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Latin American (Re) Insurance Regulatory Update

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Machua Millett is a member of Edward Angell Palmer & Dodge LLP's Insurance and Reinsurance Department, which wishes to acknowledge the assistance of Jaime Guttman and Stephen Ixer of EAPD in compiling the update, as well as our local contacts in each of the 19 jurisdictions covered. The Latin American Regulatory Update is published by EAPD for the benefit of its clients on matters of interest. The information herein is not to be construed as legal advice or opinion. We provide such advice or opinion only after being engaged to do so with respect to particular facts and circumstances. Although every effort is made to ensure the accuracy and completeness of the information contained herein, the nature of the Latin American legal, regulatory and judicial systems makes it impossible to guarantee such accuracy or completeness and we do not do so here.

ARGENTINA

Non-Admitted Aviation Coverage

An Argentine court recently further postponed until at least August 2010, a decision on a lawsuit filed in 2006 by the local insurance association challenging Decreto 1012 (2006). As a result, the "temporary" suspension of the Decreto, which would otherwise have permitted non-admitted aviation coverage in Argentina remains suspended and not in force. Therefore, despite erroneous indications in several other regulatory services that such insurance is permissible, non-admitted aviation cover is not currently permitted under Argentina law.

In 2002 and then 2006, Argentina's insurance regulator, the Superintendencia de Seguros de la Nacion, issued Decretos Nos. 1654 (2002) and 1012 (2006) stating that Argentine companies were permitted to obtain cover for aviation risks from non-admitted foreign insurance companies. However, Decreto No. 1012 included an express requirement that, in order for the decree to take full force, it needed to be embodied in the form of legislation by the Chief of Ministries within 30 days of the decree's issuance, which never occurred. Furthermore, soon after Decreto No. 1012 was issued, the Argentine Association of Insurance Companies brought suit seeking a determination that the Decreto was constitutionally impermissible. As part of the suit, the local Association sought and obtained a court order suspending the applicability of Decreto No. 1012. In the absence of the Decretos, Law 12.988 generally applies, which prohibits non-admitted insurance coverage.

On October 27, 2009, since which time nothing has changed with the relevant regulatory or judicial situation surrounding this issue, we obtained an opinion letter from the Superintendencia de Seguros de la Nacion stating that non-admitted aviation insurance is not permitted under Argentine law. In particular, the SSN stated that companies must comply with Law 12.988 as required for other lines of insurance (i.e., must purchase such insurance in the local market) because, although the Decretos in question are still valid written law, the exception created by the Decretos has been indefinitely suspended due to a court order obtained by the Argentine Association of Insurance Companies. Until such court order is lifted, therefore, aviation coverage for Argentine risks must be obtained in the local market, foreign (re)insurance companies may only offer aviation reinsurance as permitted by the foreign reinsurer law and non-admitted companies may not offer direct aviation insurance as to Argentine risks.

BOLIVIA

Government Draws Up Plans for Agriculture Insurance to Be Provided by Private Sector

Bolivia's Vice-Ministry for Agriculture has submitted to the legislative assembly a draft bill to set up a scheme of universal agricultural insurance that would provide protection to farmers from extreme weather events. The agricultural insurance bill stems from article 407(4) of Bolivia's new constitution, which provides that one of the State's rural development objectives is "to protect agricultural and agro-industrial production from natural disasters and inclement climate, and geological catastrophes. The law shall provide for the creation of agricultural insurance."

The insurance would benefit small, medium and large-scale producers, who together number around 650,000, and would provide cover for frost, floods, drought and hailstorms. The Vice-Ministry estimates that the scheme will cost US$ 40 million from 2010-15 as the State assists small producers with payment of the premium, with a further US$ 40 million expected to come from premiums revenue and overseas assistance. The cover would be provided by the private sector.

Introduction of the insurance would be in three stages. A first stage would cover the main crops of corn, potatoes, rice, wheat, quinoa and soy beans, which take up around 70% of Bolivia's cultivated land. The scheme would be extended to cover the entire agriculture sector in later stages. Relative risks (and consequently premiums) would be determined along the same lines as a similar scheme in Chile, i.e., through the division of the national territory into about 100 zones each with homogenous climate, ecology and geography. Broadly, these would fall into either highland plains, lowland grass plains, or valleys. The Vice-Ministry is currently compiling food production data for this exercise.

Brazil

Foreign Reinsurers Receive Greater Access To Brazilian Market

As of Sunday January 17, 2010, foreign reinsurers received access to a larger portion of the Brazilian reinsurance market as local reinsurers' right of first refusal was reduced from 60% of risks in the market to only 40%. The change was triggered by the passage of three years since the enactment of Supplemental Law 126, which first opened the Brazilian reinsurance market to foreign competition.

