International Investment

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I. Middle East—Palestine

Given the current political and military instability of the West Bank and Gaza strip, only a handful of laws were enacted by the Palestinian Legislative Council (PLC) during 2006.[1] Of the laws enacted, half call for the creation of some form of independent body. For example, Law No. 1 calls for the creation of an independent medical and research council;[2] Law No. 2 seeks to create a union for Palestinian industrialists;[3] and Law No. 3 establishes an independent higher constitutional court[4] composed of a chief justice, deputy chief justice, and seven other justices.[5] Two laws make minor revisions to existing laws.[6]

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1. A total of six laws were passed during 2006. Palestinian Medical Council Law No. 1 (2006) [hereinafter Law No.1]; General Union of Palestinian Industries Law No. 2 (2006) [hereinafter Law No. 2]; Supreme Constitutional Court Law No. 3 (2006) [hereinafter Law No. 3]; Amendments to the Provisions of the Elections Law No. 4 (2006) [hereinafter Law No. 4]; Amendments to the Provisions Providing for the Sanctity of the Palestinian Flag Law No. 5 (2006) [hereinafter Law No. 5]; Submitting the Law of Public Budget to the Palestinian National Authority Law No. 6 (2006) [hereinafter Law No. 6].

2. Law No. 1, *supra* note 1, § 2.

3. Law No. 2, *supra* note 1, § 2.

4. Law No. 3, *supra* note 1, § 1.

5. *Id.* § 2.

6. Law No. 5 makes minor aesthetic revisions to the dimensions of the Palestinian flag as stipulated in Section 1 of the Sanctity of the Palestinian Flag Law No. 22 (2005). Law No. 5, *supra* note 1, § 1. Law No. 4 adds an additional section to the Elections Law No. 9 (2005); Section 1 states that all elected members of the Palestinian Legislative Council will be become members of the Palestinian National Council and therefore must accept and abide by the Palestinian Liberation Organization's Basic Law. Law No. 4, *supra* note 1, § 1.

Law No. 6 directs the Council of Ministers to submit Public Budget Law of 2006 to the Legislative Council.[7] One of the more interesting laws, the Law Concerning the Establishment of the National Register for Identifying Damages Caused by the Establishment of the Separation Wall (National Register Law), has yet to be enacted and is still in draft form.[8] The bill will be submitted to the Legislative Council in early December 2006.

The main purpose of the bill is to create an independent body to help identify and quantify the damages done to Palestinian individuals and corporate entities and their respective properties as a result of Israel's construction of a barrier (Wall) mostly built in the Occupied Palestinian Territory (OPT), including East Jerusalem.[9] The construction of Israel's separation barrier was declared to be a violation of international law on July 9, 2004 by the International Court of Justice (ICJ).[10] The ICJ ruled that Israel was under an obligation to return all property seized as a result of the construction of the Wall, and if such restitution is materially impossible then Israel is to compensate the victims.[11] The first step in implementing the ICJ ruling was the creation of a registry by the Secretary General of the United Nations to quantify the damages caused by the construction of the Wall.[12] The second step is the creation of a national registry in the West Bank and Gaza to document and assess the damages caused by the construction of the Wall. It is believed that a national registry will increase the efficiency and accuracy of the claims. This bill, once enacted, should give force to the ICJ ruling.

II. Europe—Spain

The changes in foreign investment regulations in Spain during 2006, globally assessed, revealed two basic tendencies: on the one hand, the pursuit of a process to liberalize foreign investments, and, on the other hand, the implementation of stricter measures to control and prevent money laundering.

