

NEW YORK UNIVERSITY
JOURNAL OF LAW & BUSINESS

VOL. 9

Summer 2013

No. 3

KEYNOTE ADDRESS: HIS EXCELLENCY, CARLOS
URRUTIA, AMBASSADOR OF THE REPUBLIC
OF COLOMBIA TO THE UNITED STATES

2013 ANNUAL SYMPOSIUM:
DEVELOPMENTS IN THE LAW OF INTERNATIONAL
PROJECT FINANCE
NEW YORK UNIVERSITY SCHOOL OF LAW
FEBRUARY 1, 2013

INTRODUCTION: JONATHAN CARDENAS, MANAGING EDITOR OF THE NYU JOURNAL OF LAW & BUSINESS: It is now my distinct privilege to introduce to you our keynote speaker and guest of honor, Ambassador Carlos Urrutia. Ambassador Urrutia was appointed Ambassador of Colombia to the United States on September 5th, 2012, by Colombian President Juan Manuel Santos. Throughout his career, Ambassador Urrutia has been a leader in both the public and private sectors, including serving as managing partner of Brigard & Urrutia—the oldest and one of the largest and most prestigious law firms in Colombia—from 1999 to 2012.

Prior to this position, Ambassador Urrutia, who had been with the firm since May 1977, began serving as partner in 1981. During his 35-year career at the firm, Ambassador Urrutia advised clients on a wide variety of issues, including commercial law, commercial transactions, energy projects, international financial transactions, litigation and arbitration. His clients were some of the world's leading multinational companies and financial institutions with interests in Colombia.

Ambassador Urrutia's work in the public sector began in 1975 when he became Secretary General of the Governorship of the Department of Cundinamarca, serving until 1977. Fol-

lowing this role, he served as Secretary of Finance of the Governorship of the Department of Cundinamarca from February 1977 to April 1977. Appointed by the Colombian government, Ambassador Urrutia is also currently a panel member on the International Center for the Settlement of Investment Disputes ("ICSID") Panel of Arbitrators.

In addition, he has been a member of numerous boards of directors of a diverse group of Colombian companies and financial institutions. Until August 2012, he was a member of the board of directors of the following entities: Allianz Colseguros S.A., the largest insurance company in Colombia; Ladrillera Santafe S.A.; 3M Colombia S.A.; Leo Burnett Colombia S.A.; Dividendo por Colombia, a Colombian nonprofit institution affiliated with United Way and devoted to the advancement of children's primary school education in Colombia; and Cámara de Comercio Colombo Francesa.

Ambassador Urrutia began his undergraduate studies at Johns Hopkins University in Baltimore, and completed his studies at the Faculty of Law of the University of Los Andes in Bogotá, earning a degree in law. As an associate member of the American Bar Association and International Bar Association, Ambassador Urrutia has attended numerous conferences, seminars, and workshops in the United States and Europe. With his legal background, he frequently participates as a speaker on topics such as foreign investment, financial matters, investments in natural resources, enforcement of foreign judgments, and international arbitration.

It is our pleasure to have the Ambassador join us here today. Please rise to join me in welcoming His Excellency the Ambassador of the Republic of Colombia to the United States, Ambassador Carlos Urrutia.

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HIS EXCELLENCY, CARLOS URRUTIA, AMBASSADOR OF THE REPUBLIC OF COLOMBIA TO THE UNITED STATES: Firstly, I would like to thank the organizers for their kind invitation to speak at this Symposium, which has a well established reputation for bringing together scholars, students and international practitioners to address thought provoking issues concerning business law.

Efforts such as this symposium are always a welcome contribution to making the crucial connection between theory and practice. Through the various panel discussions, attendees will no doubt have access to discussions that are at the very forefront of developments in the law of international project finance.

Today, I want to share with you my perspective on how a country can establish the type of framework that is needed to foster international investment. And of course, being Ambassador of Colombia, I am going to use our case to show you how that can be achieved.

Today, most analysts agree that Colombia is a key emerging player. Last year, Time magazine ran a cover page article with the title: *The Colombian Comeback: From Nearly Failed State to Emerging Global Player*.

