LEGAL ASPECTS OF DOING BUSINESS IN LATIN AMERICA

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INTERNATIONAL BUSINESS SERIES

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VOLUME 2

1991

KLUWER LAW AND TAXATION PUBLISHERS

Deventer•Boston

Kluwer Law and Taxation Publishers
P.O. Box 23 Tel. : 31-5700-47261
7400 GA Deventer Telex : 49295
The Netherlands Fax : 31-5700-22244

Distribution in USA and Canada
6 Bigelow Street Tel. : 617 354 0140
Cambridge, MA 02139 Fax : 617 354 8595
USA

Library of Congress Cataloging-in-Publication Data

Legal aspects of doing business in Latin America / editor, Dennis Campbell.
(International business series; v. 2)
ISBN 9065449302
1. Investments, Foreign–Law and legislation–Latin America. 2. Industrial laws and legislation–Latin America. 3. Trade regulation–Latin America. I. Campbell, Dennis. II. Series: International business series (Deventer, The Netherlands); 2.
KG101.B87L43 1991
346.8'07–dc20 91-27863
[348.067] CIP

ISBN 90 6544 930 2

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Supplement 2

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after divider 'Chile' pages Chile-1/34	after divider 'Chile' *pages Chile-1/34*
after divider 'Colombia' pages Colombia-1/82	after divider 'Colombia' *pages Colombia-1/82*
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90T 2820028

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Introduction

JUAN CARLOS URIBE

COMING TO LATIN AMERICA

Five hundred years ago, the first chapter on how to do business in Latin America was drafted. The Spanish Empire was initiating its expansion with two main targets in mind, to increase the wealth of the Crown and the number of subjects for the Church.

The new instruments for the conquest of the Latin American markets have been transformed from a sword to a facsimile machine, but the mental skills and motivation required to succeed have remained unaltered, that is: planning, intelligence, precaution, patience, perseverance, opportunity surveillance and of course, ambition.

Although almost all the countries of Central and South America have Spanish or Portuguese as their official language, this common bond has not precluded the formation of an extremely complex mixture of cultures in which the white, the black and the indian races have created nations that must be understood and studied as independent microcosms to avoid the trap of the latin stereotype.

SURVEYING THE LATIN AMERICAN MARKET

The economies of the Latin American Countries have experienced diverse economic trends during the decade of the 1980s.

At the beginning of the decade the management of the external debt problem took proportions which challenged the global economic order. Mexico was the first country which notified its foreign creditors that it had to suspend the payment of interest, an example which was followed by Peru and Brazil in the following years. The debt crisis had such a direct impact on the impoverishment of the region that many economists have called this period, the lost decade. Growth rates were in most cases negative, Colombia being the only exemption, and the situation of the trade balance forced massive devaluations which had as a consequence a reduced exchange of goods and services and higher inflation rates.

No doubt such a grim situation, occurring at a time when most Latin American countries were holding on to the dogmas of nationalism, the Falklands War being one of its consequences, and governed by totalitarian governments with little interest in controlling government spending, and with highly centralized economies, paved the way for the democratic renaissance, with the radical change that the Latin American countries are giving to their fiscal policies and the new attitude towards foreign investment.

The success of the European Community has encouraged negotiations on economic integration treaties such as the North American Free Trade Agreement (NAFTA), the discussions between the member countries of MERCOSUR to develop and increase their trade operations and cooperation, the policies of the so–called 'Grupo de los 3' (Mexico, Colombia and Venezuela) aimed at creating a free trade zone among them, or the new Andean Pact decisions to ease restrictions on foreign investment, transfer of technology and reduction of customs tariffs.

The democratic atmosphere, the negotiations on the reduction of the external debt, increasing trade balance surplus, diminishing government intervention, reduction of government spending, welcoming of foreign investment, and better tax collection systems are the new perspective that the Latin American countries promote to recover from the enduring recession that reigned there in the 1980s.

However, it seems an irony of the destiny that just when the Latin economies adopt the credo of free market and open their economies to foreign competition, the developed countries are immersed in a two–year recession, from which it is still unclear if by the end of 1993 it will have finished. New ecological concerns which were made well-known at the Rio Summit in June 1992, are questioning the wisdom of the developed countries' methods of economic exploitation, and cast serious doubts on whether a free-ride attitude to natural resources will only bring chaos and destruction in the long term.

Therefore, the volatile and experimental economic models upon which the Latin American countries are relying to diminish the poverty gap with the industrialized world cannot be claimed to be fully adopted for the present decade, but are honest efforts to solve a long standing problem of stagnation and technological dependence. We will take a brief look at the measures that the region has fostered to change its cinderella situation.

ARGENTINA

The fervor which the government of Argentina has shown for the forces of the free market to heal the economy and bring new dynamism to its industries , is reflected in almost every manufacturing, financial and services activity.