US$ 5 Million Award to Family of Air France Brazil Crash Victim

A Brazilian court recently awarded US$ 5 million to the family of a passenger on the Air France plane that crashed into the Atlantic Ocean off Brazil last year. The award included US$ 1.15 M in pain and suffering damages for the decedent's family. The judge concluded in his ruling that, while the cause of the crash remains unclear (the cause of the crash has not yet been established because the plane's black boxes are still missing, and investigation continues), it was largely due to the negligent conduct of Air France. Air France's insurers, led by AXA, have indicated that they intend to appeal the decision, including on the basis that compensation for the victim's families should not be decided by a court but by a specially-created committee of government officials, associations of victims' families and insurers tasked with identifying criteria to determine fair compensation for each victim's family.

Chile

Submission of Earthquake Related Information

On March 1, 2010, the Superintendency issued Official Bulletin No. 573 requiring reports from insurers containing the following information regarding losses due to the earthquake and related catastrophes such as fires and/or flooding: (a) Number of current policies; (b) Insured amount; (c) Retention related to insured amounts; and (d) Ordinary and extraordinary reserves identified separately. The Superintendency requested that the aforementioned information be submitted by March 15, 2010. Additionally, commencing March 8, 2010, insurance companies have been required to file weekly reports containing all claims filed the prior week and indicating the insured amount, gross and retained, and identifying the reinsurer and its percentage of participation. Insurance companies are required to submit an estimate of the effect the earthquake will have on their solvency, and specifically the gross and net amounts that are reinsured, and their impact on: the capital amount, the amount of debt currently held, and liquidity of the company (to pay the claims).

On March 2, 2010, the Superintendency issued Official Bulletin No. 576, which allowed companies to submit information regarding earthquake related claims electronically via SEIL (online information delivery system).

Abridged Liquidation Procedure for Earthquake Related Claims

On March 30, 2010, the Superintendency issued Official Bulletin No. 591 pursuant to Article 3 of D.F.L. No. 251 of 1931, Article 4 of D.L. No. 3.530 of 1980 and Article 18 of D.S. No. 863 of 1989, which modifies the liquidation (adjustment) procedures in response to the February 27, 2010 earthquake. This abridged procedure affects coverage for homes and other residential structures, and will allow affected policy-holders to obtain an immediate estimate of the damages. The procedure allows for insurance adjusters to visit the premises and prepare indemnification proposals on site.

The indemnification proposals shall contain the basic data necessary for proper processing including: policy coverage, determination of damages, and amount of indemnification. The proposal shall also include a section for acceptance of the same by the insurance company and the policy-holder (and/or beneficiary). The procedure requires the insurance company to provide the policy-holder with a copy of the proposal, and maintain copies of the proposal in a segregated folder containing the documents supporting the claim. Moreover, the indemnification proposal may be sent electronically via email. This procedure applies to all claims filed after March 30, 2010, and for those earthquake related claims that have been submitted but not processed.

Chilean Insurers Relax Claim Notice Requirements

Chile's insurance regulator, the Superintendencia de Valores y Seguros (SVS), also announced in March 2010 that the country's insurers had agreed to relax claim notice requirements under the fire insurance policies that generally provide earthquake cover by endorsement. Insureds will now reportedly have thirty days to report earthquake-related losses under such policies, whereas the mandated notice policy would otherwise have been determined by the individual policy's particular language. To qualify for such treatment, however, the insured will have to be able to show that it was within the affected areas, searching for family or otherwise impacted by the earthquake in its efforts to effect notice. Under Chilean law, the insurer will then typically have 90 days to respond to the claim, though Fernando Perez, superintendent of the SVS, expressed hope that adjustment of large losses would occur more quickly than that.

New Regulations Concerning Preexisting Condition Restrictions in Health, Life and Disability Insurance Take Effect

Beginning January 1, 2010, General Regulation No. 255 took effect, regulating the ability of insurers to include preexisting condition restrictions in health, life and disability policies. The regulation provides that, where the general wording of a policy contains any exclusion or limitation of coverage based upon preexisting condition(s), the policy must further include: (a) an obligation on behalf of the insurer to inquire of the insured as to the existence of any preexisting condition(s) -- previously-approved forms are no longer valid and new models must be requested; (b) a written health declaration must be obtained from the insured referencing any condition the insurer considers relevant; (3) the policy's special conditions must state the applicable coverage limitations or restrictions; and (4) a special signed declaration by the insured approving the coverage restrictions imposed. Failure to comply with the requirements will bar the insurer from restricting coverage based upon a preexisting condition.

