

# Inter-American Trade Report

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## BRAZIL: INVESTMENT FUNDS IN RECEIVABLES AND OTHER CREDIT RIGHTS

By Jose Barreto da Silva Netto, Rubens de Camargo Vidigal Neto,  
and Renato Pinheiro Jabur

Investment funds comprised of receivables and other credit rights (*Fundos de Investimento em Direitos Creditórios* – FIDCs) are instruments for securitization that can be very attractive for both private investors and companies holding credits against third parties who need to raise funds. These funds are instituted under regulations issued in recent years and constitute a mechanism for the securitization of credits and risk segregation that is comparatively superior to the securitization methods otherwise available in Brazil today.<sup>1</sup>

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\*Footnotes for this article begin on page 10.

## ECUADOR: NEW OUTSOURCING REGULATIONS

By Diego Palacios

Ecuador's Executive Decree No. 2166, published October 14, 2004, contains "Rules to be observed for the rendering of outsourcing services."<sup>1</sup> These regulations pertain to:

- (1) personnel hired through the so-called outsourcing companies for provision of temporary services (occasional, seasonal and hourly contracts), complementary and indefinite-duration services; and
- (2) requirements for the operation of companies providing outsourcing services.

### Which companies can provide outsourcing services

Outsourcing services can be provided only by such companies whose specific object is labor intermediation. Although these rules do not limit outsourcing activities to juridical persons incorporated under

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<sup>1</sup> <http://www.natlaw.com/ecuador/topical/lb/dceclb/dceclb2.htm>

## COSTA RICA: MONOPOLISTIC PRACTICES IN THE BEVERAGE MARKET

By Ana Victoria Velazquez

A complaint by PepsiCo Inc., Pepsi-Cola Interamericana de Guatemala S.A., Pepsi-Cola Manufacturing Company of Uruguay S.R.L. and Embotelladora Centroamericana S.A. (joined by Embotelladoras La Mundial, La Flor, Cruz Blanca y Muñoz) was brought against The Coca Cola Company, Coca Cola Interamericana Corporation and Embotelladora Panamco Tica S.A. led Costa Rica's Commission for Promoting Competition (*Comisión para Promover la Competencia* – CPC) to open an ordinary

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## INTER-AMERICAN TRADE REPORT

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# ELECTRONIC SIGNATURES FOR MEXICAN CONSUMERS

By Cristos Velasco

Mexico was one of the first countries in Latin America that enacted specific rules for electronic commerce<sup>1</sup> and electronic signatures<sup>2</sup> within the scope of commercial activities. The legislation, as it now stands, contains a fairly broad framework for the use of electronic signatures in different activities of the economy such as commercial, administrative, financial and governmental. Nevertheless, Mexico does not have an independent e-signatures law that specifically allows consumer to use a "single signature" as a unique identifier for multiple activities. This is mainly due to the interest of some influential and powerful economic sectors, such as the financial and government sectors, which have pushed for e-signatures legislation and rules governing their own activities, unintentionally creating a dispersed and burdensome framework for its use by Mexican consumers and citizens. This article reviews the existing legal framework in Mexico for a consumer's interaction with businesses, financial institutions, administrative and government authorities and other consumers.

## Commercial Activities

The Mexican Code of Commerce contains the general rules for the use of electronic signatures<sup>3</sup> in the commercial sphere, therefore this law typically governs B2B transactions and not necessarily B2C transactions. However, the Code of Commerce contains a specific provision that stipulates when a law establishes as a requirement that an act shall be granted before a public attestant ("*fedatario público*"<sup>4</sup>), the latter and the parties might express the exact terms to be binding upon through the use of a data message and the *fedatario público* should acknowledge the elements and the use of such data messages in the public deed and preserve an entire version for subsequent consultation.<sup>5</sup> Reference to this provision is made because in practice, a Mexican consumer would likely require the services of a *fedatario público* in order to obtain a certification and the validity of

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<sup>1</sup> See Decreto del 29 de Mayo del 2000 por el que se reforman y adicionan diversas disposiciones del Código Civil para el Distrito Federal en Materia Común y para toda la República en Materia Federal, del Código Federal de Procedimientos Civiles, del Código de Comercio y de la Ley Federal de Protección al Consumidor <http://www.natlaw.com/mexico/primary/files/prmx32.htm>

<sup>2</sup> See Decreto del 29 de Agosto del 2003 por el que se reforman y adicionan diversas disposiciones del Código de Comercio en Materia de Firma Electrónica, <http://www.natlaw.com/dcmxec/dcmxec1.htm>

<sup>3</sup> Electronic Signature is defined in Article 89 Code of Commerce as: "data in electronic form in, affixed to or logically associated with a Data Message or any other technology, which may be used to identify the Signatory in relation to the Data Message and to indicate the Signatory's approval of the information contained in the Data Message and that produces the same legal effects of the handwritten signature being admissible as evidence in court."

<sup>4</sup> "Fedatarios Públicos" in Mexico could be either "Corredores Públicos" or "Notarios Públicos." In Mexico, the figure of "Notario Público" differs significantly from a Notary Public in the US. A Notary Public in Mexico is both a licensed attorney and a public official usually appointed by a Mexican State. Such an appointment is considered a delegation of governmental authority for the certification or official recognition of certain legal acts and documents within a specific jurisdiction. The mandate of a *Notario Público* is very broad, typically including, *inter alia*, the certification and validity of contracts such as buy and sell of real property or mortgage agreements.

<sup>5</sup> Article 93 Code of Commerce, <http://www.natlaw.com/mexico/primary/files/prmx3.htm>

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# ELECTRONIC SIGNATURES FOR MEXICAN CONSUMERS

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an act such as a contract (as to buy-and-sell or to render services) or simply the certification of a vendor's purchase order.

## Financial Activities

Article 32 of the Law that Governs Credit Information Companies (*Ley para Regular las Sociedades de Información Crediticia*) contains the guidelines for Financial Services Agreements entered into by and between banks and customers through electronic means or automated systems. The last paragraph of article 32 specifically provides the functional equivalence of electronic means as a substitute for a hand written signature producing the same legal effects that the laws grant to the corresponding documents and having the same evidence weight.<sup>6</sup>

Likewise, the Securities Market Law (*Ley del Mercado de Valores*) provides the possibility of replacing the hand written signature with identification passwords that the parties have agreed to use in an *intermediation mercantile agreement (contrato de intermediación mercantil)*, i.e., a brokerage agreement. Based upon such agreed identification passwords, therefore, all the documentary or technical evidence will produce not only the same legal effects but also will have the same evidence weight in Mexican tribunals.<sup>7</sup>

## Fiscal Activities

In the area of federal taxation, the Fiscal Code of the Federation (*Código Fiscal de la Federación*) contains a full chapter<sup>8</sup> that provides the specific rules for the use of electronic signatures for taxpayers (both individuals and companies) before the tax administration service (*Servicio de Administración Tributaria – SAT*). For instance, such chapter recognizes the functional equivalence of electronic signatures by allowing individual taxpayers to use *advanced electronic signatures* instead of hand written

signatures, having the same legal effects that the laws grant to a document with a hand written signature and also having the same evidence weight.<sup>9</sup> In order for an electronic signature to be considered an “*advanced electronic signature*,” it must meet the requirements and criteria contained in four subsections of article 97 of the Code of Commerce, which are the following:

- I. The Signature Creation Data are, within the context in which they are used, linked to the Signatory;
- II. The Signature Creation Data were at the time of signing under the control of the Signatory;
- III. Any alteration to the electronic signature made after the time of signing is detectable; and
- IV. Regarding the integrity of the information in a Data Message, it is possible to identify any alteration after the time of signing.

