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Argentina

LEGAL MEMORANDA

ARGENTINA

I. Argentina Reciprocal Trade Credit Agreement with Hungary

The following is a summary of recent economic developments in the areas of trade, banking, oil production and the stock exchange.

On April 24, 1986, the Central Bank of Argentina announced the execution of a reciprocal credit agreement with Hungary. Under the agreement, certain imports from Hungary and certain exports to Hungary shall be paid through a reciprocal trade credit mechanism. Both countries intend to improve their present shortage of foreign exchange.

II. Restrictions to Foreign Banks Lending Possibilities

Since March 1985, Argentine financial entities have been authorized to receive deposits and lend monies at both market and regulated interest rates. However, these deposits cannot exceed a percentage of (a) total deposits and other obligations subject to reserve requirements, and (b) each entity's patrimonial responsibility (net worth). The Central Bank establishes the corresponding ratios on a monthly basis. Argentine private financial entities have for more than one year been privileged while foreign banks have conversely been discriminated against.

III. Bank Secrecy Scope Restricted

The fiduciary aspect of a bank's relationship with its clients is of substantial importance. In principle, banks have the duty to keep the affairs of their customers confidential. This is a fundamental privilege of the client. However, there are instances when disclosure may be permissible. Where the law requires disclosure, banks are bound to provide the pertinent information.

On October 21, 1985, Argentina passed Law 23,271. This law abolishes the invocation of the privilege of confidentiality when made to avoid a request for information by the Federal Tax Au-

thority (*Dirección General Impositiva* (DGI)), when performing its legal duties. Pursuant to this law, the DGI issued Resolution 2614, which defines the information services provided by Argentine financial entities.

Law 23,271 allows the DGI unrestricted access to the information held by banks, financial institutions, and the National Securities Commission. When the tax authorities require the disclosure of particular or general information, these entities are not entitled to the defense of client confidentiality. This is true despite the fact that the information sought is not related to the taxpayer or that the taxpayer is not under a specific DGI investigation or audit.

Under the regulation, banks will be required to disclose the information obtained in dealing with customers' current accounts where: (a) The monthly movement of funds in an account exceeds the amount of *australes* 15,000 (approximately, US$ 16,600); (b) the annual movement of funds in an account exceeds the amount of *australes* 30,000; or (c) a new bank account is opened.

This exception to a bank's duty of confidentiality covers a wide range of information. Banks are bound to furnish the DGI not only with global information on their operations, but also with any additional specific details which concern the affairs of a particular client including the name of the holder of the account, his domicile, the number of the account, the number of his income tax registration and the number of credits in the respective accounts.

This new regulation is intended to uncover cases of tax avoidance by crosschecking the information provided by taxpayers in their annual sworn returns with the relevant information furnished by third parties related to them. The purpose behind the new regulation is to facilitate the development of a data bank which will enable the tax authorities to enforce tax legislation. It should be noted that all information obtained by the tax authorities as a result of this regulation is to be kept confidential and, therefore, is not available to any other party. At this point in time, it is still too early to determine whether the overall advantages which the system provides outweigh the risks involved when banking confidentiality is curtailed.

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IV. Competitive Bidding for Oil Exploration and Production

The opening bids for ten of the thirty-two areas put out to tender took place at the central office of Yacimientos Petroliferos Fiscales (YPF) on January 31, February 3 and February 4, 1986. The total investment for seismic prospecting operations amounts to forty-seven million dollars. A preselection has already been made of the tenders offered by Exxon, Astra, Bridas, and by the consortia (Occidental-Bridas, Argerado Inc.-San Lorenzo Oil and Gas, and Pluspetrol-BHP Petroleum) which altogether represent a minimum investment commitment of thirty-eight million U.S. dollars.

Call for International Bids No. 14-273/86 for the exploration and exploitation of hydrocarbons covers seven basins with a total of thirty-six areas. Twenty-six of these areas have been rated as high-risk and the remaining ten as medium-risk. The basins have been designed as Noroeste (north-western), Bolsones Intermontaños (inter-mountain pockets), Cuyana and Bolsones, Neuquina, Golfo San Jorge (Saint George Gulf), Salado and Colorado off shore. The price of the specifications for each basin is US$ 10,000. The price of the technical information for each area ranges from US$ 1,000 to US$ 10,000. The opening of bids will take place at YPF's central office on July 31, 1986.

V. Complememtary Provisions to the Legislation Governing Calls for Bids

The Argentinean Government has issued the following rules to explain and complement executive order 1443/85.

(a) Resolution No. 535 of November 21, 1986, sets forth the conditions or cases in which the Secretariat for Energy may deny or condition the declaration of commerciality of any exploitation plot or plots proposed by contractors.

(b) Resolution No. 634 of December 30, 1985, provides that in the event of YPF's partial or total default on its payments, the Secretariat for Energy shall instruct YPF, at the request of a contractor, and within a period of fifteen consecutive days to surrender to such contractor, not later than fifteen days thereafter, a quantity of crude oil equivalent to the sums owed to the contractor plus the interest accrued thereon.

(c) Executive Order No. 127 of January 28, 1986, exempts con-

tractors from their obligation to sell to the Argentinean Central Bank any foreign exchange arising from their exports of crude oil or oil by-products surrendered to them as payment in conformity with the provisions of article 8(h) of Executive Order 1443/85 and article 19.2 of the model contract. Such exports are also exempted from any existing or future customs duties.

VI. Conversion of Bearer Stock into Registered Stock

Law No. 23,299 provides that any shares issued by Argentinean corporations must be non-endorsable registered stock. Consequently, any outstanding stock which does not conform to these characteristics must be exchanged by the corporations concerned, no later than April 30, 1986, for non-endorsable registered stock. In this respect, Executive Order 83/86 set forth the method to be used for conversion of the shares, as well as the penalties that will be imposed for failure to comply with this provision.

The nature of the obligations imposed and the scope of the penalties will be applied for failure to comply with the provision have raised severe criticism from corporations and stockbrokers. Moreover, there has been a sharp fall in the price of the shares listed on the Buenos Aires Stock Exchange.

The following provisions apply to stockholders:

(a) Stockholders whose shares are deposited with the Caja de Valores S.A. (Securities Bank) will have their shares automatically converted into non-endorsable registered stock; and

(b) Stockholders whose shares do not conform to these characteristics must take them to the respective corporations for registration before May 1, 1986.

VII. Compulsory Savings

Law 23.256 established compulsory saving system. Taxpayers were required to pay the appropriate amounts in two installments during 1985 and 1986. Executive Order No. 440/86 provided that in 1986, the payments would be made on the following dates and in the following percentages: (1) April 21 (forty percent); (2) July 21 (twenty percent); and (3) November 21 (forty percent).

VIII. Case Law

The Supreme Court of Justice ruled that in the case of expropriation of landed property, the compensation to be paid by the state shall include the mineral value of the expropriated property, even though the mineral deposits involved are not actually being exploited at the time of expropriation. The Supreme Court of Justice ratified the principle of full compensation for the private owner for the loss suffered as a result of expropriation, as provided for in article 17 of the National Constitution. Implied in this recognition is a guarantee of property rights with the wide scope established by long-standing court decisions. Furthermore, after noting that the provinces may enact local statutes to regulate expropriations, the Court emphasized that such statutes must respect the rights and guarantees established in the Federal Constitution.

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