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GOLDMAN ANTONETTI & CÓRDOVA, P.S.C.
ATTORNEYS AT LAW

Business Law Developments
puerto rico

Fifty Years of Service to Our Clients in Puerto Rico

We are happy and proud that this year Goldman Antonetti & Córdova, P.S.C., is celebrating its 50th anniversary! For 50 years our Firm has provided local, regional and international clients with legal counsel marked by excellence, credibility and creativity. GAC has grown and changed in response to the needs of today's clients while our attorneys continue to provide a high level of personal service to businesses and individuals.

The commemorative activities began with Vicente J. Antonetti's keynote speech during a reception held at the Puerto Rico Museum of Arts on June 3, 2009. Mr. Antonetti spoke eloquently about the Firm's history. *The following is an excerpt of such speech.*

"By mid 1959, three lawyers who had dedicated the first years of their professional careers to public service formed a professional partnership to devote themselves to the private practice of the law: Marco A. Rigau, Sr., Executive Assistant to Governor Luis Muñoz Marín; Max Goldman, Director of the Office of Industrial Tax Exemption; and Basilio Santiago-Romero, attorney for the Tax Litigation Division of the Puerto Rico Department of Justice. The Firm was named Rigau, Goldman & Santiago.

One year later, on June 2, 1960, upon graduating from the School of Law of the University of Puerto Rico, I began working at the Firm while I was simultaneously studying for the bar exam. During that first decade, the Firm's clients consisted of manufacturing companies mainly engaged in needlework, clothing, and electronic products, rice and food mills, and housing and hotels developments.

In 1963, Governor Muñoz Marín appointed Marco A. Rigau as Associate Justice of the Puerto Rico Supreme Court, a position in which he distinguished himself as an exemplary jurist until his last days. The Firm changed its name to Goldman & Santiago. At that time attorney Basilio Santiago Romero was a professor of the School of Law of the Interamerican University of Puerto Rico. He began writing a treatise on negotiable instruments, work that he completed several years later and which became the textbook subject taught in the Schools of Law of Puerto Rico.

Throughout his whole career, Max Goldman was the cornerstone of our Firm. He graduated with high honors from the School of Law of Columbia University and thereafter worked in Washington, D.C. in the Legal Division of the Federal Communications Commission (FCC) from 1941 to 1951, where he reached the position of Assistant General Counsel in charge of litigation. From 1945 to 1946, Max took a leave of absence to work as Law Clerk to Learned Hand, Chief Judge of the United States Circuit Court of Appeals for the Second Circuit.

The Firm continued to grow conservatively and further diversified its practice areas. In January 1965 attorney

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Santiago Romero became of counsel for the Firm. Goldman Antonetti & Subirá was created and we moved to the Banco de Ponce Building, located at Stop 18, Ponce de León Avenue, Santurce. We remained there until 1972 when due to lack of space and normal growth, we moved to the Centro de Seguros Building, Ponce de León Avenue, Miramar. Simultaneously with such move we added several lawyers to our staff, diversifying our professional practice areas to better and more effectively serve our clients' needs.

During the '70s our firm had grown from five to some twenty lawyers. The economic development of Puerto Rico was expanding and our clients consisted of companies in the pharmaceutical industry, manufacturing of electronic and chemical products, petrochemical industries, transportation, hotels, airlines and telecommunications. Our firm continued to grow gradually and expand its practice areas. In 1990 we moved to our current offices at American International Plaza, floors 14 and 15, Muñoz Rivera Avenue, Hato Rey.

After a number of changes of the Firm name, through which the names Goldman and Antonetti remained as constant components, in early 1993 the firm was joined by most of the partners and associates of the law firm of Brown, Newsom & Córdova, founded in 1910. The current name of the firm –Goldman Antonetti & Córdova, P.S.C.– was established at that time. The senior partner of that group, Enrique Córdova-Díaz, a distinguished practitioner with more than fifty years of experience, actively continued his practice of corporate and banking law until 1998 when he passed on.

Presently, the firm has adapted and diversified to better and more effectively serve our clients in these changing times of a global, volatile and dynamic economy. Each day in this new century the worlds of business and law have become increasingly intermingled, changing the practice of law as a result.

In order to better serve our clients, we have joined three professional organizations that cover the whole World and whose membership consists of leading law firms in different countries and states. They are: International Lawyers Network (ILN); Interlaw; and Employment Law Alliance (ELA).

It is the Firm's goal to continue to offer legal services of the best professional quality following the example of the high ethical standards and professional principles established by the two pillars of our firm: Max Goldman and Enrique Córdova Díaz.

I would like to leave you with a vision of the Firm through the prism of our founding partner Max Goldman:

From its early years, the firm has offered our clients the personalized cost-efficient services of a small firm. Despite growth, its success today is owed to that continuing commitment, reinforced by the dedication of its members to the practice of law with the highest regard to ethical standards and professional competence.

