

Banking and Finance

The Official Gazette of June 11, published Resolution N° 040-11, issued by the Superintendency of the Institutions of the Banking Sector, which has the purpose of limiting the placement of resources in trusts contracted with insurance and/or reinsurance companies. This Resolution shall be applicable to those institutions governed by the Institutions of the Banking Sector Law, which **must refrain from executing or renewing trust contracts with insurance and/or reinsurance companies, if they do not have the approval of the Superintendency.** Those institutions of the banking sector that maintain **current trust contracts** with insurance and/or reinsurance companies as of the date that this Resolution is applicable, **must forward the same to the Superintendency within the five (5) working days following the date of the publication of this Resolution in the Official Gazette.** In case of being applicable and within such same term, the banking institutions must **inform** the Superintendency **if they have not executed trusts** with insurance and/or reinsurance companies.

The Superintendency of the Institutions of the Banking Sector issued Ruling N° 083-12, providing the Norms Governing the Trust Operations, which was published in the Official Gazette of June 11. Said norms are applicable to all those universal banks that operate in the Venezuelan banking sector, authorized by this Superintendency to act as trustees, as well as those financial institutions previously authorized by this Superintendency to act as trustees, whom, as of the date of the effectiveness of these norms

have not merged nor are in the process of merging or transforming into a universal bank. The purpose of these norms is to **establish the requisites for the universal banks at the moment of requesting the authorization to perform trust activities, and to indicate the scope of these operations.** The Resolution expressly **superseded** Resolutions Nos. 179-00 and 052-11, which were published in Official Gazettes dated June 6, 2000 and February 25, 2011, respectively. The Resolution will be effective sixty (60) days after the date of publication in the Official Gazette.

The Official Gazette dated June 13 published an *official communication issued by the Venezuelan Central Bank ("BCV")*, which establishes the interest rates for the payment of seniority (16.75% and 15.63%), acquisition of vehicles under the balloon payment modality (16.75%), for credit card transactions (29% and 17%) and for credit transactions dedicated to tourism sector (11%).

Tax

The National Integrated Service of Customs and Tax Administration ("SENIAT") issued Ruling No. SNAT/2012/0034, informing that the weighted average interest rate for loans of the six (6) principal commercial and universal banks of the country with the highest volume of deposits, excluding portfolios with prime rates, set by the BCV **for May 2012 is 18.63%**. Therefore, for the calculation of the **late payment interest** accrued during May, 2012 the rate is to be increased **1.2 times**. Said Ruling was published in the Official Gazette of June 15.

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The Presidential Decree N° 9,044 was published in the Special Official Gazette of June 15, which refers to the *Decree with Status, Value and Force of Law of the Organic Law of Tourism, which has the objective to develop, promote, organize and regulate the activity of tourism, and the National Touristic Sector*. Among other factors, **an obligation is established for a special contribution** for those who render touristic services equal to one percent (1%) of the gross income obtained monthly from the touristic services rendered; such contribution may not be transferred to the final user. In this sense, **the President of the Republic may grant** to those who render the services, **the following incentives**: (i) rebate of up to 75% of the income tax of the amount spent by new investments for the construction of touristic lodging, to the rendering of any touristic service or to the training of its workers, among others; (ii) rebate up to 75% of the income tax of the amount spent in new investments for touristic purposes, in rural areas or suburban areas, in ranches, farms, agricultural developments, among others; (iii) exoneration of taxes for the import of airplanes, ships, and land vehicles for touristic purposes; (iv) establishment of special tariffs for the fuel of ships and airplanes for touristic purposes; and (v) establishment of special tariffs for the provision of public services in charge of the State for those who render touristic services. All the foregoing is possible for those touristic operators that possess the touristic certificate issued by the corresponding Ministry. Likewise, **the banks of the country are required to use a percentage of their credit portfolio to the tourism sector, which may not be less than three percent (3%) of the same**. Finally the cancellation of the Mixed Funds of Tourist Promotion and Training of the States, Federal Territories, Federal Dependences and of the Capital District, is ordered. This Decree will be effective as of the

date of its publication, and the same **supersedes** the Decree with Rank, Status, Value and Force of the Organic Law of Tourism, published in Special Official Gazette N° 5.889 of July 31, 2008. The President of the Republic by official notice, corrected due to a material error, the Decree with Status, Value and Force of the Organic Tourism Law, which was published in the Official Gazette of June 29, 2012.

