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LEGAL MEMORANDA

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LIMITED LIABILITY COMPANIES IN ARGENTINA

I. PERMANENT STATE FISCALIZATION AND COLLEGIATE SUPERVISION

A. Law 21.304, published in the *Official Bulletin* of May 6, 1976, introduces important changes in the system of state fiscalization and collegiate supervision (*sindicatura colegiada*) of limited liability companies (*sociedades anónimas*) as set forth in Articles 284 and 299 of Decree-Law 19.550/72. The reform also affects Art. 3 of Decree-Law 18.805/70, which creates the Inspectorate General of Juridical Persons, because paragraph b), subparagraph 3.1.3 thereof establishes the amount of capital above which limited liability companies are subject to permanent official fiscalization on a nation-wide basis.

B. Under the system recently amended, limited liability companies with a capital of more than five million pesos were subject to permanent state fiscalization, carried out by the pertinent agencies—within the national jurisdiction, that of the Inspectorate General of Juridical Persons—and were required to entrust private fiscalization to a collegiate body, known as the Fiscalization Committee, integrated by three regular syndics and at minimum an equal number of alternates. According to the new legal regulations, the situation, henceforth, will be as follows:

1. Limited liability companies are subject to permanent state fiscalization by the controlling authority of their respective legal domiciles, if they:

- a) Make public offers of shares or debentures;

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- b) Have a capital of more than five million pesos or whatever amount the Executive Power may establish;
- c) Undertake economic activities of a joint nature or have majority participation by the state;
- d) Carry out savings or capitalization operations or in any way request money or securities from the public, promising future benefits or loans;
- e) Exploit public services or concessions; or
- f) Control or are controlled by another company which is subject to fiscalization in accordance with the preceding paragraphs.

2. Limited liability companies mentioned in subparagraphs a), c), d), e), and f) of the preceding paragraph must have a collegiate body of syndics with at least three regular syndics and three alternate members.

C. It should be pointed out that in the legal reform under consideration there is a certain degree of inconsistency in that a plurality of syndics is required in the case of limited liability companies controlled by or controlling other companies which are exempt from such a requirement and are subject to permanent state inspection solely by reason of the amount of their capital. In other words, the accessory is treated with greater severity than the principal.

II. UNANIMOUS MEETINGS

A. Resolution I.G.P.J. (Inspectorate General of Juridical Persons) (G) No. 1 of March 29, 1976, published in the *Official Bulletin* of May 7, 1976, sets forth the position of this controlling authority concerning previous requirements hitherto deemed essential for the holding of unanimous meetings, in accordance with the interpretation previously given to Article 237, paragraph three, and Article 240 of Decree-Law 19.550/72.

B. According to the resolution, henceforth a unanimous meeting may be validly held without complying with the following pre-requisites:

- 1. Meeting of the board calling the meeting;
- 2. Publication of the notice calling the meeting; and
- 3. Certified notice to directors, syndics, and general managers.

C. Consequently, being the highest expression of the will of the shareholders, the unanimous meeting may convoke itself and transact business of all kinds with the sole legal restriction that, to be valid, decisions must be adopted by a unanimity of all shares with the right to vote.

D. In any event, we understand that in cases of regular meetings called to consider financial statements, memorials, and reports from the syndics, even when such meetings are of the unanimous type, it is not permissible to dispense with the previous meeting of the Board of Directors at which these documents are approved, whether or not there has been a pronouncement about the convocation of such meetings.

M. & M. BOMCHIL
Buenos Aires, June 1976

Note: The above memorandum was first published in *The Review of the River Plate* of June 18, 1976. The translation appearing herein was prepared by the staff of the *Lawyer of the Americas*.

ANNUITIES FOR PATENT APPLICATIONS IN BRAZIL

1. By Normative Act No. 017 of May 11, 1976, the National Institute of Industrial Property (INPI) granted a term of 30 days in addition to the normal term of 180 days established by the Industrial Property Code—Law No. 5.772/71—for payment of the annuities for patent applications in course, and made other provisions regarding proceedings pending on appeal or pending dismissal due to lack of payment of such annuities within the 180-day term.

2. Thus, in accordance with the above-mentioned Normative Act, the following three hypotheses were established:

- a. Concerning patent applications whose annuities have not been paid within the 180-day term (established by the Code), provided that 30 days have not elapsed from the end of said legal term, the interested party must simply pay the charges relative to the respective annuity and prove such payment by means of a petition, regardless of any notification from the INPI to so proceed;