

Energy

On August 19, 2011, *Petróleos de Venezuela S.A.* (“PDVSA”) and *Petrochina* executed the Agreement for the Development of the Project and Establishment of the mixed company (PDVSA-40% and *Petrochina*-60%) that will be in charge of the development of the future *Nanghai* refinery, in *China*, projected to operate in early 2015, with a capacity to process 400 thousand barrels of petroleum per diem from the *Orinoco Oil Basin*.

On July 19, 2011, the company *Koch Minerals Sàrl* and *Koch Nitrogen International Sàrl* filed a request for arbitration against *Venezuela* with the *International Centre for Settlement of Investment Disputes* (“*ICSID*”), because of the nationalization of the company *Fertinitro*, in which *Koch* had a majority interest. The process is pending the constitution of the arbitral tribunal.

Banking and Finances

The *National Assembly* published a statement endorsing the decision of *President Chávez* and the *Venezuelan Central Bank* to repatriate to *Venezuelan territory* the gold bullion currently held in foreign banks and to transfer the operating reserves to financial institutions of countries with emerging economies that have showed a sustainable economic growth.

The *Superintendency of Institutions of the Banking Sector* (“*SUDEBAN*”) issued the rules relating to the process of intervention of the

institutions that operate in the *Venezuelan banking sector* and connected legal persons. The purpose of these rules is to regulate the process of intervention of the entities that operate in the banking sector. They are contained in *Resolution N° 209-11*, published in *Official Gazette* of August 9, 2011.

The *Fund for Social Protection of Bank Deposits* (*Fondo de Protección Social de Depósitos Bancarios*, “*FOGADE*”) issued *Ruling N° 082*, whereby it established the *Rules for Liquidation of Institutions of the Banking Sector and Related Legal Persons*. The *Ruling* was published in *Official Gazette* of August 23, 2011. These rules regulate the matters relating to the methods and procedures for calculation, qualification, and payment of obligations, payment of termination benefits to the personnel, transfer of assets, liabilities, and properties. The *Ruling* repeals the earlier rules on liquidation of institutions of the banking sector and related legal persons published in *Official Gazette* of January 26, 2011.

Through an unnumbered *Resolution* published in *Official Gazette* of August 2, 2011, the *Ministry of the Popular Power for Housing and Habitat* corrected, due to error, *Articles 1, 4, 5, and 7* of *Resolution N° 103*, published in *Official Gazette* of July 19, 2011, which establishes the financing conditions that will govern the granting of credits for the acquisition of principal family dwelling units.

Through *Official Notice* published in the *Official Gazette* of August 9, 2011, the *Venezuelan Central Bank* established the interest rates for the calculation of the indemnity for seniority (18.51% and 16.52%), the interest rate for the

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acquisition of vehicles under the “balloon payment” method (18.51%), the interest rates for transactions with credit cards (29% and 17%); and the interest rates for credit transactions intended for the tourism sector (12% and 9%).

The Instructions for the granting of credits for self-construction, enlargement or improvement of principal family dwelling units were issued through Resolution N° 121 of the Ministry of the Popular Power for Housing and Habitat, published in Official Gazette of August 3, 2011.

The President of the Republic ordered to reprint, due to errors, Presidential Decree N° 8.330, whereby the Decree with the Status, Value, and Force of Law of the Banco Agrícola de Venezuela, C.A. was issued. This Decree contains the statutory provisions that govern the Banco Agrícola de Venezuela (“BAV”) and was published in Official Gazette of August 19, 2011. The Decree repeals Decree N° 6.242, with the Status, Value and Force of Law of the Banco Agrícola de Venezuela dated July 22, 2008, published in Official Gazette Extraordinary N° 5.891 of July 31, 2008.

