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TEHAR

Caracas

Torre La Castellana, Piso 6,
Avenida Principal, La Castellana.

Maracaibo

Unicentro Virginia, Piso 2,
Local
2-12. Avenida 3C con
esquina calle 67, Sector La Lago.

Valencia

Torre Movilnet, Piso 7,
Oficina
No. 3. Avenida Paseo
Cabriales.

Puerto la Cruz

Torre Banco Venezolano
de Crédito (BVC), Piso 6,
Oficina 6-J, Avenida
Intercomunal,
Sector Las Garzas.

Maturín

Centro Comercial
Petroriente (CCP), Nivel
Oficinas 2,
Oficinas 02-N19 y 02-N20,
Ala Norte del Green Mall,
Avenida Alirio Ugarte
Pelayo.

Introduction

During the months of October and November, there was a new intervention of the State in private activities through the forced purchase of the Margarita Hilton hotel, certain coffee companies and finally the intervention of small banks all of which generated concern with respect to the Venezuelan economy.

Energy

As per resolution published in the Official Gazette of October 30, 2009, 2,510,291 MMPCN of new proven reserves of gaseous hydrocarbons as of December 31, 2008 were incorporated. This means that the total amount of proven gaseous hydrocarbons reserves in Venezuela as of December 31, 2008 is 176,014,636 MMPCN.

The Presidential Decree that authorized the creation of the mixed company Petroquiriquire, S.A., to be incorporated by Corporación Venezolana de Petróleo, S.A. (60%) and Repsol YPF Venezuela, S.A. (40%), to carry out primary hydrocarbons activities in the area of Barúa-Motatán, was republished in the Official Gazette of October 21, 2009 to correct certain formal errors.

The Ministry of the Popular Power for Energy and Petroleum regulated the price of the freight to be paid by PDVSA Empresa Nacional de Transporte, S.A. to the transporting companies that are duly authorized to render the services of land transport of gasoline and diesel for automotive use from the PDVSA plants to the gas stations and the Pescar modules (facilities for the supply of fuel and lubricants that are adjacent to the collection centers of fishing communities). (Official Gazette of October 21, 2009).

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The Ministry of the Popular Power for Electric Energy was created as per Presidential Decree published in the Official Gazette of October 28, 2009. The new minister, Ángel Rodríguez, was also appointed President of Corpoelec which is the State-owned company that holds the shares of all Venezuelan power companies.

The Ministry of the Popular Power for Electric Energy issued a resolution that instructs all companies that generate electricity to take the necessary actions to increase their generation capacity, including the installation of additional required equipment and the recovery of units that are out of service. This resolution also instructed CORPOELEC to identify the private companies that generate electricity to maximize the use of such generation and if possible, to contribute excess energy to the national electric system. To promote this increase in generation, the granting of incentives such as the exoneration from payment of fuel used for generation, support in requests for foreign currency, customs formalities and credits in their energy consumption for the energy effectively placed in the national electric system will be analyzed. (Official Gazette of November 3, 2009).

Mining and Basic Industries

The creation of the Corporación Nacional del Aluminio, S.A. was authorized by Presidential Decree published in the Official Gazette of October 21, 2009. The purpose of this corporation will be to direct the companies of the aluminium industry (extraction of raw material and its transformation into products for final consumption). For this purpose, it was specifically authorized to acquire totally or partially the share participation of all companies related to its object, owned by national or foreign investors, or merge into them.

Exchange Control

Ruling No. 99, issued by the Foreign Exchange Administration Commission (CADIVI), was published in Official Gazette dated November 27, 2009. This Ruling establishes the new Requirements, Controls, and Formalities for the Request for Authorization for Acquisition of Foreign Currency Intended for the Payment of Consumption Abroad. It regulates the acquisition of foreign currency intended for the payment to suppliers abroad made by natural persons through credit cards and/or in cash.

