAL AND TRANSNATIONAL BRIBERY

Traditionally, when a case of bribery occurred in Colombia, only the individuals committing the crime (i.e., the public officer receiving the bribe and also the persons offering or giving it) would face criminal indictment and sanctions such as jail time and fines. Now, since the enactment of Law 1778 in February 2016 (“Law 1778”), those legal entities (either Colombian companies or local branches of foreign companies) which benefitted or were involved in the bribery are also subject to sanctions to be imposed by the Superintendence of Companies. And these sanctions can be harsh!

The Superintendence may impose:

- Fines or penalties of up to 200,000 monthly minimum wages (approximately, US\$46 million).
- Prohibition to enter into contracts with public agencies for 20 years.
- Publication of the sanction in wide-circulation media and on the person’s website for a year.

- No benefits or incentives may be received from the Government for over 5 years.
- Registration of the sanction in the registry of commerce.

And these sanctions can be imposed not only in cases of local bribery. They can also apply whenever a Colombian company, or a local branch of a foreign entity, acting through one of its directors, managers, employees, agents, shareholders or contractors, gives or offers a bribe (i.e., money, benefits, profit, a valuable object) to a foreign public officer for him/her to carry out, omit or delay one of his/her duties regarding an international business or transaction. The Superintendence has recently said that these sanctions would even apply to a Colombian company which engages in such a conduct through a foreign subsidiary or branch [1]. Hence, Law 1778 has introduced the “transnational bribery” concept into the Colombian legal framework.

It also results very interesting that, at least for transnational bribery, the Superintendence may initiate the sanctioning proceeding irrespectively of the initiation of civil or criminal proceedings or the issuance of an adverse judgment or a sentence by a civil or criminal court (either national or foreign). The Superintendence may even impose the sanction on a company in cases when the individuals involved have been acquitted by the criminal judges.

For the imposition of the sanction, the Superintendence will bear in mind the following criteria: (i) economic benefit obtained or sought by the entity; (ii) economic capacity of the entity; (iii) whether it is a repeated conduct; (iv) express acceptance of the charges before the evidentiary stage has commenced; (v) compliance with precautionary measures; or (vi) the existence, implementation and effectiveness of transparency and business ethics programs or anti-corruption mechanisms in the company.

There are no precedents yet for the imposition of these sanctions and there is a

great expectation in the local business environment regarding how the Superintendence will apply these new legal tools, particularly amongst those companies that have more exposure in dealing with local and foreign authorities, such as infrastructure contractors, concessionaires, importers and exporters. For the time being, the Superintendence of Companies issued Resolution No. 100-002657 dated July 25, 2016, that sets out the applicable criteria to determine which companies are obliged to implement a Business Ethics Program for them to tackle the transactional bribery risk. In addition, by means of the External Circular No. 100-0000003 of July 26, 2016, the Superintendence issued a guide with the contents and minimum requirements to be met by such programs. Hopefully, we will see further developments within the next couple of months.

Contributor: Maria Luisa Porto, Brigard & Urrutia Abogados, Bogotá. For further information, please send an email to mporto@bu.com.co.

◇ Costa Rica

RELEVANT DEVELOPMENTS, MARCH-JUNE 2016

Relevant developments can be pointed out in different areas, but most notably in taxation, competition, labour and investment funds.

Costa Rica is seeking to be accepted as a member to the Organization for Economic Cooperation and Development (OECD). As part of this process, the country is being evaluated in many aspects by OECD's experts. Taxation and competition are perhaps the main areas undergoing this evaluation. As a result of this review, there have been several recommendations and therefore, law reforms are expected soon. In the taxation front, the government is seeking approval of various laws. The first one will order the creation of a shareholders' registry at the Central Bank where all corporations will have to report ownership changes. This

registry is supposed to be used only by the tax authorities. Reforms in value added tax and the territorial nature of the system are also expected.

In competition matters, the Government published a bill which will transform the competition authority into an entity independent from the Ministry of Economy. The bill also includes leniency provisions and the elimination of the possibility to notify mergers after closing. The bill has already received some criticism because it takes unfair competition from judicial review to the competition authority. The Government is supposed to file a final version in Congress by the end of the year.

Early this year, the biggest amendment to labor and employment law was passed and will come into effect in July 2017. This amendment brings changes not only at a judicial procedural level, but also regarding collective bargaining and the right to strike.

