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EBD/89/222

July 17, 1989

To: Members of the Executive Board  
From: The Secretary  
Subject: Colombia - Inquiry Under Article VIII, Section 2(b)

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by noon on Monday, July 24, 1989. In the absence of such a request, the draft decision that appears on page 3 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Mr. Elizalde (ext. 7796) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:  
Department Heads



INTERNATIONAL MONETARY FUND

Colombia: Inquiry under Article VIII, Section 2(b)

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations  
Department and the Western Hemisphere Department)

Approved by François Gianviti

July 14, 1989

In connection with an action pending in a U.S. court, counsel for one of the parties has requested a certification whether Articles 2, 4, 5, and 6 of Colombia's Decree-Law No. 444 of March 22, 1967 are maintained or imposed consistently with the Fund's Articles of Agreement.

Attachments A and B contain the letters requesting the certification, and the English translation of the provisions in question.

This inquiry is made under Article VIII, Section 2(b) of the Fund's Articles of Agreement, the first sentence of which reads as follows:

"Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member." 1/

Pursuant to this provision, the Executive Board adopted Decision No. 446-4, on June 10, 1949, in which it is stated that:

"The Fund will be pleased to lend its assistance in connection with any problem which may arise in relation to the foregoing interpretation or any other aspect of Article VIII, Section 2(b). In addition, the Fund is prepared to advise whether particular exchange control regulations

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1/ For more detailed discussions of this provision, see "Legal Effects of Approval or Nonapproval of Exchange Restrictions by the Fund," EBS/88/13 (1/28/88) and "Statement by the General Counsel on Legal Effects of Approval or Nonapproval of Exchange Restrictions by the Fund," Executive Board Seminars 88/5 and 88/6 (6/3/88), Buff document 88/94 (5/16/88).

are maintained or imposed consistently with the Fund Agreement." 1/

For purposes of Article VIII, Section 2(b), the relevant question is whether the exchange control regulations subject of the inquiry are consistent with the Fund's Articles of Agreement at the time the contract in dispute is sought to be enforced. Accordingly, unless for a particular reason the inquiry otherwise specify, the Fund's practice is to base its answer on the current text and implementation of the regulations. 2/

The legal provisions subject of this inquiry are exchange control provisions and "exchange control regulations" for the purposes of Article VIII, Section 2(b), insofar as they regulate the acquisition, holding, or use of exchange as such.

1. Article 2 of Colombia's Decree-Law No. 444 provides that all foreign exchange transactions corresponding to payments for services and transfers of capital shall conform with the provisions of Chapters VII and VIII of the same Decree-Law.

(a) Chapter VII establishes, inter alia, that, unless otherwise authorized by the Monetary Board, all foreign exchange income from services shall be surrendered to the Bank of the Republic at the prevailing exchange rate. Other provisions of that chapter subject international payments for services to the approval of the Monetary Board, which has established conditions and limitations for the granting of such approvals.

Regulations requiring the surrender of foreign receipts do not restrict the making of payments and transfers for current international transactions. They can be maintained by members without the approval of the Fund, and are consistent with the Fund's Articles of Agreement.

The regulations applying to the payment for services, insofar as they restrict payments for current transactions, are being maintained by Colombia under the transitional arrangements under Article XIV, and thus are consistent with the Fund's Articles of Agreement.

(b) Chapter VIII of Decree-Law No. 444 establishes a series of controls on inward and outward capital movements. Fund members may exercise such controls as necessary to regulate international capital movements, provided that they do not restrict payments for current transactions or unduly delay transfers of funds in settlement of commitments. With the exception of taxes on profit and income

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1/ Selected Decisions, Thirteenth Issue, pp. 290-91.

2/ See EBS/88/13, pp. 51-53 and Buff document 88/94 (5/16/88).

remittances which give rise to multiple currency practices that are subject to approval by the Fund under Article VIII, the capital control measures implemented by Colombia under Chapter VIII of Decree-Law No. 444 are consistent with the Fund's Articles of Agreement.

The multiple currency practices resulting from taxes on profit and income remittances have not been approved by the Fund, and, therefore, are inconsistent with the Fund's Articles of Agreement.

2. Articles 4 and 5 of Decree-Law No. 444 establish and broadly specify the obligation to surrender all incoming foreign exchange to Colombia's Central Bank. As already mentioned, to the extent that these measures only require the surrender of foreign exchange, their imposition or maintenance by Colombia do not require the approval of the Fund and are consistent with the Fund's Articles of Agreement.

