ARGENTINA

**Application of Penalties for Lack of Prior Administrative Filings Regarding Shareholders’ Meetings**

**News Regarding Foreign Exchange Restrictions and the ‘Cejo Cambiario’**

BRAZIL

**Foreign Ownership of Airline Companies**

COLOMBIA

**News Regulation to Tackle Climate Change and Foster Renewable Energies in Colombia**

PARAGUAY

**Law to Promote Investment is Enacted**

**PPP Laws Allows use of National Funds for Investment Projects**

PUERTO RICO

**The United States Supreme Court and Congress Attempt to Address Puerto Rico’s Fiscal Woes**

**CONTRIBUTING FIRMS:** ALMEIDA ADVOGADOS (www.almeidalaw.com.br); BERKEMEYER ATTORNEYS AND COUNSELORS (www.berke.com.py); BRIGARD URRUTIA ABOGADOS (www.bu.com.co); BRONS & SALAS (www.brons.com.ar); JEHMAL TERRENCE HUDSON.
APPLICATION OF PENALTIES FOR LACK OF PRIOR ADMINISTRATIVE FILINGS REGARDING SHAREHOLDERS’ MEETINGS

General Inspection of Corporations (the administrative agency in charge of the oversight of companies registered in the City of Buenos Aires - formerly, the Public Registry of Commerce- “GIC”) resolutions currently in effect, require companies whose corporate capital exceeds AR$ 10,000,000, to carry out certain filings with a 15-day advance to an Annual Ordinary Shareholders’ meeting that considers financial statements.

Among other documents, the GIC requests these companies to file: (i) a copy of the Board of Directors’ meeting that resolved the summoning of the Shareholders’ meeting; (ii) a copy of the financial statements which fiscal year end results will be considered at the Shareholders’ meeting; (iii) a copy of the Board of Directors’ Report (memoria), signed by the legal representative; (iv) a copy of the Auditor’s Report, including its opinion; and (v) additional information regarding the composition of the Board of Directors and its members’ personal information.

On March 1, 2016, Chambers D of the Commercial Court of Appeals for the City of Buenos Aires [Cámara Nacional de Apelaciones en lo Comercial], in the case entitled “Inspección General de Justicia c/ Herso S.A. s/Organismos Externos” confirmed the trial court’s ruling which resolved to apply penalties to a company for not promptly carrying out the required prior administrative filings with regards to a Shareholders’ Meeting held on March 28, 2014.

To reach such conclusion, the Court members held that the obligation to carry out such prior filings is rooted in public knowledge concerns, that is, that any person who has a legitimate interest related to the company have a right to know its patrimonial situation, prior to the celebration of a Shareholders’ Meeting.

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

NEWS REGARDING FOREIGN EXCHANGE RESTRICTIONS AND THE ‘CEPO CAMBIARIO’

As a direct consequence of a change in paradigm in the new administration (which was inaugurated on December 10, 2015), on December 17, 2015, the Argentine Central Bank (“ACB”) passed Communiqué “A” 5850, which regulated the release of the “cepo cambiario”, which was the name given to certain economic and foreign exchange measures adopted since 2012 by the previous administration.

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

(a) allows payments for new import of goods’ operations, shipped after December 17, 2015, to be made without limitation; and, with regards to older payments (for debts based on import of goods due by December 16, 2015), the ACB provides for a progressive schedule of limitations (i.e., from January 2016 to May 2016, payments may be made, subject to a maximum of USD 4,500,000 and starting on June 2016, no such limitations will apply);

(b) allows payments for new services’ operations, invoiced after December 17, 2015, to be made without limitation; and, with regards to older payments (for debts based on services rendered and/or due by December 16, 2015), the ACB provides for a progressive schedule of limitations (i.e., from February 2016, payments may be made, subject to a maximum of USD 2,000,000, from March 2016 to May 2016, subject to a maximum of USD 4,000,000 and
starting on June 2016, no such limitations will apply);

(c) have eliminated the ‘encaje’ with regards to foreign investments - the encaje was a mandatory deposit that was to be made (with certain exceptions) before a local financial institution, consisting in a US Dollar, 365-calendar day, non-remunerated mandatory deposit that amounted to 30% of the funds brought into the country; and

(d) allows access to the foreign exchange market (subject to a maximum monthly limit of USD 2,000,000) for foreign investments in real estate abroad, loans to non-residents, foreign investments abroad, purchase of foreign currency to be kept in Argentina, among others.