The Constitutional Panel of the Supreme Court rendered its decision on two important cases. On the one hand, it decided that employers must give paid leave to employees to take care of their sick children. On the other one, the Panel decided that the fees related to a collective bargaining agreement existing between the state company in charge distributing fuel (RECOPE) and its union cannot be excluded by the government regulatory office (ARESEP) from the fuel price paid by consumers. Since fuel prices are regulated, this will tend to keep such prices higher than in other countries.

The last amendment to the Costa Rican Regulation on Management Companies and Investment Funds will make it possible for any entity, public or private, to invest through a public offer, in every infrastructure project on the market (i.e., transportation, construction, renewable energy), and not only in real estate development as it was previously the case. Also, the developer of the project does not necessarily have to be the owner of the property. Any sort of right to use the property, including a private agreement will

be enough for authorization purposes. The amendment also reduced the minimum amount required to invest from US\$50,000.00 to US\$1,000.00.

Contributor: Edgar Odio and Sergio Aguiar assisted by Manfred Banks from Pragma Legal. For further information, please send an e-mail to edgar.odio@pragma.legal or sergio.aguiar@pragma.legal.

◇ Ecuador

RECENT LEGAL AND REGULATORY DEVELOPMENTS IN ECUADOR

• **Double Taxation Treaty between Ecuador and Belarus**

- This Agreement is applicable to taxes on income and property. For Belarus, the Agreement applies to taxes on income of natural and legal persons, profits and real estate; for Ecuador, the Agreement applies to income and real estate taxes.
- According to this Agreement, residents in one of these two countries only pay the relevant tax in that country.
- All of the benefits described in the Agreement are applicable to real estate income, corporate profits, maritime and air transport, associated companies, dividends, interest, royalties and others.

• **Air Services Agreement between Ecuador and Italy.**

- This Agreement grants the following freedoms of the air:
 - The right to fly over a foreign country without landing.
 - The right to refuel or carry out maintenance works in a foreign country without embarking or disembarking passengers or cargo.
 - The right to stop-over in the

other Party's territory with the purpose of embarking and disembarking passengers and cargo, including mail.

– This Agreement grants the following permitted routes:

- From any point in Italy to Quito, Guayaquil, and two other free choices
- From any point in Ecuador to Rome, Milan, and two other free choices.

• **Organic Law on Solidarity and Joint Responsibility of Citizens**

- After the earthquake that struck the coast of Ecuador on April 16th, 2016, there has been a struggle to rebuild what was left and build from scratch what was destroyed. The main objective of this law is to raise contributions for the planning, construction and reconstruction of public and private infrastructure that was damaged and/or destroyed.
- In order to fulfill these objectives, this law creates solidarity contributions on remunerations, property, assets, profits, real estate and ownership interests. Also, it provides for an increase in value added tax to 14%. All of these measures will be in force for a period of 12 months as from June 1, 2016.

• **Organic Law for the Balance of Public Finances**

- The country has been through a tough process of modification of tax contributions for the last couple of years. This new law provides for an increase in the special excise tax on sugary and soft drinks, as well as on beer and cigarettes. This law has also created a 15% tax on mobile communication.

- Something that changes the entire movement of money in the country is the incorporation of incentives for the use of electronic money, and, credit and deb debit cards. Transactions with electronic money will have a 2% reimbursement, and transactions with credit or debit cards will have a 1% reimbursement.

- **General Court Procedure Code (COGEP)**

- This code marks a difference in the Ecuadorian procedural system. It entered into force on May 25th. Over the years, Ecuador had been ruled with a written system which delayed court proceedings. Now, lawsuits and all types of controversies will be oral, which will allow for more speedy judgments as judges will have to pass rulings on the same day as the hearing.
- Evidence must be included in the complaint and the answer to it; this means that lawyers will have to be fully familiar with the law, and most of all they will have to do a thorough investigation regarding their cases in order not to leave out any evidence.
- In the past there were about 80 types of proceedings or judicial channels; now, there has been a reduction and unification of all of them in only 4: ordinary, executive, payment (“monitorio”) and summary proceedings.

