Paul Hastings

LATIN AMERICA LEGAL AND BUSINESS DEVELOPMENTS

January – June 2009

ARGENTINA

Argentina Suspends Foreign Deposits 30% Charge Requirement

Argentina has passed legislation suspending the requirement that foreign deposits in its banks are subject to a 30 percent charge, a move that could be the start of a wave of tax cuts to stimulate the economy.

The six-month suspension began on March 11, 2009, and applies to deposits made to acquire assets in the country, securities issued by the Argentine government, and currency and foreign exchange holdings in or outside the country.

The legislation is part of a series of new laws designed to encourage repatriation of capital to Argentina.

Investors will have to demonstrate to the banks that their deposits are exempt from the charge.

The Argentine Tax Authority (AFIP) has guaranteed the confidentiality of the information disclosed under the new resolution.

Development of Fourth Nuclear Plant Announced

Argentina's government is planning to develop a fourth nuclear plant. While the location of the plant was not revealed, construction could begin in less than a year.

Works at the country's third nuclear plant, the 700MW Atucha II facility, are on track for a 2011 operational startup.

BRAZIL

Brazil plans public auctions in wind power

Brazil's Ministry of Mines and Energy ("MME") has announced that the first auction for concessions to sell back-up supply wind power will take place in November 2009.

The regulatory body in charge of the auctions, *Empresa Produtora de Energia* ("EPE"), has stated that the requirement for new generation equipment has been proposed to avoid the re-use of equipment from countries that are replacing their equipment with more modern apparatus.

EPE will impose a requirement that bidders submit details of their wind-measuring track record. Companies that are successful in the auctions will be able to apply for credits under the Clean Development Mechanism (CDM). Parties wishing to apply for credits must register with and submit documents to CDM's executive board.

The MME has announced that, alongside the auctions, it will make public call for transmission facilities associated with or

serving more than one of the wind power projects. This is expected to reduce costs associated with the construction and operation of facilities to connect the project to the Brazilian power grid by spreading those costs between several projects.

The publication of the bid notice with further detailed rules on the power auction and the draft power purchase agreement are still pending.

Brazil's Congress issues New Gas Legislation

Brazil's Congress approved on January 2009 a new gas bill, which President Lula da Silva signed into law in March of 2009. The new law regulates the transport, storage, production and sale of gas, and is aimed at attracting investment in exploration, production and transport, creating a competitive environment and reducing the prices paid by consumers.

The law gives consumers the right to buy gas from any producer, importer or trading agent, as well as establishing a national plan for expanding the gas transportation network, including a new concession regime for new pipeline construction projects.

The new gas law could give rise to a conflict between federal and state law since constitutionally the states are responsible for legislating the distribution of natural gas, and the federal government can only rule on the distribution of natural gas over great distances, as well as with respect to gas imports and exports.

Under the new concession regime, bidders offering the lowest price for the transportation will be granted 30-year contracts to build and operate pipelines, with the opportunity to extend for a further 30 years.

Under the new law, pipelines operated under international agreements and pipelines delivering exclusively to large gas consumers will not be subject to concession contracts.

A contingency plan was also introduced to establish distribution priorities for the event of a natural gas shortage.

Reform of Oil Legislation in the Making

Brazil is expected to pass a new oil law in the next few months. Proposals for changes to the oil law are currently being discussed by an inter-ministerial committee in light of recent massive subsalt oil and gas discoveries. However, a final decision on the regulatory model has been postponed for months.

Brazil Opens Cartel Investigation Into Dredging Sector

Brazil's Secretariat of Economic Law (SDE) has begun investigating an alleged bid-rigging cartel in the country's dredging industry. The antitrust authority began formal proceedings on 23 April against 15 companies accused of rigging bids to dredge access routes to the ports of Santos and Rio Grande, following a complaint from the Secretariat of Ports.

The SDE says it compared dredging cartels in the US, Canada and India to identify key indicators of collusion that were also evident in the Brazilian bids.

The contracts, each worth US$90 million,

are part of a US$690 million government dredging initiative to allow the nation's main ports and waterways to receive larger vessels. The SDE now intends to monitor the bids for 15 other forthcoming port contracts.

Brazilian court declines constitutional appeal

A decision recognizing a French ICC arbitration award will remain intact; after the Brazilian Supreme Court declined last March a construction company's attempted constitutional challenge.

Inepar Indústria e Construções objected to the recognition of a 2003 award favoring French engineering company Spie Enertrans.

The Brazilian company alleged constitutional breaches by the Superior Court of Justice that recognized the award. But Supreme Court minister Cezar Peluso refused to hear the appeal, noting that this was the first time the constitutional arguments had been raised.

CHILE

Ministry launches tender for 20 geothermal concessions — Chile

Chile's mining ministry has launched a tender for 20 geothermal concessions across the country. Under Chile's current geothermal concession laws, firms typically submit concession requests before the ministry opens public tenders for the areas.