The negotiations with the International Monetary Fund have included in the letter of intention that the government of Argentina shall try to obtain a budget surplus by selling its public companies, the most well-known examples being the 'Empresa Nacional de Telecomunicaciones' and the national aviation company, 'Aerolineas Argentinas'. Recently shares also have been sold in EDENOR and EDESUR, which are electricity distribution companies.

The main headache of the Argentine economy through the 1980s, the hyper-inflation, has been contained from a 2.2 per cent to 1.5 per cent monthly increase during 1992, partly due to the reduction of the public sector and to the raising of tax revenues. Although labor unions have been agitating for higher wages, fiscal discipline continues to be exercised by the monetary authorities.

Another example of the deregulation which is sweeping the Argentine economy is Decree No. 2284 with 122 articles, which aimed to dismantle limitations which affect the commerce of goods and services, import limitations, elimination of several public entities, elimination of taxes and contributions charged by regulatory entities, the creation of a single social security system that will be controlled by the Labor

Ministry and the elimination of separate collective labor agreements by activity, which has been a major set-back for the power of labor unions.

From the international trade view-point, the highlight is the enactment of the MERCOSUR market created in the Treaty of Asuncion, which was signed by Argentina, Brasil, Paraguay and Uruguay. In keeping with the free market orientation, there is no supra-national body to oversee and direct this agreement, the main aim of which is to establish a Southern free-trade zone by the end of 1995.

With all these changes, Argentina has been placed in the front line of the new neo-liberal economic thinking, whose main responsibility is to restore the optimism that reigned in the country at the turn of the century.

BRAZIL

Brazil has placed itself at the center of the international news agencies for issues as divergent as soccer, the destruction of the Amazon jungle or the size of its external debt.

The ecologic summit of Rio de Janeiro in June 1992 was held to change the image of a mindless destroyer of the richest fauna and flora in the world to a new-age ecology conscious country, and to ease the pressure that was mounting among environmental groups in Europe and the United States to boycott the acquisition of Brazilian agricultural goods.

The impeachement of the Brazilian president by the Congress after a corruption scandal and the political responsibility which preceeded it, were clear signs to the international community of how democracy is being entrenched in the spirit of the Brazilian people which in the long run will provide institutional stability.

The current economic perspectives are not gloomy but neither are they bright. The political crisis that has dominated most of the country's public life has created difficulties in proceeding with the adjustment regulations necessary to obtain a macro-economic balance. The fiscal targets posed by the IMF stand-by program were not achieved and although the tight monetary policy remains in effect, monthly inflation is high.

The good news is that the trade balance continues to perform well, reaching US $8.8-billion in July 1992, portfolio investment from abroad in the local stock market reached US $1.5-billion. However, imports may grow due to the opening of the economy, the MERCOSUR treaty and the liberalization of customs regulations.

BOLIVIA

The economy of Bolivia has also performed better than expected for the first time in several years and the economic growth will increase at a higher rate than the population.

Public investment has increased to US $200-million, and the policy aimed at diminishing state intervention in industry is expected to raise another US $250-million to bring new dynamism to the economy.

Inflation remains low and hopes are high that it will continue within the ceiling calculated by the government, even though the government has maintained a relatively expansive monetary policy.

The trade balance has experienced several setbacks due to the reduction of gas exports to Argentina, and the unsatisfactory price that is being paid in the international markets for tin.

In the foreign debt arena, the structural adjustment program which was agreed upon with the IMF has allowed Bolivia to cling to the 'Initiative for the Americas' orchestrated by the Bush Administration, aimed at the reduction of the external debt of the Latin American countries.

Bolivia is also at a new stage of its political maturity. Since the mid-1980s, this has been one of the few periods of its history when democratic governments have changed administrations without intermissions created by military coups. No doubt this situation has created a friendlier atmosphere with the other countries of the region and is accountable for the new but sound economic stability.

COLOMBIA

Although this country continues to be beset by its perennial ills of guerrilla fighting and drug cartels, the economy has maintained a steady growth, even after ten months of a severe drought which have forced electricity cuts through the country of at least six hours daily.

The new Constitution which replaced a long standing, 105–year old republican constitution, was enacted in 1991, defining new 'essential rights', granting broader autonomy to the country's political units, and increasing the services to be borne by the State, forcing the issuance of a new tax reform that raises the rate of sales taxes and extends their coverage to services, including fees of the free professions.

The government is also committed to open the economy to foreign investors and new rules to simplify the procedure of investment, allowing foreigners to participate in once forbidden sectors such as telecommunications, have been enacted. The share ownership of banks by foreigners, which at some point was limited to a maximum of forty-nine per cent has now been opened to full participation.

Stock exchange operations have also experienced a boom in which the growth in the operations have surpassed 400 per cent during 1991 and are expected to keep this performance during 1992. More than thirty-three funds of foreign portfolio investment have initiated operations in Colombia, and the possibility for companies to raise working capital through the stock market has assumed new perspectives.