- **Regulations on the Application of the Tax on Remittances of Foreign Currency**

- When playing with credit card, only amounts of less than \$5000 are exempt of the tax. Such \$5000 represent an annual amount and the sum of all credit cards under one person’s name or

ownership. Nevertheless, foreigners who are not residents when entering the country, and do not stay for a period longer than 90 days, will now have to pay the tax.

- **Organic Law on the promotion of Youth Employment, Exceptional Regulations on Work Hours, Redundancy and Unemployment Insurance**

- Employment contract for young people: the number of youngsters to be hired is calculated based on the number of new contracts. Businesses with less than 50 employees do not have to comply with this requirement. Instead, businesses subject to this requirement will pay a maximum fine of \$200.00 if they do not fulfill the minimum youth employment percentages. It should also be considered that if a young worker is separated from the company before 12 months, the subsidized social security contributions will have to be returned to the Government.
- Interns: businesses, institutions and foundations of the private sector with more than 100 employees are forced to employ a number of interns. This number will be defined by regulatory provisions of the Labour Ministry. The internship must last 6 months and payment therefore shall be no less than one third of the unified basic salary (SBU) at that time, which also means that the company has to pay the entire social security fee.
- Prolonged work hours: there has to be a written agreement between the employee and employer to prolong the work hours to no more than 40 hours a week and no more than 10 hours a day. This agreement will be

enforceable for a maximum of 6 months.

- Reduced work hours: the employer is required to submit a petition containing an austerity plan and explaining the motives, necessity, time and additional measures that prevent compliance with regular work hours. The Regional Director of Labour and Public Service has three days to accept or reject the petition. In order to distribute profits on the shares, the company must pay its entire payroll the unified basic salary (SBU).

compliance with regular work hours. The Regional Director of Labour and Public Service has three days to accept or reject the petition. In order to distribute profits on the shares, the company must pay its entire payroll the unified basic salary (SBU).

- Permission to take care of one's children with no right to remuneration for a maximum of 9 months after expiration of the mandatory maternity or paternity leave. This permission is granted to both parents who wish to take care of their newborns. The regulatory leave is 3 months for the mother, and 15 days for the father. The request for an extended leave cannot be a motive for dismissal and a parent can return to work before the 9 months' term is over.

- **Regulations on the Organic Law of Incentives for Public-Private Partnerships**

- Under a Public-Private Partnership, Governmental entities delegate to a Private Developer the execution of a specific public project. These

partnerships can be created in the following situations:

- For new projects of general interest (building and development of infrastructure; provision of equipment; operation, maintenance and management).
- With existing infrastructure or services (rehabilitation or improvement of infrastructure; provision of equipment; operation, maintenance and management).
- Regarding construction and commercialization of real estate projects of social interest and urban development.
- New hydroelectric projects and alternative energy projects.

- **Law on ancestral territories and rural lands**

- Rural lands are extensions of land situated outside the urban area where productive activities related to the land are performed. The objective of this law is to guarantee the redistribution of productive land, and the recognition and legalization of these lands. The text expresses how lands that are not being used for the purpose set by the law may now be expropriated.
- Regarding foreign investments, this law contemplates that foreign public companies cannot acquire, rent or hold under usufruct any rural lands within the Ecuadorian territory.

Contributor: Carolina Ortiz Espinoza, Paz Horowitz Abogados, Ecuador. For further information, please send an email to cortiz@pazhoworitz.com.

◇ Virgin Islands

U.S. VIRGIN ISLANDS ATTORNEY GENERAL SUBPOENAED EXXONMOBIL REGARDING CLIMATE CHANGE

In a March 2016 issued subpoena, the United States Virgin Islands (USVI) Attorney General Claude Walker became the first attorney general to investigate ExxonMobil on whether the company violated the U.S. Racketeer Influenced and Corrupt Organizations Act (RICO). The Attorney General alleged a suspected civil violation of the multinational oil and gas corporation “by having engaged or engaging in conduct misrepresenting their knowledge of the likelihood that their products and activities had contributed and are continuing to contribute to climate change in order to defraud the Government of the United States Virgin Islands and consumers in the Virgin Islands.” The Attorney General issued the subpoena to ExxonMobil seeking documents going back to January 1, 1977, related to the existence, impact, and severity of climate change. The subpoena gave the company one month to respond.