Insurers Required to Comply with International Financial Reporting Standards in 2010

Beginning in 2010, Chilean insurers will be required to progressively ensure compliance with International Financial Reporting Standards ("IFRS") in their submission of information to the SVS. On October 13, 2009, the Insurance Superintendency ("SVS") issued Official Bulletin No. 546 to all financial institutions operating in Chile notifying them of the new requirement to comply with IFRS. Bulletin No. 546 provides a trial period for statements due in September and December 2010, allowing those statements submitted under IFTS (non-comparative) to be submitted in conjunction with those statements prepared under the current rule. The September 2010 filing should contain balance sheets and profit and loss statements. The December 2010 filing should contain balance sheets, profit and loss statements, statements of capital, cash flow statement, and notes/disclosures regarding the financial statements. Notably, the financial statements due on December 31, 2010 under IFRS are not required to be audited. Official Bulletin No. 546 sets forth the following additional requirements and deadlines:

- Non-comparative Financial Statements under IFRS. After March 31, 2011, insurance companies will be required to submit non-comparative financial statements under IFRS with corresponding notes/disclosures.
- Comparative Financial Statements under IFRS. After March 31, 2012, insurance companies will be required to submit comparative financial statements under IFRS with corresponding notes/disclosures.
- Consolidated Financial Statements. Insurance companies will be required to submit the financial statements as set forth below, which shall include information from their subsidiaries (which are also required to comply with the same standards):
    - After December 31, 2011, insurance companies will be required to submit non-comparative consolidated financial statements under IFRS.
    - After December 31, 2012, insurance companies will be required to submit comparative consolidated financial statements under IFRS.
- Proper format for financial statements and respective notes. The Superintendency will establish the proper format for financial statements and respective notes/disclosures. The Superintendency objective is to develop formats that will allow compliance with IFRS, while providing homogeny with the information contained in financial statements submitted under the current norms.
- Method of submitting financial statements under IFRS. The Superintendency will utilize the XBRL format standard (eXtensible Business Reporting Language) to ensure proper receipt, validation, recording, and dissemination of financial information provided by insurance companies under IFRS. Under this standard, the data is accompanied by a label that provides a unique identification linked to the financial statements submitted by a particular financial group. A group of definitions for XBRL filings known as "Taxonomia" will be issued and maintained by the SVS for the Chilean insurance market. The Superintendency will publish the "Taxonomia" in its webpage to allow companies to generate the XBRL files containing the financial statements and respective disclosures.
- Treatment for adjustments for first application of IFRS. Insurance companies will be required to record adjustments created by the adoption of IFRS under an account labeled "Other Adjustments." Should the insurance company decide to distribute dividends from the accumulated results derived from such adjustments, the amount available

for distribution shall be based only on those adjustments that have been realized.

- Monetary correction. Under IFRS a monetary correction can only be applied if the conditions set forth under NIC 29, "Financial Information under Hyperinflationary Economies," are met. Accordingly, they are not currently applicable (as Chile is not suffering from hyperinflation). Similarly, for the revalorization of capital under Article 10 of Law No. 18.046, it is understood that the distribution of the revalorization will only be allowed when there is actual revalorization to be distributed, which is not going to occur while the Chilean economy remains healthy and outside hyperinflation pressure. Therefore, revalorization will also remain inapplicable until the required conditions are met.
- Convergence Plan. Insurance companies were required to file with the Superintendency an "implementation plan" of the IFRS norms prior to December 31, 2009. The plan had to be approved by the director of the entity.
- Progress reports. The Superintendency will conduct periodic surveys to various insurance companies to collect information regarding progress made in the application of IFRS.

Colombia

Policies Covering Colombian Risks Must Be In Spanish; No Cession Maximum or Minimum for Reinsurance Agreements

By Concepto 2009081074-001, issued in February 2010, the Colombian insurance regulator, la Superintendencia Financiera de Colombia (Superfinanciera), reminded the market that: (1) insurance policies covering Colombian risks must be issued in Spanish and not any foreign language; and (2) Colombian laws and regulations do not impose either a maximum or minimum cession requirement for reinsurance agreement. Issuance of a policy in any language other than Spanish is a violation of a legal requirement and can bring an administrative sanction under Colombian regulations. In creating its internal policies concerning reinsurance, local insurance companies should address maximum and minimum cession amounts.

Statute of Limitations Against Liability Insurer Runs from Date Underlying Suit or Demand is Filed/Made

Concepto No. 092756, issued by Superfinanciera in February 2010, advised the market that the statute of limitations for seeking indemnification from a liability insurer by an insured runs from the date the victim files a judicial claim or make an extrajudicial demand.

Coverage Period of An Insurance Policy Must Be Forward-Looking

By Concepto Jurídico No. 071756-001, issued in February 2010, Superfinanciera informed the market that, because uncertainty and a forward-looking view are essential elements of an insurance contract and necessary characteristics of an insurable risk, insurance companies may not legally issue insurance policies whose coverage periods begin prior to the date the insurance contract is perfected.