3. Article 6 of Decree-Law No. 444 establishes the general category of items for which foreign exchange may be acquired for payments abroad. Although the provision itself does not contain anything that can be considered inconsistent with the Fund's Articles of Agreement, its implementation has involved restrictions in the form of a comprehensive foreign exchange budget and of a multiple currency practice arising from an advance deposit for import payments. These restrictions have not been approved by the Fund, and are, therefore, inconsistent with the Fund's Articles.

In view of the facts and conclusions set out above, the following decision is proposed for adoption by the Executive Board:

"The General Counsel is authorized to transmit  
the letter contained as Attachment C to EBD/89/222."

Law Offices of  
PAUL, LANDY, BEILEY & HARPER, P.A.  
Penthouse, Atico Financial Center  
200 Southeast First Street  
Miami, Florida 33131

May 5, 1989

FEDERAL EXPRESS

François Gianviti, Esq.  
General Counsel  
Legal Department  
International Monetary Fund  
700 19th Street, N.W.  
Washington, D.C. 20431

Re: Behar v. SunBank/Miami, N.A.  
Our File No. 18446 - 89

Dear Mr. Gianviti:

We represent Sun Bank/Miami, N.A. ("Sun Bank") in a litigation action currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, styled Sami Behar v. SunBank/Miami, N.A., et al., Case No. 86-39776. One of the primary issues in this litigation is whether the conduct of the Plaintiff which occurred from December 1, 1981, to August 1, 1982, violated certain exchange control laws of Colombia. The cause is currently set for jury trial for the two week period commencing July 31, 1989, so time is of the essence.

In connection with said litigation, we hereby request a certification advising whether, pursuant to Article VIII, Section 2(b), the exchange control regulations of Colombia set forth in Law 444 of March 22, 1967 is "maintained or imposed consistently with" the agreement.

If there has been a previous certification issued by the International Monetary Fund ("IMF") with regard to this particular Colombian law for the period in question, we would be more than glad to accept same in lieu of a de novo certification. As such, we would respectfully request that you search your files to determine whether there have been any such prior certifications which would be applicable under these circumstances. We assume that if you should locate such a certification, the IMF would simply re-certify it to our attention.

François Gianviti, Esq.  
May 5, 1989  
Page 2

If a de novo certification is required, we would respectfully request that said certification be accomplished as soon as is reasonably possible under the circumstances, as we are somewhat short of time.

Should you have any questions or require any additional information, please do not hesitate to call me.

Thank you.

Sincerely yours,

PAUL, LANDY, BEILEY  
& HARPER, P. A.

/s/  
SHERRY C. DICKMAN

SCD:mid  
889-283

Law Offices of  
PAUL, LANDY, BEILEY & HARPER, P.A.  
Penthouse, Atico Financial Center  
200 Southeast First Street  
Miami, Florida 33131

May 22, 1989

VIA FAX

François Gianviti, Esq.  
General Counsel  
Legal Department  
International Monetary Fund  
700 19th Street, N.W.  
Washington, D.C. 20431

Re: Behar v. SunBank/Miami, N.A.  
Our File No. 18446 - 89

Dear Mr. Gianviti:

As a follow up to my conversations with Mr. John Surr last week, and my letter of May 5, 1989, please be advised that we are narrowing down our request for certification to Articles 2, 4, 5, and 6 of Colombia Law No. 444 of March 22, 1967 and would respectfully request a certification advising whether these provisions of Law #444 are "maintained or imposed consistently with the Agreement."

We have an emergency hearing before the Judge on Friday, May 26, 1989, and, as such, would like to know whether it would be possible for you to obtain the certification before that date. We would only need for you to fax it or Federal Express it to us, at our expense, of course.

Thank you again for your assistance in this matter.

Sincerely yours,

PAUL, LANDY, BEILEY  
& HARPER, P. A.