On April 13, 2016, ExxonMobil petitioned a Texas court, its principal state of business, for declaratory relief against the USVI Attorney General. The company alleged that the defendant’s actions in issuing the subpoena “violate ExxonMobil’s constitutionally protected rights of freedom of speech, freedom from unreasonable searches and seizures, and due process of law and constitute the common law tort of abuse of process.” The Exxon’s lawyers charged that the Attorney General was “abusing the power of government to chill and deter ExxonMobil from engaging in public discussions of policy issues related to climate change.” Moreover, the lawyers contended that subpoena was invalid because it sought records beyond the territory’s RICO law’s five-year statute of limitations.

However, on June 30, 2016, the Attorney General agreed to withdraw the subpoena. Mr. Walker defended his investigation against Exxon’s charges. The Attorney General

deferred to the United States Department of Justice and the Federal Bureau of Investigation, which received information regarding potential fraud actions against ExxonMobil.

Contributor: Jehmal Terrence Hudson, Esq. For more information, please send an email to jehmal.hudson@gmail.com.

◇ United States

DERISKING: IMPACT AND CONSEQUENCES OF NEW YORK PART 504 REGULATION ON TRADE WITH DEVELOPING COUNTRIES.

In December 2015, Governor Andrew Cuomo of New York announced what he defined as a “new anti-terrorism, anti-money laundering regulation”¹ which was to, inter alia, ensure that regulated “institutions have sufficient systems in place to detect, weed out, and prevent illicit transactions”.

- That each institution maintains a Watch-List Filtering Program for the purpose of interdicting transactions before their execution.
- That such technology / tools used in the Watch-List Filtering Program be capable of matching names and accounts.
- That there be Annual Certifications by Certifying Senior Officer (CSO)
- That there will be strict liability for the filing of a false or incorrect statement by the CSO, who, consequently, will face personal criminal liability. Therefore, criminal liability will bite whether the false or incorrect statement was filed intentionally or not.

As can be seen, these proposals - if implemented - will have far-reaching consequences and it is reassuring to note that several non-bank businesses have already written to the DFS seeking clarification as to whether the proposal applies to the practices in their businesses, products, services, and customer/counterparties which are already

compliant under Federal Law, and if so, to what extentⁱⁱ. Indeed, some businesses have rightly underscored in their correspondence to DFS that the requirement for a “screening program” by DFS exceeds the OFAC compliance requirements.

What are the impact and consequences of trade with developing countries?

In light of the ABA’s comment underscoring their ongoing commitment in the battle against money laundering and terrorist financing, combined with the recent statement of the Comptroller of the Currency, Thomas Curry, that “...suffice it to say that the vast majority of institutions we supervise have solid programs in place to manage and control BSA/AML risk”ⁱⁱⁱ ... but that “...these re-evaluations have led banks to terminate some of these relationships, typically because of concerns about the host country’s ability to supervise AML risk and doubts that the potential financial benefits of the relationship would offset the cost of managing the BSA compliance risk associated with the relationship”^{iv}, it is worth noting the World Bank’s report in 2015^v (hereinafter “the report”) underscored the essential nature of corresponding banking services in enabling companies and individuals to transact internationally and make cross-border payments. In addressing the issue of derisking, the report states that “...certain large banks have started terminating or severely limiting their correspondent banking relationships (CBRs) with smaller local banks from jurisdictions around the world”. The reported findings of the World Bank, in that regard, are absolutely astonishing!

Which countries are most affected?

Indeed, the report states that in a recent survey of banking authorities, roughly half - of the ones surveyed - and slightly more of the regional / local banks had indicated that they were, in fact, experiencing a decline in CBRs. The report also found that banks in the Caribbean (countries which are either or both members of the Organization of Eastern Caribbean States - OECS - and members of the

Caribbean Community - CARICOM) had been most affected. To that end, Comptroller Curry’s words are apt in stating “*customers whose banking relationships are terminated and who cannot make alternate banking arrangements elsewhere may effectively be cut off from the regulated financial system altogether. And there have been many instances of real human hardship that results when customers find themselves unable to transmit funds to family members in troubled countries. Such stories remind us how profoundly banking can affect people’s lives.*”^{vi}

What products / services are affected?