The tendency toward liberalization of foreign investments follows European Union policy in favor of the freedom of capital movement. Recent Spanish regulations dealing with different issues and realities have reflected this tendency, as follows. First, Law 13/2006, dated May 26, 2006, dismantled the public control system applicable to transactions involving the sale of strategic assets or stock capital of former state-owned companies to third-parties (golden share).[13] The administrative authorization required under former Law 5/1995 to execute such transactions is now eliminated.[14]

Second, a new Royal Decree was issued by the government on November 21, 2006, to allow the incorporation of Spanish Limited Liability Companies (*Sociedades de Respon-*

7. Law No. 6, *supra* note 1, § 1.

8. The Law Concerning the Establishment of the National Register for Identifying Damages Caused by the Establishment of the Separation Wall No. # (2006) (on file with the author) [hereinafter Law No. #].

9. Law No. #, *supra* note 9, § 2.A.

10. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 131, ¶ 143 (July 9), *available at* http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm.

11. *Id.* ¶ 153.

12. General Assembly, *Letter Dated 11 January 2005 from the Secretary General to the President of the General Assembly*, ¶ 1, U.N. Doc. A/ES-10/294 (Jan. 13, 2005).

13. B.O.E., No. 126, May 26, 2006.

14. *Id.*, *Préambulo* II.

sabilidad Limitada) through the Internet.[15] The basic aim of this decree is to decrease the time and cost required to form these companies.[16] The granting of the public deed of incorporation of the company before a notary public will still be necessary. But all other procedures concerning the registration of the company with the Mercantile Registry, the payment of the Stamp Duty Tax or Transfer Tax, and other procedures before the Tax Administration and the Social Security will be completed through the Internet.[17] Current procedures to incorporate *Sociedades de Responsabilidad Limitada* require between four and six weeks to be completed. Therefore, if the new regulation helps speed up the incorporation process, it will be welcomed by both Spanish and foreign investors. But there is some skepticism regarding the implementation of said regulation, since similar previous developments have not yielded the expected results.[18]

Third, an Order from the Economy and Finance Ministry dated May 3, 2006,[19] increased the threshold of the obligation to declare to the Spanish Authorities (usually the Custom Offices at the Spanish borders or the Customs Department at the Tax Administration) movements of cash or cash equivalents by natural or legal persons to the authorities, which are fixed at 10,000 euros (up from 6,000 euros) for the entry or departure across the Spanish border, and 100,000 euros (up from 80,500 euros) for movements inside the Spanish territory. Failure to file the declaration form or the declaration of false data may authorize the seizure of funds by the Spanish police or the Spanish customs agents.

With regards to the second basic tendency, dealing with the implementation of measures to combat and prevent money laundering, Spanish regulations in this area have implemented recent European Union legislation.[20] Most importantly, the Order from the Economy and Finance Ministry dated July 28, 2006,[21] reinforces the controls on currency exchange and international transfers of funds to be implemented by banks, investment funds, and other entities governed by Law 19/1993.[22] Essentially, banks and other af-

15. B.O.E., No. 286, Nov. 30, 2006.

16. Note that the Spanish "*Sociedad de Responsabilidad Limitada*" is the most common type of company in Spain, due to its low minimum share capital (3,006 euros), advantages for contributions in kina, and limited liability for its partners.

17. *Id.*, Cap. II.

18. There was previously a simplified limited liability company that could be incorporated using the Internet, the "*Sociedad Limitada Nueva Empresa.*" But the results did not meet the expectations created, because very few companies of that type have been incorporated.

19. Order published in the Official Gazette on May 13, 2006. Orden EHA/1439/2006 de 3 de mayo (B.O.E. 2006, 114).

20. *See, e.g.*, Council Directive 2001/97 O.J. (L 344) 76 (EC); *see, e.g.*, Council Regulation 1889/2005 O.J. (L 309) 9 (EC) (addressing the control of cash flows into and from the European Union).