Taxpayers may request the data used for the creation of advanced electronic signatures either from the SAT or any certification service provider authorized by Mexico's central banking authority (*Banco de México*).<sup>10</sup>

Individual taxpayers not engaged in commercial activities and whose annual income has been lower than \$300,000.00 Mexican pesos may submit their tax declarations, information and other related documents either in digital form by using *advanced electronic signatures* in the official electronic formats provided by SAT or through the use of an *electronic card* used instead of the *advanced electronic signature*.<sup>11</sup> Use of *advanced electronic signatures* for tax related purposes became an optional method for individual taxpayers during the fiscal year 2004.<sup>12</sup>

Use of electronic signatures for tax purposes will not only have the potential to help taxpayers to comply with their annual obligations to SAT in a timely, efficient fashion, but will likely improve the administration of the Mexican tax system that has been characterized

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<sup>6</sup> <http://www.natlaw.com/stmxbk/stmxbk26.htm> In addition, Article 210-A of the *Federal Code of Civil Procedure (Código Federal de Procedimientos Civiles)* stipulates the recognition of information generated or communicated through electronic means as binding evidence in Mexican courts,

<http://www.natlaw.com/mexico/primary/files/prmx4.htm>.

<sup>7</sup> Article 91 section V of the *Securities Market Law*, <http://www.natlaw.com/stmxbk/stmxbk6.htm>

<sup>8</sup> Chapter Second entitled: “About Electronic Means” of the Fiscal Code of the Federation (*Código Fiscal de la Federación*). <http://www.natlaw.com/dcmctx/dcmctx61.htm>

<sup>9</sup> *Ibid*, Article 17-D third and fifth paragraph, Fiscal Code of the Federation.

<sup>10</sup> For Digital Signatures and Certification Service Providers within the Banking Sector, see *Inter-American Trade Report*, Apr. and Dec. 2003.

<sup>11</sup> *Op. cit.*, Article 31 paragraphs first and third of the Fiscal Code of the Federation.

<sup>12</sup> *Ibid*, see “*Artículo Transitorio Segundo*” subsection XXI of the *Decreto por el que se reforman, adicionan y derogan diversas disposiciones del Código Fiscal de la Federación*, *Diario Oficial*, January 5, 2004.

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# ELECTRONIC SIGNATURES FOR MEXICAN CONSUMERS

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by inefficiency and its burdensome cost to the Mexican federal government. Use of electronic signatures in this field can be expected to facilitate the exchange of information between taxpayers and SAT and will probably increase tax collection across the Mexican Republic.

There are other legal instruments that allow for the use of electronic signatures within the administrative sphere, as for example for administrative proceedings of the federal public administration such as health services<sup>13</sup> or government procurement, whereby involved parties may use electronic means as a substitute for handwritten signatures, and the use of electronic means are recognized and produce the same legal effects and evidence weight in Mexican courts.<sup>14</sup> This type of signature is used mainly by employers and small and medium enterprises.

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<sup>13</sup> See article 286-I of the Law of Social Security (*Ley del Seguro Social*).

<sup>14</sup> See article 69-C of the Federal Law of Administrative Procedure (*Ley Federal de Procedimiento Administrativo*). See also, "Acuerdo de la Secretaría de Contraloría y Desarrollo Administrativo por el que se establecen las disposiciones que deberán observar las dependencias y los organismos descentralizados de la administración pública federal, para la recepción de promociones que formulen los particulares en los procedimientos administrativos a través de medios de comunicación electrónica, así como para las notificaciones, citatorios, emplazamientos, requerimientos, solicitudes de informes o documentos y las resoluciones administrativas definitivas que se emitan por esa misma vía publicado en el DOF de 17 de Enero del 2002."

## Final Comments

The existing legal frame on e-signatures for consumers is dispersed and difficult to understand for an average consumer who has no legal background. In order to facilitate the use of electronic signatures for consumers, the author considers it is necessary for the government agencies in cooperation with business, financial institutions, administrative and judicial authorities and consumer organizations to create a set of guidelines containing relevant information, tips and faq's for the better the use of e-signatures for Mexican consumers and citizens in general. Such an initiative would likely help Mexican consumers to know more about the different existing e-signatures they can use in the various activities and could possibly make consumers feel more confident in their use. ■

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*Cristos Velasco is the Director General of the North American Consumer Project on Electronic Commerce (NACPEC), a website <<http://www.nacpec.org>> that provides information and sources in the field of electronic commerce for consumers, government, academia, civil society and policymakers located in North America. NACPEC also serves as an advocacy organization dealing with regulation and Internet policymaking issues in the area of electronic consumer protection in Mexico.*

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## MEXICO:

# APPROVING TREATIES ON ECONOMIC MATTERS

By Luis Miguel Diaz

On September 2, 2004, the Federal Official Gazette published the Law for Approval of International Treaties on Economic Matters (*Ley Sobre la Aprobación de Tratados Internacionales en Materia Económica*).<sup>1</sup>

The philosophy behind this new law is the promotion of the principle of transparency in governmental affairs and the participation of diverse sectors of the society in treaty approval. The Law develops the Law of International Trade (published in 1993 as amended in 2003) and the Law Regarding the Making of Treaties (1991, as amended).<sup>2</sup> It concerns treaties related to trade, investment, services, technology transfer, copyright, double taxation and economic cooperation. The Law contains 14 Articles which refer to the purpose of the said treaties, the channels of communication between the Senate and the Executive for the approval of treaties, and the participation of State governments, management associations, citizens and labor unions before the Senate.

On settlement of disputes the Law restates (Article 4-1) the three guiding principles established in Article 8 of the 1991 Law of Treaties.

Thus, any treaty or inter-institutional agreement which contains international mechanisms for the settlement of legal disputes in which the parties are, on one hand, the Federation or Mexican individuals or legal entities, and on the other, foreign governments, individuals or legal entities, or international organizations, shall:

- I. Render equal treatment to Mexicans and foreigners who are parties to the dispute, pursuant to the principle of international reciprocity;
- II. Assure the parties the right to be heard and the due presentation of their defense; and
- III. Guarantee that the composition of the decision-making bodies insures their impartiality. ■

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<sup>1</sup> <http://www.natlaw.com/stmxga/stmxga35.htm>

<sup>2</sup> <http://www.natlaw.com/stmxcu/stmxcu1.htm>  
<http://www.natlaw.com/stmxga/stmxga16.htm>

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## COSTA RICA:

# MONOPOLISTIC PRACTICES IN THE BEVERAGE MARKET

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administrative proceeding against Coca Cola Interamerican Corp. and Embotelladora Panamco Tica S.A. for the purpose of investigating whether the facts alleged constituted “relative,” i.e., vertical, monopolistic practices which injured competition in the market. Not included in this investigation was The Coca Cola Company, given that this firm did not have a domicile in Costa Rica and, thus, the proceeding was opened in respect to its subsidiary, Coca Cola Interamerican Corp. At the end of this proceeding, the CPC issued a final resolution at its ordinary session N° 19-04 on May 25, 2004. This article indicates the significant conclusions contained in this decision.

