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Circular for P & I Clubs

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New Law for Reactivation of the Venezuelan Merchant Marine

On 26th June 2000 was published in the Official Gazette No. 36,980 the "Law for Reactivation of the National Merchant Marine", recently passed by the *Congresillo*, the so-called temporary legislative body of Venezuela. This short piece of legislation should have great impact on domestic shipping business, taking into consideration that its provisions are going to complement the changes already introduced in the "Law for Navigation" as well as the "Law for the Protection and Development of the Merchant Marine", allowing 100% foreign participation in national flag vessels and the inscription in the national registry of vessels under bareboat charter or leasing.

Articles 4 and 5 deserve particular attention, since temporal or definitive importation of ships (including tug boats) are declared exempt of payment of Tax on Added Value (IVA), as well as investments in the shipping sector are entitled to a rebate on Income Tax equivalent to seventy five percent (75%) of the amount assigned to new investment for the acquisition or leasing of new ships (including tugs) or accessories for navigation, for a period up to three (3) years. These benefits equally apply to accessories for navigation (e.g. barges), including drilling platforms. Generally speaking, it has been said that until now a conservative estimate for vessel registration

costs in Venezuela, is in the order of 25% of the vessel value, situation that will change with the enactment of the new legislation.

Undoubtedly the Law for Reactivation of the National Merchant Marine is of paramount importance to the maritime sector; however, it would be *naïve* to think that this legal instrument will ensure alone the development of a national fleet in the short term. It is by all means a good first step since it has been able to gather all the players within the maritime activity, realising the importance of the topic, and moving all in one direction, i.e. the need to develop the merchant marine.

There are reasons, at least, to believe that this time the incentives prescribed by the law will work. To illustrate this point suffice is to say that the amendments to the Law for Navigation and the Law for the Protection and Development of the Merchant Marine made back in 1998, were intended to open the national flag to foreign investors, this by lifting foreign participation restrictions, allowing the flagging of bareboat chartered vessels and those under leasing agreements and, finally, exonerating the payment of VAT and other taxes. What happened in practice was that between 1998 and until very recently, the national flag registry did not growth at all; actually the tax exoneration (VAT) prescribed by proviso 152 of the Law for Navigation in the event of inscription in the national flag registry was useless, being the reason that for the drafting of this amendment the SENIAT (Customs Authority) opinion was not taken into account by the law drafters, bringing as a result that the customs procedures operated against the registry of vessels. On the contrary, this aspect was duly taken into account this time, this to ensure the effective application of the incentives. This time the Bill was sufficiently discussed with the SENIAT, drawing its attention about the importance to implement the incentives. As a matter of fact, the recent amendment to the VAT law (published in the Official Gazette No. 37,002 of 28th July 2000) included the exonerated of this tax for the definitive and temporal importation of vessels, something that was compulsory to make the Law for Reactivation worth. What's more even the importation of port cargo handling equipment has been exonerated from the payment of VAT by this recent amendment, just as a way to fostering the renewal and modernisation of port cargo handling equipment within ports.

Nevertheless, the Law for Reactivation needs to be accompanied by others elements, namely a set of clear policies by the government, the pursue of specific objectives as well as the updating of the legislation, particularly, the employment law.

In line with the above, one of the aspects that worries this law firm most, for instance, is the lack of clear understanding by some people at governmental and private levels as to what the Law for Reactivation stands

for. In opinion of some people it should be an instrument to fostering a flag of convenience; in the mind of others rests the idea that this law will help the alleged 54,000 unemployed sailors to get onboard. Even others, although in silence, seems to be looking forward to revive the CAVN past times.

This law firm is of the particular opinion that the reactivation of the merchant marine should have as cornerstone the *cabotage*, since there is an interesting volume of domestic cargoes, particularly, oil, steel and bulk products, able to ensure a market for many players but, once again, whether or not the *cabotage* will be that cornerstone depends very much on the rules to be drafted by the Dirección General de Transporte Acuático as national maritime authority. There is no traffic without cargo, for which reason is of the utmost importance having clear rules for cargo access within the *cabotage* traffic.

One last point that deserves to be mentioned resulting from the enactment of the Law for Reactivation is that it has given rise to a revision of the whole maritime legislation, in order to bring it up to date. It should be borne in mind that proviso 8 prescribed to set up a 90 days period following the publication of the law, to elaborate the principles governing the aquatic policies of the state, as well as recommendations to review the maritime legislation . To this end the Dirección General de Transporte Acuático set up a number of commissions that are currently working. Never before in the maritime sector, it has been witnessed such an enthusiasm where professionals and students alike, lawyers, engineers, sailors, etc. meet every afternoon to discuss and propose amendments to the maritime legislation. It is true that these laws will have to be submitted to the National Assembly (Congress) and there is no guarantee that they will be passed at the end of the day, but there is no doubt that the proceedings of these commissions will be of help at some point in time.