21. Order published in the Official Gazette on August 10, 2006. Orden EHR/2619/2006 de 28 de Julio (B.O.E. 2006, 190).

22. *See* Law 19/1993, of December 28, 1993, on the implementation of certain measures to prevent money laundering, published in the Official Gazette on December 29, 1993. *Sobre Determinadas Medidas De Prevencion Del Blanqueo De Capitales* (B.O.E. 1993, 311). For further developments to the Law, *see* Royal Decree 925/1995, as amended by Royal Decree 54/2005, of January 21, 2005, and Law 19/2003, of July 4, 2003, on the legal status of movements of capitals and of cross-border economic transactions and certain measures to prevent money laundering. *Por El Que Se Aprueba El Reglamento De La Ley* 19/1993 (B.O.E. 1995, 160) (as amended by *Por El Reglamento De La Ley* 19/1993 (B.O.E. 2005, 19) & *Sobre Regimen Juridicio De Los Movimientos De Capitales Y De Las Transacciones Economicas Con El Exterior Y Sobre Determinada Medidas De Prevencio Del Blanqueo De Capitales* (B.O.E. 2003, 19).

fected entities will need to implement identification controls on clients who make transactions involving currency exchange or international transfers of funds. If certain thresholds are reached (3,000 euros for currency exchange and 6,000 euros for the international transfer of funds), additional control obligations are imposed. Furthermore, banks and other entities are required to maintain documentation related to currency exchange and transfer of funds by their clients for six years, and to implement internal control measures so as to detect, prevent, and hinder transactions related to money laundering.

III. South America

A. Argentina

Introducing a special regime for the exploration and exploitation of hydrocarbons, Law Number 26,154[23] (the Law) was passed by the National Congress on October 27, 2006. The government's intention is to create certain benefits to induce companies in the hydrocarbon sector to invest, mainly in exploration. The government's motivation for the new law is to avoid a major national energy crisis due to a lack of gas. At the same time, however, the government has been under public pressure to keep the price of hydrocarbons as low as possible. As no company would invest in exploration if it was not permitted to raise the tariff price for the service, the government introduced this regime as a way to compensate those companies.

The regime contained in the Law is applicable throughout Argentina and the Argentinean Continental Sea Platform. Each province, however, must decide to adhere to this special regime.[24] To obtain the fiscal benefits contained in the Law, it is mandatory to create a joint venture with *Energía Argentina Sociedad Anónima* (EN.AR.S.A.). The Law enacts a number of important tax and duty benefits, as follows. First, companies that access this regime are to be entitled to recover any Value Added Tax paid for those expenditures and investments made during the exploration and exploitation periods.[25] The Law establishes a waiting period of three fiscal years and compensation against other national taxes. Second, the Law amends the Income Tax Law to permit amortizing the expenses and investments undertaken during the exploration and exploitation periods, respectively, in three annual, equal, and consecutive steps, after a waiting period of one year since their initial funding.[26] Third, the owners of exploration rights, exploitation rights, or both will be exempted from the payment of importation rights for any goods necessary for the exploration and exploitation of hydrocarbons, provided that those goods are not manufactured in Argentina.[27] The Law sets forth a quota for the application of these tax benefits.[28] The quota is to be distributed between all the jurisdictions adhering to the regime contained in the Law.

The terms under which the Law applies depends upon how the project is characterized. In turn, the character of the project depends upon its location. There are three categories

23. Published in the Official Gazette on November 1, 2006. Law No. 26154, Oct. 27, 2006 (B.O.).
24. *Id.* § 2.
25. *Id.* § 9.
26. *Id.* § 10.
27. *Id.* § 12.
28. *Id.* § 8.

of projects: continental sea platform, sedimentary basin with no actual production, and sedimentary basin with actual production.[29]

In the continental sea platform, the regime will apply to those permits granted between November 1, 2006, and five years thereafter. Once granted, the benefits contained in the regime shall last for fifteen years. In the sedimentary basin with no actual production, the regime will apply to those permits granted between November 1, 2006, and four years thereafter. Once granted, the benefits contained in the regime shall last for twelve years. In the sedimentary basin with actual production, the regime will apply to those permits granted between November 1, 2006, and three years thereafter. Once granted, the benefits contained in the regime shall last for ten years.