Costa Rica

Reporting Requirements for Insurers, Reinsurers and Insurance Intermediaries

Circular SGS A-003-2010, issued by Costa Rica's insurance regulator, la Superintendencia General de Seguros (Sugese), and effective as of April 1, 2010, establishes the system for the required submission of information to Sugese by insurers, insurance agencies, insurance brokers and reinsurers. The circular sets forth the required frequency, scope and means of providing the mandated reports. The relevant companies were required to present their first such reports to Sugese by April 1, 2010. Such reports are further required to comply with the "Accounting Plan for Insurance Entities" that took effect as of January 1, 2010.

Insurance Agencies and Anti-Drug Trafficking/Terrorism Funding Compliance

On March 24, 2010, a draft set of requirements for insurance agencies to request exception from Article 37 of the law governing compliance programs to avoid funding of terrorism and drug trafficking activities was released. Article 37 provides for companies to request different treatment from the regulator where they are unable to comply with the established compliance structure. The proposal issued on March 24, 2010 provides how insurance agencies can request such an exception.

Sales, Claims and Service Regulations for Insurance Companies

Despite the opening of the Costa Rican market by statute in Fall 2008, mandated regulations concerning insurance sales practices, claims and customer service remain pending and have not yet been issued.

Dominican Republic

Regulator Announces 2009 Results--Total Premiums Grow 6.5%

The Dominican Republic's insurance regulator, the Superintendencia de Seguros, recently announced that the island nation's insurance industry continued to grow in 2009, with net insurance premiums increasing 6.5% to RD$ 23.2 billion (US$ 637 million) over the previous year. The highest proportional growth was concentrated in the life sector, where revenue jumped 37% from US$ 68 million in 2008 to US$ 93 million in 2009, although individual life premiums fell significantly as collective life insurance premiums saw strong growth. In the non-life sector, health insurance premiums rose 12.6% to US$ 28 million and fire premiums rose 6.8% to US$ 210 million. Auto insurance premiums dropped 2.2% to US$ 213 million.

Insurance Superintendent Euclides Gutiérrez stated that the steady growth in the insurance industry is the result of good performance by insurers combined with sound government policies and sensible supervision and regulation by the Superintendencia. The top five companies by premium revenue in 2009 were Seguros Universal (US$ 169 million); Seguros Banreservas (US$ 118 million); Mapfre BHD Compañia de Seguros (US$ 100 million); Proseguros (US$ 67 million); and La Colonial Compañia de Seguros (US$ 64 million).

Ecuador

Insurers Must Return a Total of US$ 19.4 Million in Compulsory Auto Premiums

Ecuador's Banking and Insurance Superintendency announced in January that the seventeen companies that operate in the country's mandatory auto coverage market (SOAT – Seguro Obligatorio de Accidentes y Transito) must return US$ 19.4 million in premium to their customers, representing a 30% credit against "excessive" premiums charged in 2009. Superintendent Gloria Sabando also stated that the reimbursement should occur the moment that the SOAT coverage is renewed in 2010. The announcement impacts the following companies: AIG, Alianza, Bolivar, Cervantes, Colonial, Constitucion, Coopseguros, Interoceanica, Latina, Olympus, Oriente, Panamericana, Rocafuerte, Sucre, Sweaden, Unidos and Vaz Seguros.

Despite significant dismay over the decree among local companies, insurers had little ability to challenge the pronouncement and proceeded to comply with the reimbursement requirement. Several local executives publicly criticized the concept of basing such a decision upon accident results for a single year, and questioned the political motives underlying the decree. Corposoat, an organization representing Ecuador's compulsory auto carriers, has filed an appeal with the Superintendency, seeking reconsideration of the requirement and clarity as to how the SOAT system will function going forward. According to Patricio Salas, manager of Corposoat, the main goal of the appeal is to ensure that the SOAT program is regulated in a balanced and reasonable manner.

Petroecuador Rejects Pricing Offered By State-Owned Insurer

Ecuadorean state oil company Petroecuador rejected the pricing terms offered by the state insurance company Seguros Sucre for the company's total risk and liability insurance policy. Seguros Sucre reportedly sought US$ 49.9 million in premium for the two-year policy, whereas Petroecuador's budget reference was US$ 18.1 million per year. Seguros Colonial had previously provided the cover. Seguros Sucre argued that the pricing took into account a significant appreciation of Petroecuador's assets over the two policy periods and also covered the tax on capital flight that it would incur when engaging foreign reinsurers, which is around 3%. Seguros Sucre is part of the state bank Banco del Pacifico. Petroecuador subsequently announced its intention to open the contract to a public tender after initially declining to do so when it entered talks with Seguros Sucre. In the meantime, it has extended its existing contract with Seguros Colonial.

