

Latin America & Caribbean

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This article highlights important developments in 2017 in Latin America and the Caribbean, specifically in Bolivia, Columbia, and Ecuador.

I. Bolivia

A. CORPORATE GOVERNANCE

On April 12, 2017, the Business Inspection Authority (AEMP)¹ issued RA/AEMP/No. 25/2017 approving a new corporate governance regulation that updates RA/AEMP/No. 99/2016, which was issued in December 2016.² In contrast to the first corporate governance regulation issued in Bolivia in 2011,³ which contained only guidelines, this new regulation is compulsory for all commercial companies and their shareholders, executives, and directors.⁴

The new regulation requires all commercial companies to include policies on the following: access to information;⁵ selection, hiring, and remuneration of employees;⁶ earnings distribution;⁷ attendance and participation of members;⁸ corporate ethics;⁹ review and approval operations with interested third parties;¹⁰ internal and external mechanisms to verify compliance with

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1. See RA/AEMP/No. 25/2017, Apr. 12, 2017 (Bol.), available at <http://www.autoridadempresas.gob.bo/direccion-tecnica-de-defensa-de-la-competencia-y-desarrollo-normativo/gobierno-corporativo>.

2. See RA/AEMP/No. 99/2016, Dec. 30, 2016 (Bol.), available at <http://www.autoridadempresas.gob.bo/direccion-tecnica-de-defensa-de-la-competencia-y-desarrollo-normativo/gobierno-corporativo>.

3. See RA/AEMP/No. 142/2011, Dec. 30, 2011 (Bol.), available at <http://www.autoridadempresas.gob.bo/direccion-tecnica-de-defensa-de-la-competencia-y-desarrollo-normativo/gobierno-corporativo>.

4. See RA/AEMP/No. 25/2017 art. 2.

5. See *id.* arts. 5, 6, 19.

6. See *id.* art. 20.

7. See *id.* art. 10.

8. See *id.* arts. 11, 13.

9. See *id.* art. 14.

10. See *id.* arts. 23, 24.

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applicable legal provisions;¹¹ representation of the partners or shareholders before shareholders' meetings;¹² declaration of independence of directors, executives, and administrators;¹³ implementation plan for corporate governance measures;¹⁴ and an annual corporate governance report.¹⁵

Because these regulations do not differentiate between small and large companies, closely or publicly held companies, venture capital firms, or other types of companies, it is especially difficult for small companies to comply with all the requirements of this corporate governance regulation.

B. OIL COMPANIES COMMIT NEW INVESTMENTS IN BOLIVIA

During the Fourth Gas Exporting Countries Forum Summit (GECF Summit), convened in Santa Cruz de la Sierra, Bolivia, on November 24, 2017,¹⁶ the Bolivian government and representatives of Repsol, Pan American Energy (PAE), Shell, Petrobras, and Yacimientos Petrolíferos Fiscales Bolivianos (YPFB) subsidiaries announced commitments to invest a total of \$1.582 million for the development of gas fields.¹⁷ Three gas contracts¹⁸ were signed during the GECF Summit: (1) Iñiguazu Area with Repsol, Shell, PAE, YPFB Andina, and YPFB Chaco; (2) San Telmo Area with YPFB and YPFB Chaco and Petrobras; and (3) Astillero Area with YPFB and YPFB Chaco and Petrobras.¹⁹

II. Colombia

A. PEACE PROCESS

On November 24, 2016, the Colombian government and a former rebel group—the Revolutionary Armed Forces of Colombia (FARC)—signed a revised peace agreement after the original agreement did not pass in the popular ratification by a plebiscite on October 2, 2016.²⁰ Colombia's Congress approved the implementation of the revised peace deal but the

11. *See id.* arts. 25, 26.

12. *See id.* arts. 15, 16.

13. *See id.* art. 17.

14. *See id.* art. 27.

15. *See id.* art. 28, 29.

16. *See* Declaration of Santa Cruz da la Sierra, Fourth Gas Exporting Countries Forum, Nov. 24, 2017 (Bol.), *available at* https://www.gecf.org/_resources/files/events/fourth-gecf-gas-summit/gecf-santa-cruz-declaration-4th-gas-summit.pdf.

17. Fernando Carrafa, *Petrobras Invertirán \$US 1.582MM*, CAMBIO (Nov. 22, 2017), <http://cambio.bo/?q=node/35855>.

18. Although already signed, these contracts must be approved by the Bolivian Congress before they can be enforced. *See* Santiago Atsuro Nishizawa & Mario Ballivián Cabrera, *Bolivia*, LATIN LAWYER (July 25, 2017), <https://latinlawyer.com/jurisdiction/1004506/bolivia>.

19. *See* Carrafa, *supra* note 17.