Colombia is South America's third-largest economy, a thriving market of over 46 million people. We have been growing steadily and faster than the Latin American average, and we are quickly becoming one of the leading emerging economies. In fact, in 2009 HSBC distinguished Colombia in a new class of growing economies – it coined the acronym CIVETS – Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa, characterized by their dynamism and high growth prospects in the forthcoming decades.

I would like to point to a few facts that are symptomatic of the success of the Colombian economy:

- Since 2003, foreign direct investment (FDI) in Colombia has increased sevenfold. Initial estimates are that for the year 2012, FDI exceeded US\$16 billion, a 20% increase from 2011. Leading companies from the United States and elsewhere, such as Hyatt hotels, Scotiabank, ConocoPhillips, BHP Billiton, IBM, Hewlett Packard, JW Marriott, Eaton and many more are expanding in the fast-growing Colombian market.
- The UNCTAD 2012 World Investment Report ranks Colombia as one of the countries in the region with the highest potential and effective attraction for direct foreign investment.
- Only two weeks ago Colombia issued US\$1 billion in 10-year global bonds. The offer was three times oversubscribed and the paper was sold to yield 2.7% per

annum, the lowest in our country's history in the international capital markets.

Colombia has also become an attractive destination for project finance initiatives, particularly in the fields of energy, oil and gas, transportation and telecommunications. Project finance has gained momentum and a number of projects are being developed under project finance structures. In early 2012, Ecopetrol and Reficar closed the largest project finance in Colombia's history, involving a US\$5 billion deal to upgrade and expand the Cartagena Refinery to turn it into a world-class state-of-the-art facility. The project was financed by US-EXIM Bank and a syndicate of lenders.

Several factors play an important role in creating the right environment to foster project finance.

I.

COLOMBIA'S ADHERENCE TO THE RULE OF LAW

The first is the existence of a framework where the rule of law prevails. Colombia is a concrete example that breaks common knowledge on the difficulties of structuring project finance transactions in developing countries, which many times lack certainty, predictability and stability. Colombia's strong adherence to the Rule of Law, together with a first class regulatory regime, has been essential to guaranteeing certainty and predictability.

Constitutional principles and legal values such as the protection of property, as well as Colombia's reliance on free enterprise, private initiative and a market economy based upon the notion of free competition, enable businesses to operate within a clear and certain environment.

Colombia has a well earned reputation for abiding by the sanctity of contracts and a long history of respecting the rights of international investors. As a matter of fact, our country's historic fulfillment of its obligations to the international markets was a key factor observed by Standard & Poor's, Moody's, and Fitch's ratings in 2011 when they decided to reinstate investment grade status to our sovereign debt.

The Colombian government has made substantial reforms to the judiciary, with the view of expediting civil and administrative proceedings by making them oral in nature. Also, Congress recently enacted an arbitration reform (Law

1563 of 2012), which should position Colombia as an attractive venue for international arbitration. Colombia is party to the Multilateral Investment Guarantee Agency (“MIGA”) and the International Centre for Settlement of Investment Disputes (“ICSID”).

II.

A FIRST CLASS REGULATORY ENVIRONMENT

Another element that plays an essential role is a first class regulatory environment. Colombia has implemented a wide range of institutional and economic reforms aimed at boosting competitiveness and private sector growth. The most notable improvements have been made in the following areas:

- Encouraging business start-ups;
- Simplifying tax compliance;
- Enhancing investor protections; and
- Making insolvency proceedings more efficient.

As a result, we are now considered to be a regional leader on Investor Protection and Ease of Doing Business, according to the World Bank. We are committed to the highest international governance standards. For instance, Colombia has adhered to several OECD initiatives, such as the Declaration on International Investment and Multinational Enterprises, and expects to be invited soon to join the organization as a full member.

An additional feature of this modern framework is our network of free trade agreements and bilateral investment treaties that create an even more robust and transparent platform for investors:

- Nine free trade agreements with 16 countries, including the United States, Switzerland and Canada, are already in full force and effect. By 2014, Colombia will have implemented FTAs with 49 countries, including the European Union, South Korea and Turkey, thereby gaining preferential access to 1.5 billion consumers worldwide.
- 22 International Investment Agreements with 49 countries, and 16 agreements to prevent double taxation with 20 countries.