/s/  
SHERRY C. DICKMAN

SCD:mid  
FAX: (202) 623-4661  
(202) 623-7491



July \_\_, 1989

Sherry C. Dickman, Esq.  
Paul, Landy, Bailey & Harper, P.A.  
Penthouse, Atico Financial Center  
200 Southeast First Street  
Miami, Florida 33131

Dear Ms. Dickman:

This is in response to your letters of May 5 and 22, 1989, addressed to the Fund, concerning the consistency of Articles 2, 4, 5, and 6 of Colombia's Decree-Law No. 444 of March 22, 1967, with the Articles of Agreement of the International Monetary Fund (hereafter referred to as "the Fund's Articles").

The Fund's advice on the consistency of the above-mentioned provisions with the Fund's Articles is based on the current text and implementation of the provisions. This is in accordance with Article VIII, Section 2(b) which prevents the enforcement of a contract that is contrary to exchange control regulations that are maintained or imposed consistently with the Fund Agreement at the time of said enforcement.

Article 2 of Decree-Law No. 444 provides that all foreign exchange transactions corresponding to payments for services and transfers of capital shall conform to the provisions of Chapters VII and VIII of the same Decree-Law. Chapter VII provides for the surrender to the Bank of the Republic, Colombia's central bank, of all foreign exchange income from services, and subjects the making of those payments to the conditions and limitations that Colombia's Monetary Board may establish. Regulations requiring the surrender of foreign

exchange are imposed or maintained consistently with the Fund's Articles.

The regulations applying to the payment for services, insofar as they restrict payments for current international transactions, are maintained by Colombia under the transitional arrangements under Article XIV of the Fund's Articles, and thus are consistent with them.

Chapter VIII of Colombia's Decree-Law No. 444 establishes a series of controls on inward and outward capital movements. With the exception of taxes on profit and income remittances, which give rise to multiple currency practices imposed by Colombia inconsistently with the Fund's Articles, the capital control measures implemented by Colombia are consistent with the Fund's Articles. Under the Fund's Articles members may exercise such controls as are necessary to regulate international capital movements, provided that they do not restrict payments for current transactions or unduly delay transfers of funds in settlement of commitments.

With respect to Articles 4 and 5 of Decree-Law No. 444, to the extent that they establish and specify the obligation to surrender all incoming foreign exchange to Colombia's Bank of the Republic, they are consistent with the Fund's Articles.

Lastly, Article 6 of Decree-Law No. 444 lists the category of items for which foreign exchange may be acquired for payments abroad. The implementation of this provision has involved restrictions on the making of payments and transfers for current international transactions in the form of a comprehensive foreign exchange budget and of a multiple currency practice arising from an advance deposit for import

payments. Those restrictions have not been approved by the Fund and are, therefore, inconsistent with the Fund's Articles.

Sincerely yours,

François Gianviti  
General Counsel

Attest: (seal)

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Leo Van Houtven  
Secretary

DECREE 444, 1967

Article 2: All foreign exchange transactions shall be controlled in the following manner:

- a) Transactions corresponding to payment of services and transfers of capital shall conform with the provisions of Chapters VII and VIII of this Decree, and,
- b) Ordinary transfers shall be supervised in order to enforce the regulations referred to in the preceding sub-paragraph.

Article 4: Possession and negotiation of gold and foreign exchange shall be regulated by the provisions of this Decree.

With the exceptions herein provided, all incoming foreign exchange shall be sold to the Bank of the Republic or shall be exchanged by this institution for "exchange certificates", as the case may be.

Foreign exchange may be acquired only for economically or socially useful purposes as defined by this Statute, once the covering foreign exchange license has been granted.

Article 5: The rule of the preceding article on the obligation to negotiate foreign exchange with the Bank of the Republic shall be especially applied to the following receipts:

- a) Those resulting from the export of goods and services;
- b) Those earmarked for investments or expenses in the country;
- c) Those originating in activities carried out within the country or in goods located within the national territory; and
- d) Those originating in Colombian capital invested abroad.

Article 6: Within the terms and limitations determined by this Statute, foreign exchange may be acquired for payment abroad of the following items:

- a) Goods whose import has been duly authorized;
- b) Import freights payable in foreign currency;
- c) Crude oil purchased for refining in Colombia, when so authorized under Article 154 below;
- d) Services evidently desirable for the country;

- e) Diplomatic service; payments to international bodies; external debt; and other contractual obligations of the State and the remaining public law entities;
- f) Expenditures in foreign currency as required by the export trade;
- g) Expenses for students abroad;
- h) Service of the external debt of the Bank of the Republic and of the Federación Nacional de Cafeteros de Colombia (Colombian National Federation of Coffee Growers);
- i) Service of foreign loans to private parties;
- j) Remittance of profits and repayment of foreign capital invested in Colombia, and,
- k) Any other items as determined by the Monetary Board for economically or socially useful purposes.