The major companies operating in the hydrocarbon sector in Argentina have enthusiastically welcomed the new regime. Repsol-YPF has announced an investment of US$65 million for exploration during the next two years in the province of Río Negro.[30]

B. Brazil

In March 2005, the Central Bank of Brazil introduced significant changes in the foreign exchange market, enacting more flexible exchange rules. Currently, remittances of funds in and out of Brazil flow through one single exchange market regardless of the nature of the payments.[31]

In August 2006, the government introduced more significant changes in the rules applying to Brazilian exports and foreign capital registration with the Central Bank (MP 315).[32] Under these new rules, Brazilian exporters are allowed to keep all or a portion of the proceeds from export sales in a bank account outside of Brazil. Previously, Brazilian exporters were obliged to repatriate all export payments into Brazil.

Another important change introduced by MP 315, which impacts foreign investments in Brazil even more significantly, is to enable foreign investors, who, for whatever reason, had not registered their interest with the Central Bank of Brazil, to remedy their lack of registration if the investment was duly booked in the accounting entries of a Brazilian company.[33]

An additional development concerns the Central Bank Foreign Capital Census. In October 2006, the Central Bank of Brazil established the rules regarding the 2006 foreign capital maintained in Brazil by nonresident investors (legal entities and natural persons).[34] According to these new rules, the legal entities required to reply to the Foreign Capital Census are those located and headquartered in Brazil that, on December 31, 2005, (1) had an interest directly or indirectly held by nonresidents of at least 10 percent of the voting shares or quotas or 20 percent of the total capital stock[35] and (2) owed debts to foreign

29. *Id.* § 2.

30. Information published during November/December 2006 in Argentinean newspaper Infobae (www.infobae.com.ar).

31. The changes in the exchange market were based on Circular Diretoria Colegiada Do Banco Central Do Brasil 3.280 of Mar. 14, 2005, and subsequent amendments.

32. *Medida Provisória 315* of August/2006 (MP315) recently converted into federal law (n° 11.371 of November/2006). Lei No. 11.371, de 28 de Novembro de 2006, D.O.U. (29.11.2006) (Brazil).

33. Lei No. 11.371, art. 5.

34. Circular Diretoria Colegiada Do Banco Central Do Brasil 3.329 of Oct. 11, 2006.

35. *Id.* at art. 3(I).

residents with an outstanding principal balance equal to or greater than the equivalent of R $100,000 (approximately US$45,500).[36]

On the corporate side, 2006 saw consolidation of companies going public in Brazil, especially under the special corporate governance listing segments of Bovespa. These listing segments were created in 2001, but companies did not utilize the rules for going public until 2005 and 2006, as they provide for additional corporate governance and minority shareholder rules, according to Level 1, Level 2, and New Market special segments bylaws.[37]

The majority of investors in these recent initial public offerings are foreign investors. Responding to this trend, in July 2006 the Brazilian Securities and Exchange Commission (CVM) enacted Regulation 437,[38] which expanded simplified registration possibilities for foreign investors. The Regulation enables foreign investors whose countries have signed the Multilateral Memorandum of Understanding of IOSCO to be registered under the simplified procedure.[39] This procedure has been available since May 2005 to foreign investors whose countries have entered into bilateral agreements for exchange of information with the Brazilian CVM. Another rule enacted by the CVM provides for the automatic registration of certain debts, real estate, and private equity-related and receivables securities, expediting the placement, and trading of such securities.[40]

Finally, antitrust enforcement saw important activity with the Administrative Council of Economic Defense (CADE) conditionally approving the merger of DirecTV and Sky (a subsidiary of News Corp), involving national and multinational media companies.[41] Later in the year, the main antitrust bodies conditionally recommended CADE's approval to another case involving some of the biggest paper manufacturers in Brazil.[42] Finally, in May 2006, CSN, a major steel producer, submitted for review its proposed acquisition of Prada, one of its key customers.[43] This transaction is currently being challenged by the trade union SIEMESP.

