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NEW FOREIGN EXCHANGE TAX

On September 22, 2012, a new amendment to the Bolivian State Budget for 2012 (the “Budget Amendment”) was approved by the senate (Law No. 291). The most controversial section was the Foreign Currency Sale Tax (“FCTA”), which imposes tax on any foreign currency transaction conducted by banks and exchanges within Bolivia. The tax is 0.70 percent of each transaction.

According to government officials, the principal objectives of the FCTA are: (i) Discourage foreign currency exchange within Bolivia; (ii) Promote the use of the boliviano (local currency) in Bolivian economy; (iii) Shield Bolivia’s economy from the global financial crisis; (iv) Increase regulation of currency exchange; and (v) Increase State revenue.

In light of strong consumer distrust, emphasis that the tax would not be borne by the final consumer, but rather by the bank or exchange, was key to the senate’s approval. To address this concern, the Budget Amendment establishes a system in which the banks cannot conduct foreign currency transactions outside the limits stipulated by the Bolivian Central Bank (thereby preventing banks and exchanges from, for example, increasing fees to offset the tax).

The overall objective of the Budget Amendment is to strengthen the State’s finances. To this end, it also contains provisions that will progressively extend the statute of limitations for the collection of tax debts from the current 5-year period to 10 years.

The Budget Amendment will take effect 120 days after its implementing regulations are promulgated and published in the legislative gazette, which will likely take place in early 2013. Once this occurs, foreign exchange transactions may become less attractive to local banks, causing such business to gradually migrate to the Bolivian Central Bank.

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THE APPROVAL OF THE CYBERCRIME ACT AND ITS EFFECTS ON THE BRAZILIAN DIGITAL ECONOMY

The great attention brought up by the media in certain cases dictates how quickly a bill will be analyzed by the Congress. A very good example rests on the Brazilian cybercrime act, that had its discussions started on 1999, with the Azeredo Bill. In 2012, the subject got more attention from the media due to the disclosure of personal (and quite intimate) pictures of soap opera actress Carolina Diekmann. That lead to a great media commotion and a new bill regarding cybercrimes (presented late in 2011) was named after the actress.

While the bill presented by Senator Eduardo Azeredo was processed, criticized, amended for over a decade, the “Carolina Dieckmann Law” was quickly approved in Senate on May 2012 and in October of the same year on the Deputy House. Before the end of 2012, it was sanctioned by President Dilma Roussef and published in December as Law No. 12.737. The Law will only be enacted in April.

Additionally, it will impact in several sectors of the Digital Economy and it is extremely important for the companies to prepare themselves for its effects.

The current wording of the Law, is much more simple and direct when compared to the Azeredo Bill, and they have only established three crimes: (i) the nonauthorized access to protected systems; (ii) the insertion or propagation of malicious codes and the same act followed by damages; and (iii) the publication, commercialization or assignment of secret documents obtained during an unauthorized access.

Among other matters, Law No. 12737 sets that the invasion of certain systems should occur “after improper violation of security mechanism with the purpose of obtaining, tampering or destroying data or information without the express or implied authorization of the owner of the device”. In this sense, the principle of intentionality is observed in this regulation, what is very important to prevent that certain acts like receiving illegal contents that were not solicited or the performance of computer technicians hired to test failures on the systems do not be characterized as crimes (what hap-
pened earlier with the Project Azeredo). With regards to the entry or propagation of malicious codes, the wording of the Law limits the conduct to the person who produces, offers, propagates, sells or diffuses a file (a crack or a similar program), but with the intention to enable the practice of unauthorized access.

Moreover, the project establishes as a crime the disclosure or commercialization of the data obtained during the unauthorized access, including a penalty increase if such crimes are committed against the President, the Supreme Court, the Federal, State or Municipal legislative, and against the members of the direction of Federal, State, Municipal or District direct and indirect administration bodies.