CHAPTER VII

Income and Expenditures Relating to Services

Article 93: The provisions of this Chapter shall be applied to income and expenditures in foreign currency for services such as transportation, insurance, banking, personal services, official and information services, students, tourists and residents, royalties, trade-marks and patents, radio, moving pictures and televisions services.

Article 94: The foreign exchange income from services shall be sold to the Bank of the Republic at the capital market rate, under the terms fixed by the Monetary Board.

In spite of the preceding provision, the Board may authorize enterprises which, due to the nature of their business, have foreign exchange income and expenditures, to deposit said foreign exchange in a foreign currency account subject to periodic liquidation.

Should the balance be favorable, this shall be sold to the Bank of the Republic; if unfavorable, foreign exchange may be acquired in the capital market to cover the short fall.

Article 95: Foreign exchange may be acquired in the capital market for the payment of services which must be paid for in foreign currency.

The Monetary Board shall regulate the amount of such payments and the terms to be met for their approval. The amounts shall be reasonable and every effort should be made to prevent that through such transfers the provisions on the control of the capital movement be infringed.

Article 96: As from the date of this Decree all payments in foreign currency for import, export or coastwise shipping freights shall be made through the capital market.

The Monetary Board shall grant special priority in the foreign exchange budget to items necessary for the payment of import and export freights.

The provisions of this Article shall be applicable to freights paid for reimbursable or non-reimbursable imports, whether official or private.

Article 97: Remittances through the capital market may be authorized for the payment of freights on merchandise going into the free industrial and commercial zone of Barranquilla and into any other similar zones, on the granting of a bond to ensure the return of the value of the freight if the merchandise is re-exported.

Article 98: It shall be the duty of the Banking Superintendent to single out cases where authorization may be granted for the payment of premium in foreign currency on insurance contracts.

Article 99: The insurance companies' remittance applications shall require, before they are handled by the Office of Exchange, the previous authorization of the Banking Superintendent.

The Superintendent shall authorize the remittance applications of insurance companies to their reinsurers abroad only when they arise from automatic or optional reinsurance agreements approved by said official.

For the study of these applications the Superintendent shall take into account the maximum capacity of covering the risk within the country, the maximum quantitative reciprocity abroad and the similarity of the commissions which are usually applied in the reinsurance market.

The Banking Superintendent shall determine the minimum percentage of retention of reinsurance in the country and he may establish exemptions therefrom.

Article 100: If necessary to facilitate foreign trade, the risks on imports of goods into the country may be covered by companies not registered in Colombia, in accordance with regulations that the Banking Superintendent will issue.

Article 101: The registration of contracts in foreign currency for the payment of technical, scientific or artistic services or of services of any nature shall be requested at the Office of Exchange. Said Office shall make the registration provided that:

- a) The cost of the services to be compensated does not exceed the price usually charged for them, and,
- b) The services are socially, economically, technically and culturally useful to the country.

Article 102: [Substituted by Article 6 of Decree-Law 688, 1967, as follows:]

To be entitled to make remittances abroad for royalties, commissions, use of trade-marks, patents and the like, all contracts executed as of this date and all extensions of existing contracts must be registered at the Office of Exchange, once they are approved by a committee [today the Royalty Committee] made up of the following functionaries or their delegates: the Minister of Development, the Head of the [National] Planning Department, the Superintendent of Foreign Trade, the Prefect of Exchange Control and the Head of the Office of Exchange.

The Committee may authorize or reject the registration of the contracts herein referred to, taking into account among others, the following criteria:

- a) Usefulness of the contract for the economic and social development and the relation of that usefulness with the foreign currency outlays that the contract might give rise to;
- b) Possibility of manufacturing the product under similar conditions without a royalty burden by using normal processes applicable for that purpose in accordance with the progress of modern technology and with the development of the national industry;
- c) Public treaties executed by Colombia and international practices prevailing in this field;
- d) Effect of the contract on the balance of payments of the country;
- e) Size of the market to which the products manufactures under the contract might be destined;
- f) Term of validity of the patent.

Paragraph: In no case may a contract be registered that implies the violation of the provisions of this Decree on the transfer of capitals abroad.