I am very grateful for your presence here today. You, our clients, friends and collaborators, are the reason of our existence." ■

The Firm is pleased to announce that effective April 1, 2009, ***Edgardo Colón-Arrarás***, ***Carlos A. García-Pérez***, ***María Patricia Lake-Montilla***, ***Myrna I. Lozada-Guzmán***, and ***José M. Marxuach-Fagot*** became Shareholders; ***Javier G. Vázquez-Segarra*** became Partner; ***Johanna E. Estrella-López*** and ***Angel D. Marrero-Murga*** became Senior Associates; and ***Giovanni Dávila-Egipciaco*** joined the firm as an Associate.

We are also pleased to announce that ***Carlos A. Rodríguez-Vidal*** has been elected by the Shareholders of the Firm as our new Managing Partner. Mr. Rodríguez-Vidal, who currently also heads our Litigation and Trial Practice Department, majored in philosophy and Spanish at Haverford College and received his B.A. in 1979. He earned his J.D. from Columbia University in 1982. He also chairs the board of directors of the Oficina Legal de la Comunidad, a public interest law firm jointly funded by the Legal Services Corporation and the Inter-American University Law School in San Juan, which provides legal services in civil matters to indigent clients of metropolitan San Juan, and is a member of the Board of Managers of Haverford College since 1998. Mr. Rodríguez-Vidal specializes on matters involving various areas of substantive and procedural law, including federal practice and procedure; contracts (including extensive knowledge of commercial contracts relating to franchising and distribution); banking; construction disputes; constitutional; antitrust; insurance; products liability; and intellectual property.

We also want to express our gratitude to ***Roberto Montalvo-Carbia***, who served as our Managing Partner for more than 15 years. Mr. Montalvo will continue in his tax practice and as chair of our Firm's Tax Department. ■

PUBLIC PRIVATE PARTNERSHIPS

PPPs are contractual arrangements between the public and private sectors for the development and operation of infrastructure facilities and/or for the providing of public services which have traditionally been in the hands of the State. The skills and assets of each sector (public and private) are shared in order to deliver a service or facility to the general public, as well as the risks and rewards associated with arrangement.

The Public Private Partnership Act recently adopted by the Puerto Rico Legislature creates the Authority that will handle these arrangements. The Authority is a public corporation affiliated with the Puerto Rico Government Development Bank (G.D.B.). Generally, the Authority will identify, evaluate and select those projects which should be established as PPPs; evaluate and select the proponents; negotiate the contracts with the proponents, including the selection of the entity to be awarded the contract; and determine the best terms and conditions to be contained in the PPP contracts.

Every department, agency, board, commission, entity, body, office, Municipal Entity, public corporation or instrumentality of the Government of Puerto Rico (collectively, the "Government Entities") can, through the process provided in the Act, establish PPP contracts.

The Act provides that contracts can be established for the development, construction or operation of the following types of projects:

Landfills, recycling plants, distribution of water, production of hydraulic energy, water treatment plants, plants for the production of existing or new sources of energy, creation of alternative energy, transportation systems (including sea and air), educational, medical, corrections and rehabilitation facilities, public interest housing, sports, cultural, recreational and tourism establishments, high technology and information systems.

Other types of projects can be added to the list by legislation. The Act also authorizes the Joint Commission of the Legislature created under the Act to recommend projects not listed in the Act.

The Authority is required to establish a Committee for each PPP Project that it decides to pursue. Said Committees will, with respect to the particular PPP, approve the documents for qualification of proponents, evaluate potential proponents, evaluate the proposals submitted, carry-out the negotiation of the contract, and prepare the Report outlining the reasons for entering into the proposed contract, the process which was followed, and the reasons for selecting the selected proponent. The Report must be presented for approval to the Board of the Authority and the Board of Directors of the respective Government Entity. Once approved by these two Boards it must be sent to the Governor (or his appointed representative) for final approval.

The Act also enumerates the minimum requirements that a Proponent must meet as well as certain terms and conditions that must be included in all contracts. However, the specific details of the process for invitation, qualification, evaluation, negotiation and selection of the proponent, as well as for the adjudication of the contracts and additional terms and conditions, will be established in the Regulation to be adopted by the Authority. As of the date of printing of this Newsletter, the Authority has published the proposed Regulation. The Authority will be receiving comments until **September 23, 2009**.

The Act provides that PPP contracts cannot have a maximum initial term that exceeds 50 years. By legislation, the term can be extended for successive periods which in the aggregate do not exceed 25 years (75 years in total).

Special tax treatment is available for those entities participating in a PPP. The other laws that afford special tax treatment (i.e., tax exemption grants) would not apply to the contracting parties under a PPP Contract.

All Government Entities were ordered to submit to the Authority a list of their proposed Priority Projects by September 8, 2009. The Authority has published an initial list of projects in its website at www.app.gobierno.pr. The list must be updated 30 days from the commencement of each calendar year.