The report further found that the products / services which had been identified as most affected by the withdrawal of CBRs include: check clearing and settlement; cash management services; international wire transfers. The survey went on to reveal that the ability to conduct foreign currency denominated capital of current account transactions in US Dollar (USD), Euro (EUR), Pound Sterling (GBP) and the Canadian Dollar (CAD) had been most severely affected. And by way of a stark example, the case study of Fidelity Bank & Trust International which, in July 2015, terminated its 20-year old franchise relationship with Western Union in the Bahamas^{vii}.

Banks obligations under the Second European Payment Directive

The report acknowledges that while banks may be justified in terminating corresponding banks relationship, such termination ought not to be undertaken in a wholesale, discriminatory manner. Indeed, proper risk assessment on an individual basis ought to be undertaken because of concerns of, inter alia, breaches of consumer protection. By way of example, the Second European Payment Directive^{xvi} underscores in its Preamble that “(t)he provisions of this Directive on transparency and information requirements for payment service providers and on rights and obligations in relation to the provision and use of payment services should also

apply, where appropriate, to transactions where one of the payment service providers is located outside the European Economic Area (EEA) in order to avoid divergent approaches across Member States to the detriment of consumers. Where appropriate, those provisions should be extended to transactions in all official currencies between payment service providers that are located within the EEA^{viii}.

Conclusion

Noting Thomas Curry's statements^{ix} combined with the those of the ABA, the World Bank Report^x, and the Comment Letter of the NYSBA in which it is specifically underscored that "banks with federal licenses under the Office of the Comptroller of the Currency, national banks and foreign banks supervised by the Comptroller of the Currency already have strong BSA compliance obligations..." as well as banks obligations under EU Law, it would seem that in order for Part 504 Regulation to pass muster, New York banks would be strongly advised (and even imperative) to carry out ongoing individual risk assessment programs within local / regional corresponding banks so as "to identify current practices and possible gaps in existing policies and procedures for conducting periodic [and ongoing] client risk re-evaluations" and to remedy same without the requirement of terminating the relationship with their corresponding bank.

Indeed, local / regional knowledge and practices matter, so as to provide a safe and secure banking system to local communities and ensure fair access to financial services and trade.

Contributor: Marcia B Moulon-Atherley, from Moulon Law. For further information, please send an e-mail to moulonlaw@gmail.com

◇ Mexico

IMPROVING MEXICO'S REPUTATION IN GLOBAL FINANCIAL MARKETS THROUGH THE IMPLEMENTATION OF NEW VALUATION STANDARDS

In May 2015, the Instituto de Administración y Avalúos de Bienes Nacionales (INDAABIN), Mexico's federal government organization that administers nearly 100,000 federal assets in the Republic of Mexico, similar to the United States Government Services Administration (GSA), requested our organization to assist in preparing the Valuation Standards and Code of Ethics to conform to International Valuation Standards (IVS). The President of Mexico recognized the country's poor reputation with respect to its appraisals, which are commonly rejected by many global financial institutions.

The federal government of Mexico recognized that the Valuation and Review Standards and Code of Ethics must change in order to attract global investors. INDAABIN wanted to promote and maintain a higher level of public confidence in the valuation profession by standardizing such requirements for both external hired appraisers and internal reviewers within the Institute. By adopting a set of standards and code of ethics which conform to IVS and place personal responsibility on the valuation professionals in the sector, the federal government is making strides in pursuing the global public interest and increasing foreign investment. The success of the new standards and code of ethics will require valuation professionals and reviewers in Mexico to develop conclusions which clearly communicate their analysis and opinions that are not misleading, and are performed with objectivity, integrity, independence and professionalism.

According to the World Bank's recent report on "Corruption", non-ethical behavior in Latin American countries:

- Causes higher interest, risk and discount rates;

- Generates lower global foreign investment, resulting in a reduced economic growth;
- Global financial organizations take a “harder look” at transactions in those respective countries;
- Corruption distorts public expenditure—increases economic waste, losses of government revenues & instils excessive spending;
- Eliminates or reduces free competition;
- Increases inequality between the wealthy and the poor;
- Undermines “institutions” of democracy;
- Reduces patronage between the wealthy and the political elites;
- Reduces monopoly of power; and
- Weakens the respective judicial systems.