### Vertical Monopolistic Practices

“Relative” monopolistic practices are acts that are carried out between or among firms that operate at different levels of the market

or different phases of the productive process in such manner that they create obstacles to or prevent free competition at those levels. These practices are known as having a vertical character or, more specifically, as being vertical restrictions. Costa Rican Law N° 7472<sup>1</sup> establishes that three elements must be shown in order to determine the illegality of this conduct. It must be proven that:

- the economic agent that engages in the practice has substantial power in the relevant market;
- the practice was carried out; and

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<sup>1</sup> *Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor*, <http://www.natlaw.com/cr/topical/at/stcrat/stcrat1.htm>

# MONOPOLISTIC PRACTICES IN THE BEVERAGE MARKET

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- there are anti-competitive effects of said practices, i.e., that the facts demonstrated have or could have the object or effect of unduly displacing other actors in the market, of substantially preventing market access or of establishing exclusive advantages in favor of one or more persons.

## The Relevant Market and Substantial Power

In this case in particular, the relevant market was defined as bottled or canned fruit juices and carbonated beverages. In this regard, there was accepted a study, presented by the Embotelladora Panamco Tica S.A., that showed that the cross elasticity<sup>2</sup> of demand shows a high degree of substitution in consumption among carbonated drinks, fruit juices and orange juice in containers. That study was carried out utilizing a technique of economics that allows one to establish the substitutability in respect to two or more products, determining—based on market figures—the variation in the quantity demanded of one product as a result of a change in the price of another, which enables an evaluation of whether the products are substitutes for one another or are complementary.

On another point, the CPC concluded that, due to the elevated market participation of the carbonated beverages and fruit juices bottled or canned by the firm Embotelladora Panamco Tica S.A., the relatively low participation of its competitors in the relevant market as defined, the necessity of depending upon intensive distribution throughout the national territory, a broad portfolio of brands and a substantial investment in advertising, which made difficult the entry of new competitors, the firm named in the complaint, Embotelladora Panamco Tica S.A., possessed substantial power in the relevant market.

## Concerning the Imposition of Prices

In the proceeding, it was found that Embotelladora Panamco Tica S.A. established in sales agreements clauses related to the sales price charged to the consumer which the firm suggested, including reference in some contracts to the obligation to follow the lists of prices. Further, it was proven that this firm distributed in all its business price lists that did not establish clearly their suggestive character and, moreover, it was decided that some retailers were obliged by the firm to follow those prices.

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<sup>2</sup> The *cross price elasticity of demand* (often called simply the *cross elasticity*) measures the responsiveness of the quantity demanded of a good to a change in the price of another good. Where the two goods are substitutes, the cross elasticity will indicate that, as the price of one goes up, the quantity demanded of the other will increase.

Due to the fact that this practice reduced the intra-brand competition, i.e., reduced the competition of products of the same brand as between different establishments, and limited the freedom of the retailer to set his sales prices, the Commission penalized Embotelladora Panamco Tica S.A. for violating article 12 (b) of Law N° 7472 in the amount of ₡34.028.360.<sup>3</sup> In addition, the firm must suppress the practice, eliminate the offending contract provisions and change the editing of the price lists in such a way as to indicate that these prices are suggested and that it is the dealer/retailer who is to decide the price at which he has to sell.

## Imposing of Conditions

Two types of imposed conditions were investigated: minimum purchase volumes and exclusivity in the refrigeration equipment that Embotelladora Panamco Tica S.A. granted to the businesses in the nature of a loan.

In relation to the first condition, it was proven that Embotelladora Panamco Tica S.A. had written contracts with various types of establishment, principally schools and colleges, to which it offered a series of benefits such as cash, contribution to bingo games, sports uniforms, etc., and, in return, solicited a minimum volume of sales in order to recover the investment made. In principle, these acts do not necessary contravene Law N° 7472, inasmuch as they represent behavior that is commercially reasonable.

The problem is in that the benefits were granted and the minimum volumes imposed with the object or effect of displacing competitors. Thus, if one firm imposes a volume equal to the total of the beverage sales in a locale, such firm is imposing in an indirect manner an exclusivity, since the retailer, to comply with the minimum volume in order to obtain the benefits, is not going to acquire the product of competitors.

Undoubtedly, in this particular case, given that in the contracts in which the benefits are granted and the minimum quantity required there is also included a clause of exclusivity or preference in the sale of the bottler, it was not possible to decide that the specific action of imposing minimum volumes had the object or effect of preventing the entry of other competitors in the commercial establishment, as

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<sup>3</sup> About US\$78,300 at the January 2005 exchange rate of about 460 CR colones to the US dollar.

another clause existed that required that result explicitly. For this reason, Embotelladora Panamco Tica S.A. was completely exonerated in relation to these practices in relation to the benefits granted.

In relation to the exclusivity in the refrigeration equipment, the Commission considered that, even though it is understandable that, being an investment of one firm, the equipment be restricted so as not to be used for products that are not supplied by the company that provided the equipment, it was decided that, for a firm with substantial power in the market, the imposition of this condition in *small* establishments where it is not possible to install another refrigerator undoubtedly generates an exclusivity in that establishment for the sale of that product. Further, if one considers that the number of small establishments is relatively high, this circumstance becomes a barrier to entry for competitors in the market.

Due to the fact that this practice leads to the displacement of other economic agents and prevents the access of new participants, the CPC sanctioned Embotelladora Panamco Tica S. A., ordering it to abstain from imposing, including or agreeing in any form to clauses of exclusivity with its customers with respect to the use of cooling equipment in those locations where space does not exist for placing other refrigeration equipment for products considered in this resolution as part of the relevant market.

### **Exclusivity contracts**

In the proceeding, it was decided that Embotelladora Panamco Tica S.A. had established, in some distribution channels, sales agreements in which were included a clause for exclusivity or preference of the dealer in the sale of the beverages of that firm. Given that these types of actions reduce competition and lead to the displacement of competitors and prevent entry of new participants, the Commission

considered that Embotelladora Panamco Tica S.A. violated article 12(a), for which a fine of ¢34.028.360. was imposed. In addition, the firm was ordered to eliminate these types of clauses from contracts in force as well as to abstain from including such clauses in future contracts.