For that matter, we can affirm that the quick approval of this Law in both Houses of the Congress demonstrates how the legislative process can be efficient when aligned with strong interests and media commotion. The support of sectors (such as banks, for example) was also extremely important to the approval of this Law.

In this sense, it is indispensable that Information Technology companies with business in Brazil start reviewing their policies, their way to present the work developed (nowadays, there are still some IT security companies that try to unlock systems without any authorization from the owner of the device in order to evidence its flaws) and even the agreements in effect before the Law is enacted, so that the relation with their clients remains in accordance with the new rules.

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ALL-ELECTRONIC FILING POSTPONED IN SÃO PAULO STATE


The bar organizations asserted that the timeline for implementation was so tight that lawyers would have difficulty in timely obtaining the certificação digital (digital certification) required to begin to use electronic filing, as well as difficulty in adjusting to the associated rules generally. The contested timeline contemplated by the São Paulo Court of Justice was to discontinue acceptance of petitions and related documents in paper format as of December 3, 2012. Starting November 19, 2012, both electronic and paper format documents had been accepted.

OAB, IASP and AASP asserted the need for an additional 180 days for lawyers to be ready to join the system. The São Paulo Court of Justice, through its President Ivan Sartori, admonished that delay would imply “elevated and unexpected expenses”. The bar groups thus sought CNJ’s intervention, which found that indeed a high number of lawyers still had to apply for a digital certification and that the imposition of the deadline was so unreasonable as ultimately to frustrate access to justice. CNJ determined that full implementation of PJe be postponed to February 1, 2013, as of when only electronic petitions would be accepted.

AASP President Arystóbulo de Oliveira Freitas reports that only 10 out of 800 petitions submitted daily at the João Mendes Júnior civil court in São Paulo are currently in the electronic format.

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NEW CORPORATIONS REGULATION

On October 4, 2012, a new Regulation to Corporations Act (the “New Regulation”) entered into force. The New Regulation main purposes are to include the latest legal amendments and to complement provisions of Corporations Act by means of clarifying or specifying certain matters that were not clear on former regulation.
The New Regulation contains, amongst other, provisions regarding companies’ spin-off, conversion and merger. Particularly it specifies information that must be provided to shareholders and procedures that must be taken to protect minority shareholders. It also includes new provisions on election of directors and their rights and duties, stating that the list of candidates for the position of director, who have previously accepted their nomination, must be published on the company’s website and informed to shareholders. It further emphasizes directors’ duties of care, loyalty and confidentiality, making it mandatory for them to diligently participate in boards of directors and in any special committees, clarifying that directors having a conflict of interest must refrain from voting but may exercise their speaking rights, etc.

In addition, the New Regulation provides new rules for proxies, expressly allowing to include specific instructions for the representative regarding how to vote on each matter; clarifies which shareholders have withdrawal rights and includes a formula to calculate the per share value to be paid on said circumstances. It also complements rules applicable to preferred shares series and shares exchange.

Finally, the New Regulation expressly allows closed corporations to authorize shareholders’ meetings remote attendance through technological means, and issuance of shares without printing material certificates.

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**New Regulation on Industrial Property Applications**

On November 9, 2012, the National Institute for Industrial Property (“INAPI”) issued a new regulation regarding requirements for appearance before this institution, specifically applicable to powers of attorney, assignments and transfers, which seek to facilitate presentation of applications in our country.

This new regulation has straightened powers of attorney’s filing deadlines, which shall be only 30 days for national applicants, and 60 days for foreigners. Requirements for powers of attorneys filed by legal entities have been reduced, as no legal capacity must be evidenced, and powers of attorney granted abroad no longer must be legalized; however, the regulation provides that they must comply with formalities required in Chile and abroad.

New formalities are required for brands and patent assignment and transference, which must be executed by means of notarized documents, duly translated into Spanish. Furthermore, the regulation allows new acceptable means to evidence changes in brands ownership.