C. Peru

Growth in Peru in 2006 followed the pattern observed during the most recent years. A notorious increase in the price of certain mining commodities has resulted in record-breaking income for the mining industry in Peru which, in turn, has translated into a

36. *Id.* at art. 3(II).

37. The by-laws and requirements are available at http://www.bovespa.com.br.

38. Instrucao Comissao De Valores Mobiliarios, Resolution 437, July 5, 2006 (Brazil).

39. The list of regulators signatories of the MMOU of IOSCO is available at http://www.iosco.org/library/index.cfm?section=mou_siglist.

40. Registro Automatico De Ofertas Publicasde Valores Mobiliarios, Regulation 429, Mar. 22, 2006 (Brazil).

41. *See* Ministerio da Justica, Conselho Administrativo de Defesa Economica, Ato de Concentracao No. 53500.002423/2003 & 53500.029160/2004, *available at* http://www.cade.gov.br/jurisprudencia/dprocesso.asp?pc=2407 (last visited Nov. 3, 2006).

42. *See* Ministerio da Justica, Conselho Administrativo de Defesa Economica, Ato de Concentracao No. 08012.010195/2004-19, *available at* http://www.fazenda.gov.br/seae/littera/pdf/08012010195200419.pdf (last visited Nov. 3, 2006).

43. *See* Ministeria da Justica, Conselho Administrativo de Defesa Economica, Ato de Concentracao No. 08012.004385/2006-51, *available at* http://www.cade.gov.br/ASPintranet/andamento.asp?pro_codigo=3237 (last visited Nov. 20, 2006).

considerable increase in taxable revenues. In addition, in December 2005, Peru signed a Free Trade Agreement with the United States[44] which, pending ratification by the U.S. Congress, should boost exports in a number of areas such as agriculture, business, and textiles.

On the political front, Peru elected a new President, Alan Garcia, who is harshly remembered for a strong economic crisis during his first term.[45] Regional and municipal elections are set to take place in the end of November 2006.

A major change worth highlighting in connection with legal developments affecting investment is the enactment on March 1, 2006, of the Law for Securities over Personal Property (Law No. 28,677),[46] which became effective on May 30. The introduction of this statute provides evidence of the importance that has been given to the need to have a more expedited process for the recovery by way of the sale or transfer of the encumbered property, so as to encourage investors to rely on collateral based on personal property.

By virtue of this statute, the traditional pledge, which was regulated on the Peruvian Civil Code of 1984, has been replaced by the security on personal property and, as a consequence thereof, the provisions of the Civil Code. Other special regimes referring to the pledge (such as the mining pledge or the industrial pledge) have also been abrogated. As the pledge had done, this new institution represents an encumbrance over personal property or chattels standing as collateral for certain undertakings or debts.

There are five main differences of the security over personal property with regard to the ordinary pledge. First, it is now possible to use not only existing, but future property to collateralize actual obligations, future obligations, or both of the guarantor, third parties, or both.[47] Second, registration before a centralized public registry serves as a means of giving validity to the security towards third parties and for purposes of priority rights.[48] Thus, dispossession of the encumbered item in favor of the creditor or depositary agent is no longer needed for such purpose (under the pledge regulations dispossession was not required only for movable property subject to registration). Third, enforcement of the collateral through a direct sale conducted by an agent named by mutual agreement now serves as an alternative to a foreclosure before the civil courts.[49] Fourth, the new institution now provides for strict foreclosure of the encumbered item by the creditor, when contemplated in the security agreement (this enforcement mechanism had been traditionally forbidden by the provisions of the Civil Code for the ordinary pledge).[50] And lastly, the concept of movable property has been expanded to include certain property traditionally considered as real estate (ships, planes, certain concessions, etc.), thereby facilitating foreclosure of the encumbered items.[51]

44. *See* Press Release, United States Trade Representative, United States and Peru Conclude Free Trade Agreement (Dec. 7, 2005), *available at* http://www.ustr.gov/assets/Document_Library/Press_Releases/2005/December/asset_upload_file744_8518.pdf.