Article 103: Remittances for the maintenance of students abroad and of professional or technical personnel who are undertaking training courses in foreign countries shall be made through the capital market.

The remittances to university students sponsored by the Instituto Colombiano de Especialización Técnica en el Exterior (ICETEX) shall be made through the exchange certificate market.

The Government shall regulate the amount and terms of the remittances and of the training courses which may be taken care of by them and shall appropriate the amounts required to provide the Instituto Colombiano de Especialización Técnica en el Exterior (ICETEX) with financial means for the normal progress of its work.

Article 104: Royalties in foreign exchange received by individuals or entities, whether official or private, shall be sold to the Bank of the Republic at the capital market rate.



CHAPTER VIII

Control of Capital

Article 105: The rules of this Chapter shall be applicable to foreign capital investments in Colombia, to foreign currency credits granted to individual or entities residing in this country, and to the investments or loans that the latter may make or grant to individuals or organizations abroad.

SECTION ONE

Investment of Foreign Capital

Article 106: Foreign capital investments in established or in proposed enterprises may be represented by the following:

- a) Import of machinery and equipment covered by non-reimbursable import licenses, as a capital contribution;
- b) Import of foreign exchange for sale to the Bank of the Republic to be invested in national currency as a direct capital contribution or for the acquisition of rights, shares or other valuables, and,
- c) Other, as determined by the National Council of Economic Policy by means of general Resolutions.

Article 107: Any proposed investment of foreign capital in the country shall require the approval of the [National] Planning Department.

Any substitution of the original investment shall likewise be subject to the approval of this Department.

The [National] Planning Department shall study, within the terms fixed by the National Council of Economic Policy, the proposed investments, as the case may be, in accordance with the criteria herein set forth and those laid down by said Council through general Resolutions.

Any applications which have not been resolved within the period fixed by the regulations of the Council shall be regarded as approved [see Article 6 of Resolution 1, 1967].

Article 108: The national Council of Economic Policy may exempt certain types of investments from the requirement of the preceding Article, due to their evident importance for the economic and social development of the country or their small value.

Article 109: The application for approval of foreign capital investments filed for the consideration of the [National] Planning Department shall contain the following data:

- a) Name and domicile of the investor;
- b) Purpose of the investment;
- c) Amount of the investment and, if necessary, the overall value of the project;
- d) Period in which the remittance of profits abroad is expected to start; and
- e) All other data determined by the National Council of Economic Policy through general Resolutions.

Article 110: The National Council of Economic Policy shall determine the criteria to be applied by the [National] Planning Department for the study of the foreign capital investment applications, taking into account the following factors:

- a) Contribution of the investment to the country's employment level;
- b) Net effect of the investment on the balance of payments;
- c) Degree of initial and subsequent utilization of national raw materials and parts or elements manufactured or to be manufactured in this country;
- d) Proportion between the capital imported and the fixed investment requirements and working capital needed by the respective enterprise;
- e) Participation of national capital and national investors;
- f) Degree of competition in the market for the respective product;
- g) Contribution to the process of Latin American integration;
- h) Technical features of the project, its management and administration; and
- i) All other circumstances which the Council may deem desirable to ensure that the investment will conform with the programs of economic and social development and with the advisability of connecting foreign capital to certain activities which cannot be adequately carried out with internal resources only.

Paragraph: Preference shall be given to investments which would result in the increase or diversification of exports.

Article 111: Should the purpose of the foreign investment be to make direct capital contributions to already existing enterprises, the [National] Planning Department shall take into consideration, among the criteria mentioned in the preceding Article, those which would be applicable to this type of investment.

Article 112: The National Council of Economic Policy may determine that projects of special importance for the development of the country be submitted for the consideration of national and foreign investors so that investment proposals may be filed and, among them, the most convenient to the national interests be selected.

Article 113: Foreign capital investments shall be registered at the Office of Exchange, once they are approved by the [National] Planning Department.

The movement of the investments, including additional foreign investments, re-investment of profits entitled to remittance abroad, remittance of profits and capital reimbursement shall also be registered at said Office.

The Office of Exchange shall regulate the manner and terms of the registrations herein provided for and shall determine, if necessary, the procedure to be followed for assessing the value of investments not made in foreign currencies, such as those represented by machinery and equipment.

