

01/11/1995 04:17

POSSE HERRERA RUIZ

PAGE 01

From OWA File

**POSSE
HERRERA
& RUIZ**

ABOGADOS

Cra 7A No. 69-67
Tels: [REDACTED]
Fax: [REDACTED]
E-mail: phr@posseherreraruiz.com
Bogotá - Colombia

(b)(6), (b)(7)(C)

**PORTADA DE TRANSMISION DE FAX
FAX TRANSMISSION COVER
(571) 313 0259 / 348 0995**

PARA: [REDACTED]
TO: CHIQUITA BRANDS INTERNATIONAL

DE: [REDACTED]
FROM: [REDACTED]

FECHA: May 7, 2001
DATE:

FAX NUMERO: [REDACTED]
FAX NUMBER:

PAGINAS: C + 6
PAGES:

MENSAJE: YOUR TELEPHONE CALL OF MAY 3, 2001
MESSAGE:

SI NO RECIBE COMPLETAS TODAS LAS PAGINAS POR FAVOR LLAME A LOS TELEFONOS INDICADOS EN LA PARTE SUPERIOR DE ESTA CARATULA. LA INFORMACION CONTENIDA EN ESTE MENSAJE ES PRIVILEGIADA Y CONFIDENCIAL ENTRE EL REMITENTE Y LA PERSONA O ENTIDAD A LA QUE SE DIRIGE. SI RECIBE POR ERROR ESTA COMUNICACION POR FAVOR INFORMENOS Y DESTRUYA EL ORIGINAL GRACIAS.

IF YOU DO NOT RECEIVE THIS MESSAGE WITH ALL THE PAGES, INCLUDING COVER, PLEASE CALL TO THE TELEPHONES MENTIONED IN HEADING. THE INFORMATION CONTAINED IN THIS MESSAGE IS PRIVILEGED AND CONFIDENTIAL BETWEEN THE SENDER AND THE PERSON OR ENTITY NAMED ABOVE. IF YOU RECEIVE THIS INFORMATION IN ERROR, PLEASE NOTIFY US AND DESTROY THE ORIGINAL THANK YOU.

05/07/2001 04:34PM

CBI-V1-003-000179
CHIQUITA NSD 6329

**POSSE
HERRERA
& RUIZ**
ABOGADOS

(b)(6), (b)(7)(C)

Pedro A. Posse Camargo
(1894-1975)
León Posse Arboleda
(1931-1989)
Daniel Posse Velásquez
Mariana Posse Velásquez
Jaime Herrera Rodríguez
Juan Guillermo Ruiz Hurtado
José A. Torres Hernández
Cecilia M. Mateus Niño
Alvaro José Rodríguez Gómez
María Cecilia Pérez Varela
María Rocío Arjona Duque
Rodrigo Lozano Villa
Andrés Montoya Benítez
Cecilia Vargas Cifuentes
María Lucía Posada Isaacs
Ibibianna Camacho Reyes

**CONTENTS COVERED BY ATTORNEY CLIENT PRIVILEGE &
ATTORNEY WORK PRODUCT DOCTRINE**

Bogotá, May 7, 2001

VIA FACSIMILE (513) 564 2916

Mr.

[Redacted]
CHIQUITA BRANDS INTERNATIONAL
250 East Five Street
Cincinnati, Ohio 45202
USA

Reference: Your telephone call of May 3, 2001

Dear [Redacted]

1. We refer to the conference call held on May 3, 2001. You have requested (i) a brief description of the legal framework applicable to "CONVIVIR" organizations in Colombia, and (ii) an opinion as to the legality of payments to "CONVIVIR" organizations under Colombian law.
2. At the outset we would like to caveat that the analysis below is preliminary in nature. As you will see a number of complex legal issues stem out of the issues touched upon below, a due assessment of which would require a more detailed study of subject matter.
3. Please be informed that "CONVIVIR" organizations are expressly authorized under Colombian law. The legislative background of the institution can be traced to Law 61, 1993,

**POSSE
HERRERA
& RUIZ**

ABOGADOS

(b)(5), (b)(7)C

whereby the Colombian Congress vested the executive branch with temporary powers to issue the "Surveillance and Private Security Statute" (article 1(j), Law 61, 1993).