The members of the Board of Directors of the Authority are: Carlos García, President G.D.B.; Juan Carlos Puig, Secretary of the Treasury; Héctor Morales, President Planning Board; and Luis Berríos-Amadeo and Hernán Padilla, representing the public sector.

The G.D.B. has informed that the first Puerto Rico PPP Project Conference will be held on October 15-16, 2009. ■

By: Thelma Rivera, Corporate & Banking Law Department

ENERGY RELATED BILL

Puerto Rico's Legislature considers the approval of a mandatory goal for consuming electricity generated by renewal sources.

On April 29, 2009, members of the Puerto Rico Senate from the New Progressive Party and the Popular Democratic Party jointly filed Bill No. 679. The Bill proposes that the Commonwealth of Puerto Rico adopt a "mandatory goal" for reducing the dependency on fossil fuel for generating electricity. The Bill intends to encourage the generation of electricity from clean renewable sources by proposing that electric energy producers include a specific percentage of electricity from renewable sources in the generation that they sell to the customers. In addition, the agencies, municipalities and any other political subdivisions or entities must consume a specific percentage of electricity from renewable energy sources. The proposed level or Mandatory Goal of renewable energy gradually increases according to a 12-year schedule ending in year 2020, when a 20% Mandatory Goal must be attained.

The Bill would empower the Administration of Energy Affairs (A.E.A.) to pursue the Mandatory Goal. The A.E.A. must adopt the mechanisms for issuing Renewable Energy Certificates (RECs) and determining their value. The A.E.A. would also be required to delineate special incentives for energy producers which exceed the Mandatory Goal before the time set forth therefore.

RECs would be tradable commodities evidencing that one megawatt-hour of electricity was generated from a renewable energy source. Each REC will indicate the total kilowatts per hour of renewable energy generated and its nominal value. The A.E.A. would issue RECs every calendar year to renewable energy producers duly qualified in accordance with the corresponding requirements.

The Bill provides to every REC creditor the right to offer its REC to any agency of the Government and the agency would then be required to purchase the REC. If the agency could establish that it had already complied with the applicable percentage of renewable energy for that year, the agency would not be obligated to purchase the REC. Note that the REC creditor would not have an obligation to sell the REC exclusively to the Government.

We have yet to see the final outcome of the Bill requiring the implementation of a Mandatory Goal. This Bill, however, represents a bipartisan effort to address the energy independence goals that these times require. Meanwhile, we stand ready to assist you in the implementation of mandatory or voluntary measures for reducing the demand of environmental resources. This could represent, in the long term, savings for your business and your contribution to the environment. ■

By: Alicia Lamboy,
Environmental Law Practice Group

MY BANK HAS FAILED!
And now what?

Let's start with what a bank failure is. When a bank has obligations exceeding its assets, it cannot meet its current obligations, is critically undercapitalized and has no reasonable prospect in becoming capitalized, among others, it has failed. Prior to a bank's failure, the Federal Deposit Insurance Corporation (F.D.I.C.) offers some or all of the failing bank's assets for sale to healthy financial institutions upon a bank closing. If the troubled bank is not acquired by another stable bank, the bank is closed by federal or state regulatory agencies. Closing a bank stops a run, constrains aggressive collection practices, and allows time for the orderly sale of the bank's assets. It helps deter the bank's managers from improper self-dealing, sweetheart deals, and other irregularities.

Although news travels faster through the media, in order to know if your bank has officially failed you have to check the mail. The F.D.I.C. notifies each depositor in writing using the depositor's address on record with the bank. This notification is mailed immediately after the bank closes.

In the event of a bank failure, the F.D.I.C. has two roles. It acts as the *insurer* of the bank's deposits, and as the *receiver* that takes control of the failed bank. In other words, while it pays insurance to the depositors up to the applicable insurance coverage limit, it also marshals the bank's assets by selling and collecting the assets of the failed bank and settling its debts, including claims for deposits in excess of the insured limit. Regulators also have the option of placing a troubled bank in conservatorship. While the receiver liquidates a bank, a conservator can correct problems as required for the bank to remain open. Conservatorship is relatively rare. Generally, and in accordance with Federal law, allowed claims will be paid, after administrative expenses, in the following order of priority: Depositors, Secured Creditors, General Unsecured Creditors, Subordinated Debt, and Stockholders.

Depositors are often worried about how fast they can get their money back. Federal law requires the F.D.I.C. to make payment as soon as possible. Historically, the F.D.I.C. pays insurance within a few days after a bank closing either by establishing an account at another insured bank or by providing a check.

Deposit Boxes

The F.D.I.C. does not insure safe deposit boxes or their contents. In the event of a bank failure, the F.D.I.C. in most cases arranges for an acquiring bank to take over the failed bank's deposit boxes. If no acquirer is found, box holders would be sent instructions for removing the contents of their boxes. ■

By: Johanna E. Estrella, Corporate & Banking Law Department

How safe is your MONEY

What is the Federal Insurance Corporation (F.D.I.C.)?