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Banking

The following banks were intervened as per Official Gazette of November 19, 2009 (i) Banco Confederado; (ii) Banco Bolívar, (iii) Banco Provienda (Banpro); and (iv) Banco Canarias de Venezuela. Subsequently, as per Official Gazette of November 27, 2009, Banco Canarias de Venezuela and Banpro were ordered to be liquidated and Banco Confederado and Banco Bolívar will be reopened.

The Law of the Venezuelan Central Bank (VCB) was amended as per publication in the Official Gazette of November 5, 2009 (republished on November 6, 2009 to correct certain editing errors). Among the main modifications there is the elimination of the maximum 2-year period for the credits that the VCB may grant to banks and financial institutions with credit instruments as guarantees and for discount and re-discount of bills of exchange, promissory notes, or other instruments issued within the framework of special programs established by the National Executive related to operations for financing of the agrarian, construction, foodstuff, exports, and transformation of raw material sectors. The amendment also establishes that the VCB may establish special conditions for such financing operations when they are executed with the participation of State-owned funds or institutions. With this amendment, the VCB may buy and sell in open market securities and other mass-issued financial instruments, at arm's length conditions, but without the limitation of carrying out such operations as a means for direct financing and including not only securities issued by the VCB but also by PDVSA.

As per Resolution No. 09-11-02, the Venezuelan Central Bank modified the Norms that Regulate the Constitution of the Legal Reserve, in force since July 2009, by reducing the minimum legal reserve on the total amount corresponding to the Marginal Balance and the Basis of Reserve of Net Obligations plus Assigned Investments to take it from 25% to 23%.

The Ministry of the Popular Power for Economy and Finance issued Resolutions that regulate the purchase of shares through public offers and public offer to take control of entities supervised by the Superintendence of Banks and the Superintendence of Insurance. Such public offers on financial institutions and insurance companies now require the prior authorization of the pertinent superintendence.

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The Venezuelan Central Bank, via Resolution, established that in the public offer procedures, information on the changes of the business plan and service platform, if applicable, the origin of the funds and the financial condition of the participants must be provided to the Venezuelan Central Bank.

FOGADE (the Fund for Guarantee of Deposits and Banking Protection) issued the norms that regulate the procedure to cash the payment of guarantee of deposits supported by FOGADE. (Official Gazette of October 27, 2009).

The Technical Norms on the Requirements and Documents for Granting of Mortgage Loans for Purchase of Main Housing Unit were published in the Official Gazette of November 11, 2009.

The Superintendence of Banks issued the Rules to regulate the Incorporation of Non-Banking Correspondents as a Channel of Distribution of the Products and Services offered by Financial Institutions.. The financial services that may be offered by the financial institutions through non-banking correspondents on the basis of the corresponding contract to be entered into therefor are: cash deposits in and cash withdrawals from accounts; transfers of balance among accounts of the same customer and to third parties at the same institution, consultation of balance and transactions, payment or amortization of balance owed and payments of services of electricity, telephone, water, domestic gas, among others, information about the conditions and characteristics of the other financial products and services offered by the respective financial institution.

Tax

As per Presidential Decree No. 6985 published in the Official Gazette of October 23, 2009, the import of capital goods, their parts and accessories therein indicated, intended for the execution of industrial development projects of the manufacturing and/or construction industries in accordance with the Nation's Economic and Social Development Plan for 2007-2013 "Plan de Desarrollo Económico y Social de la Nación 2007-2013", are subject to VAT and import taxes exoneration provided that they are not produced in Venezuela or their production is insufficient. This exoneration will be in force for three (3) years. The request for exoneration shall be presented to the Ministry of the Popular Power for Science and Technology and Intermediate Goods Industries, which shall evaluate the request and decide within a 20-working-day period.