20. *See* Nicholas Casey, *Colombia and FARC Sign New Peace Deal*, N.Y. TIMES (Nov. 24, 2016), *available at* <https://www.nytimes.com/2016/11/24/world/americas/colombia-juan-manuel-santos-peace-deal-farc.html>.

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fast-track mechanism for implementation expired in November of this year, leaving a number of reforms unapproved.²¹ Due to the expedited implementation of the agreements, the Colombian government has focused on the agreements rather than projects on other topics.

The Colombian Congress approved special jurisdiction for peace and an amnesty law in December 2016.²² The Colombian Congress is also debating a statute for the political reincorporation of the FARC.²³ In 2017, the main focus was to provide enough tools for implementation to continue and because of this implementation, many entities postponed the review of other issues and focused their attention on the peace agreement. One cause for delayed implementation is some lawmakers' view of the reforms as mere recommendations.²⁴ There is still a long way to go in order to implement reforms through the fast-track mechanism.

B. MODIFICATION TO THE INTERNATIONAL INVESTMENT REGIME

Colombia's Ministry of Finance and Public Credit issued Decree No. 119 of 2017, which regulates foreign capital investments of non-residents in Colombia as well as investments made by Colombian residents abroad.²⁵ The new regulation defines types of direct investment, including investment in companies, contracts, and private equity funds, among others.²⁶ Foreign investments and Colombian investments abroad must be registered with the Central Bank.²⁷ The registration grants foreign exchange rights.²⁸ Except in the case of investments by entities subject to the supervision of the Financial Superintendence of Colombia (FSC), Colombian investments abroad are not subject to prior authorization.²⁹

21. See L. 1/17, abril 4, 2017, DIARIO OFICIAL [D.O.] (Colom.); U.N. Secretary General, *Rep. on the U.N. Verification Mission in Colombia*, ¶ 5, U.N. Doc. S/2017/1117 (Dec. 27, 2017).

22. See L. 1820/16, diciembre. 30, 2016, DIARIO OFICIAL [D.O.] (Colom.).

23. See *Por Medio de la Cual se Adopta el Estatuto de la Oposición Política y Algunos Derechos a las Agrupaciones Políticas Independientes* [By Means of Which the Statute of the Political Opposition and Some Rights to the Independent Political Groupings are Adopted], CONGRESO VISIBLE, available at <http://www.congresovisible.org/proyectos-de-ley/por-medio-de-la-cual-se-adopta-el-estatuto-de-la-oposicion-politica-y-algunos-derechos-a-las-agrupaciones-politicas-independientes-estatuto-de-la-oposicion/8768/> (last visited Apr. 5, 2018); see also Fabio Andres Diaz, *The Latest Threat to Colombia's Peace With FARC*, U.S. NEWS (Dec. 7, 2017, 12:44 PM), <https://www.usnews.com/news/best-countries/articles/2017-12-06/colombias-congress-impedes-peace-with-farc> (explaining that lawmakers have proposed over 150 revisions to the peace deal concerning FARC reincorporation).

24. See James Bargent, *Time Running Out for Colombia Congress to Pass FARC Peace Legislation*, INSIGHT CRIME, <https://www.insightcrime.org/news/analysis/time-running-out-colombia-congress-pass-farc-peace-legislation/> (last updated Nov. 6, 2017) (explaining that lawmakers opposed to the peace deal have used "delay tactics to slow down the process").

25. L. 119/17, enero. 26, 2016, DIARIO OFICIAL [D.O.], art. 2.17.2.1.1. (Colom.).

26. See *id.* arts. 2.17.2.2.1.2, 2.17.2.2.1.3, 2.17.2.2.1.4.

27. *Id.* art. 2.17.2.5.1.1.

28. *Id.* art. 2.17.2.2.3.2.

29. *Id.* art. 2.17.2.4.1.3.

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Among the objectives of the foreign exchange regime is the promotion of the Colombian economy abroad in order to increase its competitiveness in external markets.³⁰ This decree seeks to update the foreign investment regulation in order to have an efficient and modern framework in accordance with international standards.³¹

C. NEW REGULATION FOR THE FINANCIAL CONGLOMERATES

The Colombian Congress passed Law No. 1870 of 2017, which established the control and supervision of financial conglomerates.³² According to the new law, a financial conglomerate is comprised of a set of entities—two or more national or foreign entities—which have a common controlling entity and exercise activities that may be regulated by the FSC.³³ The law authorizes the FSC to control and monitor the activities developed by financial conglomerates and permits national government intervention to regulate such conglomerates.³⁴ The purpose of this law is to ensure the stability of the national financial system, recognizing the relevance of the economic activities of financial conglomerates.³⁵

