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# Argentina

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## LEGAL MEMORANDA

### ARGENTINA

*The following is a brief summary of recent legislative developments in Argentina.*

#### I. YACIMIENTOS PETROLIFEROS FISCALES ISSUE OF BONDS TO PAY OFF INTERNAL, COMMERCIAL AND FINANCIAL DEBT

The Argentine Government has empowered Yacimientos Petroliferos Fiscales (Y.P.F.) to issue bearer bonds for a one (1) year-term with an amount of up to 1,000,000,000 A (approx. U.S. \$850,000,000) to pay off its internal commercial and financial debt. Amortization shall take place in a single installment on the maturity date. The annual interest rate shall be equal to the annual rate for U.S. dollar deposit for 180 day-term at the London interbank market and shall be paid semiannually in arrears.

#### II. COMPENSATION FOR EASEMENTS AND DAMAGES TO SUPERFICIARIES IN THE EXPLORATION, EXPLOITATION AND TRANSPORT OF HYDROCARBONS

Superficiary owners who granted easements and suffered damages will be compensated by companies . . . that carry out exploration, exploitation and initial transport of hydrocarbons in the provinces of Chubut, Santa Cruz, and National Territories of Tierra del Fuego, Antártida and South Atlantic Islands.

#### III. ISSUE OF "COMPULSORY SAVING CERTIFICATE"

The Secretariat of Finances has decided that the General Tax Bureau (DGI) will issue "compulsory saving certificates" pursuant to Section 18, last paragraph of decree 2078/85. These bearer endorsable credit instruments shall be requested by payers before the DGI 180 days from the deposit date according to the conditions established.

#### IV. NOMINATIVE BONDS IN U.S. DOLLARS (*Bonods*) AND PUBLIC FOREIGN DEBT CERTIFICATES

Executive Power Decree No. 772/86 empowers the Ministry of Economy to provisionally extend for 180 days from their maturity dates, principal amortizations due as of May 26, 2986.

Ministry of Economy Resolution 450/86 sets forth terms and interests which extended certificates shall accrue. *Bonods* and promissory notes at Libor rate shall accrue a 1  $\frac{3}{8}$  % annual interest rate. *Bonods* and promissory notes at prime rate shall, at the creditor's option, accrue 1  $\frac{3}{8}$  % annual interest rate on 180 day Libor or 1 % annual interest rate on the prime rate, which shall be replaced by  $\frac{3}{8}$  % annual interest rate on a 180 day interest rate for deposit certificates adjusted for extensions as officially published by the law authorizing said rate.

#### V. INTERNATIONAL TREATIES

The International Treaty on Economic, Social and Cultural Rights, and the International Treaty on Civil and Political Rights were adopted by a United Nations General Assembly resolution 2200 (XXI) and were approved by means of Law 23313.

On July 29, 1986, the Argentine-Brazilian Integration Charter was signed. The Charter enacted twelve protocols on the following subjects: capital goods, wheat, food supply complementation, trade development, mixed companies, financial matters, investments trusts, energy, biotechnology, economic research, immediate information and reciprocal assistance in the event of nuclear accidents and radiological emergencies as well as cooperation in the aeronautical field. This Charter is intended to design a common Argentine-Brazilian market later open to incorporation by all Latin American countries.

#### VI. REFORM TO TAX PROCEDURES LAW

Law 23314 (Official Bulletin May 8, 1986) ruling amendments to the Tax Procedures Law 11683 was passed. The reform aims at enlarging the supervisory scope of the Tax Authority (General Tax Bureau) and is part of an overall program launched by the government to fight tax evasion.

VII. SECURITIES, NOMINATIVE CHARACTER OF SHARES,  
INFORMATION SYSTEM, STOCK CORPORATIONS AND GENERAL  
RESOLUTION 2596

As a result of amendments to Law 20643 by Law 23299 (May 1, 1986), the capital stock issued by Argentine corporations must be nonendorsable registered stock, or stock capable of being converted by means of a deed (*Acciones escriturales*). To further that purpose, the General Tax Bureau enacted General Resolution 2596 dated April 3, 1986 (Official Bulletin April 9, 1986) which established a permanent information system which allows one to know the make-up, ownership and value of the capital stock of the above mentioned corporations.

