

TRAVIESO EVANS ARRIA RENGEL & PAZ

VENEZUELAN LEGAL AND ECONOMIC NEWSLETTER

JUNE 2011

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TEHAR

Caracas

Edificio Atlantic, Piso 6,
Avenida Andrés Bello,
Los Palos Grandes.

Maracaibo

Unicentro Virginia, Piso 2,
Local
2-12. Avenida 3C con
esquina calle 67, Sector La
Lago.

Valencia

Torre Movilnet, Piso 7,
Oficina
No. 3. Avenida Paseo
Cabriales.

Puerto la Cruz

Torre Banco Venezolano
de Crédito (BVC), Piso 6,
Oficina 6-J, Avenida
Intercomunal,
Sector Las Garzas.

Maturín

Centro Comercial
Petroriente (CCP), Nivel
Oficinas 1,
Oficina 01-N, Ala Norte
Pasillo Amarillo,
Avenida Alirio Ugarte
Pelayo.

Introduction

The most relevant news of June was centered in the announcement of President Chavez' illness, which maintained the country in a certain degree of anxiety, as well as measures for saving and efficient use of electric energy, which have again forced companies and residential users to adopt a series of measures tending to the reduction of consumption of electricity.

Energy

The Ministry of the Popular Power for Electric Energy published the following Resolutions in Official Gazette No 39.694 dated June 13, 2011:

(i) **Resolution N° 73**, with the purpose of regulating and promoting the rational and efficient use of energy in the advertising systems contained in illuminated advertising signs and billboards This Resolution prohibits the use of incandescent lamps and light bulbs and limits the continuous use of outdoor advertising to the hours from 7:00 PM to 12:00 M. Drugstores, health centers, and security facilities are exempted from this restriction.

(ii) **Resolution N° 74**, with the purpose of promoting the efficient use of electric energy in all of the national territory and furthering reduction of excess monthly consumption by residential users. This Resolution provides for incentives (penalties and discounts) offered to residential users and to be applied to their monthly bills, using as a parameter the higher value between the consumption invoiced in the same month and the average monthly consumption invoiced, both referred to year 2009. Said incentives will be applied as from July 15, 2011, as follows:

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Residential Users

Should consumption not be reduced:

By 10%

Increase ranging from 10% to 20 %

Increase by more than 20%

Penalties

Calculated on the basis of the monthly invoice

75,00%

100,00%

200,00%

Residential Users

Discount

Should consumption be reduced:

Between 10% and 19.99 %

20% or more

Calculated on the basis of the monthly invoice

25,00%

50,00%

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(iii) **Resolution N° 75**, with the purpose of improving the power factor of industrial, commercial, and governmental users, with charges higher than or equal to two hundred Kilovoltamperes (200 kVA), in order to reduce voltage drops and increase power availability in the electric network. The users from the industrial, commercial, and governmental sectors with charges exceeding 200 kVA that fail to maintain a factor equal to or higher than 0.9 will be subject to a surcharge in their monthly invoicing to be calculated according to a formula established in the Resolution.

(iv) **Resolution N° 76**, whereby the following is established: (i) the obligation of companies of the private sector that exceed an assigned demand contracted of one Megavoltampere (1 MVA) to take actions to maintain a reduction of their power consumption of at least 10% with respect to the higher value between the consumption invoiced in the same month and the average monthly consumption invoiced, both referred to year 2009. In the event of failure to perform said obligation, a 10% surcharge will be applied to the corresponding monthly invoice and a 5% surcharge will be applied in case of repeated nonperformance;. (ii) the obligation of companies from the private sector with charges ranging between Two Hundred Kilovotampere (200 kVA) and One Megavoltampere (1 MVA) to take actions to maintain a reduction of their power consumption of at least 10%, with respect to the higher value between the consumption invoiced in the same month and the average monthly consumption invoiced, both referred to year 2009 and (iii) the obligation of institutions of the private sector to operate auto-generation systems during the hours of highest power consumption nationwide. The services of medical attention, distribution

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of hydrocarbons, public transportation, telecommunications services, schools, universities, among others, are exempted from meeting the aforesaid targets.

(v) **Resolution N° 77**, with the purpose of establishing a group of technical and administrative measures in order to achieve the rational and efficient use of electric power by public entities. The measures prescribed by said resolution include: (i) the creation of a group of “electric energy management” within each agency or entity of the Public Administration with the purpose of supervising and following up the measures established for reduction of power consumption at public entities, and (ii) the performance

of activities and measures related to adjustment of thermostats, replacement of refrigerating equipment with over 15 years of existence, prohibition against using incandescent or halogen light bulbs and lamps and the replacement of the same by energy saving bulbs, among others.

In the Official Gazette of June 20 a resolution of the Ministry of the Popular Power for Oil was published; in the resolution an area of 4,842.75 square kilometers called Mantecal located in the Municipalities of Achaguas, Muñoz and Rómulo Gallegos of the State of Apure and the Arismendi Municipality of the State of Barinas is established for PDVSA Petroleo, S.A.’s primary activities of hydrocarbons governed by the Organic Law of Hydrocarbons.

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Banking and Finances

The Superintendence of the Institutions of the Banking Sector, issued the Norms referring to the Registration of the Persons in charge of performing the External Audits of the Institutions of the Banking Sector, which were published in the Official Gazette of June 1. The Resolution establishes the requisites that are necessary for the registration, and it is indicated that the Registry Certificate will be valid for three years.

