

University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

7-1-1991

Argentina

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

Argentina, 22 U. Miami Inter-Am. L. Rev. 405 (1991)

Available at: <http://repository.law.miami.edu/umialr/vol22/iss2/10>

This Legal Memorandum is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

LEGAL MEMORANDA

EDITORS' 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 brief summary of recent legislative and judicial developments in Argentina.

SECOND STAGE IN THE GOVERNMENT'S PROGRAM OF CONCESSION AND PRODUCTION-SHARING OF OIL DEPOSITS

Decree 2074/90, enacted on October 3, 1990, launched the second stage of the Program of Concession. Article 11 of the Decree covers the secondary oil fields (producing fewer than 200 m³ per day) and the Government's Oil Deposits (YPF).¹ Approximately 100 secondary oil fields will be put up for tender. Article 12 of the national decree provides for the execution of the second stage of the Programme of Association of YPF with private companies for the exploitation of Central Areas. Within 180 days, the specific areas for bidding purposes must be selected, the bidding conditions must be determined, and the international public call for bids must be announced.

1. Yacimientos Petroliferos Fiscales.

PLAN HORIZONTE

The Government intends to finalize the Houston Plan and launch a new off-shore exploration policy in accordance with the general outline of Law 17,319. Once the exploratory areas have been defined, any company, after payment of an exploration fee, will be able to search for oil.

ARGENTINA JOINS MIGA

By Decree 1863/90, Argentina joined the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) on October 11, 1985. This significant move will improve the foreign investment climate in Argentina and potentially play an important role in reversing the capital flight problem. It is hoped that investors will see Argentina's adoption of MIGA as a step of goodwill and confidence towards recognizing the importance of fostering foreign investment. Decree 1863/90 contains a customary express qualification made by Argentina vis-a-vis MIGA's Resolution 88-11 of September 7, 1988, in connection with the disputed jurisdiction over the South Atlantic islands.

RESPONSIBILITY FOR LOSS RESULTING FROM THE MISUSE OF CREDIT CARDS

The Supreme Court of the Province of Buenos Aires decided a case, *Neme, Alejandro J. c/Banco de la Provincia de Buenos Aires* (Ac 42.047), that concerned a credit cardholder's liability when a merchant sold goods or services to an impostor. Credit card use normally involves three different contracts: the contract between the issuer and the holder of the card, a second contract between the issuer and the merchant, and a third independent agreement between the merchant and the cardholder. The main problem between the issuer and the cardholder is determining who is liable for any loss when the card is fraudulently used by third parties. This problem was analyzed in *Neme*, where the credit cardholder had contractually agreed to be liable for purchases made with the card through midnight of the date in which the holder had notified the issuer of any loss.

The Supreme Court of the Province of Buenos Aires upheld the validity of the parties' agreement. In rendering its decision, the court refused to consider the cardholder's allegations that the im-

poster's signature was obviously fraudulent. The court reasoned that acceptance of the fraudulent signature by the merchant was connected with the contractual relationship between the issuer and the merchant, to which the cardholder was not a party. The court held that an agreement between an issuer and a cardholder which relieves the issuer of liability when the holder fails to promptly report loss of the card is not an abusive or unreasonable contract.

CHANGES IN CIRCUMSTANCES AND THE REVISION OF DOLLAR DENOMINATED LOAN AGREEMENTS

On August 23, 1990, the Buenos Aires Civil Court of Appeals (Chamber E) decided *Rodríguez v. García Bonadío*. The court rejected the argument that a change in circumstances dictated a revision of a pricing scheme contained in a U.S. dollar denominated loan agreement. The changes in circumstances argument is specifically recognized in Article 1198 of the Argentine Civil Code. This provision allows a party to seek a modification or termination of a contract if an unforeseen and extraordinary change of circumstances renders the party's contractual performance substantially more burdensome.

The accelerated inflationary process which has plagued the Argentine economy during the past two decades created the "circumstances" that, from time to time, forced Argentine courts to resort to this device. Debtors of foreign currency denominated loans were particularly affected, since the exchange rate with the U.S. dollar frequently evolved at a more accelerated pace than the inflation rate. However, in the *Rodríguez* case, the court held that the unusual increase in the exchange rate could not be deemed to have unbalanced the original contractual equilibrium when a party was only required to return in U.S. dollars, as realized on the date of the transaction, exactly what the party received. Courts have been confronted with the problem of applying the literal wording of Article 1198, which states that "change in circumstances" cannot be invoked by a party already in default in the performance of his obligations. To lessen the effect of the restriction, the courts have held that Article 1198 is still applicable if the default derives from the breaching party's non-performance of an obligation which became excessively onerous due to a "change in circumstances."

RENEGOTIATION OF EXPLOITATION CONTRACTS

The final stage of the reconversion of twenty-four oil exploitation contracts, representing thirty percent of the country's domestic crude oil, is nearing completion. This reconversion modifies the contracts to reflect the new economic and legal conditions resulting from a deregulated market. Each new contract is updated with a new legal structure, the association or concession. Before each contract is signed, the oil companies must accept a "trigger clause." The "trigger clause" provides for the sharing of oil revenues resulting from the international increase of oil prices. The clause sets forth a mechanism for compensation which will be applied when oil is quoted at a price in excess of US\$24 per barrel. Of every dollar above that ceiling, the state will keep half and the remaining amount will go to the private firm involved. The fifty-fifty distribution must be calculated after deduction of the royalties and the higher costs. By means of this mechanism, the gap will be closed between the price outlook envisaged during the discussion of the contracts (US\$21 per barrel) and the new scenario of crude quotations.

The main point of reconversion addresses the fact that YPF will no longer buy private production (which, according to the original term of the contracts, it was obliged to purchase). Reconversion will allow the private companies to dispose of all of their production (concessions) or to share it with YPF (association). In any case, it will be oil of free disposal — exportable or marketable locally.

APPRAISAL OF OIL AND GAS RESERVES

With the aim of confirming the Government's goal of increasing production, an appraisal is being carried out of all oil and gas reserves of both the private and state sectors. This appraisal is being carried out by a firm of independent consultants selected with the assistance of the World Bank. The appraisal is aimed at correcting the considerable dearth of available information about oil and gas reserves in an attempt to attract significant investments for the sector. The final report and certification regarding existing liquid and gaseous hydrocarbon reserves in the country was scheduled to conclude on December 31, 1991.

PRIVATIZATIONS: GAS DEL ESTADO

Article 1 of Decree 2074/90 provides for the complete concession of the distribution and marketing of gas belonging to the Gas del Estado (State Gas Company). The decree establishes that general and detailed bidding conditions must be prepared and the National and International Public Call for Bids must be launched within 180 days. A study is being conducted of the legal framework to be adopted to proceed with the privatization of the five subsystems of trunk pipelines that transport the gas from the production locations to the consumption centers.

Resolution 144/90 authorizes private capital concerns to construct, operate, and exploit gas distribution networks, pressure regulation plants, and feeder connections from trunk or secondary pipelines. This allows the capital concerns to supply natural gas to domestic and community commercial consumption centers, as well as to industries formerly supplied by the previously constructed system.

Emilio J. Cardenas
Cardenas & Otero Monsegur
Buenos Aires, Argentina