El Salvador

Minimum Capital Requirements for (Re)insurance Companies and Brokers

On January 1, 2010, new regulations concerning required minimum capital for insurance and reinsurance companies were issued, with which companies must comply by June 30, 2010, as follows:

General Insurance	US$ 1,215,600
Personal Lines	US$ 859,100
Guaranty	US$ 697,000
Reinsurance	US$ 3,451,800
All lines of insurance	US$ 2,074,300
Insurance brokers	US$ 15,400

Taxation on Insurance and Reinsurance Premiums

On January 1, 2010, certain fiscal reforms came into effect that impact insurers and reinsurers. First, local persons and entities must pay a withholding tax of 20% on any revenue paid to a person or entity not domiciled in El Salvador. Notwithstanding the foregoing, amounts paid to foreign insurers, reinsurers, surety companies, and insurance brokers authorized by the Salvadoran regulators, the Superintendencia del Sistema Financiero, shall be subject to a 5% tax.

Guatemala

DR-CAFTA Brings Regulatory Ramifications for (Re)insurance Industry

As a consequence of Guatemala's ratification of the Dominican Republic-Central American Free Trade Act, the Guatemalan Congress has under consideration a new insurance law. The new law has received the approval of the Economic Commission of the Congress, but approval of certain articles and final drafting are pending. Some of the significant changes in the law include:

- Guatemala's insurance regulator, la Superintendencia de Bancos, will establish minimum capital requirements for insurers by line, which shall be reviewed on an annual basis.
- Foreign insurers shall be permitted to operate in Guatemala by the establishment of a local branch authorized by the Monetary Authority.
- Companies will be required to submit annual risk management reports.
- Establishment of an exit process for foreign insurers.

- Regulation of the acquisition of insurers and reinsurers.
- Creation of a system of oversight for insurance intermediary activity and sanctions for illegal sales or placement of insurance.

Honduras

No notable regulatory developments occurred in the (re)insurance space in Honduras between January 1, 2010 and March 31, 2010.

Mexico

New Insurance and Bonding Institutions Law

The Ministry of Finance and Public Credit ("Secretaría de Hacienda y Crédito Público") ("SHCP") and the National Insurance and Bonding Commission ("CNSF"), have commenced the process for enacting a draft statute (the "Draft Insurance and Bonding Law") designed to replace the Insurance Institutions Law in force. The main proposition of the Draft Insurance and Bonding Law is that the regulation applicable to insurance institutions and bonding institutions (which, as of today, are regulated by separate statutes) be merged into a single statute that unifies regulation on divergent areas. The technical aspects of the new statute are also aimed at bringing Mexican insurance regulations in line with Solvency II principles. The most recent version of the Draft Insurance and Bonding Law is dated April 16, 2010. The Draft Insurance and Bonding Law is intended to become effective on January 1, 2012.

Amendments to Insurance Contract Law

Together with the New Insurance and Bonding Institutions Law, the SCHP and the CNSF are also proposing certain amendments to the Insurance Contract Law. In general, the purpose of such amendments is to include a framework applicable to the new seguro de caución (guarantee insurance) line of business.

Bill from the Chamber of Deputies Amending Article 160 BIS of the Insurance Contract Law (the "Insurance Contract Law Bill")

The amendment of article 160 BIS of the Insurance Contract Law Bill sets out the right of insured persons to renew their insurance agreements (covering medical or health expenses) for the remaining years of their lives. The aforementioned right is subject to: (1) the prior payment of the premium by the insured persons during five consecutive years; and (2) the current payment of the premium by the insured persons during the remaining years of their lives.

Registration of New or Modified Insurance Products

Regulation S-8.1, issued by the CNSF on January 22, 2008 and published on April 14, 2010, provides revised general criteria for the registration of Insurance Products. The new regulation replaces former Regulation S-8.1 issued by the CNSF on January 22, 2008. These regulations set forth the procedures and timeframes for registering new or modified insurance products before the CNSF as a condition for their sale.

Minimum Paid-In Capital

In a Resolution used by the SHCP on March 31, 2010, the regulator sets out the minimum paid-in capital that insurance institutions are required to have in place. This is an annual publication that sets forth the amount of paid-in capital that insurance companies in Mexico must maintain, based on their authorized line of business. Where the applicable minimum paid-in capital is increased, insurance companies will have until June 30, 2010 to pay-in such increase.

Burden of Proof as to Proof of Loss

Transporte Especializado Bissa, S.A. de C.V. ("Bissa") vs. AXA Seguros, S.A. de C.V. In 2007 Bissa, a company in the business of transporting and safeguarding cash and valuables, filed a claim against AXA Seguros demanding payment of 103.5 million pesos plus accrued interest under Bissa's insurance policy issued by AXA Seguros. On first instance and on appeal, the courts entered decisions favorable to AXA Seguros. Bissa has now filed a Constitutional review action (amparo) against the decisions and, on April 7, 2010, the Mexican Supreme Court exercised its "attraction authority" on this case and is expected to enter final judgment in the coming months. The central issue in the case is whether the burden of proof of the loss under the insurance policy should be shifted to the insurance company.