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Pursuant to Presidential Decree 6994, published in the Official Gazette of November 3, 2009, the payment of Value Added Tax (VAT) was exonerated for the definite importation of chattel property necessary for the continuity, reliability, and efficiency of the rendering of electric generation services carried out by companies engaged in such activity and referred to the systems listed in the decree which include equipment such as turbines, solar panels and water treatment plants. This decree also exonerated the payment of VAT for (i) definite importation of chattel property necessary for transmission and sub-transmission services, such as transformers, tension regulators and cable; (ii) the importation of fluorescent bulbs, sodium vapour lamps, electronic balusters, and light emission diodes (LED); and (iii) the supply of electric energy carried out among companies that provide electricity services directly or through interconnected systems. The exonerations will have a duration of five years.

Dredging services for the Project “Return to Design Depth of the Orinoco River Navigation Channel” were exonerated from the payment of Value Added Tax pursuant to Presidential Decree No. 6984, published in the Official Gazette of October 21, 2009.

According to Ruling No. SNAT/2009/0103 dated 10/30/09, published in Official Gazette N° 39.296 dated 10/30/09, the SENIAT established the duty for all legal persons and unincorporated entities, as well as for those individuals whose tax determination results in no tax to be paid, to file their Income Tax Returns only through the SENIAT's internet site www.seniat.gov.ve. The Ruling also indicates that those individuals whose tax determination results in tax to be paid, can opt to use this mechanism or use the SENIAT-issued forms.

In the same manner, and according to Ruling N° SNAT/2009/0104 dated 10/30/09, published in Official Gazette N° 39.296 dated 10/30/09, the SENIAT established the duty for all taxpayers to file their Value Added Tax Returns only through the SENIAT's internet site www.seniat.gov.ve.

The SENIAT established the system for withholding of income tax from lottery prizes and the norms for control of entities that carry out said activity. (Official Gazette of October 22, 2009).

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Telecommunications

The Charter of Industria Electrónica Orinoquia, S.A., incorporated by Telecom Venezuela, S.A (State-owned company) (65%) and Huawei Technologies de Venezuela, S.A., (35%), was published in the Official Gazette of November 9, 2009. The object of such company is the manufacturing, commercialization, purchase, development and research of terminal telecommunications equipment.

Consumer Protection

According to joint resolution of the Ministries of the Popular Power for Economy and Finance and Agriculture and Lands (Official Gazette of October 14, 2009), untoasted coffee and not decaffeinated coffee (excluding the coffee used for sowing) were declared temporarily as a basic consumer good, with the purpose of applying the customs tax exoneration benefit referred to in article 91 of the Organic Customs Law. This Resolution entered into effect on November 30, 2009.

The price of paddy rice paid to the primary producer and placed in the customary reception locations was fixed by resolution published in the Official Gazette of October 21, 2009. This price will enter into effect on January 1, 2010.

Environmental

The Ministry of the Popular Power for Agriculture and Lands issued the Technical Norms to regulate Polyvalent Industrial Fishing Offshore, published in the Official Gazette of October 29, 2009. These Technical Norms are included in the resolution and apply to every natural or legal person that will perform at Territorial Sea, Exclusive Economic Zone, deep sea and non-jurisdictional waters, according to International Treaties, activities of polyvalent industrial fishing offshore, defined by the resolution as the group of activities to extract sea fish species using more than one mechanized art of fishing, being allowed only: i) long-line fishing, ii) trap fishing and iii) trolling.

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Miscellaneous

The import of certain air conditioning equipment, refrigerators and chillers that do not comply with a minimum energetic efficiency requirement was prohibited as per joint resolution of the Ministries of the Popular Power for Commerce, Electric Energy, and Science Technology and Intermediate Goods Industries, published in the Official Gazette of November 3, 2009.

As per joint resolution published in the Official Gazette of October 29, 2009, the Ministries of the Popular Power for Commerce and Public Works and Housing extended again for an additional 6-month period (until May 2010) the rental freezing measure which began in May 2004 applicable to all real property intended for housing.

The forced purchase of the assets, real estate, chattel property and upgrades of the Margarita Hilton & Suites Tourism Complex was ordered as per Presidential Decree published in the Official Gazette of October 9, 2009.

As per publication in the Official Gazette of November 10, 2009, the forced purchase of the following companies was ordered (i) Fama de América C.A.; and (ii) CAFEA, C.A., which are coffee producers.