Areas being tendered include Volcán Tacora, Licancura 1, Licancura 2, Licancura 3, Aucán I, Aucán II, San Pablo II, Alitar, Tuyajto 1, Tuyajto 2, Tuyajto 3, Tuyajto 4, Juncalito 1, Juncalito 2, Laguna Verde, Colimapu, Calerias, Necul, Calabozo and Sollipulli.

The ministry has received to date 100 requests for geothermal concessions, according to a report by the ministry. Information packages were available from the ministry through June 30, and offers are due July 31.

Proposed exploration investment in the areas could reach US$100mn and lead to US$1bn in geothermal projects, according to the ministry data.

New Trade Agreement Between Peru and Chile

A free trade agreement between Peru and Chile came into force in March 2009, giving the already-growing trade practices of local firms an extra lift.

On March 1, 2009, a complementary economic agreement between the two countries was officially replaced with the FTA, which affords greater investment protection and promotes cross-border trade in goods and services.

First project financing of Chilean wind farm

The first project financing of a wind farm was executed on February in Chile, putting the country's recently enacted renewable energy law to the test.

The International Finance Corporation (IFC) invested US$62 million in the 43MW Totoral wind farm project developed by Norvind, a co-owned company by Norway

energy company Statkraft Norfund Power Invest and Chilean investor Centinela.

The wind farm is expected to be completed in 2009.

MEXICO

Antitrust Investigation into Mexico's Four Largest Cement Companies Soon to be Concluded

Mexico's competition commission (*Comisión Federal de Competencia* – COFECO) is finalizing a three-year investigation into the country's four largest cement companies for possible cartel activities.

COFECO has been examining claims that Cemex, Holcim-Apasco, Cementos Moctezuma and Cruz Azul illegally manipulated prices and divided the market. The companies have been notified of the results of the investigation, and now have 30 days to respond; by law, the commission cannot reveal the results until then.

Cemex controls about 50 per cent of Mexico's cement market, while Apasco has 23 per cent.

On the price manipulation claims, the companies are accused of giving each other prior notice of their pricing structures, as well as colluding to prevent price decline.

The market division claims stem from former employees alleging that some customers are regarded by rival companies as "untouchable", as well as from suggestions that the companies divided the market by region.

Last year, the European Commission raided Cemex's office in the UK and Germany, as well as other building materials firms on suspicion of illegal cartel activity in Europe.

CFE to Conduct International Tender for 376MW Norte II plant Power Plant

Fourteen firms had purchased bidding rules for the international tender launched by Mexican state power company – Comisión Federal de Electricidad (CFE) – for a 376MW combined-cycle power plant in the state of Chihuahua, according to Mexican government's federal procurement website.

The winning bidder will build, own and operate the Norte II power plant under the independent power producer (IPP) model. Norte II will provide power to CFE under a 25-year power purchase agreement. Works are scheduled to begin on January 5, 2010 and run 817 days.

The bidding rules will be available through October 27, with bids to be opened on December 3, 2009. CFE's will announce the winner by January 14, 2010.

Pemex to Conduct International Tender for 60MW Offshore Gas Plant

Mexican state oil company Petróleos Mexicanos – PEMEX, through its subsidiary *PEMEX Exploración y Producción*, has issued international tender rules for the engineering, procurement and construction of a 60MW thermoelectric generation system. The gas-fired turbine system would be located on the offshore PG-ZAAP-C rig in the southeast marine basin and provide power for a pumping system in the Zaap

and Maloob field rigs. The eight rigs have demand for 48MW.

Twenty companies have purchased bidding rules: ABB, Bosnor, Dragados Offshore de México, Heerema Marine Contractors Mexico, J Ray McDermott de México, Turbinas Solar, Demar Instaladora y Constructora, Industria de Hierro, Operadora CICSA, Construcciones y Equipos Latinoamericanos, Construcciones Mecánicas Monclova, Dresser Rand de México, ABB México, Industrias W de México, Siemens Innovaciones, Representaciones y Distribuciones EVYA, General Electric International Operations, Grupo Sentir, Especialidades en Turbomaquinaria and Global Offshore México.

Pemex held a second project meeting on April 27, 2009. Bidding rules were available through June 25, and bids were due July 1, 2009.

Works are scheduled to begin August 26 and run 660 days.

SCT Extends Deadline for Registration for Punta Colonet Tender

Mexico's transport and communications ministry (*Secretaría de Comunicaciones y Transportes* — SCT) has extended the deadline to obtain the registration form to apply for the 50bn-peso (US$3.26bn) Punta Colonet port project tender, to be located in Baja California state.

The decision comes as a result of a weak showing of interest by private entities, as the project was originally conceived to be majority privately financed. SCT will likely modify the tender and project specifications to facilitate its carrying-out and financing, as the deadlines to obtain the form and put together the inventory of bidders expired on April 24 and 30, respectively.

SCT added it will announce the new deadlines shortly and introduce the pertinent modifications into the project schedule.

