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Circular for P & I Clubs

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Recent amendments to the drug legislation in Venezuela

Relevant legislation dating back 2005 has been recently amended and enacted in the new Venezuelan drug law published in the Official Gazette No. 39,510 dated 15th September 2010, aimed to include some conceptual definitions and to set up procedural steps to decide upon the seizure and release of assets used in connection with drug trafficking, as well as to impose more serious penalties to the offenders. The main changes worth to mention are as follows:

1. Those involved in drug trafficking which includes its trading, supplying, distribution, concealment and carrying in any means of transport (vessels) found guilty will be punished with 15 to 25 years in prison, whereas in the older law was 8 to 10 years. The penalties increase from 25 to 30 years for those organizing or financing the operations (Article 149).
2. Penalties for judges omitting or refusing to apply the legal provisions arguing insufficiency, contradictions or silence of the law range from 4 to 6 years in prison, or the double if it is moved by a private interest (Article 171). Similarly, those public prosecutors intentionally not exercising the legal recourses or giving the necessary steps to clarify the facts or complying the procedural terms will be punished with 6 to 8 years in prison and suspension in the exercise of their functions for 6 years after imprisonment has been served (Article 173).
3. Pursuant to article 183 vessels found to be transporting drugs may be subject to preventive seizure at the request of the public prosecutor, in which case the vessel may be held at least three months until the preliminary hearing, opportunity at which the court could decide upon the

release should circumstances proving lack of intention by the owners be present (Article 183). If the petition for the release of the vessel is denied, the matter will be decided in the definitive sentence, at which moment the vessel can be either released or confiscated as the case might be. On the other hand, article 185 prescribes that after one year since the preventive seizure of the asset, without being possible to determine the identity of its owner or the author or the asset has been abandoned, the prosecutor will request from the court its confiscation.

4. As per article 183 the vessel subject to preventive seizure will be assigned to the National Drug Office (the so-called ONA) for its custody, maintenance, conservation, administration and use in the activities within the scope of the law.

5. It is important to point out that according to article 189 the legal actions in connection with the drug trafficking and the resulting penalties are not subject to time-bar.

By way of summary, leaving aside the fact that the new drug legislation imposes serious penalties to the offenders, and taking into account that also penalties of imprisonment are imposed upon judges and public prosecutors now increased, a tough attitude from the former could be seen in future. Nevertheless, it is fair to say that procedural rules have also been introduced to clarify the preventive seizure of assets and its eventual release. In any event, it is clear that Members must be cautious when calling at domestic ports, taking all necessary extra measures to avoid drug smuggling on their ships by way of at least underwater and security inspections and close co-ordination with their local agents.

Should you need any assistance or further information regarding the topic stated above, please feel free to contact:

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