The F.D.I.C. is an independent agency of the United States government that protects the funds depositors place in insured institutions in the event of bank failure. F.D.I.C. deposit insurance is backed by the full faith and credit of the United States government.

Federal Deposit Insurance was enacted after the U.S. banking system collapsed in 1933. It calmed banking markets, restored confidence in the banking system, and made bank runs exceedingly rare. Yet it eventually had serious problems of its own. The thrifts debacle of the 1980s bankrupted the Federal Savings and Loan Insurance Corporation and left the taxpayers with a $125 billion tab.

How do I know if my accounts are covered?

F.D.I.C. insurance covers funds in deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit. F.D.I.C. insurance does not cover other financial products that insured banks may offer, such as stocks, bonds, mutual fund shares, life insurance policies, annuities or municipal securities. Deposits in separate branches of an insured bank are not separately insured. Deposits in one insured bank are insured separately from deposits in another insured bank.

What are the insurance coverage limits?

Currently, the standard insurance amount is temporarily $250,000 per depositor until December 31, 2013. On January 1, 2014, the standard insurance amount will return to $100,000 per depositor for all account categories except IRAs and other certain retirement accounts, which will remain at $250,000 per depositor. The extension does not apply to the Transaction Account Guarantee Program.

The coverage limits shown in the chart below refer to the total of all deposits that an accountholder has in the same ownership categories at each F.D.I.C. – insured institution. Deposits maintained in each of the different categories of legal ownership (as shown below) at the same bank can be separately insured. Therefore, it is possible to have deposits of more than $250,000 at one insured bank and still be fully insured.

F.D.I.C. Deposit Insurance Coverage Limits (Through December 31, 2013) [1]	
▷Single Accounts (owned by one person)	$250,000 per owner
▷Joint Accounts (two or more persons)	$250,000 per co-owner
▷IRAs and other Certain Retirement Accounts	$250,000 per owner
▷Revocable Trust Accounts	$250,000 per owner per beneficiary up to 5 beneficiaries (more coverage is available with 6 or more beneficiaries subject to specific limitations and requirements)
▷Corporation, Partnership and Unincorporated Association Accounts	$250,000 per corporation, partnership or unincorporated association
▷Irrevocable Trust Accounts	$250,000 for the non-contingent, ascertainable interest of each beneficiary
▷Employee Benefit Plan Accounts	$250,000 for the non-contingent, ascertainable interest of each plan participant
▷Government Accounts	$250,000 per official custodian

[1] www.fdic.gov

Where do the F.D.I.C.'s funds come from?

The F.D.I.C.'s funds consist of premiums already paid by insured banks and interest earnings on the F.D.I.C.'s investment portfolio of U.S. Treasury securities. No federal or state tax revenues are involved.

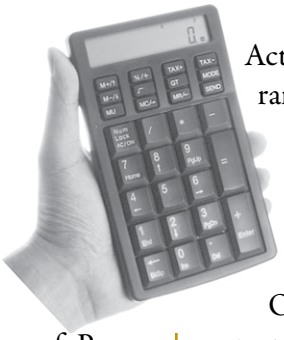
Can the F.D.I.C. become insolvent?

Sixty-two banks failed in 2008 and the first half of 2009. The fund, which had $52.4 billion dollars in its coffers at the end of 2007, had been depleted to $18.9 billion dollars by the end of 2008. It is anticipated that other banks may follow suit. This has forced the F.D.I.C. to replenish its insurance fund. Since the insurance coverage limit was raised to $250,000, the risk of a quicker depletion has also increased.

On May 22, 2009, the F.D.I.C. adopted the Final Assessment Rule which plans to raise money by imposing a one-time emergency premium on all federally insured institutions effective on September 30, 2009. This fee will be 5 cents for every $100 on each insured depository institution's assets minus Tier 1 (regulatory capital) as of June 30, 2009. ■

By: Johanna E. Estrella,
Corporate & Banking Law Department

Get informed about your new alternative minimum tax computations



On March 9, 2009, the Governor of Puerto Rico signed into law three bills aimed at stabilizing the Government's fiscal situation and boosting the island's economic development. Among these bills is Act No. 7 of March 9, 2009. »»»»»

Act No. 7 provides for various measures, both temporary and permanent, that should result in increased tax revenues. Essentially, Act No. 7 is aimed to reduce costs and create a financial structure that should permit the Government to emerge from the current financial crisis.

One of the mayor changes introduced by Act No. 7, as amended, is a permanent change in the method of computing an individual's net taxable income for purposes of the alternative minimum tax. The new calculation will now include various types of income that are classified as exempt income or income that is subject to preferential tax rates under the Puerto Rico Tax Code, for instance:

- Dividends distributed by companies covered under the Economic Incentives Act, the 1998 Tax Incentives Act, and the Tourism Incentives Act;
- Certain long-term capital gains;
- Certain eligible dividend distributions;
- Certain interest on bank deposits and individual retirement accounts;
- Certain interest from notes or bonds; and
- Certain exempted interest from Government National Mortgage Association bonds (Ginnie Mae bonds).