Article 114: The registration of foreign investments and their movement shall be made in the foreign currency adopted by the Monetary Board and no readjustment or re-evaluation will be allowed.

Article 115: The registration of the investment by the Office of Exchange shall entitle [the investor] to the following:

- a) Remittance of profits abroad within the limits set by this Statute and by the resolutions of the National Council of Economic Policy which may be in force at the time of the registration:
- b) Reimbursement of the principal for up to the amount actually imported plus the amount of profits reinvested entitled to remittance abroad, in the event of total or partial disposal of the goods, shares or respective rights; or in the case of investments subject to depletion, such as those made in exploitation of mineral deposits, all in accordance with the provisions of Article 12 of this Statute; and
- c) Reimbursement, in cases other than those contemplated by the preceding sub-section, of moderate amounts for investment amortization, as dictated by the [National] Planning Department at the time of the approval of the investment and in line with the criteria set forth by the Council of Economic Policy.

Paragraph: It is understood that at no time shall the purchase of foreign exchange be authorized for the reimbursement of capitals for amounts exceeding the net balance in foreign currency of the corresponding investment, as defined in the last paragraph of the following Article.

Article 116: Only those profits that were actually produced by the foreign investment may be remitted abroad. The Office of Exchange and the Prefecture of Exchange Control shall supervise the exercise of this right.

Remittances abroad of foreign capital profits may not exceed 10% per annum, computed on the basis of the net value in foreign currency of the investment. [This percentage was increased to 14% by Resolution 7, 1968 of the National Council of Economic Policy.]

The net value in foreign currency of the investment is made up of the capital initially invested, additional foreign investments and profit reinvestments entitled to remittance, less the capital reimbursements, all in accordance with the amounts that have been registered by the Office of Exchange.

Article 117: [Substituted by Article 117 of Decree 444, 1967, as follows:]

In spite of the provisions of the foregoing Article, the National Council of Economic Policy may increase in a general way or for specific branches of production the maximum percentage therein stipulated for the remittance of profits, in the light of conditions prevailing in the international capital market.

The council may also authorize larger percentages of profit remittance in the case of certain investments which are specially important for the national economy or which imply special risks, or which, by their nature, yield a delayed profit.

Article 118: The right to remit profits abroad from foreign capital investment in the country shall become effective on the date the company starts production or the capital invested yields profits.

If over any one period profits are remitted for an amount below the authorized percentage, the difference may be remitted in subsequent periods, without exceeding an additional 3% per annum.

Foreign capital investors may choose to reinvest, with the same rights of the initial capital, any remittable profits which have not been remitted abroad.

Article 119: Duly registered foreign capitals invested prior to June 17, 1957 shall not require further registration, but

any data or information dealing with them must be supplied at the request of the Office of Exchange.

Article 120: Foreign capital invested in the country after June 17, 1957, must be registered with the Office of Exchange.

This registration shall constitute an indispensable requisite to continue remitting profits abroad as well as for the reimbursement of capital.

Article 121: The Office of Exchange may reject applications for registration filed pursuant to the preceding Article when sufficient evidence is not given to it as to the authenticity of the investment and the data relating to its movement.

Article 122: In order to obtain the registration required by Article 120 above, an application must be filed with the Office of Exchange showing the following information:

- a) Name of the investor;
- b) Value of the initial investment according to the calculation system indicated by the National Council of Economic Policy;
- c) Value of the foreign investments in addition to the initial investment, calculated in the same manner;
- d) Value of the reinvestments of profits;
- e) Amount in foreign currency of the profits remitted abroad;
- f) Portion of capital reimbursed abroad; and
- g) All other information required by the Office of Exchange.

Article 123: The rules of this Statute as to remittance of profits and reimbursement of capital shall also be applicable to capitals registered prior to June 17, 1957 and those registered pursuant to Article 120 above.

The terms and conditions under which the remittance corresponding to amortization or reimbursement of these capitals may be made shall be regulated by the National Council of Economic Policy.

Article 124: Remittance of profits from foreign capital invested in Colombia and of its reimbursement shall be made through the capital market at the rate prevailing at the time of the remittance. The capital market rate shall also be used for the purchase by the Bank of the Republic of exchange corresponding to foreign investments.