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VIII. NO "CAUTIO INDICATUM SOLVI" REQUIRED IF FOREIGN  
PLAINTIFF SUES IN ARGENTINE COURTS UNDER A CONTRACTUAL  
CLAUSE DESIGNATING EXCLUSIVE ARGENTINE JURISDICTION

Under Argentine law, a plaintiff who does not have an Argentine domicile or own real estate located in Argentine territory, can be forced to guarantee that all fees and costs generated by his cause of action will be paid. Prior to answering the plaintiff's complaint, a defendant can demand that the plaintiff post a bond to cover said expenses with the court. This procedure is the so-called *excepción de arraigo*, also known as *cautio indicatum solvi* (National Court of Civil and Commercial Procedures, Article 348).

However, in a recent case, *Assucom N.V. v. Captain and/or Owner and/or Charterer of the 'Tuyuti'* (March 10, 1986), the Federal Civil and Commercial Court of Appeals held that a foreign party suing an Argentine defendant in Argentine courts under a bill of lading containing an exclusive selection of Argentine jurisdiction clause, shall not be required to post the above-mentioned bond. In this case, plaintiff brought suit in an Argentine forum pursuant to the terms expressed in the bill of lading. The Federal Court of Appeals recognized that requiring a plaintiff to post a bond to guarantee payment of expenses in an action brought under a contractual clause specifying exclusive jurisdiction was unreasonable. The decision, in fact, gave effect to the legitimate intentions of the parties.

IX. ARGENTINA'S PRIVATE SECTOR EXTERNAL OBLIGATIONS:  
NEGOTIATIONS WITH THE INTERNATIONAL BANKING COMMUNITY

The Central Bank of Argentina (BCRA) extended for a 180-day period, private sector external obligations *falling due from October 1, 1986 through March 31, 1987* by Communication A-956.<sup>1</sup> These obligations include: (i) obligations covered by *exchange insurance* contracts entered into under Communications A-31 and A-137 (as amended and supplemented) (insured maturities); (ii) obligations (other than short-term trade-related obligations) *not* covered by an *exchange insurance* contract or *swap agreement* (uninsured maturities); (iii) financial *swap agreements* entered into with BCRA pursuant to Communications A-129, A-130 and A-136, refinanced pursuant to Communication A-327 (as amended and supplemented) and not covered by the scheme enacted under Chapter 2 of Communication A-695 (swap maturities); and (iv) obligations which matured between January 1, 1986 and September 30, 1986, and renewed for a 180-day period pursuant to Communications A-893, A-894 and A-895. Communications A-893, A-894 and A-895, issued on June 9, 1986, deal with swap, uninsured and insured maturities . . . respectively.

Communication A-956 closely follows Communications A-893, A-894 and A-895. It provides for the issuance by BCRA of interim 180-day notes, denominated in U.S. dollars, to cover the insured, uninsured and swap maturities. It renews further foreign creditor's option to select provisionally an annual interest of 1 $\frac{3}{4}$ % over either *Libor* or *Adjusted Certificate of Deposit (CD)* rate (or in certain cases, in lieu of the *Adjusted CD* rate, 1% over the *Prime* rate).

Communication A-956, like A-893, A-894 and A-895, represents only an *interim regulatory scheme*. Argentina's ongoing negotiation of its private sector foreign debt, in contrast to the 1986-87 overall financing plan proposed to the foreign lending community, is pending.

*BCRA Interim Notes*

The common characteristics of the BCRA interim note issued under Communication A-956 are summarized as follows:

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1. "Communication(s)" herein refer to communications issued by BCRA.

1. *Text.* A particular version for each Libor, Prime or Adjusted CD rates (as appropriate) is made known at a future date.