4. Based on such legislative powers the President of the Republic issued Decree 356, 1994, which constitutes the governing Surveillance and Private Security Statute" (the "Statute"). The Statute created a number of security related entities, including, *inter alia*, Surveillance and Private Security Companies, Security Departments, Surveillance and Private Security Cooperative Institutions, Transportation of Valuables, and most notably for the subject matter of this communication, the Surveillance and Private Security Community Services (the "Community Services") and Surveillance and Private Security Special Services (the "Special Services").

5. Community Services and Special Services became known as "CONVIVIR" organizations by virtue of Resolution No. 368 issued by the Surveillance and Private Security Superintendence (the "Superintendence") on April 1995.

6. The Special Services are defined by article 39 of the Statute as so:

"Article 39.- Definition. Surveillance and Private Security Special Services are those juridical persons of private or public law, expressly, individually and temporarily authorized by the Surveillance and Private Security Superintendence, with the exclusive purposes of providing its own security for the development of activities in high risk areas or of public interest, which require a security level of high capability".

Paragraph.- A surveillance and private security services is considered special, whenever it deploys restricted fire weapons, and proceeds with techniques and procedures different to those established to other surveillance and private security services, to which end it requires the approval by the Arms Committee of the Ministry of National Defense".

7. The distinguishing feature of Special Services is that a given company or enterprise is in need of providing security services to protect the activities carried in its ordinary course of business, within a prescribed geographical area. Therefore, it is the same company providing Special Services for its own benefit and credit.

8. Community Services, in turn, are defined by the Statute in the following manner:

"Article 41. Definition. Surveillance and Private Security Community Services are defined as the organization of the community in cooperative form, community action boards or community enterprises, with the purpose of providing surveillance and private security services to its affiliates or members within the area where the respective community is located.

**CONTENTS COVERED BY ATTORNEY CLIENT PRIVILEGE &
ATTORNEY WORK PRODUCT DOCTRINE**

2

08/07/2001 04:13:48 PM

**CBI-V1-003-000181
CHIQUITA NSD 6331**

**POSSE
HERRERA
& RUIZ**

ABEEA005

(b)(6), (b)(7)(c)

Paragraph 1.- Surveillance and private security communities may not provide surveillance and private security services to persons other than its affiliates or members, or beyond the authorized zone.

Paragraph 2.- The National Government may regulate this activity".

9. It is worth noting that affiliate and members of Community Services can be individuals or juridical persons, but in any case, need to reside within the area of operation of the Community Services. As opposed to Special Services, in Community Services, a plural number of persons or entities are associated in order to provide security services to its members and affiliates, within the area of residence of such members and affiliates. It is not one person providing its own security, but a number of persons associated to provide services for the benefit of the associates.

10. By 1997, through Resolution 7164, the Superintendence prohibited the use of the expression "CONVIVIR" to identify Special Services and Community Services. On same year, the National Government issued Decree 2974, whereby both the Special Services and the Community Services were integrally regulated.

11. As highlight of the above regimes we have the following:

(i) Before the initiation of operations, both the Special Services and the Community Services need to obtain a license from the Superintendence. The Superintendence is vested with discretionary powers to grant such licenses.

Licenses for Special Services may be granted for up to two (2) years, and Special Services may obtain indefinitely new licenses upon elapsing of previous licenses. Likewise Community Services may obtain anew license each time current license expires, and such licenses may be granted for up to three (3) years each time. Granting of anew licenses is subject to the existence of security conditions warranting the continuance of the provision of the respective security service.

(ii) To obtain a license for Special Services, the relevant company must detail, amongst other things, the resources to be allocated to the provision of the Special Services.

(iii) For Community Services, although there is no express provision ordering the disclosure of budgetary aspects of the organization, there is the duty to disclose the list of members and affiliates.

(iv) In both cases, only weaponry suitable for self-defense may be deployed, unless otherwise authorized by the Ministry of Defense.