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

Brazil

FOREIGN OWNERSHIP OF AIRLINE COMPANIES

The limitation of foreign capital in Brazilian airline companies arose many decades ago, when protecting the domestic market was part of a strategy of economic development. According to the Brazilian Aeronautical Code Act 7,565 of December 19, 1986, currently in force, an airline company shall only operate in the Brazilian market if it holds the relevant permit and complies with the following requirements:

• To be headquartered in Brazil;
• At least 4/5 of the voting shares shall be held by Brazilians;
• To be managed exclusively by Brazilians.

However, in an interconnected globalized world, such restriction barriers the engagement of new competitors in the sector as well as hampers the development of existing companies.

As a result, the pressure of airline companies over Brazilian policymakers in order to obtain flexibility in what regards participation of foreign capital in the sector has increased significantly.

Last year, the Congress considered a proposal to increase the foreign ownership limit to 49 percent, but such amendment to Act 7.565 never passed.

Nevertheless, due to the recent depression and strong crisis facing internal economy, President Dilma Roussef is considering reviewing the restriction.

A bill of law to remove the current restriction in the foreign ownership of airlines companies has not been proposed yet. When proposed, it will have to be previously approved by the National Congress. The President will have the discretion to allow foreign groups to own as much as 100 percent of local airlines.

Within the same trend (but probably with less flexibility than expected by foreign investors), the President is also contemplating opening up the capital of Infraero, the state-run company that controls most of Brazilian airports.

The market has also given strong signals of the opening of the sector. Two of the biggest operators in Brazil have already been partially acquired by overseas corporations. Gol has Delta Air Lines and Air France-KLM Royal Dutch Airlines among its shareholders with 6.1 percent and 1.5 percent stakes respectively. TAM resorted to a complex two-tier ownership structure and merged with Chile-based Latam Airlines Group.

Additionally, it is known that stakes in a corporation are not the only way to control a company and it is likely that airlines corporations in Brazil have already been run from abroad through confidential agreements.

Despite the crisis that impacts Brazilian economy, the airline sector is well-established. Brazil owns the third biggest internal airline market in the world, only
behind USA and China, and forecasts from the Association of Brazilian Airlines - ABEAR estimate 109 percent growth of passengers and 58 percent growth of cargo flights from 2012 to 2020. That represents an addition of BRL 146 billion to gross national product.

The limitation of foreign participation in airlines company was built in a different historic period, when there were several reasons to restrict the entry of operators from overseas. Nowadays, the opening of the national market would increase those prospected figures and would help to speed up the development of the sector through the input of assets, foreign expertise and importation of specialized professionals.

Finally, it is matter of time for the government to review its position and accept the rules of a globalized economy.

Contributors: André de Almeida and Natalie Yoshida, Almeida Advogados, São Paulo. For further information, please send an e-mail to almeida@almeidalaw.com.br or nayoshida@almeidalaw.com.br.

◊ Colombia

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

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

In this respect, Colombia has advanced to produce several pieces of legislative measures and programs addressing both, climate change and the introduction of renewable energies to Colombia´s energy matrix, therefore achieving to foster “green development”.

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

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

The SISCLIMA shall have the following purposes:

- Coordinate all the efforts and obligations assumed by the national, regional, local and international entities in charge of dealing with climate change;
- To ensure that all strategies aiming at tackling climate change effects are defined and
implemented in light of the economic, environmental and social development of Colombia, emphasizing on the need to eradicate poverty and ensure sustainability of the use of natural resources;

- To ensure coordination of all private and public initiatives of mitigation and adaptation to climate change;

- To identify and make use of the opportunities associated to mitigation and adaptation to climate change that effectively promote sustainable development;

- To reduce vulnerability of the population to climate change effects;

- To foster public participation in the decision-making process related to climate change;

- To promote the implementation of adaptation and mitigation measures within the country;

- To harmonize criteria and mechanisms to evaluate and surveil the responsibilities and commitments assumed by Colombia with respect to adaptation and mitigation to climate change.

