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Argentina

LEGAL MEMORANDA

EDITOR'S NOTE

"Legal Memoranda" is a regular section of the Review devoted to reports from corresponding law firms throughout the hemisphere. The reports are compiled by the Review, but their accuracy is represented by the corresponding law firms, to which all inquiries should be directed.

We appreciate the contributions of our corresponding law firms and invite other law firms interested in participating in this section to contact us.

ARGENTINA

The following is a commentary on the new bankruptcy law in Argentina.

THE NEW ARGENTINE BANKRUPTCY LAW

On July 21, 1995 the Congress approved a new Argentine bankruptcy law superseding the current statute No. 19,551. The new law will enter into force ninety days after its publication in the Argentine Official Gazette.

This new bankruptcy law (Law) has substantial differences with the present system. The main objectives of the Law are: (i) to allow flexibility in the insolvency proceeding in order to allow the creation of as many alternatives as possible to preserve the functioning of the debtor; (ii) to give a more important role to the creditors of the debtor; (iii) to limit the powers of the bankruptcy judge; (iv) to simplify the process enabling a faster sale of the assets of the debtor in case of bankruptcy; (v) to reformulate the receivership function; and (vi) to incorporate professionals

and experts (accountants, financial analysts, etc.) during the insolvency and bankruptcy process. What follows is a highlight of the main changes incorporated in the Law.

Contrary to the position held by the former law, the Law provides that corporations partially or wholly owned by the federal, state or municipal government may be declared in bankruptcy.

The insolvency proceeding may be commenced at the instance of the debtor even after the bankruptcy has been declared. In such case, if the bankruptcy is declared by the judge upon request of a creditor, the debtor (and not a creditor) may request the conversion of the bankruptcy into an insolvency proceeding.

Regarding the necessary formalities to request the opening of an insolvency proceeding, the Law has lightened the requirements, eliminating, for example, the payment of all employees' social security contributions and salaries as a condition for presentation. However, other prior requirements have been added with the purpose of obtaining at the time of court presentation, a clear picture of the financial condition of the debtor (presentation of accountants' certifications and financial documentation).

The Law vests in creditors a more significant role, authorizing the establishment of a creditors' committee to be composed of representatives of each of the different categories of creditors. Once the insolvency proceeding has been initiated, the debtor shall present a payment proposal of approval to the creditors. Upon approval of such proposal by the creditors, the judge shall confirm it.

Following the trend of other countries, the Law admits the presentation of a different proposal for each category of creditors and accepts the offering of several choices within each category. Thus, a creditor may choose between a reduction of the payable amount, longer terms, fixed interest rate etc., depending on the needs of each creditor. The Law also authorizes the capitalization of labor credits into stock of the debtor.

One very innovative approach is the possibility that the Law gives to a creditor or third party to "rescue" the troubled corporation. Pursuant to this mechanism, if the term for presentation and approval of the scheme has expired before the debtor has been able to obtain approval by the creditors, third parties or

any creditor of the debtor may present a payment proposal. If such proposal were approved, the creditor or third party may acquire the aggregate equity interests held by shareholders of the debtor. Such rescue mechanism works as follows: within forty-eight hours from the expiration of the term for approval of the debtor's proposal, the court shall open a registry in which the creditors and third parties interested in rescuing the debtor shall register. Those registered will be entitled to present payment proposals within a ten day period. The proposal shall be approved by a majority of creditors representing at least two-thirds of the capital within each creditor category. The first one who obtains the approval of the proposal has the right to request the transfer of the aggregate interest held by the shareholders or partners of the debtor. The consideration paid thereof shall not be less than the total net worth of the debtor reduced by the value of all the credits against the debtor admitted by the court. By use of this mechanism the Government intends to foster the restructuring and reconversion of corporations in financial difficulties (preserving labor forces and preventing the increase of unemployment) and to protect the interest of the selling shareholder. It is expected that this mechanism will attract foreign investors (with available funds and technology or know-how) by the prospect of acquiring companies in financial difficulty at low costs.

Another important amendment to the former bankruptcy law is that labor suits, which are usually on the rise during a company's financial difficulties, are suspended if the debtor files for bankruptcy or insolvency proceedings. Workers will have to demonstrate the existence of their credits at the bankruptcy court. The accumulation of all labor suits in the court where the bankruptcy has been filed will save time, reduce the receiver's workload and benefit the labor creditor (previously it was necessary for the worker to obtain a favorable decision of the labor court and afterwards request verification of the amount of the judgment at the bankruptcy court). Furthermore, with the new Law, the debtor is allowed to renegotiate the employment terms with the workers (this was formerly prohibited because of public order principles and collective bargaining agreements) limiting the days and hours of work, reducing salaries, etc.

Since, in the current economic system, corporate groups are significant players, the new Law incorporates a special chapter enabling entities that form part of an economic group to jointly

request at court the opening of an insolvency proceeding.

The Law regulates out-of-court agreements executed between creditors and debtors. If the agreement is signed by a majority of the creditors representing at least two-thirds of the liabilities of the debtor (excluding the creditors indicated in Section 45 of the Law) the agreement may be filed in court for the judge's approval. All creditors not party to the agreement may oppose its approval. If approved by the judge, the agreement will be held valid against those creditors who were not parties to it and against any other third party, even if, afterwards, the debtor is declared bankrupt.

Finally, another important institution of the Law is the creation of the National Registry of Insolvency Proceedings and Bankruptcies in which all the persons and entities subject to any proceeding will appear. Through the creation of this registry, it is expected that more transparency and certainty will be given to future business activities.

The Law shall be applicable to all the insolvency proceedings filed and bankruptcies declared after the date on which the Law enters into effect.

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