Labor

The *Decision N° 650 of the Constitutional Chamber of the Supreme Court of Justice of May 23, 2012* was published in the *Official Gazette of June 12 (Case: Appeal of Constitutional Revision of the decision rendered on July 14, 2009 by the Social Chamber that overruled the appeal filed by Irwin Oscar Fernandez Arrieche, in the lawsuit filed against Productos EFE, S.A.)* in which the Court established –under the prior Organic Labor Law published in 1997 (“OLL”)– that **in case a worker is dismissed without a justified cause, the time he/she would have had to render services if he/she had terminated the contract him/herself will be added to: (i) determine the real date of the employment termination; and (ii) increase his/her seniority benefits**.

The Official Gazette of June 15 published Presidential Decree N° 9,048 by which the *Partial Amendment of the Decree with Status, Value and Force of Law of the Regime for the Provision of Housing and Habitat* was stated. Among the main amendments besides the establishment of mortgage loans granted with the resources of the funds referred in this Decree, **banks and financial institutions will be obliged to use their own assets to grant such loans for the building, acquisition, enlargement and remodeling of the primary homes of the**

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beneficiaries of the Obligatory Saving Fund for Housing (“FAOV”). Also, there have been amendments regarding the sanctions imposed to employers (Article 91) regarding the: (i) failure to registry of beneficiaries to the FAOV; (ii) delay in payments owed to the FAOV; and (iii) failure to notify changes in their payroll. **Monetary sanctions will apply** and may span from one (1) to a hundred (100) tax units **and in some cases the commercial establishment of the employer might be temporally closed**. There have been **other modifications** in the sanctions imposed to financial institutions (Article 92) and other sanctions common to all parties involved in the FAOV (Article 93). This Decree **supersedes** the Decree with Status, Value and Force of Law of the Regime for the Provision of Housing and Habitat published in the Special Official Gazette N° 5,867 dated November 28, 2007, and will be effective as of its publication in the Official Gazette.

The President of the Republic issued Decree N° 9,053, by which he issued the *Decree with Status, Value and Force of Special Law of the National Fund of Termination Benefits*. **The purpose of the Decree is to create the “Termination Benefits National Fund Program”**, under which the conditions for the receipt and administration of the deposits corresponding to the guarantee of the termination benefits of the workers in financial institutions of the banking sector that constitute the Public Bank, are established. The Decree was effective as of the date of its publication in the Official Gazette.

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The Official Gazette of June 11 published *Ruling N° FSAA-001618, issued by the Superintendency of the Insurance Activity, according to which, the general*

conditions of the bond contract with State enterprises were established. The Ruling establishes that **insurance companies must use the wording therein approved in the issuance or amendments of bond contracts executed with organisms or State contracting entities**. Finally, the Ruling **supersedes** Communication N° SAA-2-3-4596-2012 of March 29, 2012.

Criminal

The Presidential Decree N° 9,042 was published in the Official Gazette of June 15, which refers to the *Decree with Status, Value and Force of Law of the Criminal Procedural Organic Code*, which presents, as its **most relevant differences –with respect to the former Code of 2009–** the following: (i) the effects of the pardon and amnesty are established, which provision was not included in the former Code; (ii) the current Code increases the premises of exclusion, totally or partially, of the criminal action dispensability, limiting this action to the crimes of intentional homicide, rape, crimes against children and teenagers, kidnapping, corruption, among other crimes not established in the former Code; (iii) the limit of the sentence in order that the imputed may request the conditional suspension of the process when completing eight (8) years of the sentence, and (iv) the limit of the penalty is increased for the petition of work out of the establishment (to one half); open regime (to two thirds); and conditional freedom (to three fourths). **This Decree will be effective as of January 1, 2013, except for the special provisions therein indicated**. The Decree **supersedes** the Organic Criminal Procedural Code published in the Special Official Gazette N° 5,930 dated September 4, 2009.

