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Recommended Citation

Argentina, 15 U. Miami Inter-Am. L. Rev. 597 (1984)

Available at: <http://repository.law.miami.edu/umialr/vol15/iss3/9>

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LEGAL MEMORANDUM

ARGENTINA

The following are recent developments in Argentine law reflecting changes in trade and commerce.

I. AMENDMENTS TO THE BANKRUPTCY LAW

The Argentine government enacted Law 22917 to amend Bankruptcy Law 19551. Although the new instrument introduced changes in 22 articles of the original law, the most important modification was the amendment of article 4, whereby credits payable abroad now rank *pari-passau* with those in the Republic of Argentina. In a single bankruptcy proceeding in Argentina, claims payable abroad may be included among the local claims if the legal systems of their respective countries of origin provide for reciprocity of credits payable in Argentina. Previously, under article 4, Argentine creditors had precedence over foreign creditors in respect to assets located in the country. The international finance community objected to this inequity because Argentina is currently facing a heavy foreign indebtedness of approximately US \$40 billion. The bankruptcy law was also amended to provide that entities other than individuals and corporations, such as controlling companies, unduly diverting the corporate interests of their subsidiary companies, may now be declared bankrupt.

II. RESCHEDULING THE ARGENTINE FOREIGN DEBT

On September 15, 1983, the federal government enacted Decree No. 2408/83 which approved the use of a number of standard clauses in rescheduling external debts secured by guarantees from either the Argentine government alone or from both the public and private sectors. On the same date, Decree 2410/83 was passed approving an agreement for rescheduling the debt of *Aerolineas Argentinas* (Argentina Airlines) with a group of banks under the government's guarantee. This agreement is to be used as a model to reschedule the debts of other public corporations approximately amounting to an aggregate total of US \$12 billion worth of debt. Although a federal judge objected to certain clauses in those agreements, his decision was ultimately reversed by the Court of Ap-

peals and the executive was eventually authorized to proceed with the rescheduling negotiations.

III. AMENDMENT OF THE COMPANY LAW

Law 22903, which was passed on September 9, 1983, introduced several amendments to Company Law 1950. The modifications, which are incorporated in 80 amended clauses and in 17 new clauses, largely reflect the opinions held by the Courts and the *Inspección General de Justicia* (Corporations Control Authority). Most importantly, the amendments include stricter regulations defining controlled companies (article 33). The new regulations require that such companies have a minimum amount of capital stock valued at \$a100,000 upon creation (currently equivalent to approximately US\$4,000), and that an absolute majority of the members of the board of directors have effective domiciles in Argentina (article 256). Finally, "joint venture" regulation, which was hereby undertaken for the first time in Argentine law, includes two basic types of business cooperation: collaborative groupings and temporary unions of companies.

IV. AMENDMENTS TO THE INDUSTRIAL PROMOTION LAW

Law 22876 amended articles 4 and 5 of Industrial Promotion Law 21608. Under exceptional circumstances, the benefits of the system can be extended for a maximum period of 5 years. Previously, benefits always expired after 10 years without exception. Provisions were also included to foster exports.

V. INSURANCE OF GOVERNMENT SECURITIES TO COVER OBLIGATIONS ARISING FROM CENTRAL BANK'S FORWARD COVER AND "SWAPS" COMMITMENTS

On September 14, 1983 the Government enacted law 22910, which provided that where forward cover was obtained in light of the regulations passed in late 1982 and early 1983, and the maturities of such transactions were extended, the foreign currency securities created may be issued to debtors who have resorted to such a system. In addition, the law provided for the use of the US "prime rate" in such obligations.

VI. RENEGOTIATION OF OIL CONTRACTS

Prompted by a sharp drop in oil production amounting to approximately 13% in the first quarter of 1983, the government has approved the renegotiation of twenty oil production contracts between the National Oil Company (YPF) and local and foreign companies. These contracts represent slightly less than 10% of the total oil production in Argentina. The new price agreed upon, which was described by the contractors as the minimum amount required to permit the performance of their obligations under the contracts, is to apply retroactively from April 1, 1983.

The administration which will be elected later this year will have 120 days after its inauguration (instead of the prior May 30, 1984 deadline) to revise the terms of the contract in whole or in part. In exchange for the newly negotiated price, the contractors have agreed to invest 58% of such higher prices now payable.

VII. APPROVAL OF INTERNATIONAL CONVENTIONS

By decree 22921 Argentina approved the following international conventions signed in Montevideo from April 23 to May 8, 1979: the Inter-American Convention on Conflicts of Law in the Field of Trading Companies; the Inter-American Convention on General Regulations of International Private Law; the Inter-American Convention on the Extraterritorial Effectiveness of Foreign Arbitration Awards and Judgments; and the Inter-American Convention on the Observance of Precautionary Measures.

VIII. INTERNATIONAL SALE OF GOODS: RATIFICATION OF UN CONVENTION

Law 22765, published in the Official Gazette on March 30, 1983 ratified the UN Convention on the International Sale of Goods which was signed in Vienna on April 11, 1980. This law also approved the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) which was also signed in Vienna.

IX. ARGENTINE-ITALIAN TREATY ON DOUBLE TAXATION

Under law 22747, published in the Official Gazette on February 24, 1983, the Argentine government approved an agreement entered into with Italy in November, 1979. The purposes of the

agreement were to avoid double taxation of both income and net worth and to prevent tax evasion. The agreement will come into force when the ratification instruments are exchanged. To date, Argentina has made double taxation treaties with various countries including: *Japan* 1961 (approved 1966); *West Germany* 1966 (approved 1967); *Brazil* 1972 (road transportation); *Japan* 1975 (approved 1976, operation of international vessels and aircraft); *Brazil* 1975 (approved 1977, sea and air transport); *Bolivia* 1976 (approved 1978); *West Germany* 1978 (approved 1979); *France* 1979 (approved 1981); *Cuba* 1978 (approved 1980, operation of vessels); *USSR* 1979 (approved 1981, international sea and air transport); *France* 1979 (approved 1981); *Austria* 1979 (approved 1982); *Ecuador* 1981 (approved 1982, air transportation); *Spain* 1978 (approved 1982, air and sea transport) and *Brazil* 1980 (approved 1982).

X. INTER-AMERICAN CONVENTION ON BILLS OF EXCHANGE, PROMISSORY NOTES, ETC. RATIFICATION

Law 22691, published in the Official Gazette on December 14, 1982, ratified the Inter-American Convention on Confictive Laws in the Field of Bills of Exchange, Promissory Notes and Invoices, which was signed in Panama on January 30, 1975. Under this convention, the form of the draft, endorsement, and guarantee shall be governed by the law of the country where the act occurs.

XI. NEW ARGENTINE CURRENCY

A new unit of currency called the "Peso Argentino" (\$a), which has been in existence since June 1, 1983, and which is equivalent to 10,000 pesos of the old currency has been formally adopted. As of July 18, 1983, the official rate of exchange to the US dollar was approximately \$a 9.70.

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BRAZIL

The following is a brief summary of several legislative and administrative rulings, and several judicial and administrative decisions by the Brazilian government which may affect foreign trade and investments in Brazil.