2. *Interest Rates.* Interest is either (i) Libor for six-month Eurodollar deposits plus a spread of  $1\frac{3}{8}\%$  or (ii) adjusted CD for a 180-day term plus a spread of  $1\frac{3}{8}\%$ . If insured maturities, this latter rate is replaced by Prime plus a 1% spread for renewals made on or prior to the communication date by BCRA of its decision to use the Adjusted CD rate. Interest is payable on arrears at the end of the interest period and defined by Communication A-697 concerning . . . Libor, Prime and Adjusted CD rates.<sup>2</sup> In addition, each foreign creditor is given the option to change, at the time of the issuance of final BCRA notes. If approved and communicated via the creditors' working committee by December 15, 1986, the spreads agreed on under such plan will, as of October 1, 1986, apply in lieu of the spreads set forth above. However, if the 1986-87 financing plan is approved and communicated on or before May 15, 1987, but after December 15, 1986, the spreads agreed on thereunder will be effective on January 1, 1987.

3. *Beneficiary.* At the option of its (a) ultimate obligee, in its name, to pay or guarantee the relevant obligation, or in the name of the (b) borrower, to guarantee or renew the loan agreement, or in the name of a (c) foreign financing institution, to guarantee or pay a loan to a local financial institution which, in turn, is a creditor of an ultimate local borrower.

4. *Transferability.* A BCRA interim note may not be subject to public offerings in Argentina nor traded among resident or domiciled parties in Argentina. It may only be transferred to financial institutions domiciled outside Argentina which are also parties to the 1984-1985 Argentine Financing Plan. A transfer must be notified by tested telex to BCRA for it to take effect against the issuer.

5. *Interest Payments.* All such payments in U.S. dollars by

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2. Under paragraph 1.3.1, "Libor" is defined as the rate per annum at which deposits in U.S. dollars are offered by BCRA's reference banks in London one business day before the first day of each interest period. Under paragraph 1.3.2, "Prime" is defined, for any day, as the average of the annual rates for a 90-day period announced publicly by BCRA's reference banks for such day as such banks' prime rate. Finally, "Adjusted CD" is defined, under paragraph 1.3.3, as the annual rate prevailing at 10 a.m. E.S.T. for the purchase by deposit dealers of CDs issued by reference banks in US \$5 million amounts and carrying a 90-day maturity. Such rate will be adjusted by reference to the reserve requirement for bank members of the New York Federal Reserve whose deposits exceed US \$5 billion, and the annual rate determined by the average of the rates applicable to annual premiums payable at the Federal Deposit Insurance Corporation for the insurance deposits in U.S. dollars.

transfer to New York for the account of the party indicated by the beneficiary of the note.

6. *Tax Exemptions.* All payments without deduction for taxes or charges, present or future, to the Republic of Argentina. Where withholding tax is contractually assumed by the local obligor, whether the original borrower or a local bank accepted the interim note as payment, the tax liability remains with the borrower until the corresponding legal authorization is obtained for that liability assumed by the BCRA.

7. *BCRA Application Form.* Delivery of the interim note is conditioned on the filing of the appropriate application form with BCRA including a statement by the foreign creditor to the effect that it accepted the assumption of the relevant obligation by the Republic of Argentina.

8. *Registrations.* In all cases, the borrower must be registered with the *Registro de Deudores con el Exterior*, pursuant to Communication A-407, even if not required to do so under such Communication. In addition, the supplied information must be consistent with the prior registration of the terms and conditions of the outstanding relevant debt pursuant to Communication A-496. Note that the obligations to be documented by the interim notes must *not* be disclosed under the *Relevamiento de la Deuda Externa*, or Registry of Foreign Debt.

These particular rules are applicable to each category of obligations.

#### *Insured Maturities*

The BCRA interim note is issued as of the date the insurance matures. Application form 4039B must be filed with BCRA no later than January 9, 1987, for insurances falling due from January 1, 1986 through December 5, 1986 (the date of Communication A-956). For those maturing after December 1986, the deadline is 30 days after maturity.

All debts subject to *public* sector refinancing are excluded from these rescheduling provisions. Such debts include those carrying insurance whose holders are public sector companies or instrumentalities including government banks. Insured *private* sector debt guaranteed by public sector banks through their external lines of credit are also excluded. Paris Club lenders, that is, sover-

foreign lenders, are also excluded.