Nicaragua

DR-CAFTA Brings Regulatory Ramifications for (Re)insurance Industry

As a consequence of Nicaragua's ratification of the Dominican Republic-Central American Free Trade Act, the National Assembly is considering a law that would permit foreign insurance companies to do business in Nicaragua through local branches. The proposed law also includes provisions strengthening the national insurance regulator. The bill does not appear to be a priority for the Asamblea Nacional, which appears preoccupied with internal political events in the nation.

Minimum Capital Requirements

As of January 1, 2010, new capital requirements for insurance companies came into effect as follows:

Property and casualty insurer	US$ 944,519.82
Personal lines insurer	US$ 944,519.82
Insurer in both lines	US$ 1,889,039.64

Insurers not satisfying these new requirements have a period of seven days from their next shareholders meeting to meet these levels.

Taxation on Interest, Dividends, Revenue

As of January 1, 2010, certain fiscal reforms came into effect in Nicaragua, including a 10% withholding tax on interest and dividends for Nicaraguan persons and entitities received from Nicaraguan sources. As to income received by non-Nicaraguan persons and entities from Nicaraguan sources, a 20% withholding tax applies.

Panama

Taxation of Insurance Revenue and Transfer of Corporate Assets

On March 15, 2010, Ley No. 8 was published, revising various provisions of Panama's fiscal code. Among other things, the new law revises the tax applicable to revenues of insurance companies and imposes a revised tax upon the transfer of corporate assets.

Paraguay

Foreign Reinsurer Registration

On February 9, 2010, Paraguay's insurance regulator, the Superintendencia de Seguros of the Banco Central de Paraguay, issued Resolution SS.SG. No. 013/10 concerning the requirements and procedure for registration of foreign reinsurers. Foreign reinsurers are required to submit: (1) the required application; (2) a power of attorney (where applicable); and (3) proof of minimum financial strength rating or certification by its home regulator of authorization and minimum capital. Reinsurance brokers are mandated to ensure the compliance of reinsurers with these requirements in the transactions in which they are involved. Where reinsurance agreements are currently in force with foreign reinsurers that do not meet these requirements, local insurers are responsible for changing reinsurers or otherwise ensuring sufficient security (aside from credit for reinsurance issues, as to which such a non-complying reinsurance agreement will not count). Reinsurance agreements with entities not complying with the registration requirements will have no legal or regulatory effect in Paraguay.

Rating Agency Certifications for Insurance Entities

On February 9, 2010, the Superintendencia also issued Resolution SS.SG. No. 012/10 concerning the form, frequency, breadth and exceptions for ratings issued as to insurance companies. Ratings are to be issued on at least an annual basis on or before June 30th of each year in conjunction with the release of the company's latest financial statements. Contracts between insurers and ratings agencies are to include a provision requiring the level of monitoring necessary to detect changes in the company's financial condition. Ratings agencies are to consider the legal and regulatory requirements in issuing any local ratings, and are not permitted to issue local ratings over BB or under BBB without compliance with such requirements.

Publication of Insurer Financial Information

On February 9, 2010, the Superintendencia also issued Resolution SS.SG. No. 011/10 concerning the Superintendencia's intention to publish a periodic report containing certain financial indicators for each insurer. The published information will be based upon the information submitted by companies to the Superintendencia.

Calculation of Insurers' Technical Assets

On March 2, 2010, the Superintendencia issued Resolution SS.SG. No. 020/10 modifying the calculation of insurers' technical assets as governed by Resolution SS.SG. No. 239/07 of September 21, 2007. Resolution 020/10 revises the components to be included in calculating an insurer's technical assets.

Peru

Legislature Considers Medical Negligence Bill, Including Compulsory Insurance for Medical Practitioners

Peru's Congress is considering the establishment of a statutory compensation scheme for victims of medical negligence, at least one potential version of which would require compulsory insurance for medical practitioners at public hospitals and private clinics. An initial bill was proposed by the government as a matter of urgency in February that included the mandatory insurance. Although supported by local insurers, the bill faced vehement opposition from doctors' associations, who asserted they should not be held solely responsible for accidents which were often in part caused by inadequate equipment. The bill was subsequently tabled.

Two alternative schemes have also been proposed: (1) A "Health Services Risk Fund," initially funded by the government, which would compensate victims for expenses incurred (the fund would be overseen by the Superintendency of Banking, Insurance and Pension Fund Administrators and would only pay out once medical negligence had been demonstrated); and (2) An "immediate indemnity insurance" scheme that would pay out to victims on a per occurrence basis and without further investigation or approval from a designated authority (the scheme would be "immediate and unconditional" in the sense that claimants would need to show what had happened and the consequences suffered, but the indemnity would be paid irrespective of any responsibility by the medical practitioner--further claims for responsibility could then be pursued in the courts).