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MOBILIZATION OF RAW MATERIALS - FOOD

The Resolution DM/N° 25-12 issued by the Ministry of the People's Power for Nourishment was published in the Official Gazette of June 21, and it establishes the guidelines and criteria that are applicable for the issuance of the guide of mobilization, follow up and control of conditioned raw materials, and of conditioned food products, transformed or completed, destined to the commercialization, human consumption and animal consumption with direct incidence in the human consumption in the national territory (the "Sole Guide"). The Sole Guide **must be requested** before the National Superintendency of Silos, Warehouses and Agricultural Deposits **by all those individuals or corporations, public or private that perform activities of mobilization of conditioned raw materials or of finished food products, destined to the commercialization, human consumption and animal consumption with direct incidence in human consumption.** The Resolution was effective as of its publication in the Official Gazette, and **supersedes** Resolution N° DM/N° 022-12 dated May 30, 2012, published in the Official Gazette N° 39,938 dated June 6, 2012, which **superseded** Resolution N° DM/N° 020-11 dated May 26, 2011, published in the Official Gazette N° 39,683 dated May 27, 2011.

EXPROPRIATION – APPRAISAL

Presidential Decree N° 9,050 which issued the Decree with Status, Value and Force of the Law for the Determination of the Price of Appraisal for Real Property in the Case of Expropriation and Emergency for Purposes of Populate and

Habitat was published in the Official Gazette dated June 15. The purpose of the same is to establish the **procedure to determine the appraisal of real property to be acquired by the State of Venezuela, in those cases of expropriation for emergency reasons, foreseen in the law that governs the emergency of lots and housing.** According to what is established in the Decree, the basis of calculation to determine the appraisal will be the last value of purchase indicated in the corresponding deed of property duly recorded, except in the case that the record has a date of less than one (1) year, as of the moment of the commencement of the expropriation, in which case, the basis of calculation will be the last recorded transaction. The Decree will be effective as of the date of its publication in the Official Gazette.

Presidential Decree N° 9,052, which contains the Decree with Status, Value and Force of the Law that Promotes and Regulates the New Means of Joint Associations between the State, the Community Initiative and the Private Initiative for the Development of the National Economy, was published in the Official Gazette of June 15. The purpose of the Decree is to normalize new association means of transition to socialism. The Decree establishes that the State, jointly with the private initiative, will promote the creation of new means of association, establishing a minimum share participation of forty (40%) to the State. **The Decree regulates the composition, acknowledgment, operation and daily activity of the new association means of the State, such as strategic alliances, joint companies and conglomerates.** The Decree will be effective as of the date of its publication in the Official Gazette.

The President of the Republic issued the *Decree N° 9,041 which creates the Decree with Status,*

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Value and Force of the Organic Law of Public Properties. **The purpose of the Decree is to establish the norms that will regulate the scope, organization, attributions and operation of the System of Public Properties, as an integral part of the System of Financial Administration of the State.** The Decree was published in the Official Gazette of June 15 and will be effective as of that date.

The Official Gazette of June 1 published the *Law of Control for the Integral Defense of the Air Space*, which establish the **norms that regulate the control for the defense of the continental, insular and maritime air space of the national territory**, in the exercise of its sovereignty, and in attention of the highest security interests and overall defense, for imposing actions of interception, persuasion and deactivation of every aircraft or object which, not being an aircraft, breaches the provisions of air transit. **The law is applicable to all those aircrafts, and objects not being an aircraft, traveling through the continental, insular or maritime air space of the national territory.** This law

will be effective as of ninety (90) days of its publication in the Official Gazette.

The Ministry of the People's Power for Commerce issued Resolution N° DM-054 by which it regulates the service of parking or public garages. The purpose of the resolution is to regulate the service of parking or public garages meant to the receipt, storage and custody of motor driven vehicles, **fixing the maximum tariffs that shall be charged to the persons using such services.** Exempted from this Resolution are the five stars hotels' parking spaces and mechanical structural parking machines and concessionaries for the safekeeping of vehicles to the order of the authorities of the National Institute of Transit and Land Transportation ("INTTT"). **The charge of tariffs over the ones established** is forbidden, and **will be fined** in accordance with the provisions of the Law for the Defense of Persons in the Access to Goods and Services. This Resolution was published in the Official Gazette of June 4, date on which it became effective.

Caracas, July 13, 2012

*NOTE: THIS NEWSLETTER SHOULD NOT BE CONSTRUED AS LEGAL ADVICE ON ANY SPECIFIC MATTER AND ITS CONTENT ARE INTENDED AS A MANAGEMENT ALERT AS TO CURRENT DEVELOPMENTS IN VENEZUELA, ANY SPECIFIC LEGAL QUESTIONS REGARDING THE POSSIBLE APPLICATION OF NEW OR PROPOSED LEGISLATION TO PARTICULAR SITUATIONS SHOULD BE ADDRESSED TO TRAVIESO EVANS ARRIA RENGEL & PAZ.