The SISCLIMA will be coordinated by the new Intersectoral Commission of Climate Change (“CICC” in Spanish) composed by delegates of the Ministry of Environment and Sustainable Development, the Ministry of Interior, the Ministry of Finance, the Ministry of Agriculture and Rural Development, the Ministry of Mines and Energy, the Ministry of Transportation, the Ministry of Foreign Relations and the Director of the National Planning Department.

In addition to the CICC, the SISCLIMA Act created the so-called “Regional Nodes of Climate Change”, as regional instances responsible of promoting and supporting the enforcement of policies, strategies, plans, programs, projects and actions related to climate change within the regions.

Regarding renewable energies, Colombia enacted Law 1715 of 2014 by means of which Colombia expects to boost renewable energies within the country. According to the definitions set by Law 1715 of 2014, renewables in Colombia comply Energy recovery from non-recyclable waste materials, Energy recovery from biomass wastes, Solar energy, Wind energy, Geothermic energy, Small-scale hydroelectric energy and the use of waves, tides and ocean thermal difference.

Law 1753 of 2014 has the following objectives:

- Promotion of auto-generation of energy in small and large scale and distributed generation of electricity;

- Gradual replacement of diesel generation in Non-Interconnected Areas of the country;

- Creation of the “Fund for Efficient Energy Management and Non-Conventional Energy” and financial aids to facilitate the energy provision in Non-Interconnected Areas;

- Design of mechanisms to encourage energy efficiency and development of energy generation from non-conventional sources (renewable energies); and

- Provision of tax and tariff incentives to investors performing non-conventional energy projects.
On February 2016, Resolution 045 of 2015 of the Colombian National Energy Planning Unit (UPME in Spanish) was enacted in order to define the rules to grant the economic incentives to foster renewables. With the aforesaid legislation, Colombia expects to enter the renewable energy path, helping both, to achieve sustainable development and tackle climate change, as well as diversifying the energy matrix of the country.

Contributor: Guillermo Tejeiro Gutierrez, Brigard Urrutia Abogados, Bogotá. For further information, please send an e-mail to gtejeiro@bu.com.co.

Paraguay

Law to Promote Investment is Enacted

The law “On guarantees for investments and fostering job creation and economic and social development” guarantees investors the tax stability and certainty they need in general for the investment and profit in particular since longer-term return is one of the key features.

The benefits of this law are given through a notarial contract between the state and investors, who must form a corporation. In the contract the period within which companies must make the integration of capital must been set. That period may not exceed five years for investments higher then USD 5,000,000 and two years for those of less than that amount.

Among the rights of the beneficiary companies, it provides that the exchange rate applicable to the transfer of capital and profits is the most favorable that investors can obtain. Additionally it states that currency remittances from capital gains will be exempt from all taxes up to the amount of approved investment.

The key aspect of this act is to authorize the immutability of the income tax rate for a basic period of 10 years, according to the type of investment and the amount invested. This period may be extended up to 15 years depending on the selected industry and the amount of the investment.

Paraguay is one of the countries with the lowest tax burden in the region and this law strengthens this circumstance, providing the necessary legal certainty to continue in this position.

Furthermore, the law grants additional benefits for industries with high social content and its shareholders. If the requirements of the law are met, these companies may benefit from an exemption of an additional rate of 5%. As for dividends and profits earned in character of shareholders or members of the beneficiary companies, a reduction of the tax rate applied to the remittance of profits abroad of 1% for every hundred direct jobs created can be applied and with a limit up to 50% of the value of the rate applicable to that transaction.

Contributor: Alexander Berkemeyer, Berkemeyer Attorneys and Counselors, Asunción. For further information, send an e-mail to Alexander.Berkemeyer@berke.com.py

PPP Laws Allows Use of National Funds for Investment Projects

One of the less well known aspects of the recent Paraguayan Public Private Partnership Law (PPP) is that Article No. 12 states that 7% of the resources of the National Fund for Public Investment and Development (Fonacide) - destined to programs or projects
infrastructure may be used under the PPP for projects to be developed specifically in Asuncion and cities in the metropolitan area.

As a background it should be mentioned that the Law that created the National Fund for Public Investment and Development (Fonacide) provides that 28% of its resources should be used in projects or programs to promote infrastructure.