The new Law is in force following publication in the Official Gazette; no doubt that it is worth to have a look of its content, for which reason a free translation of it has been prepared:

LAW FOR REACTIVATION OF THE NATIONAL MERCHANT MARINE

Article 1.-

The purpose of this present Law is to establish principles and basis according to which, the National Merchant Marine is to be reactivated. All matters related to maritime transportation, national and international, of goods and persons, and in general, all the activities inherent and connected to these matters and pertaining directly to maritime and shipping national activities are declared subject of public interest and with strategic character.

Article 2.-

National Executive shall tend to the fulfilment of all requirements regarding reserve of all domestic coastal shipping and transfer of cargo, nationalised or not, to ships under national flag, subject to the International Conventions subscribed by the Republic. The ships engaged to cabotage and coastal shipping shall perform international navigation subject to authorisation by the Ministry of Finance.

Article 3.-

General National Division for Aquatic Transportation belonging to the Ministry of Infrastructure shall issue favourable opinion provided for in article 222 of the Rules and Regulations of the Customs Organic Law, on applications regarding exceptional cases, based in revision made by National Council of Merchant Maritime. To this effect, the General National Division for Aquatic Transportation of the Ministry of Infrastructure shall certify that the ship under foreign registration complies with all requirements contemplated in national and international legislation regarding matters of maritime security as well as lack of national tonnage.

Article 4.-

Temporal or definite importation of ships and accessories for navigation, including drilling platforms, are declared exempted of duties and taxes under the terms established in the articles 9 and 10 of the Law for Navigation, including the drilling platforms. Temporal or definite importation of ships and accessories for navigation, including drilling platforms, are declared exempt of payment of Tax on Added Value.

Article 5.-

The holders of enrichment derived from activities related to merchant marine and dockyards, are entitled to a rebate on Income Tax equivalent to seventy five percent (75%) of the amount assigned to new investment for the acquisition or leasing of new ships or accessories for navigation; for the acquisition of new equipment and technology regarding marine safety; for increase or improvement and equipping of existing ships and accessories for navigation; for the incorporation of companies or acquisition of shares in these societies acting as holders of such enrichment as described above, and also, to that investment on training of workers.

This rebate is to apply only to those fiscal years in which those new investments have been made, and may be subject to transfer to following fiscal years for the time referred to in the art. 58 of the Law on Income Tax. Rebates established in this article shall apply inclusive when applied to debt converted to investment.

Article 6.-

Ships, dredges, drilling platforms and navigation accessories national, leased or hired by national shipowners or Government agencies making use of the benefits of this present Law, must perform all normal repairs and maintenance in national (Venezuelan) dockyards, with the exception of cases where force majeure or competitive reason apply, and in these cases, the shipowner must notify National Council of Merchant Marine. Emergencies requiring entrance of ship into dockyards because of force majeure or when hull or engine is in danger, or when ship is in international waters are also exempted.

Article 7.-

After hearing the opinion of the National Council of the Merchant Marine, the Ministry of Infrastructure shall revise authorisation and permits issued to foreign ships and navigation accessories before publication of this present Law, to the effect of determination of their legality.

Article 8.-

The Ministry of Infrastructure, with the National Council of Merchant Marine, after hearing opinion of all entities related to the Marine sector, shall set forth, within ninety days following publication of this present Law, the Government Aquatic Policies and shall present the proposals to be developed by the project for the Organic Law for Aquatic Spaces, and the insertion of the National Maritime Legislation into the Constitution of the Bolivarian Republic of Venezuela.

Article 9.-

Articles 16, 17, 18, 19 and 40 of Decree 3,144, published in Extraordinary Official Publication N° 5,293 dated January 26, 1999 are derogated in all that pertains to treatment and registration of ships specified in articles 9 and 10 of Law for Navigation. Resolution N° 363 dated March 20, 2000 issued by the Ministry of Finance and published in Official Gazette N° 36,916 of the Bolivarian Republic of Venezuelan on March 22, 2000 is also derogated.

Article 10.-

This present Law will be in force as of date of publication in Official Gazette of the Bolivarian Republic of Venezuelan.

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

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