45. *Alan Garcia's second chance*, ECONOMIST, June 10, 2006, at 58.

46. Published in the Official gazette on Mar. 1, 2006. Ley 28,677, D.O. 01.03.2006. (Peru).

47. *Id.* at arts. 3.4, 4.

48. *Id.* at art. 17.

49. *Id.* at art. 47.

50. *Id.* at art. 53.

51. *Id.* at art. 2.4, 4.

From a tax standpoint, there is another encouraging development that could make the concession regime for public works more attractive for private investors, both local and foreign. By virtue of Law No. 28,754,[52] a Value Added Tax (VAT) early recovery scheme has been introduced in the concession regime of the aforementioned nature.

Securities market regulation has also been subject to a number of important changes that are worth highlighting. New Regulations for Mandatory Tender Offers and Delisting Tender Offers (approved by CONASEV Resolution No. 009-2006-EF/94.10)[53] were introduced, updating the criteria for the acquisition of significant stakes in listed companies. Likewise, the so-called Fast Track Rule for Initial Public Offerings to qualified investors was also approved by CONASEV Resolution No. 41-2006-EF/94.10.[54]

D. Venezuela

The investment climate for private-sector productive investment, and particularly for direct foreign investment, turned more negative in 2006, resulting in the lowest levels of private investment in many years.[55] There were a number of reasons for this, and they are set forth below.

In December 2006 Venezuela was to hold presidential elections and the contrast between the two presidential candidates, from the perspective of private entrepreneurs, as well as in many other respects, could not have been more stark. President Hugo Chavez, seeking re-election, frankly advocates policies of state socialism modeled after those of communist Cuba, whereas the opposition candidate, Zulia state governor, Manuel Rosales, represented a return to democratic values, an open, capitalist economy, and the rule of law.[56] Accordingly, the aggressive threats of President Chavez to further radicalize his revolutionary government have been a significant disincentive to investment.[57]

During 2006 the government rescinded the thirty-two petroleum operating contracts in effect since the mid-1990s under which mainly foreign, western petroleum companies operated as service companies extracting oil for export by the state oil company, Petroleos de Venezuela (PDVSA).[58] This unilateral decision on the part of the government was viewed as illegal by most of the oil companies, although only a few ultimately opted not to con-

52. Published in the Official gazette on June 5, 2006. Ley 28,754, May 30, 2006, D.O. 05.06.2006. (Peru).

53. Published in the Official Gazette on Mar. 4, 2006, and effective as of May 3 of the same year. Resolucion Conasev No. 009-2006-EF/94.10, Mar. 2, 2006, D.O. 04.03.2006. (Peru).

54. Published in the Official Gazette on July 20, 2006. Resolucion Conasev No. 041-2006-EF/94.10, Jul. 19, 2006, D.O. 20.07.2006. (Peru).

55. *See Venezuela: Investment regulations*, EIU ViewsWire, Nov. 21, 2006. Through the first semester of 2006, the Superintendency of Foreign Investment had registered only some US $50 million in foreign investment, compared to nearly US$600 million in the first semester of 2005 and to US$915 million for all of 2005. Likewise, new foreign investment by international oil companies was also reduced, as was their production, due to the forced migration to joint ventures with PDVSA.

56. *See* Richard Lapper, *Petro-populism: A Third Term Beckons for Venezuela's Firebrand President*, Fin. Times, Dec. 1, 2006, at 15.