At the end of March, the Peruvian Congress rejected a bill that combined aspects of the three proposals. The legislation would have created a Health Services Risk Fund paid for by contributions from medical practitioners with a payout on an "immediate and unconditional" basis. The government has said the law could still be passed by executive decree.

At present, victims of medical negligence in Peru must pursue their claims through the courts in a lengthy, costly and unreliable process.

Regulator Publishes Draft Regulation for Equity Risk Measurement

Peru's Superintendency of Banking, Insurance and Pension Fund Administrators has published a draft resolution approving a new regulation for measuring equity risk in insurance companies. The draft text sets out a proposed method for calculating equity risk indicators. It provides that the results should be submitted to the Superintendency on a monthly basis on form Annex S-15, which is also included in the draft. The Superintendency invited comments on the draft resolution from March 9 to April 9, and the final text is expected to enter into force on October 1, 2010.

State Bank Plans to Expand Presence in Insurance Sector

Peru's state-owned Banco de la Nación plans to launch a life insurance program and offer new products covering serious illnesses and funerals as part of its drive to extend its presence in the rapidly growing insurance market. The bank is working with private insurers on the products, which are expected to be life insurance, cancer and serious illness insurance and funeral insurance. Banco de la Nación already offers debtor's life (desgravamen) insurance, credit card insurance and obligatory road transit insurance. Other "microinsurance" products the Bank intends to offer include debit card protection, loan payment protection and temporary unemployment protection. The bank expects to sell an additional 300,000 insurance policies this year.

Puerto Rico

Operation of the Catastrophe Loss Reserve

As of February 12, 2010, new Rule 72 was filed with the U.S. Department of State establishing how the catastrophe reserve will be calculated and accumulated pursuant to Chapter 25 on the Puerto Rico Insurance Code. The new Rule 72 sets forth the requirements for all domestic insurers authorized to underwrite catastrophe insurance in Puerto Rico to establish annual contributions to a Catastrophe Reserve as set by the Insurance Commissioner and to obtain reinsurance for any Catastrophe Exposure not covered by the company's Catastrophe Reserve. The Catastrophe Reserve must be itemized in each year's financial results filing with the Commissioner and failure to comply with the requirements of new Rule 72 can lead to administrative penalties, including revocation of authorization. New Rule 72 took effect as of March 14, 2010.

Risk-Based Capital Provisions

As of January 5, 2010, new Rule 92 was filed with the U.S. Department of State establishing standards for implementing the risk-based capital provisions contained in Chapter 45 of the Puerto Rico Insurance Code. The rule applies to all local insurers and health services organizations, as well as to foreign insurers subject to regulation by the Puerto Rico Insurance Commissioner under Article 45.110 of the Puerto Rico Insurance Code. New Rule 92 establishes a phased schedule for these entities to comply with the RBC requirements of Chapter 45. Entities may also seek exemption should they meet certain criteria concerning the volume and type of business in which they are engaged in Puerto Rico. New Rule 92 took effect as of February 4, 2010.

Uruguay

Central Bank Abolishes Foreign Reinsurer Registration Requirement

By Cirular 2054, the Central Bank of Uruguay amended the Book III of the Code of Insurance and Reinsurance Regulations (the Code) to abolish the foreign reinsurance registration requirement. Instead, local insurers will now be permitted, regardless of registration, to reinsurer with an foreign reinsurer carrying an A- or better financial strength rating from Standard and Poor's, Fitch Ratings, Moody's or A.M. Best. Any discrepancy between the ratings given by different agencies, will result in the Bank applying the lower rating. This measure takes place immediately for new business and for renewals of reinsurance contracts from July 1, 2010 going forward. It is the responsibility of the local insurer rather than the foreign reinsurer itself to ensure it contracts with a properly accredited reinsurer (inability to show sufficient minimum rating will result in inability to obtain credit for reinsurance and other potential penalties). The resolution also adds that reinsurance contracts concerning Uruguayan risks should adopt the terms and conditions of those generally accepted internationally.

Central Bank Revises Noncompliance Sanctions and Information Submission Portions of Insurance Law

Circular 2054 also announced revisions to Book II (information submission) and Book V (non-compliance sanctions) of the insurance code.

As to Book II, the circular announced a new scheme for insurance companies' submission of information to the regulator. In particular, information relating to quarters ending March 31, June 30 and September 30 must be submitted within 30 days of the end of each quarter, and within 60 days from December 31 for year end information. The data can be submitted electronically on forms found on the Bank's website. Under separate communications (2010/048 and 2010/050), the Central Bank listed the information it considers relevant for submission by insurance companies, including monthly accounts and quarterly audited accounts, capital reserves and shareholder and director information. Finally, the circular also noted that, if a company fails to comply with information submission deadlines, daily fines can be imposed (these will be higher for delayed presentation of time critical information) and, in the case of delays of more than one month, penalties may be increased depending on the seriousness of the delay or importance of the information. Fines can also be imposed if the information submitted contains errors.