The regulations to the Law of Silos, Warehouses and Agrarian Deposits were published in the Official Gazette of November 10, 2009.

The Instructions that regulate the notification of documents for the sale, constitution of encumbrances or liens on privately-owned property declared to be national monuments or goods of cultural interest were published in the Official Gazette of November 12, 2009.

As per resolution of the Ministry of the Popular Power for Internal Affairs and Justice, published in the Official Gazette of October 20, 2009, the Forty-second Notary Public's Office of the Municipality of Libertador in Caracas will be the only Notary Public's Office authorized to process documents related to airplanes. Said Notary Public shall present a monthly report of all such transactions.

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The following laws and international treaties were published in the Official Gazette of October 1, 2009:

- 1) Law of the Judicial System, the purpose of which is to coordinate the organization and operation of the Venezuelan judicial system;
- 2) Special Law of Municipal System at Two Levels for the Metropolitan Area of Caracas;
- 3) Law approving the Treaty for the Strengthening of the Inter-American Commission of Tropical Tuna established by the 1949 Convention between the USA and Costa Rica – the Antigua Convention;
- 4) Law approving the Supplemental Economic Treaty between Venezuelan and Iran;
- 5) Law approving the Basic Economic Treaty on Technical Cooperation between Venezuela and Ecuador on Mining;
- 6) Law approving the Supplemental Treaty to the Basic Agreement on Technical Cooperation between Venezuela and Brazil on Housing and Habitat Matters;
- 7) Law approving the General Cooperation Treaty between Venezuela and São Tomé and Príncipe;
- 8) Sanitary and Phyto-sanitary Agreement between Venezuela and Portugal for the Commercial Exchange of Agrarian Products and Subproducts.

In the Official Gazette of October 21, 2009, the following laws were published:

- Law to Simplify the Proceedings for Exporting and Importing by State-owned Companies, with the objective of simplifying the proceedings that must be carried out by State-owned Companies with the purpose of exporting, importing and commercializing goods.
- Law of Partial Reform of Decree No. 6.293 with Value and Force of Organic Law of the National Bolivarian Armed Forces, which establishes the principles that rule the functioning of the Armed Forces.
- Law of Urban Lands, with the purpose of regulating the possession of urban plots of land that are not being used, that might be considered adequate to develop social housing projects which, among other things, indicates that the State may acquire urban lands occupied with deteriorated edifications, with construction defects or ruins when these are not inhabited, as long as they have not been declared uninhabitable.
- Law of Military Conscription and Enrollment, which contains the norms that regulate the military service.

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- Law of Partial Reform of the Law of Youth, which changes the name of the Law to Law of the Popular Power of Youth and has the object of regulating, guaranteeing and developing the youth's rights.
- Law of Integral and Social Policy of Air Transportation, with the purpose of developing the State's social policy with respect to national and international air transportation service.

The following laws were published in the Official Gazette of November 23, 2009:

- The Law approving the Constitution of the Bank of the South;
- The Laws approving the Treaties between Russia and Venezuela for (i) development of Joint Strategic Projects, (ii) the Mutual Protection of Classified Information; (iii) the Mutual Protection of Intellectual Property during the Bilateral Technical Military Cooperation; and (iv) the Cooperation with respect to the Protection of the Environment.

Caracas, December 18, 2009.

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NOTE: THIS NEWSLETTER SHOULD NOT BE CONSTRUED AS LEGAL ADVICE ON ANY SPECIFIC MATTER, AND ITS CONTENTS ARE INTENDED AS A MANAGEMENT ALERT AS TO CURRENT DEVELOPMENTS IN VENEZUELA. ANY SPECIFIC LEGAL QUESTIONS REGARDING THE POSSIBLE APPLICATION OF NEW OR PROPOSED LEGISLATION TO PARTICULAR SITUATIONS SHOULD BE ADDRESSED TO TRAVIESO EVANS ARRIA RENGEL & PAZ.