57. *Id.*

58. *See Ley de Regularización de la Participación Privada en las Actividades Primarias Previstas en el Decreto No. 1.510 con Fuerza de Ley Orgánica de Hidrocarburos*, Official Gazette No. 38.419 of Apr. 18, 2006. (Decree No. 1.510 was the original hydrocarbons law of the Chavez government and has now been modified.) *See, e.g.*, Robert Perkins, Eni seeks compensation for lost Dacion oil field, Platt's Oilgram News, Sept. 27, 2006, at 9.

tinue as minority joint venture partners with PDVSA[59] The previous contracts were annulled by the National Assembly, in the name of national interest and sovereignty, and the private companies were forced to migrate to twenty-one joint ventures in which an affiliate of PDVSA has, on average, a majority control of 63 percent.[60] The foreign companies lost the economic and legal rights they enjoyed under their previous contracts. In addition, the state greatly increased the tax burden for all petroleum companies, including an increase to the wellhead royalty from 16 to 30 percent and the income tax obligation from 34 to 50 percent.[61] Further, the government has been pressuring the foreign investors in the four heavy upgrading oil projects to accept similar minority joint ventures, which they have thus far been resisting, although their tax burden was also increased.[62] In a similar vein, the government is also seeking to apply the same principles of state domination and sovereignty to the mining sector.[63]

A further factor undermining investor confidence is the continued state practice of inciting and condoning property invasions and confiscations of rural and urban properties, including working agricultural and industrial establishments that the government deems to be underutilized or abandoned.[64] While in some cases compensation has been paid for these taken properties, more often it has not and, given the political control of the judicial system, the result has essentially been confiscation.

Another major disincentive to investment is the rigid exchange control system in effect since early 2003.[65] Although foreign exchange is generally available for consumer imports, many foreign companies, especially during the electoral year of 2006, have not been

59. Among those opting out were ExxonMobil, Total, and ENI, but also included were several smaller companies. *See* Steve LeVine, Bhushan Bahree & Gregory L. White, *Oil Companies Are Split on Push By Nations to Wring More Profits; Shell, Exxon Stand Firm As Chevron, Total Consider Renegotiating Contracts*, WALL ST. J., Sept. 21, 2006, at A2. ENI has now brought an arbitration action against Venezuela before ICSID. *See* Jens Gould, *Venezuela Wields Stick at Eni and Carrot for Total*, PLATT'S OILGRAM NEWS, Dec. 1, 2006, at 7.

60. *See* Agreements of the National Assembly approving the constitution of the twenty-one mixed companies, Official Gazette No. 38.430 of May 5, 2006. *See South America: Investment Climate—Left Turn*, FOREIGN DIRECT INVESTMENT, Aug. 1, 2006, at 1; Stanley Reed, *You're Working For Chavez Now*, BUS. WEEK, May 15, 2006, at 76. The lost rights included independence and management control. They were only granted stock in the new joint ventures in recognition of their previous investments, and they gave up the right to resolve disputes by international arbitration, among others.

61. On the migration of the operating contracts, *see, inter alia*, the law annulling the operating contracts (Official Gazette No. 38.419 of Apr. 18, 2006), the approval by the National Assembly of the joint ventures (Official Gazette No. 38.430 of May 5, 2006), the modification of the Hydrocarbons Law (Official Gazette No. 38.493 of Aug. 4, 2006), and the modification of the Income Tax Law (Official Gazette No. 38.529 of Sept. 25, 2006), *available at* www.tsj.gov.ve/gaceta/gacetaoficial.asp.

62. The major oil companies involved in these projects, in which PDVSA has only a minority participation, are ExxonMobil, ConocoPhillips, ChevronTexaco, Total, and Statoil. A possible solution is for PDVSA to have a majority in the extraction portion of these Orinoco tar belt projects, but for the foreign companies to continue to control the upgrade refining, as neither Venezuela nor other potential foreign partners have this technological capability.

63. Venezuela regulations: New Mining Law Set for Approval, EIU VIEWSWIRE, Sept. 15, 2006.

64. Millions of hectares of agricultural land have been taken; the government aims to take some 1.8 million hectares in 2006 alone. In most cases the peasants who have been placed on this land have been organized into cooperatives and have not received land titles. Likewise, hundreds of abandoned factories and residential buildings have been taken. In the case of factories, the government has usually attempted to organize state-dominated joint ventures with the workers, with few functioning effectively.