### **Other practices in the complaint**

The CPC exonerated Embotelladora Panamco Tica S.A. in respect to the complaint alleging the carrying out of the anti-competitive practices of tied sales and price discrimination in terms of article 12(c) and (g) of Law N° 7472, due to the fact that it did not find indications that the firm was carrying out such acts.

### **Appeal for reconsideration**

There has been an appeal in accordance procedures under article 61 of Law N° 7472 and article 31 of the Law Governing Administrative Jurisdiction over Disputes (*Ley Reguladora de la Jurisdicción Contencioso Administrativa*).<sup>4</sup> That appeal is pending. ■

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<sup>4</sup>Law 3667, <http://www.natlaw.com/cr/topical/ga/stcrga/stcrga5.htm>

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*Lic. Ana Victoria Velázquez is an attorney with the Technical Support Unit of the Costa Rican Comisión para Promover la Competencia and a contributor to the Commission's bulletin (www.meic.go.cr/esp2/promocion/index.html). This case and this article were brought to our attention by Lic. Carlos A. Echeverría A. <careche@racsa.co.cr> of Bufete Echeverría (www.bufetecheverria.com). He is a member of the Inter-American Trade Report's Editorial Advisory Board.*

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**CHILE, PERU: FTA Negotiations to Start in April** Officials of Chile and Peru have announced an intention to begin negotiations in April for a Free Trade Agreement (FTA), at which time the intention is for Peru to have completed its FTA negotiations with the United States.

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# ECUADOR: NEW OUTSOURCING REGULATIONS

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the Law on Companies (which could be interpreted as also including civil corporations and even *de facto* enterprises), there are certain requirements for registration that lead one to believe that outsourcing companies can only be such companies established under the Law on Companies (such as the requirement of submitting a certificate of legal existence issued by the Superintendency of Companies, having by-laws to include the specific outsourcing object, submitting the registered appointment of the legal representative). The only exception to the requirement of being a company is found in the rural agricultural sector where outsourcing services can be provided by natural persons. All existing outsourcing companies must comply with the new legal provisions by July 31, 2005.

## **Juridical nature of outsourcing relations**

- The relationship between the user and the outsourcing company must obligatorily be of a civil or commercial character.
- Outsourcing contracts must be executed in writing.
- The outsourcing company must have no relationship whatsoever with the user.
- The direct work relationship of a worker hired as mentioned above is with the intermediary or outsourcing company and not with the user (the natural or juridical person that contracts for the service). However, constitutional and legal principles regarding joint liability for labor and social security obligations for the outsourced workers are expressly recognized. On that basis, the user (the person for whose benefit the outsourced workers carry out the work or provide the service) is jointly responsible for performance of work-related obligations regarding such outsourced workers.
- The user's right of recovery to recuperate what is assumed or paid on behalf of the outsourcing company is recognized.

## **Limits on outsourcing contracts for workers during an indefinite period of time**

- Outsourced workers must not exceed 75% of the user's work force. A minimum 25% of the workers must have direct dependency relationship with the user and must be included in its payroll and Social Security schedules.
- The amount charged by the outsourcing company to the user in order to pay the compensation of the worker(s) must be the same as the amount actually received by the outsourced worker, except for legal deductions such as personal contributions to the Social Security Institute, income tax, or judicial orders.

## **The outsourcing company's obligations**

- In order to initiate and carry out their activities, outsourcing companies must be registered with the National Registry of Labor Intermediation or Outsourcing Companies at the Ministry of Labor and Human Resources.
- In the event that their activities are carried out in different cities, the outsourcing company must observe that obligation by registering at its principal domicile specified in the by-laws (in Quito at the Ministry of Labor and Human Resources, in Guayaquil at the Office of the Under Secretary from the Ministry of Labor, in Cuenca and Ambato at the regional labor offices, and in other cities at provincial labor inspection offices).
- In order to obtain its registration, the outsourcing company must submit the following documents:
  - a. Copy of the company's incorporation charter indicating its exclusive corporate object of providing outsourcing services.
  - b. Copy of Taxpayers Registration Number ("RUC").
  - c. The legal representative's duly registered appointment.
  - d. The legal representative's identity card.
  - e. Social Security employer number.
  - f. Current certificate regarding the company's legal existence issued by the Superintendency of Companies.
  - g. Deed evidencing ownership by the outsourcing company or lease agreement in favor of the outsourcing company regarding the premises where the principal office operates.
  - h. Receipt of payment from the office of the Ministry of Labor and Human Resources where the company is registered.
- Once the outsourcing company has been registered, it obtains a Registration Certificate (valid for during two years).
- The outsourcing company is responsible towards the taxing authorities as withholding agent for income tax incurred by its outsourced workers.
- The outsourcing company is responsible for paying all legal benefits corresponding to its workers. To this effect, it must request the corresponding amounts from the user.
- That portion of the fees requested by the outsourcing company from the user in order to pay the workers must be used in its entirety to pay the outsourced workers, with the exception of legal deductions such as personal social security contributions, income tax or judicial orders.
- The outsourcing company must provide the user with a sufficient guarantee to secure the faithful performance of labor obligations

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# ECUADOR: NEW OUTSOURCING REGULATIONS

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as well as obligations towards the Ecuadorian Social Security Institute for the outsourced workers.

## **The user's obligations**

It must ask the outsourcing company to provide evidence of its current registration with the Ministry of Labor and Human Resources, and must keep a copy of the registration during the term of the respective contract.

## **Joint obligations of the outsourcing company and the user**

- They must determine, in the relevant service contract, the system for directing, controlling and supervising the outsourced personnel.
- For purposes of verification, the user and the outsourcing company must provide the Ministry of Labor with all information required and must allow any inspections ordered by the Ministry.

## **Rules for companies providing complementary services**

Complementary outsourcing companies are those that provide permanent or temporary services in activities not related to the user's principal activity through assignment of workers (including those that provide services requiring special know-how or technical expertise or those that are particularly qualified), such as surveillance, security, catering, messengers, maintenance, cleaning and other supporting services.

To this effect, the user's principal activities are all such tasks, processes or functions whose performance is material for the conduct of its business or that decisively contribute to the production of goods or the provision of services, without which the normal performance of its activities would be affected.

## **Rights of outsourced workers**

- Workers of labor intermediation or outsourcing companies are guaranteed by the State their right to be freely organized and to freely perform in accordance with the law.
- Labor profit-sharing, in the case of outsourced workers, is subject to Article 100 of the Labor Code and the pertinent legal provisions; that is, such workers are entitled to participate in the user's profits (because the work performed or service provided by them is for the user's benefit), unless the outsourcing company's activities bear no relation with the beneficiary of the service.
- Outsourced workers may demand payment and recognition of their rights from the employers or representatives of the outsourcing company.

- Outsourced workers cannot be paid less than the compensation established as the minimum unitized remuneration for each sector and, in the absence thereof, their compensation cannot be lower than the minimum basic wage.