The repatriation of capital to the country has also increased the international reserves to more than US $6-billion dollars, forcing the planning authorities to establish a tight monetary policy to reduce the level of circulating cash to reduce inflation. The government has also diminished the level of customs tariffs and eliminated previous approval procedures and promoted the importation of capital goods.

Foreign trade has continued its diversification, coal and petroleum being some of the new items in an area once dominated by attention to the international price of coffee, whose endemic performance has forced the Coffee Federation into deep financial troubles.

The discovery of new petroleum fields in the Cusiana region, calculated at more than 1200-million barrels of oil, makes the country self-sufficient at least until the year 2005, and allows it to continue with its export activities.

COSTA RICA

This is a country characterized during the decade of the eighties as an oasis of peace and democracy while the other countries of Central America were shattered by dictatorial regimes, guerrilla warfare, and human rights abuses.

The ecological policies initiated by president Oscar Arias and continued by the current president Rafael Angel Calderon, were the first to contemplate external debt reduction with swap operations to preserve nature. Austerity measures have also been included to reduce the public sector deficit.

Costa Rica has also made serious efforts to keep up-to-date on its payments to creditor banks although the management of its economy had problems complying with the requirements imposed by the IMF for new disbursements.

CHILE

During the dictatorship of General Augusto Pinochet, Chile was mostly known for its records in the violation of human rights and its excellent wine. Nevertheless, this situation did not preclude it from embarking on the free market economic experiment, of which satisfactory results had some effect in the recovery of democracy and the rule of law that characterized this country during most of the present century.

Keeping pace with this hard earned economic prosperity has not been easy, but the country has managed to diversify its industry, even to include war materials as an important new item in the Chile's trade balance, reflecting the new drive towards exports which is being complemented by diplomatic activity since Chile signed a free-trade agreement with the United States that shall be fully implemented by 1997 and another agreement with Mexico for the same purpose. With this healthy economic performance the United States credit rating agency, 'Standard & Poor's', placed Chile in the category with low political and economic risk.

The management of its foreign debt is also under control, since in 1990 Chile signed an agreement with its principal creditors to extend the term of payment and a new period of grace, accept debt-swap operations, and become a beneficiary of the 'Initiative for the Americas', the debt reduction program initiated by the Bush administration.

ECUADOR

The recently elected President, Sixto Duran, who during his presidential campaign had a platform of pro-market measures, had found several obstacles to implement its policies.

Although, in absolute terms the foreign debt of Ecuador is small (US $6.6-billion) the decline of the petroleum prices, the low scale of industrial production, natural disasters and a minimum level of international reserves have forced Ecuador to cease or make only partial payments of outstanding obligations.

The targets set by the IMF were not achieved and access to new disbursements will be conditioned on the success of a new program to be negotiated with the Fund.

The package of economic reforms has been met with strong political opposition since it implies a severe reduction in public spending, a sharp increase in energy and petroleum prices, a freeze on salaries of higher paid public sector employees, a liberalization of the labor regime, and a strong devaluation of the country's currency.

The reduction of state activities includes plans to privatize twenty state-owned enterprises, including the national airline, a redrafting of regulations to lure foreign investors to participate in the oil industry, and a tax reform.

The results of the efforts to renegotiate the external debt problem and the measures to stabilize the economy with non-inflationary growth are expected to produce fruit by the end of 1993.

MEXICO

The economy of Mexico could come of age, and in the view of the recent developments, abandon the level of a Third World country, proceeding to another stage, if not that of a developed country, then at least above the other economies of Latin America.

The successful negotiations to reach an agreement with regard to the text of the North American Free Trade Agreement (NAFTA), which is expected to create a surge in the employment of the Mexican workforce with its cheaper wages, and the consequent displacement of American industries to this country, have not meant the conclusion of the process, since some uncertainty remains with regard to the political will to ratify the treaty by the United States Senate.

Mexico, which during most of this century maintained a negative attitude towards foreign investment and private investment in selected sectors of the economy, has made a dramatic change with the announcement in 1990 to reprivatize the banks and the privatization of Teléfonos de Mexico. It also gave permission to produce petrochemicals by private entities, either with previous authorization for some products, or with absolute deregulation for those not included in the list published by the Ministry of Energy.

Mexico was the first country to reach an agreement to solve the external debt crisis within the framework of the 'Brady Plan'. The renegotiation of US $48-billion and the obtrude of new credits to develop programs of infrastructure.

PARAGUAY

After more than thirty years of dictatorship, Paraguay was the last Latin American country to return to the path of formal democracy, although the general elections which placed General Rodriguez in the presidency were tainted with charges of corruption.

The change of regimes has also created in Paraguay a new sense of entrepreneurial activity as indicated by the entry into the MERCOSUR treaty, in a country where