The regulation also highlights internationalization of INAPI, due to its recent designation as International Searching and International Preliminary Examining Authority (“ISA-IPEA”) under the Patent Cooperation Treaty (“PCT”), which allows INAPI, as of 2014, to receive PCT applications and to carry out international search for brands and examination proceedings. Additionally, on last October 16, 2012, INAPI subscribed the PRO-SUR-PROSUL Regional Cooperation Agreement, which seeks to promote modernization of regional industrial property systems.

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**Amendments to Notarial and Registration Systems**

On October 3, 2012, the Government passed a bill to amend notaries and registrars’ appointment and functions (the “Bill”). Both, notarial and registration systems are an important contribution to legal certainty and to civil and commercial transactions of all kinds, which, however, urgently required to be modernized.

The Bill amends Notaries and Registrars regulation by means of (i) creating new notaries’ obligation to corroborate that documents granted before them are in compliance with the law and are validly, and to orientate and inform to the parties obligations and consequences of the acts and agreements that are granted before them; (ii) standardization of notaries, registrars and archivists’ appointment requirements; (iii) new inabilities for notaries, registrars and archivists, and knowledge exams for their appointment and promotion; (iv) notaries assumption of certain ex parte proceedings, such as bills of exchange loss procedure; etc.
CUBAN GOVERNMENT IMPLEMENTS NEW MIGRATORY LAW

On October 16, 2012, the Cuban government announced new migratory law reforms that are scheduled to go into effect on January 14, 2013. Key changes to the law include the following:

1. Rather than receive a notarized invitation from the country of destination and permission to travel to that country by the Cuban government (known as the tarjeta blanca or the white card), the new law requires Cuban citizens to travel abroad through the issuance of a passport with a visa issued by the country of destination.

2. Cuban citizens may now stay abroad for up to 24 months, an increase from 11 months.

3. The new law permits Cuban citizens living abroad an opportunity to visit and stay in Cuba for 90 days (and up to 180 days with government permission) without forfeiting their migratory status abroad.

4. Cuban nationals considered to have forfeited their citizenship status in Cuba may request return as permanent residents via petition to Cuba’s Ministry of the Interior or through diplomatic channels.

Remnants of the old migratory law still remain and include the following:

1. Travel restrictions still remain for individuals the Cuban government considers valuable to its revolution. These individuals include physicians, athletes, artists and other professional groups.

2. Travel restrictions also remain to individuals for reasons of “national security and defense.” These individuals include persons eligible for military draft and persons of public interest, which include political dissidents.

Cost of Travel

In addition to the above changes, the Cuban government has also increased the fee for issuance of passports to 100 convertible pesos (CUC) per person. This makes Cuban passports the most expensive passports to obtain in Latin America after Chile. The average monthly salary of a Cuban citizen is approximately $19 CUC.

CUBAN GOVERNMENT ISSUES LAW THAT ALLOWS FOR THE EXPANSION OF FARMS ON FALLOW LAND

The Cuban government issued a measure that allows for farmers on fallow lands to lease more acreage. The new act allows individual farmers to lease up to 165 acres of land, as opposed to the old act that only allowed up to 98 acres. The new law also allows individual farmers to build homes on the land and makes it easier for individuals to keep the land in their family by giving priority to the next of kin.

However, the new act still features remnants of the old act by limiting the amount of time a person or cooperatives can lease a farm. An individual can lease a farm for up to 10 years, and cooperatives can lease a farm up to 25 years.

DISSIDENT LAWYERS FILE COMPLAINT AGAINST CUBA STATE SECURITY FORCES

Prominent Cuban dissident lawyers Laritza Diversent, Yaremis Flores, Barbara Estrabao, Veizant Boloy and activist Alier Gonzalez filed a formal complaint against State Security officials alleged to have committed arbitrary and violent arrests of political dissidents in Havana on November 7-8, 2012, resulting in detention of the dissidents throughout the month of November without judicial oversight.