Furthermore, in the recently enacted Paraguayan Public Partnership Law, article 12 establishes a payment of 2% by way of contributions offered by the bidder (company) to the Contracting Government, which would be destined to departmental governments and municipalities that are affected by a PPP project.

This payment is not mandatory, but may be present in the specifications of the contract between the company and the Contracting Authority. The tender award system has as one of the factors that help improve the scores of the bidders this point concerning payments to the contractor, i.e. the state.

On the other hand, Article 15 of the law states that the Projects Unit of Public-Private Participation shall submit an annual report to the Executive, the Congress and the Comptroller General of the Republic. This report should detail the mechanisms and transparency measures in each of the projects, including verification results and indicators, which should also be available to the public by online publication in an official electronic site to be determined in the regulations.

Also, it notes that companies that are awarded a project must necessarily be set up as a corporation (S.A.), with whom the contract of public-private participation will be entered and where the bidder shall be the majority shareholder in the percentage set out in the regulation.

These agreements may not exceed 30 years including extensions, and may be suspended or be even extinguished by the Contracting Authority if the company fails to comply with any point of the contract or becomes unable to continue to provide the service.

Contributor: Alexander Berkemeyer, Berkemeyer Attorneys and Counselors, Asunción. For further information, e-mail to Alexander.Berkemeyer@berke.com.py.

THE UNITED STATES SUPREME COURT AND CONGRESS ATTEMPT TO ADDRESS PUERTO RICO’S FISCAL WOES

Puerto Rico’s plight has gained increasing attention in Washington D.C. Insolvent cities and counties on the United States mainland have been able to find relief in Chapter 9 municipal bankruptcy in recent years. But Puerto Rico does not have access to Chapter 9 of the U.S. bankruptcy code, which governs municipal insolvencies and allows public entities including cities, towns and municipal agencies to file for bankruptcy restructuring. By law, contracts – including bond pledges – cannot be unilaterally broken except in bankruptcy, but as a United States territory Puerto Rico has no standing to seek protection under bankruptcy statutes.

The U.S. Supreme Court agreed to hear Puerto Rico’s bid to reinstate a law that would allow restructuring of the debt-burdened U.S. territory's public agencies. The Supreme Court would decide whether a 2014 law known as the Recovery Act conflicts with U.S. federal bankruptcy law. Puerto Rico passed the Recovery Act seeking similar authority to put into bankruptcy agencies holding a combined $20 billion of the island’s debt.

The creditors that first challenged the law argued the measure contravened the U.S. bankruptcy code even though the code excludes Puerto Rico. Also, the creditors contended that since 1946, federal law has barred states and Puerto Rico from using their
own laws to authorize non-consensual restructurings. Puerto Rico's creditors said that a bankruptcy mechanism would give the Caribbean island an unfair legal authority to impose deep repayment cuts. A U.S. federal court in Puerto Rico struck down the law in February, and A U.S. appeals court ruled unanimously in July that federal bankruptcy law bars the Puerto Rico measure. The three-judge panel said Congress had reserved for itself the power to decide how Puerto Rican debt should be restructured. Supreme Court intervention comes amid congressional efforts to address the Puerto Rico debt crisis.

Puerto Rico officials said it was not essential to grant Puerto Rico access to Chapter 9 bankruptcy, an approach that was considered last year but now appears to have been discarded. Instead, they said Congress could enact other measures to help Puerto Rico restructure its debts under the Territorial Clause of the United States Constitution. That clause states that Congress “shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” If the Territory Clause were used as the basis of legislation it might steer, clear of a contentious effort to amend the bankruptcy code.

Puerto Rico and its top advisers made their case in Washington for a law that would allow broad restructuring of the island's multibillion-dollar debt, saying that if Congress did not act soon, major defaults were likely in the upcoming year. Before all that debt can be restructured, the Puerto Rican legislature must first pass an enabling law – a law that, among other things, would lead to the island’s first increase in the base rate for electricity since 1989. Legislators in Puerto Rico approved a bill needed to finalize a deal to restructure the U.S. territory's heavily indebted public power company. The bill would also establish a local fiscal adjustment board, whose five members would be appointed by the governor.

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