## **Contents of the outsourcing contract**

The service contract executed by the user and the outsourcing company must include, in addition to specific provisions agreed to by the parties, the following provisions:

1. Description of work to be performed by the outsourced personnel.
2. An indication to the effect that the contract is of temporary, complementary or indefinite duration.
3. A specific clause establishing the right of recovery in favor of the user.
4. Clauses to be agreed by the parties but that cannot contradict the legal rules in force or those of the aforementioned Executive Decree.

The contract should attach the registered individual contracts of the workers as well as a performance bond guarantee to secure the labor obligations. A copy of the contract, duly signed, must be delivered to the Ministry of Labor and Human Resources within thirty days after signature.

## **Causes for voiding the outsourcing company's registration**

1. Expiration of term without having timely renewed it (automatic cause).
2. Repeated or particularly serious breach of its obligations pursuant to the laws of Ecuador and the Executive Decree (subject to a resolution which may be appealed in a process that guarantees the right of defense).
3. Loss of one or several requirements established in the Executive Decree (subject to a resolution which may be appealed in a process that guarantees the right of defense).
4. Application to withdraw the registration by the company itself (the registration is cancelled together with the application).

## **Subcontracting for works and services: the independent contractor**

Without constituting outsourcing services according to the terms of Executive Decree 2166, the users' right to subcontract with intermediary companies for works or services directly provided by the intermediary is recognized, as long as the intermediary assumes the tasks, has its own financial, technical and material resources independent of the user's, is responsible for the results of the activities, and if its workers are under its own and exclusive dependency.

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# ECUADOR: NEW OUTSOURCING REGULATIONS

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In that case, the intermediary company cannot act as an “outsourcing personnel company” but merely as an independent contractor in charge of performing the contracted objective on its own account. Typical elements of such activities are, among others, a plurality of customers, equipment of its own, capital investment and form of payment for the work or service.

## Prohibitions affecting outsourcing companies

– Individuals who are shareholders, managers, legal representatives or administrators of the users that contract or that have one single customer cannot be shareholders, managers, or legal representatives of the outsourcing companies. If this provision is breached, the outsourcing company forfeits its registration immediately (it would seem that this cause is not subject to a previous declaration) and is closed definitively. Besides, if closed, the user indefinitely takes over the contracting of the outsourced workers together with all work-related and Ecuadorian Social Security Institute obligations in favor of those workers.

- The outsourcing company cannot charge its workers any amounts or commissions for having obtained a contract for their services or for having placed them with the user.
- Failure to observe the above-mentioned rules gives rise to fines in accordance with Article 626 of the Labor Code (up to US\$ 200) for each worker involved, without prejudice to the infringer having immediately to satisfy the breached rule. If the breach is repeated, the Ministry may cancel the registration of the outsourcing company by means of a resolution with due justifications. ■

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## BRAZIL:

# INVESTMENT FUNDS IN RECEIVABLES AND OTHER CREDIT RIGHTS

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## Establishing an FIDC

An FIDC portfolio may be comprised of credit rights originating from a wide variety of sources, including finance, commerce, industry, real estate, real estate mortgages, leasing and/or the provision of services, as well as other rights or securities as defined by the *Comissão de Valores Mobiliários* (CVM), the agency charged with enforcement of Brazil's securities and exchange laws. FIDCs may also invest in credit rights stemming from contracts for continuing performance or which stipulate future delivery of goods or future performance of services, but only if supported by a guarantee from a financial institution or an insurance company.

An FIDC features joint ownership of the underlying assets by the FIDC's quota holders. The FIDC's by-laws may freely define its policy for investing in credit rights or paper that represents such rights (i.e., when such rights have been securitized). It is permissible for the FIDC policy to be to concentrate its investment in rights or paper of a single originator or debtor.

Another key feature is that the establishment and development of the FIDC is itself tax-neutral for purposes of the Brazilian tax authorities. Foreign holders of participation in an FIDC, however, are generally subject to a 15% withholding tax on their portions of FIDC income, but they may sell their participation on the stock market without liability for capital gains.<sup>2</sup>

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<sup>1</sup> <http://www.natlaw.com/brazil/topical/sc/inbrsc/inbrsc51.htm>, *Instrução 356* of Dec. 17, 2001, *Diário Oficial da União (DOU)*, Jan. 24, 2002

<http://www.natlaw.com/brazil/topical/sc/inbrsc/inbrsc38.htm>, *Instrução 393* of July 22, 2003, *DOU* July 28, 2003

<http://www.natlaw.com/brazil/topical/sc/inbrsc/inbrsc47.htm>, *Instrução 399* of Nov. 21, 2003, *DOU*, Nov. 26, 2003

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<sup>2</sup> If the foreign investor is located in a tax haven, any income arising from its investment in the FIDC or any capital gains earned from the disposal of FIDC participations on any market by the foreign investor are taxed at the rate of 20% (Normative Instruction N<sup>o</sup> 188, as issued by Brazil's federal taxing authority (*Secretaria da Receita Federal*) on August 6, 2002).

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## BRAZIL:

# INVESTMENT FUNDS IN RECEIVABLES AND OTHER CREDIT RIGHTS

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An FIDC is considered simple to establish because, in order for it to operate, it needs only to file with the CVM its certificate of establishment, its by-laws and certain other minor documents. Nevertheless, FIDCs must be rated by a rating agency in order for an FIDC to issue participations to investors. The rating must be updated quarterly and, in the event of any change, must be published as relevant data.

The credit rights of an FIDC must be held in the custody of an institution accredited by the CVM. The custody services involve various obligations on the part of the custodial institution such as, *inter alia*, analysis, administration, receiving of payments, and liquidation of credit rights.

### Investing in an FIDC

Ownership participations may be distributed or negotiated in exchanges or over-the-counter. The minimum amount that may be invested in an FIDC is R\$ 25,000.<sup>00</sup>. Investment in an FIDC may be made only by a “qualified investor”. Legal provisions define the “qualified investors.” such as financial institutions, pension funds and insurance companies, as well as legal entities and individuals holding a minimum of R\$300,000.<sup>00</sup> in securities and financial investments.

The FIDC may also be used for the capitalization of branches and/or subsidiaries by means of having the controlling companies acquire quotas of an FIDC, to which FIDC the credit rights owned by the branch/subsidiary have been assigned.

If the transferor of the credits is a financial institution or leasing company, the transferring institution—and any company directly or indirectly controlled by, linked to it or under common control with it—may acquire participations in the FIDC only if such these are subordinated in nature. In such case, the transferring institution must maintain reserves relative to the transferred credits, in accordance with rules established by the National Monetary Council (*Conselho Nacional Monetário* – CMN).

### Setting aside of receivable transfers

One important issue related to FIDCs is that transfers of receivables in Brazil may only be questioned in given situations expressly provided by law—as in the case in which the debtor transfers assets during the course of a legal proceeding, causing the debtor to become insolvent, thereby hindering execution creditors from obtaining reimbursement. In such a case, the court may set aside the transfer

of receivables. Also, as set forth in Brazil’s bankruptcy law, acts *intended* to jeopardize the rights of creditors of the bankrupt estate are revocable. Therefore, a transfer of receivables could be set aside if it is proved that the receivables were intentionally sold for a below-market price, or if the sale was intentionally executed under conditions adverse to the grantor. The setting aside of a transfer may occur, however, only in situations expressly authorized by law, the result being that Brazilian securitization transactions may be undertaken with a large degree of legal certainty.