This new change could greatly affect those individuals that derive a great part of their income from investments in such tax-exempt sources or from sources subject to a preferential tax rate. On the other hand, an individual that derives most of its income from sources subject to ordinary tax rates, like salary wages, should not see their tax bill affected by the new changes to the alternative minimum tax.

There has also been a change in the calculation of the net income subject to the alternative minimum tax for entities taxed as corporations. For such entities a deduction for expenses paid or accrued for services rendered outside of Puerto Rico may not be claimed or granted for taxable years commenced after December 31, 2008, and before January 1, 2012. This disallowance is limited to payments incurred or paid to related parties. For additional information you may contact amarrero@gaclaw.com. ■

By: Yaimé Rullán,
Summer Law Clerk

UPDATE ON TAX CREDITS

On July 13, 2009, the Puerto Rico Treasury Department issued Administrative Determination 09-05 ("AD 09-05") in regards to the credit moratorium implemented by Act No. 7 of March 9, 2009. AD 09-05's purpose is to notify the new requirements established under Act No. 7 to owners of tax credits under the Puerto Rico Tax Code, as well as under any other special act in Puerto Rico. Act No. 7 amended the Tax Code to introduce Section 1040M, which imposes a moratorium on the use of certain tax credits for taxable years commencing after December 31, 2008, and before January 1, 2012.

The moratorium applies to tax credits generated or granted before March 9, 2009. In AD 09-05, the P.R. Treasury states that any natural or juridical person that possesses a tax credit under any special act or pursuant to the Tax Code had to file Form 480.71, Informative Return of Ownership of Tax Credits, *no later than August 31, 2009*. Failure to file Form 480.71 with the P.R. Treasury by said deadline deprived the owner of the tax credit from claiming any remaining credit on taxable years commencing on or after January 1, 2012. The credits subject to the Moratorium are the following:

»»»»»

- √ Credit for the purchase of products manufactured in Puerto Rico;
- √ Credits under the Puerto Rico Solid Waste Authority Act;
- √ Credits under the Puerto Rico Capital Investment Fund Act of 1999;
- √ Credits under the Special Act for the Creation of the Santurce Theater District;
- √ Credits under the Puerto Rico Conservation Easement Act;
- √ Credits under the Urban Centers Revitalization Act
- √ Credits under the Tax Credits for Investment in New Construction and Rehabilitation of Rental Housing for Low or Moderate Income Families Act; and
- √ Credits under the Tax Credits for Investments in Housing Infrastructure Act.

AD 09-05 required the following information be included as part of Form 480.71 for each tax credit:

- √ Act under which the tax credit was granted;
- √ Amount of tax credit granted;
- √ Amount of tax credit that has been claimed in previous tax years and that will be claimed on tax years commenced between January 1, 2008 and December 31, 2008;
- √ Amount of tax credit remaining for tax years commenced after December 31, 2008; and
- √ Tax year in which remaining tax credit will be claimed or sold, if any.

Should you have any questions or need additional information, please contact any of the following attorneys in our Tax Department:

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By: Angel D. Marrero, Tax Department

IS THERE A LEGAL RIGHT TO A COFFEE BREAK?

We have all experienced the following scenario: its 3:00 p.m., the office reception is full of clients, telephones are ringing non-stop and the service cubicles are empty. We ask: ***where is everybody***? The inevitable answer... "*On a coffee break.*"

Many employers withstand this situation under the belief that the so-called coffee break is a right that is granted by local labor laws. This is far from the truth. As a general rule, there is no obstacle for the employer to reduce or even to eliminate the coffee break.

Law No. 379 of May 15, 1948, which regulates the overtime pay as well as the taking of meal periods, ***mentions nothing*** about the so-called *coffee breaks.* The Law states that the employee is only granted the right to enjoy, at most, ***one lunch hour*** for every eight hours of labor. Law No. 379 states:

> "The periods assigned for taking meals which occur within or outside the regular work schedule of the employee may be of less than one hour. If a lesser period is fixed for the mutual convenience of the employee and his/her employer, or through the written stipulation of both, the aforesaid shall not be less than thirty (30) minutes, except for croupiers, nurses and security guards, in which case it may be of a minimum of twenty (20) minutes.
>
> The period assigned for taking meals shall not commence before the conclusion of the third hour, nor after the sixth consecutive hour of work commences, so that at no time shall the employees be required to work more than five (5) consecutive hours without a break in their work schedule to take meals." (29 L.P.R.A. §271)

On the other hand, the Minimum Pay, Vacations and Sick Leave Act of Puerto Rico does not include statutory provisions in reference to this particular period. Both laws hereby cited are applicable to the private sector of the economy, as well as public corporations which operate as private businesses.

As you can see, Puerto Rico labor laws do not provide for the so called coffee break. Consequently, we must conclude that this is a benefit granted out of custom, tradition or tolerance of the employer and it is not imposed by law. Thus, it is reasonable to conclude that the employer could reduce or eliminate such period. The only exception would be that such benefit was previously negotiated and forms part of a collective bargaining labor agreement or other contractual arrangement.