The complaint alleged that State Security officials failed to identify themselves as law enforcement officials and proceeded to apply excessive force and unnecessary violence against the dissidents. Cuban dissidents rarely file formal complaints in the country’s judicial system out of fear of severe repercussions or because the courts fail to review such complaints or dismiss them outright.
NEW MINING REGULATIONS

On October 12, 2012, Mexico’s Ministry of Economy (the “Ministry”) published the new Regulations for the Mining Law (the “Regulations”) in the Federal Daily Gazette (“FDG”). The Regulations substitute those published in 1999 and contain a set of provisions more consistent with the 2005 amendments to the Mining Law, thus keeping up pace with the vibrant mining activity in the country. This is perceived in the domestic mining industry as an important step towards administrative efficiency by mining authorities and a higher degree of legal certainty for holders of mining claims.

Proceedings for registration and lottery to award new mining claims, as well as filing of simultaneous concession requests, have been modified by means of minimizing documentation and overall requirements for interested private parties’ participation, so as to make them less burdensome (Article 29 et. seq.).

For appraisals required in connection with temporary occupation, forced rights of way or easements, and expropriations over land where the underlying claim is located, the corresponding authority’s name has been updated to National Institute for the Appraisal and Administration of National Property (“INDAABIN” or Instituto de Administracion y Avalúo de Bienes Nacionales). More importantly, requirements to reconsider said appraisals have been eliminated (Article 54 et. seq.).

After the 2005 amendments to the Mining Law that reduced the types of mining concessions from exploration and exploitation to just one that allows for both activities, the Regulations incorporate such change and clarify the minimum amounts to be invested on a mining claim. The chart with such amounts is updated in proportion to the surface covered by the concession as the year of its issuance (Article 59 et. seq.). The Ministry shall update said chart on a yearly basis and publish it accordingly on the FDG.

Reporting requirements on works performed at mines remain fairly similar to those under old regulations, but criteria to calculate such investments lessens confusion for preparing the reports. Concurrent with these provisions, the Ministry’s authority to perform on-site verifications of such investments and works, or to request further information after the reports are submitted, is ratified.

Holders of six years or older mining claims, are now required to present an annual report regarding the relevant calendar year’s minerals production, benefit and destination (Article 70).

Title Six of the Regulations provides a simplified set of provisions regarding the Public Registry of Mining and Mine Cartography, by means of which recording process of agreements or actions involving mining claims, as well as mining business entities, are expedited, and references to electronic recording resources are included. It is worth mentioning that these provisions have been synchronized with the implementation of said registry’s new Integral Mining Management System (“SIAM” or Sistema Integral de Administración Minera).

The Ministry has 120 business days to adjust the Mining Public Services Handbook in order to accurately reflect the Regulations provisions.

TAX INFORMATION EXCHANGE AGREEMENT WITH BRAZIL

On October 24, 2012, Uruguay entered into a Tax Information Exchange Agreement with Brazil (the “TIEA”). The TIEA is yet to be ratified by both Congresses in order to become effective.

Under the TIEA, the Contracting Parties undertake to cooperate with each other through the exchange of any information which might be foreseeably relevant for the administration, application, control, enforcement, liquidation and assessment of taxes.

The information to be exchanged under the TIEA is comprehensive and includes any data, statement or document of any type.
Taxes encompassed within the scope of the TIEA are all federal taxes (in the case of Brazil) and all national taxes (in the case of Uruguay).

The Requested Party is required to conduct all administrative or judicial proceedings which may allow the Requested Party to obtain and deliver the requested information.

Fishing expeditions may be denied by the Requested Party.

Inspections by the Tax Office of either country in the other country are allowed, with the prior approval of the Requested Party and in the manner to be previously coordinated with the Requested Party.

The TIEA will enter into force 30 days counted as from the exchange of notices (between the Contracting Parties) confirming that the TIEA has been enacted in accordance with respective local rules. The TIEA will apply to (i) any tax crimes occurring after the effective date, and (ii) fiscal periods starting as from the effective date.

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