The World Bank report further states that, to reduce corruption, government must:

- Adopt preventive measures;
- Ensure transparency;
- Increase access to accurate public information;
- Require internal control mechanisms;
- Punish / sanction the wrongdoers; and
- Ensure the “rule of law”, promoting ethical standards.

As part of the directive to address established by President Enrique Peña Nieto and INDAABIN have taken the first steps towards adopting IVS and has become a model for other governments in Latin America.

First steps for “internal” administrative reform by INDAABIN were to:

- Perform a detailed analysis of the existing administrative and working papers of INDAABIN, which included processes, regulatory procedures, and the language of its documents to conform to IVS;
- Classify and score the University programs within Mexico that provide valuation curriculums;

- Classify and score the professionals who work within INDAABIN as valuation reviewers, and develop review guidelines for their internal professionals which conform to IVS; and
- Classify and score the professional appraisers, who are registered with the Federal Government to perform valuations for INDAABIN, and develop guidelines to perform external appraisals which conform to IVS.

Duff & Phelps proposed a draft of the new Standards and Code of Ethics to be adopted by INDAABIN. And further utilized the leading global Valuation Professional Organizations (VPOs) to review the framework to strengthen the new standards to conform to the highest level of IVS. The VPOs included the International Valuation Standards Council (IVSC), Royal Institute of Chartered Surveyors (RICS), the Appraisal Foundation, Appraisal Institute (AI), American Society of Appraisers (ASA), the International Right of Way Association (IRWA); and FECOVAL (Mexico based Valuation Professional Organization). The disciplines covered within the framework of the new Valuation Standards and Code of Ethics included appraisal review, real property, machinery and equipment, personal property, business and intangible asset valuations.

A meeting of the leaders of the seven VPOs occurred in Mexico City, and after many hours of discussion, agreement was reached to present the first round of standards to the federal government. The first round of standards, which included the Valuation Standards and Code of Ethics for all valuation disciplines, were adopted into Mexico Federal Law on December 3rd, 2015 in Mexico City by the Secretary of Public Administration (SFP), Minister Virgilio Andrade of Mexico.

The head of Mexico’s government recognized that the responsibility of the valuation professional is to protect public confidence. Some of the key tenets of the Valuation Standards and Code of Ethics adopted into law by the Secretary of Public Administration (SFP) are:

Ethics: A valuation professional must promote and preserve the public trust inherent in the appraisal practice by observing the highest standards of professional ethics;

Record Keeping: A valuation professional must prepare a work file for each appraisal or appraisal review assignment. A work file must be in existence prior to the issuance of any report; and

Competence: A valuation professional must be competent to perform the assignment. If the valuation professional is not competent, he/she must decline or withdraw from the assignment before accepting the assignment, and further have the adequate education and tools to perform the assignment.

Contributor: Bruce Greenberg, Duff & Phelps, Mexico City. For more information, please send an email to bruce.greenberg@duffandphelps.com.

◆ Puerto Rico

U.S. Supreme Court finds Puerto Rico not sovereign

On June 9, 2016, the Supreme Court of the United States dealt another blow to Puerto Rico in deciding that, for purposes of the double jeopardy clause, Puerto Rico is not sovereign. *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863 (2016). This means that Puerto Rico's courts cannot try a citizen if a United States federal court has already tried that citizen for the same offense.

In the early 20th century, the Supreme Court had decided that U.S. Territories, including an earlier incarnation of Puerto Rico itself, were not sovereign states distinct from the United States. *People of Puerto Rico v. Shell Co.*, 302 U.S. 253 (1937); *Grafton v. United States*, 206 U.S. 333 (1907). However, that was before Puerto Rico enacted its own constitution ratified by the people, and became a new kind of political entity in the mid-20th century. *Valle*, 136 S. Ct. at 1874. The U.S.

Congress' approval of Puerto Rico's constitution started a kind of relationship between the territory and the United States without parallel in our history. These changes warranted a new review of the dual-sovereignty issue.