The Decree with the Status, Value, and Force of Law of Partial Amendment to the Organic Law on Financial Administration of the Public Sector was published in Official Gazette of August 23, 2011. The Decree-Law is applicable to (i) the Republic, the States, the Metropolitan District, the Districts, and the Municipalities; (ii) autonomous institutes; (iii) State legal persons of public law; (iv) corporations in which the State holds at least fifty percent (50%) of the stock ownership; (v) corporations in which State-owned companies hold fifty percent (50%) of the stock ownership; (vi) foundations, civil associations, and institutions organized with public funds. The interpretation of “ordinary

revenues” and “extraordinary revenues” was modified in the amendment, the former being understood as those generated on a permanent basis during the economic year and the latter being understood as those generated irregularly, even if the period of their existence covers several economic years. Likewise, the numbers relating to “current revenues”, “capital revenues”, “total revenues”, and “recurring revenues” were deleted.

Through Resolution N° 233.11, published in Official Gazette of August 23, 2011, SUDEBAN issued the rules relating to the mechanisms for allocation of resources for financing the projects of Communal Councils or other forms of social organization. The Resolution is applicable to all banks and institutions regulated by SUDEBAN. The rules contained in said Resolution establish the institutions’ obligation to allocate five percent (5%) of the “gross result before tax” of the six-month fiscal period ended to the Autonomous Service of National Fund of the Communal Councils (*Servicio Autónomo Fondo Nacional de los Consejos Comunales*, “SAFONACC”), within thirty (30) days following the end of said fiscal period. The institutions subject to these rules must notify the making of the contribution to SUDEBAN within a period of time not exceeding five (5) business days following the date when the contribution was made.

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Ruling No. SNAT/2011/0050 of the SENIAT was published in the Official Gazette of August 16, 2011. This Ruling informs 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 July 2011 is 20.41%, which rate is to be increased 1.2 times for the calculation of late payment interest accrued during July 2011.

The Organic Law on Sports, Physical Activity, and Physical Education was published in Official Gazette of August 23, 2011. The purpose of the Law is to establish the bases for physical education and to regulate the promotion, organization, and administration of sports and physical activity as public services. The Law provides for the creation of the *Fondo Nacional para el Desarrollo del Deporte, la Actividad Física y la Educación Física* (National Fund for Development of Sports, Physical Activity, and Physical Education), which will be formed by the contributions of the companies or other public and private organizations that carry out economic activities in the country for profitable purposes; the donations and any other extraordinary contribution made by the Republic, the states, the municipalities, or any public or private entity, and the yield on such funds. The Law establishes that the companies or other organizations with an annual net profit or accounting profit exceeding 20,000 Tax Units (currently equivalent to Bs. 1,520,000) must contribute one percent (1%) of said annual net profit or accounting profit in accordance with the parameters defined by the Regulations to the Law, which have not yet been promulgated. Fifty percent (50%) of the contribution may be used by the companies for execution of their own projects aimed at the development of physical activities and for sponsorship of sports, provided that the guidelines of the National Institute of Sports (*Instituto Nacional del Deporte*) are met. According to the Law, the contribution may not be taken as a tax deduction or rebate. Article 80 of the Law penalizes the failure to perform the

obligation to make the contribution with double the amount of the contribution owed and in case of repetition of the failure, the penalty will be triple the amount of such contribution. Notwithstanding general provisions in the Organic Tax Code, Temporary Provision Eighth of the Law establishes that the contribution will be applicable from the publication of the Law in the Official Gazette of the Bolivarian Republic of Venezuela and that during its first year of effectiveness, taxpayers must make the relevant contribution in proportion to the number of months of effectiveness of the Law, in accordance with the dates of commencement and end of their respective fiscal years. This Law repeals the Law on Sports published in Official Gazette, Extraordinary, dated September 25, 1995.

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The pre-existence of any condition not declared at the time of execution of the relevant contract does not exempt insurance companies or companies that provide prepaid medical services from the obligation to provide the medical services required by virtue of said not declared or undiagnosed circumstance. This standard was established in a decision of the Political-Administrative Chamber of the Supreme Tribunal of Justice dated July 21, 2011 according to which said companies are under the obligation to make the medical examinations that are necessary in order to ascertain the existence of diseases at the time of executing the relevant contract.