### Notice to debtors of transfer of debt to an FIDC

Article 290 of the Brazilian Civil Code requires that debtors be notified when creditors assign the debtors’ obligations to a third party such as an FIDC. As is discussed below, this notice, which is at times onerous to accomplish, may be dispensed with in select cases provided no harm would be suffered as a result by investors, debtors and the FIDC.

The absence of notice affects neither the existence nor the validity of the rights assigned by creditors to the FIDC, as notice is foreseen by the Civil Code as being relevant exclusively to the effectiveness of the assignment vis-à-vis the subject debtor. In addition, even where no notice is provided, an assignment made through a public deed or a private assignment registered with a public registrar of documents is effective vis-à-vis all third parties except debtors (Brazilian Civil Code, Art. 288,<sup>3</sup> and Art. 130 of Law no. 6,105, of December 31, 1973).

The objective in requiring notice, in the final analysis, is to apprise the debtor that payments are henceforth to be made to a third party, not to the original creditor. Should a debtor who has received notice continue to tender payment to the original creditor, the debt is considered unpaid and remains due and owing. That said, in cases where the FIDC maintains a standard billing system for debts (for example, the payment mechanisms employed by certain banking networks), the provision of notice loses much of its practical importance inasmuch as the debtor continues to pay in the same fashion, irrespective of who owns the right to receive the debtor’s payment.

The only risk where notice is not provided is the debtor continuing to pay the original creditor, who in turn may not forward the funds to the FIDC. This risk can be minimized where the agreement pursuant to which payment rights are assigned mandates the forwarding by the

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<sup>3</sup> <http://www.natlaw.com/brazil/primary/prbr13.htm>

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## BRAZIL:

# INVESTMENT FUNDS IN RECEIVABLES AND OTHER CREDIT RIGHTS

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assignor of funds to the proper creditor in instances of misdirected payment. In this respect, the lack of compliance with the notice requirement contained in the Civil Code may not prove harmful to the FIDC and will eliminate unnecessary notification costs to funds that are assigned large numbers of payment rights.

## Conclusion

The FIDC's structure makes it attractive to those seeking and to those providing financing and serves to reduce the costs of intermediation. Because of the many advantages, use of FIDC's in Brazil is increasing significantly. ■

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### AGRICULTURE

#### **BRAZIL: Maximum Wine Alcohol Content Increased**

Brazil's Law 10.970 modifies Ordinary Law 7.678 of Nov. 8, 1988 (the Wine Law), which regulates the production, circulation and marketing of wine and of wine and grape derivatives and by-products. The new law modifies Articles 2, 8-15, 17-20, 41 and 47 of the Wine Law and, *inter alia*, increases the maximum alcohol content of Brazilian wine products to 14% by volume—up from a previous provision of 12.5–13%. The modification also specifies that national products covered by the Wine Law must be accompanied by the appropriate free transit permit, and shall only be released for marketing in their original receptacles. Any alteration of brand or type is prohibited, and products must be packed in vessels of up to five-liter capacity. For bottled products, only wines containing, at a minimum, 75% of that variety, may carry the denomination of a specific grape variety. The remaining composition may be of varieties of the same species. In production zones, wine producers may manufacture or bottle wines and derivatives in third-party facilities, through service contracts, hire or any form of leasing or cession; however, producers retain responsibility for the product, and are not required to include the name of the bottler on the label

*Diario Oficial da União*, Nov. 16, 2004

<http://www.natlaw.com/brazil/topical/ag/lebrag/lebrag40.htm>

### ANTI-DUMPING

#### **Mexico: Investigations on Chinese Nails, Tools, Toys**

Resolution 194 concludes an investigation into alleged Chinese dumping. The Secretary of the Economy determined that in the period investigated, i.e., from September 2001 to June of 2002, the importation of steel nails, with lengths from  $\frac{3}{4}$  of an inch

to 4 inches, with diverse diameters and in various forms, from the People's Republic of China were realized in conditions of price discrimination (dumping) that caused harm to the national production of similar products. As such, Resolution 194 established a tariff of \$0.50 US dollars per kilogram on those goods classified as 7317.00.99. Resolution 195 of the same date accepted the application of interested parties for initiation of an administrative investigation into alleged Chinese dumping of various tools including hammers, mallets, keys, axes, and other similarly classified goods.

Resolution 190 initiates a review of import quotas previously (in 1994) imposed on Chinese toys, and Resolution 191 exempts certain specified toys from the People's Republic of China from the quota provisions on the basis that the specified toys are "exclusive products" (*productos exclusivos*). These products are considered distinct enough from Mexican goods so that Mexican goods are unaffected by their importation. Importers must submit an evaluation issued by the Secretary of the Economy that verifies that the goods warrant such classification. The resolution gives instructions on how to certify that the products are indeed "exclusive."

*Diario Oficial*, Nov. 22 and 29, 2004.

<http://www.natlaw.com/rsmxcu/rsmcu194.htm>

<http://www.natlaw.com/rsmxcu/rsmcu195.htm>

<http://www.natlaw.com/rsmxcu/rsmcu191.htm>

<http://www.natlaw.com/rsmxcu/rsmcu190.htm>

### BANKING & CREDIT

#### **CHILE: Copy of Invoice Grants Right of Summary Proceeding**

Chile's Law 19.983 regulates the transfer and grants the right of execution (summary proceeding) to copies of invoices. The law sets rules that are the basis for transferring invoices to a bank or factor in order for a firm to obtain short-term financing based on the

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receivables represented by such invoices. Chilean government officials expect the number of firms making use of factoring arrangements to increase from some 6400 in 2004 to perhaps 50,000, once the new provisions are fully implemented. Law 19.983 becomes effective April 15, 2005. In the meantime, the Chilean tax authority, *Servicio de Impuestos Internos* (SII), expects to develop and issue a number of related regulations, including for a registry of electronic invoices, and develop a communications program to provide information about factoring. The aim is to reduce financing costs and, through the associated encouragement of electronic invoicing, to reduce administrative costs.

Law 19.983 provides that, in any sales or service transaction or in any transaction that the law likens to such transactions, where the seller or service provider is required to issue invoices, a copy of the original invoice must be issued—without the copy having any tax consequence—with the copy being available for the purpose of transfer to third parties or for collection. The seller or service provider must show evidence on the original and the copy of payment status and, where applicable, of modes of satisfying the unpaid balance.

The obligation to pay the balance owed as indicated on the invoice must be satisfied at one of the following times: upon receipt of the invoice; within a given period from the date of receipt of goods or rendering of service, allowing for establishing of partial and successive due dates; or at a date certain. Absent express mention of any of the indicated time periods, it shall be understood that it must be paid within 30 days.