To arrive at the *Sanchez Valle* decision, the Supreme Court examined the "ultimate source" of Puerto Rico's prosecutorial power. *Id.* at 1865. The Supreme Court traced that power back to 1950, when Congress enacted Public Law 600, "which authorized the people of Puerto Rico to organize a government pursuant to a constitution of their own adoption." *Id.* at 1866. In accordance with Public Law 600, the Puerto Rican people drafted and ratified their own constitution, which the U.S. Congress later reviewed and approved after it imposed certain conditions. In the *Sanchez Valle* decision, the Supreme Court explained that these constitutional developments "made Puerto Rico 'sovereign' in one commonly understood sense of that term," but that "the dual sovereignty test focuses not on the fact of self-rule, but on where it first came from," and that with regard to Puerto Rico, "the 'ultimate' source of prosecutorial power remains the U.S. Congress." *Id.* at 1866-67. Justice Elena Kagan, delivering the opinion of the Court, explained that "[t]he Island's Constitution, significant though it is, does not break the chain." *Id.*

In his dissent, Justice Breyer, joined by Justice Sotomayor, wrote that Public Law 600 must be considered in the broader context of Puerto Rico's history. *Id.* at 1880. As such, "congressional activity and other historic circumstances can combine to establish a new source of power." *Id.* Breyer concluded that in this case, "longstanding customs, actions, and attitudes, both in Puerto Rico and on the mainland, uniformly favor Puerto Rico's position" that it is sovereign. *Id.* at 1884.

Even though the *Sanchez Valle* case was a simple criminal prosecution for firearms sales, the broader dispute focused on the commonwealth's autonomy. This Supreme

Court's decision can have major consequences for setting back the island's legal status.

Contributor: M. Paula Aguila, Rivero Mestre LLP, a commercial litigation firm in Miami. For more information, please send an email to paguila@riveromestre.com.

SUPREME COURT BARRED PUERTO RICO FROM BANKRUPTCY RESTRUCTURING, BUT CONGRESS PASSED A DEBT CRISIS RELIEF BILL.

On June 13, 2016, the U.S. Supreme Court ruled in a 5-2 decision that a federal bankruptcy law barred Puerto Rico from restructuring the debt of its insolvent public utilities. Under federal law, states can authorize bankruptcy filings by their municipalities, including public utilities. Puerto Rico and the District of Columbia, however, have no authorization. Two years ago, Puerto Rico sought to circumvent the federal bankruptcy law by passing a local law that offered an option similar to bankruptcy. Nonetheless, a federal appeals court held that a U.S. bankruptcy law barred Puerto Rico from setting up its own debt-restructuring system and that Congress had reserved for itself the power to decide how Puerto Rico's debt should be restructured.

The U.S. Supreme Court case focused on the impact of a 1984 amendment to the federal bankruptcy code. The amendment stated that Puerto Rico and the District of Columbia were to be considered states for bankruptcy purposes. But an exception to the amendment declared that, unlike states, Puerto Rico and D.C. had not permission to authorize their utilities to file for bankruptcy under federal law. Puerto Rico argued that amendment implicitly freed the island to pass its own restructuring law, known as the Recovery Act, while the bondholders contended the Recovery Act was barred under an older, separate provision that prohibited Puerto Rico from enacting local bankruptcy laws.

Justice Clarence Thomas wrote the majority opinion holding that Puerto Rico did not have

the power to act because the Commonwealth was covered by a pre-emption provision in the bankruptcy code. The provision barred states from enabling municipalities to restructure their debts outside of the federal bankruptcy process. Justice Thomas noted that Puerto Rico was facing a fiscal crisis caused partly by the \$20 billion debt of the three government-owned public utilities. In the dissent, Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, articulated that Puerto Rico should not be barred from restructuring the debt because its utilities and municipalities were unable to file for federal bankruptcy under a different provision of the code.

The ruling left Puerto Rico's fate in the hands of the U.S. Congress. On June 29, 2016, the U.S. Senate passed, by a vote of 68-30, the Puerto Rico Oversight Management and Economic Stability Act. This legislation would create a fiscal oversight board with exclusive authority to enact and enforce fiscal plans and reforms, with the overall goal of improving access to capital markets. The board would promote voluntary restructuring agreements with bondholders, with additional authority to adjust debts "in the best interests of creditors." The legislation would halt any litigation over debts and create a firewall between constitutionally protected creditors and the \$2 billion Puerto Rico Employees' Retirement System. The legislation also called on the new board to conduct an independent analysis of the pension system.

The House approved the legislation earlier that month and the president signed into law on June 30, 2016.

Contributor: Jehmal Terrence Hudson, Esq. For more information, please send an email to jehmal.hudson@gmail.com.