The President of the Republic, through Presidential Decree N° 8.412, published in Official Gazette of August 24, 2011, issued the Partial Regulations to the Decree with the Force

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of Law on Fire Departments and Administration of Emergencies of a Civil Nature concerning the National Fund of Firemen and Administration of Emergencies of a Civil Nature. The Decree establishes the obligation of insurance companies to make a contribution to the National Fund of Firemen and Administration of Emergencies of a Civil Nature equivalent to one percent of the amount of the insurance premiums received by the insurance companies in the line of fire. The insurance companies must pay the contribution within five (5) business days following the receipt of the amount of the insurance premiums received in the line of fire. Likewise, the National Fund of Firemen and Administration of Emergencies of a Civil Nature will create a registry of insurance companies in the line of fire and of any other activity connected with the fire department services, in coordination with the Superintendency of the Insurance Activity.

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Resolution N° 2011-0043 of the Supreme Tribunal of Justice was published in Official Gazette of August 11, 2011. The Resolution establishes that all cases being heard by the courts of the Republic will be suspended and the procedural periods of time will not pass during the period of time from August 15 up to and including September 15, 2011. The Courts of First Instance for Criminal Matters will work in shifts. Finally, it will be permitted to work in all of the days of the aforesaid period in the cases of actions for protection of constitutional rights (*amparo constitucional*), and the judges will be under the obligation to process and deliver judgment on the relevant proceedings. The Constitutional Chamber of the Supreme Tribunal of Justice will also be on duty during the judicial holidays.

Through Decision N° 1.472 of August 11, 2011, the Constitutional Chamber of the Supreme Tribunal of Justice stated that “in urgent and necessary cases” the police bodies in charge of criminal investigations are legally empowered to begin the investigation and notify it later to the Prosecutor’s office. This action will be deemed to be valid and not constitute a defect of the actions taken prior to said notification.

Ruling N° DG/2011/C-0007 of the Central Planning Commission of the National Contracting System was published in Official Gazette of August 30, 2011. Said Ruling establishes the obligatory use of the Electronic System of Performance Assessment by the subjects indicated in article 3 of the Public Contracting Law, which system was implemented in the web site of the National Contracting Service (www.snc.gob.ve) for the automated loading of performance reports on the performance of contracts. The subjects indicated in article 3 of the Public Contracting Law are the following: (i) Agencies and entities of the National, State, Municipal, Central and Decentralized Governmental Authorities; (ii) Public Universities; (iii) the Venezuelan Central Bank; (iv) Corporations and civil associations in which the Republic and the legal persons referred to in the foregoing numbers have an interest equal to or higher than fifty percent (50%) of the respective equity or stock capital; (v) Corporations and civil associations in which the corporations and civil associations referred to in the preceding number have an interest equal to or higher than fifty percent (50%); (vi) Foundations organized by any of the persons referred to in the foregoing numbers or foundations in the administration of which the persons referred to in the foregoing number have a majority interest, and (vii) Communal Councils or any other

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community organization that manages public funds.

Caracas, September 14, 2011.

NOTA: ESTE BOLETIN INFORMATIVO NO DEBE INTERPRETARSE COMO UNA ASESORÍA LEGAL EN ASUNTO ESPECÍFICO ALGUNO Y SU CONTENIDO TIENE EL FIN DE SERVIR COMO UN AVISO GERENCIAL EN CUANTO A LOS SUCESOS ACTUALES EN VENEZUELA. CUALQUIER PREGUNTA LEGAL RELACIONADA CON LA POSIBLE APLICACIÓN DE UNA NUEVA LEGISLACIÓN O DE UNA LEGISLACIÓN PROPUESTA A UN ASUNTO ESPECÍFICO DEBE DIRIGIRSE A TRAVIESO EVANS ARRIA RENGEL & PAZ.

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