Article 125: [Substituted by Article 10 of Decree 688, 1967, as follows:]

Legal entities of any nature whose capital is partly made up of foreign investment shall supply to the Office of Exchange and to the Prefecture of Exchange Control the data required to verify the movement of foreign capital and they shall be subject to the supervision of the Superintendency of Corporations, except when they are already supervised by the Banking Superintendent.

Article 126: The international exchange and foreign trade system dealing with the mining and petroleum industry shall be governed specially by the rules of Chapter IX hereof, which shall therefore prevail, if such is the case, over those of the preceding Articles.

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September, 1976

LEGAL BULLETIN'S BASIC LAWS  
DECREE-LAW 444, 1967 [Continuation]

SECTION TWO

Article 127: In order to ensure that external loans to private parties be granted on favorable terms and that their service may be made in due time, without bringing about undesirable pressure on the foreign exchange market, the Monetary Board shall regulate in a general way the terms, interest and other conditions of such loans.

Article 128: External loans obtained by individuals or organizations residing in Colombia for investment or expenses in the country shall be registered with the Office of Exchange. The latter shall make the registration, on verification of the granting of the loan, provided all requirements determined by the Monetary Board under this section have been met.

Article 129: Foreign exchange proceeds of registered loans shall be sold to the Bank of the Republic at the capital market rate, within the terms determined by the Monetary Board, except for that part which is to be used for the payment of goods or services in foreign exchange as contemplated by Articles 131 and 132.

Article 130: The registration of an external loan at the Office of Exchange shall give the right to remit abroad, at the capital market rate, payment of:

- a) Interest;
- b) The principal, for an amount equivalent to the foreign exchange sold to the Bank of the Republic pursuant to the preceding Article; and,
- c) Commissions and similar expenses included in the loan contracts in accordance with the regulations issued by the Monetary Board.

Article 131: In the case of loans intended to finance the setting up of factories or other projects of economic or social interest, the total debt may be registered even though part of the foreign exchange is to be used for the acquisition of goods or services abroad or for payments in foreign exchange within the country.

The registration shall give the right to remit abroad the necessary amounts to service the loan. The remittances will substitute for those which might have been made for the importation of goods and services of the project being financed by the loan.

The remittances for imported merchandise shall be made through the exchange certificate market and the remainder through the capital market.

Article 132: Loans granted by credit institutions abroad to finance imports may be registered at the Office of Exchange provided that the respective import has been previously approved by the Superintendency of Foreign Trade [Incomex].

In such a case, the payment of the principal shall be made through the exchange certificate market.

Article 133: Debts registered according to the procedure established in Article 28 and following articles of Decree 2322 of 1965, as well as loans sold to the Bank of the Republic pursuant to Article 33 thereof, shall be serviced through the exchange certificate market at the rate prevailing at the time of the respective remittance and based on the terms and conditions approved at the time of registration of the debt or at the time of selling the loan to the Bank of the Republic, as the case may be.

Article 134: Debtors shall request from the Office of Exchange the registration of external loans contracted prior to the enforcement of Decree 2322 of 1965, and supply the data which this Office may require.

The Office shall register these loans for the amount corresponding to the outstanding balance of the debt, once its existence has been verified and provided it does not refer to capital investments or foreign exchange transactions which are regulated by other provisions of this Statute.

The [Superintendency] of Exchange Control is hereby authorized to make any verifications which it may consider advisable in order to establish the reality and validity of the debts to which this Article refers.

Article 135: The registration of the debts to which the preceding Article refers shall give the right to remit abroad through the capital market the value of the principal, in the manner and terms determined by the Office of Exchange, as well as any interest payable thereon which may have been satisfactorily proved not to exceed a reasonable rate, taking into account the rate prevailing at the time of contracting the loan in the capital market.

Article 136: Registration may be requested at the Office of Exchange of the outstanding balance of loans obtained after the enforcement of Decree 2322 of 1965, not sold to the Bank of the Republic in accordance with the obligation imposed by Article 33 thereof.



The Office shall make the registration on full verification of the existence of the debt and its terms and with the intervention of the [Superintendency] of Exchange Control, as contemplated by Article 134 above.

Once registration has been made, the debt may be serviced through the capital market on payment of a surcharge in favor of the National Treasury, to be credited to the special foreign exchange account, amounting to 15% of the value of the remittance in local currency as penalty for failing to comply with the above-mentioned rule.