### *Uninsured Maturities*

This category encompasses uninsured obligations arising from financial and commercial credits that may be rescheduled. The financial credits include those which are negotiated in the local exchange market. The BCRA interim notes are issued as of the date of the countervalue deposit in local currency.

The following deadlines must be met: application form 4041B must be filed no later than January 9, 1987, for obligations matured from January 1, 1986 through December 5, 1986. For those thereafter falling due, the deadline is 20 days after maturity. The exclusions applying to insured maturities also apply to uninsured maturities.

### *Swap Maturities*

These maturities include the respective undisposable deposits (*depósitos indisponibles*) resulting from exchange rate differences. Both swaps and the undisposable deposits are extended for 180 days except where a foreign creditor opts, at this point, for the settlement of the same by the issuance of interim BCRA notes. In the first case, each installment maturing from October 1, 1986 through March 31, 1987 is renewed for 180 day periods, pursuant to the rules set forth by Chapter I of Communication A-327 (as supplemented). Forms 2617-A, 2600, 3916 or 3917, as appropriate, are filed simultaneously with BCRA for the renewal and compensation of each swap.

In the second case, each installment due or becoming due between October 1, 1986 and the tenth business day following the date of Communication A-956 (except when settled on the date of its maturity) must be renewed until the date settled, in accordance with customary procedures. The date of settlement may not exceed the thirteenth business day following the date of issuance of Communication A-956. Installments due thereafter are settled for the amounts provided for under Communication A-327, Chapter I, paragraph 2, as amended by Communication A-525. Under Communication A-327, BCRA extended swaps by three years from their last maturity, with repayment in four consecutive semi-annual installments, the first installment falling due 540 days from



the date of renewal. Communication A-525 extended the swap maturities for 180 days.

The settlement option precludes the application of any future extension that may be agreed on under the 1986/1987 rescheduling plan. A swap agreement will be cancelled upon the issuance of a BCRA interim note. Such note is issued as of the date of the countervalue deposit in local currency which coincides with the date of the maturity of the principal installment being settled. The following deadlines apply for the above settlements: maturities coming due from January 1, 1986 to December 19, 1986, are due no later than January 9, 1987. Those coming thereafter, are due upon the date of each maturity. Within thirty days after the swap settlement date, form 4040B along with a copy of form 2600 (reflecting the Austral countervalue deposit), must be filed with BCRA to apply for the interim notes.

#### *Renewal of BCRA Interim Notes*

Notes are renewable for a 180-day period. Those issued under Communication A-895 (insured maturities) on a Libor basis will remain Libor plus an annual spread of 1½%. For those issued under Communication on a Prime basis, the foreign creditor is given the option of either Libor or Adjusted CD (or Prime, if appropriate). The same applies for any note issued under both Communication A-893 and A-894 (whether Libor or Adjusted CD) except that no Prime rate is available. A bank acting on behalf of a borrower in connection with Communications A-893, A-894 and A-895 must submit a note setting forth (i) the number of the interim promissory note where the same was issued, or if not, the number of form 4039B, 4040B or 4041B, as the case may be; (ii) the type of interest rate selected; and (iii) the date of commencement and termination of the semi-annual period within which such interest applies.

The following deadlines must be met. For Communications A-893, A-894 and A-895 renewals falling due through December 31, 1986, the deadline is January 30, 1987. For those falling due from January 1, 1987 through March 31, 1987, the deadline is thirty days before each maturity. If no option is exercised by the above terms, it will be deemed the rates selected before remain in force. Where guarantee interim notes are issued, such notes remain as such. Foreign creditors, however, may at any time request that a

guarantee note be changed into a payment note.

*Conclusion*

The present method of dealing with the debt crisis involves painful negotiations and, at this stage, some uncertainty ahead. In the meantime, *interim* regimes like the one described above seem unavoidable. Oliver W. Holmes once said “[C]ertainty generally is illusion, and repose is not the destiny of man.”<sup>3</sup>

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3. Holmes, *The Path of the Law*, 10 HARV.L.REV. 457, 465 (1897).