PANAMA

ACP extends proposal deadline for Atlantic dredging project

The Panama Canal Authority (ACP) has extended the deadline to receive proposals for its Atlantic entrance dredging project, contemplated under the US$5.25bn plan to expand the waterway, ACP reported in a release.

ACP made the decision after holding a site visit and pre-bid conference to discuss the project details with international dredging and excavation contractors, as well as equipment and service providers. In response to bidder requests, the entity provided a two-week extension to June 30 for a geotechnical study and evaluation in canal waters. ACP also extended the proposal due date from July 15 to July 30, 2009.

The project is an essential part of the Panama Canal expansion to ensure that larger, wider vessels can reach the new locks. The Atlantic dredging project aims to lower the canal bed to 15.5m below the mean sea level and includes the dredging of approximately 15Mm3 of wet excavation and 800,000m3 of dry excavation.

Project completion is expected for the second quarter of 2013.

PERU

Award stands in second Peruvian Duke case

A subsidiary of Duke Energy has declined to challenge an ICSID ruling it lost to Peru — throwing light on another case, in which the country is trying to annul an award in favor of a second Duke subsidiary.

In December 2008, Peru won the case filed by Aguaytia, and in April saw the lapsing of the period in which Aguaytia, a unit of the US-based energy company could file for that decision's annulment. The decision will now stand.

In 2006, Aguaytia sought US$140.6 million in compensation from Peru, arguing that the country had violated a legal stability agreement, by offering another foreign investor favorable treatment in an electricity transmission project.

Stability agreements are used widely in Peru and Colombia among other countries the region to attract investment, although to date there have been relatively few public cases testing their provisions.

The tribunal decided that "stability undertakings... are of undoubted importance for investors" and that the stability agreement "freezes" laws, rules and regulations in existence at the time the agreement was made. However, it rejected Aguaytia's claim that the stability agreement also conveyed a broader protections.

Recently Announced Energy and Infrastructure Projects

Project: Chimbote Pipeline
Projected Investment: US$1.3 billion
Description: Public tender for the construction of a 910 km pipeline to the coastal city of Chimbote, in northern Peru. Commencement of the tender is pending the expansion of the processing capacity of the Malvinas gas plant.

Project: Construction of ZAPALLAL – TRUJILLO Transmission Line
Projected Investment: US$200 million
Description: Construction, operation and maintenance of a 500KW transmission line.

Project: Several Port Infrastructure Projects
Projected Investment: US$50-100 million per project
Description: General San Martín (Pisco) Port Terminal, Salaverry Port Terminal and Yurimaguas Port Terminal.

VENEZUELA

New Law Reserves Oil Related Services and Assets to The Venezuelan State

The Venezuelan National Assembly enacted a law effective May 7, 2009, that reserves to the Venezuelan State assets and services related to "primary oil activities" (the "Law"), as defined in the Venezuelan Hydrocarbons Law. Primary oil activities include oil exploration, production, gathering, transportation and initial storage. The activities reserved by the Law will be carried out by the Bolivarian Republic of Venezuela, PDVSA, its affiliates or PDVSA's controlled joint ventures (Empresas Mixtas).

The assets and services are:

1. Water, steam and gas injection facilities that enhance reservoir recovery;

2. Gas compression; and

3. Assets linked with activities in Lake Maracaibo: personnel, submariner and maintenance transportation boats, rig boats, diesel, industrial water and other supplies; transportation boats, tug boats, underwater cable, ports and levies, among others.

The Ministry of Petroleum ("MEP") has determined, via a resolution dated May 8, 2009, a list of assets and services of 39 companies that fall under the reservation set forth in the Law. The Resolution instructs Petróleos de Venezuela (PDVSA) and its affiliates to take immediate control and possession of the operations, premises, documents, assets and equipment related to such activities.

MEP may take measures to ensure the continuity of the services, and may list additional assets and services to be subject to the reservation contemplated in the Law. MEP also will determine which employees PDVSA or its affiliates will retain as a consequence of the asset transfer.

Assets and services connected to primary oil activities are declared as a public utility. PDVSA has the power to expropriate these assets (including the shares in companies carrying out the activities governed by the Law) pursuant to the Venezuelan Expropriation Law.

From the effective date of the Law, PDVSA, directly or through affiliates, will take control of the reserved operations and assets. MEP will take all necessary measures to achieve an orderly transition and may require the assistance of any government entity to undertake such transition. All personnel related to the assets and services being reserved to the State have an obligation to assist in the orderly transition of the assets, with violators being subject to prosecution.

Amount of Compensation; Payment Terms

The compensation for the expropriation will be book value less environmental and labor liabilities. Loss of profit will not be compensated. Time of possession of the assets will be taken into account to calculate the compensation. Payments will be made in cash or with governmental debt or bonds. The assets will be transferred on a tax-free basis.

For additional information, please contact:
Raquel Bierzwinsky
202-551-1740
raquelbierzwinsky@paulhastings.com