Article 137: The Office of Exchange shall watch over the contracting of external debts by Colombian residents and shall render periodic reports to the Monetary Board regarding their amount and terms.

By means of rules of a general character, the Board may prohibit external credits whose objectives might conflict with the exchange and monetary policy as well as limit such credits in the case of excessive indebtedness.

### SECTION THREE

#### External Public Debt

Article 138: Public law entities shall comply with the conditions and requirements determined by existing provisions for the negotiation, agreement and contracting of external obligations or for guaranteeing said obligations.

Article 139: The external public debt of the Nation, the Departments, Municipalities and decentralized public establishments shall be registered at the Office of Exchange in the manner and terms established by said Office.

Registration shall also be made in this Office, according to the procedure it may establish, of the debt of the aforementioned entities not registered prior to this Decree.

Article 140: Remittances corresponding to merchandise imported by the Nation, the Departments, Municipalities and decentralized public establishments shall be governed by the normal method of payment of imports.

Hence, the respective debts shall not be registered in the manner contemplated in the preceding Article.

Article 141: The registration established by Article 139 above gives the right to remit abroad the sums required for the

service of the debt, having previously obtained the corresponding exchange license.

Except for the provisions of the following Article, remittances shall be made through the exchange certificate market.

Article 142: The foreign exchange allocated to make foreign currency payments against the national budget for the service of the external public debt, for diplomats, international agencies and contractual commitments other than those arising from imports shall be taken from the international reserves, and their value shall be deducted from the deliveries in local currency which must be made to the Government as profits of the special exchange account.

Article 143: When the tax in foreign currency referred to in Article 226 below is enforced, the Comptroller General of the Republic shall issue a certificate of availability for an amount equivalent to the largest accounting profit arising from the change of the sale rate by the Bank of the Republic for the following external expenses:

- a) Diplomatic service and international organizations;
- b) Contractual commitments in force prior to the date on which Decree 2322 of 1965 became effective;
- c) External public debt contracted by the Nation, the Departments, Municipalities and decentralized public establishments before said Decree became effective.

#### SECTION FOUR

##### Investment of Colombian Capital Abroad

Article 144: The [National] Planning Department may authorize the investment of Colombian capital abroad in accordance with the general rules and criteria to be established by the National Council of Economic Policy.

In order to establish the above-mentioned criteria, the Council shall take into account the contribution of the investments to the process of Latin-American integration and their effect on the country's balance of payments and the promotion of foreign trade.

Article 145: These investments may be made in foreign exchange, equipment and other goods and services which may be generally authorized by the National Council of Economic Policy.

If the investment is made in foreign exchange which must be acquired in

If the investment is made in foreign exchange which must be acquired in the country, the corresponding foreign exchange license shall be required.

If the investment is represented by equipment, the export shall be made according to special regulations of the Foreign Trade Board and the surrender of its value in foreign currency shall not be necessary.

Article 146: Profits, interests, commissions and royalties produced by Colombian capital investment abroad must be surrendered to the country, unless their reinvestment has been authorized by the [National] Planning Department.

Foreign exchange arising from the reimbursement of capital invested abroad must also be surrendered to the country.

The above-mentioned foreign exchange shall be transacted through the capital market.

Article 147: The [National] Planning Department shall require sufficient guarantees to ensure the effectiveness of the investment and the sale of its revenue to the Bank of the Republic, in order to prevent flight of capital or illegal re-exports.

Article 148: Credit institutions, on fulfillment of all requirements for the transfer of capitals abroad as herein provided and with the approval of the Banking Superintendent, may purchase shares, bonds or participations in banks, financial corporations or other credit entities abroad, as well as set up agencies in other countries.

Likewise, credit institutions, in accordance with the rules of this Section and with the prior approval of the Monetary Board, may grant loans or extend foreign exchange financing for projects abroad.

Article 149: The investment of Colombian capital abroad and its movement shall be registered with the Office of Exchange in accordance with the regulations that it will lay down.

## SECTION FIVE

### Donations in Foreign Currency

Article 150: Donations in foreign currency to individuals or organizations residing in Colombia shall be sold to the Bank of the Republic at the capital market rate.

If it is agreed with the donor that all or part of the foreign exchange is to be applied to certain expenses in foreign currency, the Office of Exchange may exempt the donee from the obligation of the preceding

paragraph, provided the expenses are useful to the country and are previously registered with the said Office.