In these times of economic crisis... *Is there time for coffee?* ■

By: Angel X. Viera, Labor & Employment Law Department

SPECIAL NEW ADDITIONAL PROPERTY TAX
Residential, commercial, industrial properties and vacant lots

Act No. 37 of July 10, 2009, amended Act No. 7 of March 9, 2009, by establishing a new additional property tax which will be applicable for fiscal years 2009-2010, 2010-2011 and 2011-2012, or until the aggregated sum of $690 million dollars of the tax is collected. The tax rate was reduced to an effective 5.91% of the existing assessments (0.591% of the new assessment which pursuant to Act No. 7 will be determined by multiplying the existing assessment by 10).

Act No. 37's special new additional property tax will also apply to all real property used for commercial purposes, in addition to all residential properties already subject to the tax under Act No. 7. It would appear from the language of Act No. 37 that property used for industrial purposes would not be subject to the additional tax, inasmuch as Act No. 37 refers only to property used for commercial purposes.

The Treasury Department, however, has indicated it will take the position that the term commercial purposes also encompasses the term industrial purposes. In light of the clear and simple language of Act No. 37, the Treasury's preliminary interpretation could be the object of future discussions and administrative and judicial claims.

On the other hand, the Treasury Department has indicated it will take the position that vacant lots not utilized, leased, and not producing income are not subject to the additional property tax. This, at least, is good news for non-income producing property owners of these type of properties.

Should anyone be interested in knowing more about this special property tax, such as, for example whether the Treasury reverses its preliminary position concerning industrial properties, when the payment of the tax becomes due and the manner in which an exemption for vacant land can be claimed, please contact Roberto Montalvo or Angel D. Marrero at 787.759.4123. ■

By: Roberto Montalvo, Tax Department

There and BACK again...

The Legislature once again amends the Notarial Act in order to modify the fees that a notary may charge for his or her services.

On June 23, 2009, less than one year after the Puerto Rico Notarial Act was amended in order to set a nonnegotiable fee that notaries were to charge for their services, Act 43 was enacted in order to once again allow parties to a transaction to negotiate the notarial fees within new determined ranges.

The Puerto Rico Notarial Act has regulated notarial fees since its inception in 1987. For more than 20 years (from 1987 through 2008), the fee structure contained in the Notarial Act was free from any changes, amendments or reviews from the Legislature. However, the fee structure has now gone under the knife twice in a span of about 11 months.

The 2008 Amendment

According to the Statement of Motives of last year's amendment to the Notarial Act, the purpose of the 2008 Amendment in setting fixed nonnegotiable fees for notarial transactions was mainly twofold: (1) to guaranty the quality of

the service provided by the notary; and (2) to allow the consumer to evaluate the qualities of the notary, such as his or her academic preparation, diligence, organization and responsibility, without having to go price hopping.

The Aftermath of the 2008 Amendment

The 2008 Amendment created two basic schools of thought – with many shades of grey in-between. Sticking to the black and white issues, we can summarize the schools of thought as follows: (1) One which thought the Amendment was necessary because it allowed the government and not private parties to determine the fees for notarial services, guaranteed the quality of said services, and allowed the consumer to choose a notary based on quality and not price; and (2) another school of thought which felt that the amendment interfered with free commerce and/or affected the public's access to notarial services.

The 2009 Amendment

The Statement of Motives of this year's amendment (Act No. 43) states that public interest demanded that the notary's right to a just and fair notarial fee be balanced with the public's right to access to notarial services. The Statement of Motives makes express reference to the financial, economic and real estate crisis which is currently affecting Puerto Rico. The central argument in favor of this amendment was that since the Notary could no longer reduce his legal fees per transaction, the consumer would ultimately pay more at the time of the transaction than he would have paid prior to the 2008 Amendment.

Some of the Mayor Changes in Fees after the 2009 Amendment

1- In transaction ranging from $10,000 to $5 million, the parties may agree the notarial fees from a range of 0.5% to 1% of the transaction amount. The 2008 Amendment had previously set a 1% fixed fee.

2- In transactions involving more than $5 million, the notarial fee shall be the same as the one set in the above paragraph, plus whatever amount the parties may agree to for the excess of $5 million.

3- For deeds of cancellation of mortgages in amounts of up to $5 million, the parties are free to negotiate the fee, but it no event may the notarial fee be less than 0.5% of the mortgage amount. When the amount is more than $5 million, the parties may freely negotiate the notarial fee. However, in no event may the notarial fee for the cancellation of a mortgage be less than $250.00.

In cases involving a residential real property in a new construction project and in refinancings where an appearing party appears in more than one public deed before the same notary within the same transaction, the notary may charge the same fees summarized in paragraphs 1 through 3 above for the deed with the highest transactional amount. However, for the remaining deeds within that transaction, the notary may only charge half of the authorized fees summarized in 1-3 above. The fee amount for all the different deeds before the same notary within the same transaction cannot exceed the amount of 1% of the public deed with the greatest transactional dollar amount.