65. *Venezuela: Forex Regulations*, EIU VIEWSWIRE, Nov. 21, 2006.

authorized to pay dividends or royalties abroad.[66] Moreover, the government has increased the number of requirements for being able to access foreign exchange at the official exchange rate, thereby furthering actual or feared political discrimination among companies.[67] The exchange situation was further complicated toward the end of 2006 when the differential between the official exchange rate and the legal parallel market rate widened.[68] As a result, the prices of freely traded goods began to adjust to the parallel market rate, thereby stimulating inflation and creating further concerns that if President Chavez is re-elected his government will adopt additional measures to control prices and the overall economy.

Another political shock for the private sector in 2006 was the politically-motivated decision to renounce Venezuela's membership in the Andean Community of Nations (CAN) and the G-3 (composed of Colombia, Mexico, and Venezuela), and to join MERCOSUR as a full member.[69] Especially for domestic entrepreneurs, these decisions are viewed as highly detrimental, as they risk losing an important export market (the CAN) and increasing competition against imports from the MERCOSUR countries.

Additionally, the government has continued to pursue a series of anti-competitive policies that undermine the private sector in various areas. These include, in particular, the creation of Venezuelan state companies; the government's preference for state-to-state mixed companies with countries such as China, Russia, and Iran, not to mention the close political and economic ties to Cuba; and the policy of promoting various forms of cooperatives and other small and medium-size, endogenous companies, all of which are then granted an array of state preferences in the form of tax and customs exonerations, soft loans, preferential state contracting, and other benefits that are not available to the capitalist private sector. Taken together, this overall policy orientation results in a climate of unfair trade practices biased in favor of those companies within the state-socialist mold to the detriment of private, capitalist oriented entities.

Finally, along the lines of the government's policy of encouraging nationalist, endogenous scientific and technological development, the government has created a new obligation for large companies to dedicate from 0.5 to 2 percent of their gross revenues to these activities.[70] Further, the government has created a presidential commission to analyze foreign technology and technical assistance contracts to determine, *inter alia*, if the foreign technical assistance could be competitively provided from within the country; if Venezuelan workers are being trained effectively; if the royalties and fees to be paid are consistent

66. *Id.*

67. *Id.*

68. *Id. See also, Finance And Economics: The Chavez Play*, ECONOMIST, Oct. 28, 2006, at 109.

69. The Protocol of Adhesion of the Bolivarian Republic of Venezuela to MERCOSUR, including the principal protocols and additional agreements of the MERCOSUR association, were signed on July 4, 2006. Venezuela ratified the protocol and other MERCOSUR agreements two weeks later; *see* Official Gazette No. 38.482 of July 19, 2006. The reasons stated by President Chavez were the intention of Colombia and Peru, in particular, to sign free trade agreements with the United States and the closer political relations with the moderately leftist governments of Argentina, Brazil, and Uruguay. *See Venezuela/Latin America Politics: Celebrating Mercosur Membership*, EIU VIEWSWIRE, July 11, 2006.

70. Large companies are those with over approximately US$1 million in gross revenues. Companies in the oil sector are to spend, invest, or pay 2%; the electricity and mining sectors 1%; and all others 0.5%. The law is in Official Gazette No. 38.242 of Aug. 3, 2005 and the regulations are in Official Gazette No. 38.544 of Oct. 17, 2006, *available at* www.tsj.gov.ve/gaceta/gacetaoficial.asp.

with international standards; and if the technology has been bundled with elements that could be supplied from within the country.[71] The evident consequence of this type of inquiry, in the current political context, will be to create obstacles for, and in so doing discourage, commercial channels of technology transfer.

71. Decree No. 4.994, Official Gazette No. 38.567 of Nov. 20, 2006, *available at* www.tsj.gov.ve/gaceta/gacetaoficial.asp.