An invoice shall be considered irrevocably accepted if its content is not challenged through one of the following procedures:

1. Returning the invoice and, as the case may be, the shipping bill, upon delivery, or
2. Challenging the invoice content within eight (8) calendar days of receipt, or within a time period agreed to by the parties, not to exceed 30 calendar days. The issuer of the invoice must be notified of the claim by certified letter, or any other reliable means, together with the return of the invoice and shipping bill, or else together with the request for issuance of the corresponding note of credit. The claim shall be considered to have been made on the mailing date of the notification.

The newly-required invoice copy shall remain transferable as long as all of the following conditions are met:

- a) It has been issued in conformity with norms governing issuance of the original invoice, with the notation “transferable” prominently indicated on its face, and
- b) It records receipt of goods delivered or service rendered, indicating the location and date of delivery of goods or of rendering of service and the full name, Unique Tax Identification Number and domicile of the buyer or beneficiary and the identification and signature of the receiving person.

Where receipt is not shown on the invoice copy, it shall be transferable only when accompanied by a copy of the lawfully issued shipping bill(s) showing receipt. The issuer of a shipping bill must provide additional copies to all parties as required by law, with the notation “transferable with invoice.” For the purposes of this law, an adult person receiving goods or services in the buyer’s or beneficiary’s name is presumed to represent that buyer or beneficiary. Further, *any stipulation limiting, restricting or prohibiting the free circulation of a credit which is recorded in an invoice shall be considered null and void.* This provision was important as large firms have often imposed on small and medium-sized suppliers a requirement that receivables due from the large firm not be factored. Law 19.983 also provides that the party obligated to pay the invoice must be notified of the transfer of the invoice to a third party and sets notification procedures, adding that the transfer described does not constitute a loan operation (which may satisfy some of the previous concern that was the basis for the contractual prohibitions on factoring imposed in the past).

The invoice copy shall have right of execution for collection, provided: a) the invoice has not been challenged; b) payment is currently due and actions to collect are not time-barred; and c) the invoice shows the goods delivered or the service rendered, indicating the location and date of delivery of goods or rendering of service, full name, Unique Tax Identification Number and domicile of the buyer or beneficiary and the identification and signature of the receiving person. In any case where the invoice copy does not show receipt, it shall have the right of execution when accompanied by a copy of the shipping bill(s) issued, which indicates the corresponding receipt.

The term for lapse of an execution action for the payment of credit assigned via the invoice copy is one year from its date of maturity. If the payment obligation provides for partial due dates, the term of lapse shall run from each maturity date.

The Law shall apply equally where the invoice is an electronic document lawfully issued by a taxpayer authorized by the SII. In such a case, receipt of all or part of the payment must be signed by the issuer with his or her electronic signature, and the receipt of goods or services shown in the invoice must be verifiable with an electronic acknowledgment of receipt by the receiver. However, if the shipping bill has been used, receipt may be recorded in writing therein. *Diario Oficial*, Dec. 15, 2004  
<http://www.natlaw.com/chile/topical/bs/stchbs/stchbs6.htm>

## Mexico: New Credit Classifications

Mexico’s National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) issued general rules relating to Article 134 of the Law of Credit Institutions (*Ley de Instituciones de Crédito*). The rules classify banks from I to V according to their level of capitalization: I—representing greater than ten percent, II—greater than eight percent and less than ten percent, going down to V at less than four percent. The rules describe, according to classification, circumstances in which minimum corrective

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measures must be applied, types of corrective measures, periods and procedures for applying such measures and the notification to be given. The corrective measures may involve the suspension of dividend payments, the obligation to present a capital restructuring plan, limiting the growth of assets, or even suspending all or part of the banking business. Specific terms and time frames for these conditions are provided. *Diario Oficial*, Dec. 3, 2004 <http://www.natlaw.com/smmxbk/smmxbk53.htm>

## CUSTOMS

### PERU: Reduced Penalties for Certain Infractions

Peru's Law N° 28438 (*Ley que regulariza infracciones de la Ley General de Aduanas*) provided a 60-day opportunity for the regularization of the status of exporting companies that have infringed the General Law of Customs by using as inputs products that were imported under an exemption, drawback or another customs program. Sanctions are reduced from what was previously required and loss of access to such benefits will not follow, provided that the status is regularized within the required period. Exporters had indicated difficulty in complying, especially, making certain that locally purchased inputs and locally purchased merchandise manufactured with imported inputs have not enjoyed customs benefits and had complained that the number of infractions found and the size of penalties made the drawback system a worry rather than an incentive. *El Peruano*, Dec. 28, 2004 <http://www.natlaw.com/peru/topical/cu/stpecu/stpecu4.pdf>

### U.S.: Law Benefits Caribbean Footwear

The Miscellaneous Trade and Technical Corrections Act of 2004, signed into law in the U.S. on December 3, 2004 (Public Law No: 108-429), provides favorable treatment, in general, for threads and educational toy devices to enter the U.S. duty-free or with reduced duty and amends the Caribbean Basin Economic Recovery Act (CBERA) to allow duty-free export to the U.S. of most categories of footwear (Section 1709) from the Dominican Republic and other countries eligible for CBERA benefits. <http://thomas.loc.gov/bss/d108/d108laws.html>, see public law 429 *Russin, Vecchi & Heredia Bonetti*, <http://www.rvhb.com>

## FAMILY LAW

### CHILE: Civil Matrimony Law Permits Divorce

On November 18, 2004, Chile's new Civil Matrimony Law (Law 19.947, *Ley De Matrimonio Civil*), published May 17, 2004, took effect; regulations were published this past October. The new law supersedes the 120-year-old Civil Matrimony Law, which did not allow divorce. Under the new law, a couple may divorce after a one-year separation if both partners agree to separate. For separations sought unilaterally, a divorce is allowed after three years. Such waiting periods can be avoided if one spouse can prove violations of marital duties by the partner, including domestic violence, homosexuality, prostitution, drug addiction or a criminal conviction. The law also raises the minimum age for marriage to 16 years for both males and

females. The judicial branch of government expects to have judges knowledgeable in family law operating by October 2005. *Diario Oficial*, May 17 and Oct. 30, 2004

<http://www.natlaw.com/chile/topical/fl/stchfl/stchfl5.htm>

<http://www.natlaw.com/chile/topical/fl/dcchfl/dcchfl1.pdf>

<http://www.natlaw.com/pubs/spchfl1.htm>

## GOVERNMENT ADMINISTRATION

### Mexico: Consular Document Proves Citizenship

Mexico's Nationality Law (*Ley De Nacionalidad*) was amended to add an additional document—the consular registration document (*matrícula consular*) that will be accepted as proving that the holder has Mexican nationality, provided that the *matrícula consular* has three security elements, i.e., a digitized photograph, a magnetic strip and a holographic identification. The high-security *matrícula consular* (*Matrícula Consular de Alta Seguridad – MCAS*), which is issued to Mexicans outside of Mexico by Mexican consulates, is an alternative to other proofs of Mexican nationality, such as a Mexican birth certificate which meets established requirements or a passport. The *matrícula consular* serves as an identity and citizenship document for Mexicans who are outside Mexico without having a valid passport or other documents; it also is indicative of the holder's domicile in a particular consular district. It is not a substitute for host-country documentation on whether the holder is legally in the host-country. *Diario Oficial*, Jan. 12, 2005