In cases involving residential social interest housing, the notarial fee may be freely agreed upon by the parties, but in no event may they be less than 0.25% of the transaction amount or $250, whichever is the greater amount. The notarial fee may be different if the organic law or regulation which created and/or governs the social interest program provides otherwise. When there is more than one deed executed over the same property, the fee amount may not exceed 1%. This fee schedule applies only to financings over social interest housings. Thus, it does not apply to standard financings guaranteed by federal or state agencies, such as F.H.A. loans, reverse mortgages and veterans' mortgages.

The Legislature also noted in the Statement of Motives that it hoped that the banks and real estate brokers would take the opportunity to follow in the footsteps of the 2009 Amendment and modify their respective fees in order to ameliorate the financial crisis which is affecting us all. ■

By: Paul Ferrer,
Corporate & Banking Law Department

Changes to CREDIT CARD REGULATIONS

With the adoption of the Credit Card Accountability, Responsibility and Disclosure Act of 2009, the federal government intends to further regulate the credit card business for the benefit of the consumers.

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The Act:

- Requieres credit card companies to provide you at least 21 days notice before your next payment becomes due.
- Requires credit card issuing entities to notify you at least 45 days in advance of any increase in the card's interest rate. Such increases cannot be retroactive nor can they apply to late payments.
- Prohibits interest rate increases on existing balances.
- Prohibits credit card issuing entities from requiring payment in full when a cardholder cancels its account, or raising the interest rate on such balances as a result of such cancelation.
- Requires credit card companies to apply payments made in excess of the minimum payment to the highest interest balance first.
- Prohibits credit card companies from charging interest on fees, such as late fees and over limit fees.
- Requires that all disclosures to clients, before and during the credit card arrangement, be clear, particularly highlighting fees that may be charged, and as to charged fees, explaining the reason such fees are due. Credit card issuers will need to post in the Internet their credit card contracts in plain language.

If your interest rate has been increased since January 1, 2009, based on certain factors, including credit risk of the cardholder and market conditions, the credit card issuing entity must, every six months, review the account to determine if such factors have changed and adjust the interest rate accordingly, including reducing the interest rate if the previous credit risks have been reduced. Over-limit charges are those imposed on the consumer when the consumer has over extended its credit. The Act requires that the consumer pre-approve any over-limit before a charge or fee for such over-limit is imposed.

Your statement will now contain periodic information on how long it will take you to pay your balance assuming you continue paying the minimum monthly amount and the total interest that would accrue in such case. Also, periodically, the statement must also inform you of how much it will cost you to pay the existing balance in 36 months. ■

By: Thelma Rivera, Corporate and Banking Law Department

DID YOU KNOW...?

Did you know? House Bill 1725 would establish the Government of Puerto Rico's public policy against employment discrimination based on sexual orientation in any governmental function, be it public or private. The proposed bill would order all government agencies, instrumentalities, departments, public corporations, municipalities, the Legislative Branch and the Judicial Branch to adjust their personnel policies and regulations in order to effectively promote the Government's policy against employment discrimination based on an individual's sexual orientation. ■

Did you know? The Centers for Disease Control and Prevention (C.D.C.) has a website where you can access the latest information from the U.S. Government regarding the H1N1 Influenza epidemic, including how to establish flexible leave policies to ensure that sick workers do not come to the workplace. This information is available at http://www.cdc.gov/h1n1flu/guidance/workplace.htm. ■

Did you know? The American Recovery and Reinvestment Act of 2009 (known as ARRA) includes measures to modernize the nation's infrastructure, enhance America's energy independence, expand educational opportunities, increase access to health care, provide tax relief, and protect those in greatest need. For specific information regarding ARRA funds coming to Puerto Rico, local government initiatives designed to utilize those funds, as well as business opportunities that ARRA may bring to Puerto Rico, you can access the official ARRA website for the Government of the Commonwealth of Puerto Rico, at http://www.buengobiernopr.com/arra/. *See* also www.recovery.gov. ■

Did you know? As of November 1, 2009, the Monthly Sales and Use Tax Return will be due on the 10th day of the following month. Therefore, the November return will be due on ***December 10, 2009***. This change applies for both the Commonwealth and the Municipal portion of the sales and use tax. ■

Did you know? Effective ***November 1, 2009***, only resellers with a volume of business greater than or equal to $500,000 will be automatically eligible to obtain a reseller exemption certificate. Businesses with a volume of business less than $500,000 can be eligible for a reseller exemption certificate if they comply with additional requirements. ■

USURY is not a valid defense for a corporation against a secured creditor's claim

According to a recent bankruptcy case, a secured creditor's claim against a corporate debtor can include any interest on interest agreed upon by the parties prior to the bankruptcy filing.