D. FREE TRADE AGREEMENT BETWEEN COLOMBIA AND ISRAEL

On July 12, 2017, the Colombian Congress passed Law No. 1841, which “incorporated . . . into the Colombian legal system” a Free Trade Agreement (FTA) between Colombia and Israel.³⁶ The FTA is currently under review by the Colombian Constitutional Court, which is the final stage of the enactment process.³⁷ The Colombian government considers Israel an important ally for trade, investment, and cooperation purposes because Israel is one of the most innovative and dynamic economies in the Middle East. The FTA is considered to be the first step in consolidating Colombia’s strong commercial relations with the Middle East.³⁸ The FTA contains fifteen chapters on topics including regulation of trade facilitation, customs procedures, technical assistance, and investment.³⁹ The FTA seeks to create

30. *Id.* at 1.

31. *Id.*

32. Law No. 1,870 of 2017 (Colombian Congress, issued Sep. 21, 2017) (Colombia) Official Gazette 50,363 available at <http://es.presidencia.gov.co/normativa/normativa/LEY%201870%20DEL%2021%20DE%20SEPTIEMBRE%20DE%202017.pdf>.

33. *Id.* art. 2.

34. *Id.* arts. 4, 5.

35. *Id.* art. 1.

36. L. 1841/17, julio 12, 2017, DIARIO OFICIAL [D.O.] (Colom.); Jose Francisco Mafla, Camilo Velasco, Natalia Acosta & Elineth Cortes, *Colombia: Legal Developments in Customs & Foreign Trade*, WORLD SERV. GRP. (Feb. 2018), <https://www.worldservicesgroup.com/publications.asp?action=article&artid=9058>.

37. See *Colombia: Legal Developments in Customs & Foreign Trade*, *supra* note 36.

38. See *id.*

39. L. 1841/17 (July 12, 2017), DIARIO OFICIAL [D.O.] ch. 4, 7, 10 (Colom.).

better conditions for the exchange of goods, services, and investment between both countries.⁴⁰

III. Ecuador

A. ADMINISTRATIVE CODE

The Administrative Code (Code) was adopted by the National Assembly of Ecuador in July 2017 and sets forth detailed rules on the functions of the governmental agencies that are part of the public sector.⁴¹ The Code instructs that claims, requests, or orders addressed to governmental agencies must be resolved within thirty days.⁴² Once the thirty-day term has expired, an agency's failure to respond shall constitute a constructive grant of the authorization.⁴³ Furthermore, in cases of emergency, serious danger to people or the environment, disturbance to the public order, or national defense, a governmental agency may issue the administrative act without being subject to the requirements and formalities of the administrative procedure.⁴⁴ The Code states that public sector institutions are liable for damages caused by their acts or omissions, even if such acts or omissions are lawful.⁴⁵ The Code will become effective on June 20, 2018.⁴⁶

B. MIGRATION LAW

The Human Mobility Law (Law) was enacted by the National Assembly of Ecuador in February 2017 and regulates the exercise of rights, obligations, institutions, and mechanisms related to migrants.⁴⁷ The Law establishes that Ecuadorians abroad who are in vulnerable situations will receive priority attention.⁴⁸ Such situations must be declared by the Ecuadorian mobility authority or diplomatic missions, provided that they satisfy the conditions established in the Law.⁴⁹ Foreigners are considered non-nationals of the Ecuadorian State and will be granted the status of a temporary visitor or resident.⁵⁰ In addition, the Law provides that every individual entering Ecuador must have public or private health insurance for the duration of their stay, except for those who move in the border integration zones.⁵¹ The Law indicates that temporary residence is a

40. *See id.* art. 1.3.

41. Asamblea Nacional del Ecuador [Ecuadorian National Assembly], Código Orgánico Administrativo [Administrative Code], art. 1, R.O. No. 31, July 7, 2017 (Ecuador).

42. *See id.* art. 194.

43. *See id.* at art. 207.

44. *See id.* at art. 206.

45. *See id.* at art. 330.

46. *See id.* at 74.

47. Ley Orgánica de Movilidad Humana [Human Mobility Law] art. 1 (Ecuador).

48. *See id.* at art. 21.

49. *See id.*

50. *See id.* art. 42.

51. *See id.* art. 56.

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migratory condition that authorizes the two-year stay and may only be renewed once.⁵² The Law states that permanent residence is a migratory condition that authorizes an indefinite stay, provided that at least one of the four stipulated conditions is satisfied.⁵³ Finally, the Law details the continuity period that each person must have according to his or her authorized visa.⁵⁴

52. *See id.* art. 60.

53. *See id.* art. 63.

54. *See id.* art. 65 (The temporary resident may be absent from the country for a maximum period of 90 days for each year; the permanent resident may absent himself and return to the country, but he may not remain abroad more than 180 days in each year, during the first two years).