**CONTENTS COVERED BY ATTORNEY CLIENT PRIVILEGE &
ATTORNEY WORK PRODUCT DOCTRINE**

3

05/07/2001 04:34PM

**CBI-V1-003-000182
CHIQUITA NSD 6332**

**POSSE
HERRERA
& RUIZ**

ABOGADOS

(b)(5) - (D) (C)

(v) Special Services may be provided by any entity, both non-profitable institutions, and commercial entities. Community Services may only be organized in communal like entities, which means that in principle funds may only be collected from members for the benefit of same members.

(vi) There is an extensive and exhaustive list of duties instated for these organizations, including the observance of the law and the respect of human rights.

(vii) Special Services and Community Services may not provide security services to persons other than for its own benefit (in the case of the Special Services) and to its members (in the case of Community Services).

12. Payments to fund the operations of Special Services and Community Services are legal under Colombian law, provided the respective Special Services and Community Services have obtained and maintain appropriate licenses from the Superintendence. Payments to Special Services should take the form of budgetary appropriations within the same company or entity. Payments to Community Service take the form of contributions made by affiliates, to which it is indispensable to become a registered member before making contributions.

13. In addition, please be advised that it is possible to have unrelated third parties (*i.e.*, entities different from the entity providing duly authorized Special Services, and non-members of Community Services) contribute to Special Services and/or Community Services via donations. To this respect please be informed that periodic donations are authorized by Colombian law. If the amount of the donation exceeds 50 times the minimum legal monthly salary (approximately US \$6,000), the donation must be effected through a previous notarial representation of donation (*insinuación notarial de donación*).

14. We should underline that the legality of payments, is subject to the due observance of the requisites described above. In addition the actual use by Special Services and Community Services of contributed funds should be borne in mind. If funds are used for the conduction of activities that comply with legal requirements, legality of such payments will be preserved. However, if funds are used in connection of activities beyond the scope authorized to Special Services or the Community Services, including the conductions of activities that are contrary to law, the actual (or even constructive) knowledge of such activities by the contributing party may taint such payments as illegal and even result in criminal responsibility.

15. To summarize:

(a) Organizations formerly known as CONVIVIR, are authorized under Colombian law, under the caption of Special Services and Community Services of the Statute.

**CONTENTS COVERED BY ATTORNEY CLIENT PRIVILEGE &
ATTORNEY WORK PRODUCT DOCTRINE**

4

08/07/2001 04:15PM

**CBI-V1-003-000183
CHIQUITA NSD 6333**

**POSSE
HERRERA
& RUIZ**

ABOGADOS

(b)(6), (b)(7)(C)

(b) Special Services and Community Services are stringently regulated by law, with respect to the its creation, licensing and operation.

(c) Both Special Services and Community Services require licenses of the Superintendence to legally operate.

(d) The scope of action of the Special Services and Community Services is heavily restricted by law. They can only operate within a prescribed geographical area, and services can only be provided for the benefit of the same entity (in the case of the Special Services) and of the members or affiliates (in the case of Community Services).

(e) Funding of Special Services and Community Services is lawful in Colombia, provided (i) made as intra-company budgetary appropriation in the case of Special Services, (ii) made in the form of contributions by registered members in the case of Community Services, (iii) the receiving Special Services and Community Services are duly licensed by the Superintendence, and (iv) funds are used for activities carried in strict compliance of the law.

(f) Contributions by non-related parties to Special Services and Community Services are lawful under Colombian law, subject to the compliance of applicable donation formalities, in addition to the observance of requisites listed in (iii) and (iv) above.

(g) If funds are distracted towards activities not expressly authorized by law, the actual knowledge of constructive knowledge thereof by the contributing party, could entail the unlawfulness of the payment, and even expose such party to criminal liabilities.

16. It is important to overstress the sensitiveness of these institutions within the Colombian political and social environment, and therefore forcefully caution on the making of these kind of payments. This matter should be treated with the utmost care and attention, on pain, amongst many other things, of possibly facing liabilities on account of criminal aiding and abetting.

17. Please do not hesitate in calling upon us for your questions and comments.

Yours sincerely,

POSSE, HERRERA & RUIZ

**CONTENTS COVERED BY ATTORNEY CLIENT PRIVILEGE &
ATTORNEY WORK PRODUCT DOCTRINE**

5

08/07/2001 04:34PM

**CBI-V1-003-000184
CHIQUITA NSD 6334**