<http://www.natlaw.com/dcmxga/dcmxga97.htm>

<http://www.natlaw.com/stmxim/stmxim2.htm>

## LABOR

### Mexico: Workplace Committees on Safety & Hygiene

Mexican Official Norm NOM-019-STPS-2004 replaces a 1993 Norm about the creation and duties of workplace committees on safety and hygiene (*constitución, organización y funcionamiento de las comisiones de seguridad e higiene en los centros de trabajo*). The Norm defines workplace accidents and acts of negligence, spells out responsibilities of bosses and workers—including a responsibility for bosses to providing training and breaking-in periods relevant to health, safety and hygiene and for workers to attend such training—and sets requirements for verification of compliance with this Norm. *Diario Oficial*, Jan. 5, 2005 <http://www.natlaw.com/wemxlb/wemxlb71.htm> <http://www.natlaw.com/acmxb/acmxb100.htm>

## REAL ESTATE

### VENEZUELA: Rural Land Registry in 2005 as Basis for Tax

Venezuela's Decree with Force of Law of Lands and Agricultural Development (*Decreto Con Fuerza de Ley de Tierras y Desarrollo Agrario – Decreto N° 1.546*) was promulgated in 2001. It created the National Land Institute (*Instituto Nacional de Tierras – INTI*) and called for the establishment of a land registry to be used in connection with a tax on idle or under-

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utilized land to be collected by the National Integrated Service of Customs and Tributary Administration (*Servicio Nacional Integrado de Administración Aduanera y Tributaria – SENIAT*). INTI and SENIAT, working with the Venezuelan geographic institute, *Instituto Geográfico de Venezuela Simón Bolívar*, announced in December 2004 that the registration procedure would be carried out from January 1 through December 31, 2005, in order to comply with Decree N° 1.546 and that collection of the tax (set forth in Title III of the Decree) would be fully implemented in 2006. Those affected must address themselves to the offices of the Regional Management of Internal Taxes (*Gerencias Regionales de Tributos Internos*) of their domicile and present a photocopy of their identity card (*Cédula de Identidad*), a photocopy of tax registration information (*Registro de Información Fiscal – RIF*) and documentation showing their possession or ownership of the land. The tax applies to private rural land and to public rural land in possession of anyone other than a public entity. The Fourteenth Transitory Provision of Decree N° 1.546 mentions that to be able to enjoy exonerations and exemptions allowed under that Decree N° 1.546, persons eligible must register and present the corresponding documents. (Separately, an *ad hoc* special committee has been formed to review a 2002 decision of Venezuela's Supreme Tribunal of Justice that eliminated articles 89 and 90 of Decree N° 1.546 and, according to one committee member, to reclaim the "spirit" of the law.)

*Gaceta Oficial*, Nov. 13, 2001

<http://www.natlaw.com/venez/topical/rp/dcverp/dcverp1.pdf>  
*Torres Plaz & Araujo*, <http://www.tpa.com.ve>

## SECURITIES

### BRAZIL: Investment Fund Rules

Brazil's Securities Commission (*Comissão de Valores Mobiliários – CVM*) issued CVM Instruction 411, amending the rules for investment funds contained in CVM Instruction 409 of August 18, 2004. The rules deal with the creation of such funds, administration, functioning and disclosure. The modification concerns, *inter alia*, the maximum administrative charge for retail funds (i.e., those not meant exclusively for qualified investors) when such funds acquire participations in other investment funds. Another change concerns procedures, through a general assembly, for re-opening a fund that has barred redemptions because of unusual illiquidity. CVM Instruction 413 requires that information about a fund's portfolio disclosed by a fund administrator to third parties must be made available to participation holders in the same period, except where the information has been disclosed to those performing services for the fund or to regulators. This Instruction also defines funds classified "exclusivos" as being for application by one participant, who must be a qualified investor, and defines "previdenciários" as being *exclusivos* used for application only in investment funds, life insurance, certain retirement funds or plans, etc.

<http://www.natlaw.com/brazil/topical/bk/inbrbk/inbrbk11.htm>

<http://www.natlaw.com/brazil/topical/bk/inbrbk/inbrbk12.htm>

<http://www.natlaw.com/brazil/topical/bk/inbrbk/inbrbk8.htm>

### MEXICO: Modifications Affect Futures and Options

A recent Resolution of Mexico's National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) amends rules for participants in the market for futures and options quoted on an exchange. The Resolution's stated aims include, *inter alia*, improving the ability to prevent, detect and report operations using funds derived from illegal sources, improving reporting to credit information agencies about clients that fail to perform obligations in the exchange-quoted market for futures and options and to ensuring that clients participating are informed about the risks of participating in such accounts. Administrators must keep individual accounts for each client in a group and indicate in express and obvious form the obligation of clients in case others in the group fail to meet their obligations.

*Diario Oficial*, Jan. 5, 2005

<http://www.natlaw.com/rsmxbk/rsmxbk35.htm>

<http://www.natlaw.com/rsmxsc/rsmxsc1.htm>

<http://www.natlaw.com/rsmxbk/rsmxbk7.htm>

<http://www.natlaw.com/rsmxbk/rsmxbk2.htm>

<http://www.natlaw.com/smmxbs/smmxbs2.htm>

## TAXES

### BRAZIL: Large Firms to Declare Monthly

The Secretary of the Brazilian tax authority, *Receita Federal*, issued Normative Instruction n° 482 in December, requiring large businesses to submit their federal Declaration of Federal Tax Debits and Credits (*Declaração de Débitos e Créditos Tributários Federais – DCTF*) every month and not just every quarter, beginning this year, i.e., 2005. The monthly DCTF must be submitted by legal persons, including those otherwise exempt, with gross annual income greater than R\$ 30 million or with declared debits in the second calendar year prior to the period corresponding to the DCTF that were greater than R\$ 3 million. Other legal entities may opt to submit the DCTF monthly or semi-annually not quarterly as previously required. If an entity not required to submit the monthly DCTF, nevertheless, opts to do so, the option shall be made through submission of the DCTF corresponding to the month of January with such option being final and non-retractable for the entire calendar year. Other provisions are:

- The monthly DCTF must be submitted, in a centralized form, through the principal office of the legal person;
  - Transmission of the DCTF requires a digital signature for declaration through a valid digital certificate but, in certain circumstances, may be optional for transmission of the semi-annual DCTF for the 2005 calendar year;
  - The monthly DCTF shall be submitted by the 5th business day of the 2nd month after the month of occurrence of the generating events;
  - The semi-annual DCTF shall be submitted by the 5th business day of October each calendar year for the first half of the calendar year and the 5th business day of April for the 2nd half of the previous calendar year. *Diario Oficial da União*, Dec. 24, 2004
- <http://www.natlaw.com/brazil/topical/tx/inbrtx/inbrtx37.htm>

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