The National Superintendency of Securities issued the Norms concerning the Management and Supervision of the risks associated with the crime of Legitimation of Capitals and Finance of Terrorism, applicable to the Institutions regulated by the National Superintendency of Securities, which were published in the Official Gazette of June 8. The purpose of the norms is the establishment of policies, norms and procedures that must be adopted to prevent the Legitimation of Capitals and Finance of Terrorism, in order to avoid that securities subject of public offerings, stock exchanges, authorized security operators, etc. be used as an instruments to legitimate capital and finance terrorism. The norms

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establish that the subjects under obligation should have a “Compliance Officer”, a “Prevention and Control Committee” and a “Unit of Prevention and Control” which shall be the technical body related to the prevention of both crimes.

The Venezuelan Central Bank published an official notice in the Official Gazette of June 9, which establishes the interest rates for the seniority benefit (18.17% and 16.64%), for the purchase of vehicles under the modality of balloon installment (18.71%) for credit card transactions (29% and 17%) and for operations related to the tourism sector (12%).

In the Official Gazette of June 13 the Special Law of Complementary Indebtedness for Tax Year 2011 was published. The law defined the amount of indebtedness in Bolivares that the Republic may assume through operations of public credit in excess of the maximum amount foreseen in the Special Law of Yearly Indebtedness for Tax Year 2011. The authorized amount shall be specifically used in the scope of social investment, financing of the housing missions and attention to natural disasters.

The Regulations on the Electronic Clearing House System that had been published in the Official Gazette of May 31, 2011 were republished due to printing errors in the Official Gazette of June 14.

The Constitutional Chamber of the Supreme Tribunal of Justice, through a decision published in the Official Gazette of June 16, ordered the non application of article 213 of the Law of Institutions of the Banking Sector, relative to penalties and fines that would be imposed on those persons incurring in the appropriation or diversion of sources to defraud an institution of the banking sector.

Resolution N° 11-06-01 issued by the Venezuelan Central Bank (VCB) was published in the Official Gazette of June 30. Such resolution reduces the reserve that banking institutions must maintain in the VCB by three percentage points, provided that the resources thereby freed are used to purchase instruments issued in relation to the Housing Mission.

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Taxes

The SENIAT published in the Official Gazette of June 14, Ruling No. SNAT/2011/0040, 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 Venezuelan Central Bank for May 2011 is 20.77%, which rate is to be increased 1.2 times for the calculation of late payment interest accrued during May 2011.

Labor

The Official Gazette of June 17 published the Norms for the Issuance and Access to the Payment Orders of the Venezuelan Institute of Social Security (VISS). Said norms establish that as of July 2011, the VISS shall issue, solely and exclusively through the www.ivss.gob.ve web site, all invoices for mandatory social security contributions. These invoices shall be available to the employers on the web site during the first seven (7) days of each month following the quoted period. Invoices arising from VISS since April 2008, may also be obtained through the web site.

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Insurance

The Official Gazette of June 13 published the amendment of the Norms for Prevention, Control and Supervision of the Crimes of Legitimation of Capitals and the Financing to Terrorism in the Insurance Sector, which have the purpose of mitigating the risk that insurance companies be used as instruments for the legitimation of capitals and financing of terrorism. These norms establish a series of policies that insurance companies, as well as their intermediaries, must implement with respect of their clients to determine irrefutably the economic activities in which they are engaged, as well as their financial profile.

Ruling N° 000825 issued by the Superintendency of the Insurance Activity was published in the Official Gazette of June 14. This Ruling contains the norms that will govern the insurance companies in the creation and maintenance of the reserve for reimbursement due to favorable experience (*technical reserve*) corresponding to those contracts in which the payment of said reimbursement has been agreed.

The Official Gazette dated June 23, published Ruling N°000824 issued by the Superintendency of the Insurance Activity related to the Norms that will govern insurance companies and insurance brokerage

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companies in the preparation of the fee rates, bonus and stimulation plans to compensate management of intermediaries in the insurance activity. The bonus and stimulation plans must be established per calendar year and be submitted for the approval of the Superintendency of the Insurance Activity before November 1 of the foregoing calendar year.

Miscellaneous

By means of a Resolution published in the Official Gazette of June 6, the Ministry of the Popular Power for Transportation and Communications established the tariffs to which the port services provided to individuals and corporations in public ports of public use managed by the State will be subject. The Resolution establishes that the tariffs must be paid before the cargo is withdrawn from the port, except in those cases in which the competent authorities have granted credits. The tariffs are established in US Dollars according to international standards, but must be paid in local currency at the rate of exchange established by the VCB. This Resolution shall enter into force simultaneously with the Decree with Rank, Value and Legal Force of the Law of Port Tariffs published in the Official Gazette of May 25 which entered into force on June 24.

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The Official Gazette of June 15 published the Decision of the Constitutional Chamber of the Supreme Tribunal of Justice which temporarily suspends the application of articles 13.3, 16.2 and 22 of the Penal Code relative to the submission to the surveillance of the public authority as an accessory fine to prison.

The Ministry of the Popular Power for Interior Relations and Justice published in the Official Gazette of June 16, Resolution N° 150 which contains the Norms for the Prevention, Control and Supervision of the Operations of Legitimation of Capitals and Finance to Terrorism applicable to Registries and Notary Offices. Such norms establish a series of procedures that the different registries and notaries must implement to avoid the registration or notarization of acts or businesses that tend to legitimate capitals. Also, an Integral System of Control and Prevention of Capitals which will be in charge of employees and officers of the Autonomous Service of Registries and Notaries (SAREN) is created.

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Caracas, July 12, 2011.

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NOTE: THIS NEWSLETTER SHOULD NOT BE CONSTRUED AS LEGAL ADVICE ON ANY SPECIFIC MATTER, AND ITS CONTENTS 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.

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