In *Empresas Inabón, Inc., et al. vs. Robert Hatton Gotay, et al. (In re Empresas Inabón, Inc.),* 358 B.R. 487 (Bankr. D.P.R. 2006), the debtors sought the U.S. Bankruptcy Court for the District of Puerto Rico's determination over the validity, priority, or extent of the creditors' lien on their property.

Prior to the filing of the bankruptcy case, the parties had signed various loan agreements whose provisions were later amended by a series of stipulations and agreements. Through these latter agreements, the balances on the existing debts were recalculated, reduced, and interest, fees, and costs were added to the resulting balances. While still indebted to the creditors, the debtors filed their bankruptcy petition.

As part of their objection to the creditors' claim, debtors argued that the creditors' proofs of claim should be denied in their entirety and the loan agreements between them declared void and unenforceable because, among other things, the interest rates under those agreements were usurious. The creditors argued that they should receive the entire amount claimed in their proofs of claim, including interest, fees, and charges which, according to their expert, amounted to $12.7 million.

The Bankruptcy Court found that the agreements entered into by the parties were consensual, entered into with knowledge of their consequences, with the advice of professionals, and, albeit onerous, legally binding. The Court also determined that under Puerto Rico's General Corporation Law a corporation may borrow money at any interest rate which it deems acceptable, and that a debtor corporation may not plead usury in any legal proceeding to enforce payment of said loan; hence, it stated that a corporate borrower is barred by Puerto Rico law from raising usury as a defense in a collection action.

The Court concluded that an interest rate that is provided for under a contract with a debtor corporation will be allowed as a valid claim. Finally, the Court stated that bankruptcy courts have not only looked to applicable state law when a contract does not specify an interest rate, but that they have also allowed a default rate of interest, interest on interest, late charges, and prepayment charges when the same are provided for in a contract and enforceable under applicable non-bankruptcy law. The Court consequently denied Debtor's cause of action and validated the creditors' claim on the interest rates agreed upon by the parties, including interest on interest. ■

By: Miguel Serrano, Litigation Department

LENDERS BEWARE: Foreclosures on abandoned or unfinished construction projects may have environmental compliance obligations attached

In these times, it is very common for lenders to foreclose abandoned or unfinished construction development projects. Generally, these projects are subject to various federal and Commonwealth environmental standards regulating storm water, air quality, hazardous waste, and toxic substance management and disposal, among others. These standards may continue to apply regardless of the foreclosure. This duty to comply may be shifted once the project is foreclosed to the property's new owner, the lender.

For such reasons, lenders who foreclose should become familiarized with the environmental compliance laws that apply to the foreclosed property. Lenders are encouraged to develop and implement a comprehensive environmental compliance programs for foreclosed and repossessed properties to learn of the risks involved and avoid any potential environmental liability. These programs should include case-by-case evaluations in order to clearly understand any environmental obligations stemming from the particular operations which take place in the foreclosed project. These evaluations also allow lenders to identify which, if any, permits, authorizations or licenses may be terminated in order to limit the lender's obligations and liabilities. Adherence to the standards which remain applicable is crucial to avoid any enforcement action initiated by federal and/or Commonwealth regulatory agencies. ■

By: Gretchen Méndez, Environmental Law Practice Group

Recent developments in renewal ENERGY

On July 13, 2009, the Energy Affairs Administration of Puerto Rico (E.A.A.P.R.) announced that it intends to adopt a Regulation for the Certification of Renewable Energy Systems. The referred regulation will establish the requirements and the process for the certification of installers of photovoltaic systems and wind power systems. It also proposes to establish the requirements for obtaining a certification prior to installing equipment for generating electricity using renewable sources, such as solar, wind, geothermal, and ocean-thermal. Other requirements may apply to the manufacturing and/or commercial sale of photovoltaic and wind turbine modules. The Administration received comments to the proposed regulation until August 12, 2009.

Federally, the Department of Energy and the Department of the Treasury also announced the availability of certain guidelines for applying for grants in lieu of tax credits. These guidelines clarify the eligibility requirements for certain incentives under the American Recovery and Reinvestment Act of 2009 (ARRA).

Section 1603 of ARRA mandates the U.S. Department of the Treasury to make payments to eligible persons who place in service certain energy facilities and apply for such payments. The energy facility should be placed in service during 2009 or 2010, or after 2010 if construction began on the property during 2009 or 2010 and the facility is placed in service by the credit termination date which varies with the type of energy facility. Payments to qualified applicants are based on a percentage of the eligible cost equal to 10% or 30% of that cost. The payments will depend on the type of energy facility. It is important to note that applicants who take advantage of these payments will be electing to forego other tax credits under the federal tax code with respect to the same property, such as production or investment tax credits. The U.S. Department of the Treasury recently began to receive applications for evaluation for these credits.

There are certain aspects which should be thoroughly evaluated prior to submitting an application for ARRA Section 1603 payments. If you have any questions please contact Alicia Lamboy at alamboy@gaclaw.com.

By: Alicia Lamboy,
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