Furthermore, we have put in place a set of institutions aimed at providing key project sectors with a transparent and reliable framework:

- Independent regulatory commissions for water and sewage; telecommunications; energy and gas, among others, are in charge of regulating and ensuring competition within these sectors.
- Superintendencies (capital markets, industry, utilities, etc.) are in charge of supervising the various players in the market and enforcing the regulations.

III.

ORTHODOX POLICIES AND STRONG MACROECONOMIC FUNDAMENTALS

Colombia's governments have a long tradition of applying orthodox economic policies. As a result, strong macroeconomic fundamentals have also been key to providing the stability required to develop international project finance structures. Colombia has implemented a world-class fiscal framework, including the approval of a fiscal rule, a royalties reform, and a tax reform. They ensure spending and revenue collection discipline to guarantee long-term sustainability and continuous growth.

Thanks to those policies our country's finances are approaching fiscal equilibrium. In 2012, the combined public sector deficit will be -0.5% of GDP and we expect to reach a surplus of 0.2% of GDP by 2016. To achieve this, Colombia has relied upon an independent central bank and the consistent application of an inflation-target policy. These two elements have been crucial in lowering and stabilizing our inflation rate, which was 2.4% for 2012, the lowest since 1955.

IV.

PLATFORM FOR PUBLIC PRIVATE PARTNERSHIPS

Aside from this, we now have an even greater window of opportunity to boost private sector participation and the use of project finance in Colombia, with the recently enacted Public-Private Partnerships Law. The new law introduces three noteworthy elements taken from traditional project finance structures:

- The cash flow arising from the project must be administered through a trust. This will allow control over the project's financial resources and will provide the main source of payment, serving as a bankruptcy remote security interest to project lenders.
- In case of a contractor's default, lenders may exercise step-in rights and continue performing the project agreements, directly or through third-party contractors.
- In the event of early termination of the contract, a termination payment must be assessed based upon a predetermined formula, which should provide relief to lenders that consider this amount as a security package.

The new PPP law is one of many components of a stable, investor friendly framework that will make structuring project finance transactions more attractive, feasible, and less expensive. Based upon the new PPP law, the government is launching the most ambitious infrastructure concession program in Colombia's history, involving roads, bridges and railways. The projects are worth over US\$25 billion and will be awarded during the course of the following 18 months.

V.

WHAT'S NEXT?

Of course, there is still work to be done to create the right set of factors to foster project finance in Colombia and the rest of the region. Two basic areas deserve attention and present the most challenging opportunities.

A. *Security Interest*

There is an imperative need to develop a modern secured transactions regime in Colombia and throughout the Latin American region, in order to allow the pledging of moveable property as collateral and permit a laid-back execution of priority rights in financial debt contracts. According to a recent study by the Inter-American Development Bank, an effective and efficient framework requires: (i) a law to recognize a broad range of moveable property as collateral; (ii) regulations that define how the security interest will be registered, perfected, and enforced; and (iii) a functioning, easily accessi-

ble, centralized, electronic registry to serve as a means to establish the priority of security claims.

Some initial progress has been made in Mexico, Peru, Guatemala and Honduras. However, reforms have been slow and uneven, frequently resulting in limited benefits.

As far as Colombia is concerned, the government is sponsoring a bill in Congress to enact a system of security interests; the expectation is that the law will be approved in the next session of Congress that is due to start March 16, 2013.

B. *Self-Help Remedies*

Under Colombian law there are no “self-help remedies” available. Indeed, Colombia’s legal principles do not permit the enforcement of rights by taking the collateral in satisfaction of a debt. Collateral security interests must be enforced through the courts by means of so-called executive judicial proceedings. This is a lengthy, costly and uncertain process that inevitable indirectly increases the cost of credit and is often an obstacle for small companies to have access to adequate financing.

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As President Santos has stated, in the Colombia of today, we have an unprecedented opportunity to think big and to look ahead. We hope that many of you will find an occasion to become partners in this process.