As to Book V, the circular announced new requirements for when accounting statements and other information must be submitted to the regulator and also the establishment of a new regime for the application of sanctions to insurance companies that violate the law or fail to abide by the regulations laid down by the regulator. Companies which breach their legal obligations will be subject to the following procedural stages: (1) observation; (2) warning; (3) fines of up to 65 million Index Units; (4) intervention in the company, which may include partial or total substitution of the authorities; (5) partial or total suspension of activities; and (6) temporary or definitive revocation of permission to operate.

Uninsured Motorist Compensation Fund Begins Operation

Uruguay's Insurance and Reinsurance Superintendency has launched a compensation fund for victims of road traffic accidents involving uninsured drivers. The fund was set up in accordance with articles 19-22 of Law 18,412, which established the Obligatory Automotive Insurance (SOA) scheme. In its first year of operation, the compensation fund will be funded two-thirds by the government and one-third by insurers, switching to one-third and two-thirds, respectively, in the second year, and by the third year of operation the fund will be entirely funded by insurance companies. Uruguay's Association of Insurance Companies, Audea, has called for stricter implementation of the auto insurance scheme in order to ensure that premium revenue will adequately bankroll the compensation fund.

Venezuela

Insurance Companies Ordered to Pay 0.3% of Revenue to Fund Regulator

Insurance companies in Venezuela must pay 0.3% of their 2009 net premium revenues to fund the activities of the Insurance Superintendency, according to a resolution published in Official Gazette 39,334 at the end of December 2009. The "special contribution," which is charged annually under article 23 of the 1995 Law of Insurance and Reinsurance Companies, must be paid during the 2010 tax year.

State-Owned Insurance Company Bolivariana de Seguros Prepares to Open for Business

Although not able to achieve its initial goal of an April 1, 2010 launch, Venezuela's government is preparing for the imminent opening of a new state-owned insurance company. Once open for business, Bolivariana de Seguros y Reaseguros is likely to change the landscape of the insurance industry in the country because it is expected to become the leading provider of insurance to the public sector (likely on a mandatory basis), which makes up about a third of the insurance market. The company has been in development for the last three years and was granted initial authorization to operate by the Venezuelan regulator, the Superintendencia de Seguros, in late December 2009.

In late 2009, Bolivariana acquired a substantial portfolio from the recently nationalized Seguros La Previsora. La Previsora was previously the country's fourth-largest private insurer, taking 7.9% of total market premiums in 2009. Bolivariana's new president, Tomas Rondon, oversaw the government intervention of Seguros La Previsora, while the Insurance Superintendent, Ana Teresa Ferrini, approved the business transfer from La Previsora to Bolivariana.

New Financial Regulation Law Restricts Financial Group Activities

Venezuelan legislators have passed a law regulating the financial sector and imposing new controls on the separation of banking, insurance and stock market activities.

The Financial System Law prohibits companies operating in Venezuela from forming "financial groups" with activities in different financial sectors. This applies to domestic and foreign companies. For example, a foreign insurer with activities in Venezuela would not be allowed to buy a local bank and enter the banking sector. Firms currently operating in more than one sector, such as a bank with an insurance or brokerage arm, have 180 days' grace to comply with this new requirement and hive off any relevant business activities from the group structure.

The law, which was approved in the National Assembly on March 23 but had not been officially published at the time of writing, states that its purpose is "to regulate, supervise, control and coordinate the National Financial System in order to orient the use of its resources towards the public interest." To this end, it also creates a single committee to oversee the existing regulatory bodies for banking, insurance and brokerage activities. This committee, to be known as Osfin, will keep a close watch over liquidity and solvency levels throughout the sector. It will be comprised of the Planning Minister, the president of the Central Bank of Venezuela and three directors appointed by the head of state.

Ricardo Sanguino, president of the National Assembly's Finance Commission, said the reason for separating banking, insurance and brokerage activities was to reduce risk. He said that under the existing system many banks tied up their working capital in their stock market activities. The full text of the law was not available at the time of writing, but local press reported that it would also force insurance companies to diversify the range of products offered in order to develop other areas of the economy such as agriculture, tourism and communal activities. At present, the vast majority of policies issued are individual medical or auto insurances.

The Financial System Law is the first of a package of financial bills to become law. Others currently being reviewed by legislative commissions include the insurance and reinsurance law, the banking law and the capital markets law. The comprehensive new insurance law has been under discussion for two years but not yet been enacted by the National Assembly. Further changes are now expected to ensure it fits in with the Financial System Law. One provision reported to be included in the insurance law will give the Insurance Superintendency final approval over the level of deductibles on policies offered by insurers; another would provide for policy-by-policy review to ensure premiums charged are "fair."

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