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LEGAL MEMORANDA

ARGENTINA

The following is a review of legal and economic development in Argentina.

I. ANOTHER SUCCESSFUL ROUND OF DEBT TO EQUITY CONVERSIONS

On March 29, 1988 offers filed in connection with the second round of bids under the Argentine debt to equity conversion program opened at the Central Bank. The outcome again proved to be very attractive to the government.

Twenty different projects competed in this new round. Both domestic and multinational companies filed offers for ventures contemplating, among others, the manufacture of auto parts, the production of beer, the construction of hotels and the manufacture of chemical products. An average high discount of 53.78% was offered this time. This meant that with US\$54 million, Argentina cancelled US\$117 million of foreign debts. Through this mechanism, Argentina generated \$140 million worth of new investments including \$54 million to be financed through debt to equity conversion, and \$86 million in new reserves.

With the investment community's interest remaining very high, debt to equity conversion proved to be a dynamic element of the Argentine foreign debt menu.

II. NEW EXCEPTIONS TO INSURANCE OF DEPOSITS

On April 27, 1988 the Central Bank issued Communication "A" 1,175 (hereinafter the "Communication") which regulated article 56 of the "Law of Financial Entities" No. 21.526, as amended by Law No. 22.501 (hereinafter the "Law"). This article estab-

lished a system of deposit insurance to be paid by the Central Bank in case of liquidation.

The Communication enlarged the scope of the exceptions in article 56 of the Law to the above mentioned deposit insurance. Commencing with the enactment of the Communication, the insurance would not be applicable to deposits whose holders are natural or juridical persons economically related, either directly or indirectly, with any of the members of the Board of Directors or *Sindicatura* ("Comptroller") of the depository. In entities of a private nature, the insurance would not be available to deposit holders which are related to natural or juridical persons having the decision power to form corporate consent.

The Communication established that the insurance would not be applicable to deposits of persons, either natural or juridical, who are economically related, either directly or indirectly, to officers who have the authority of operating, accounting and controlling measures of the entity. Such officers must have the responsibility for carrying out such measures established in accordance with the by-laws, general assembly, internal regulations, or the executive committee of the entity.

To determine whether an entity falls under its purview, the Communication referred to paragraph 4, Chapter 1 of Circular OPRAC 1, which defined the concept of direct and indirect economic relationship. The definition of natural or juridical persons directly related with the financial entities included those companies and individuals that exercise upon the financial entity, or upon which the financial entity exercises, control of a significant influence on its decisions.

III. NEW REGULATIONS AND LAND USE IN CONNECTION WITH OIL AND GAS EXPLORATION AND EXPLOITATION ACTIVITIES

The possibility of either acquiring or gaining the ability to use suitable land was clearly an important part of all oil and gas related developments. In this connection, Argentina decided to regulate how southern landowners were to be compensated for some of the adverse effects arising from oil and gas activities.

The general principle contained in Article 100 of Law 17.319 was that holders of oil and gas exploration or exploitation permits or concessions must indemnify landowners for all damages their activities may cause them.

Those who suffered said damages may: (i) request that the actual amount of damages be determined by the judiciary; or (ii) agree that they be defined by the Executive Power.

Decree 287/88 (published on April 21, 1988) determined when related oil and gas activities could be performed in the Provinces of Chubut, Santa Cruz and the Territory of Tierra del Fuego, Antártida and Islas del Atlántico Sur.

Each individual indemnity was to be calculated on a "surface unit" basis. A "surface unit" was defined as a 25 square kilometer area. When more than one company performs oil and gas related activities in the same "surface unit," the unit's landowner where said unit was located was entitled to receive independent indemnities from each of the developers.

Decree 287/88 determined the amount to be paid as compensation corresponding to landowners for: (i) seismic works performed in their land; (ii) the occupation of land with installations and equipment necessary for the purpose of drilling exploration or exploitation wells; (iii) the building of roads, pipelines and communication facilities; (iv) the utilization of underground and other sources of water supply; and (v) the use of riprap.

All parties involved may, by specific mutual agreement, request the Secretary of Energy and Mining to determine the compensation for damages caused to the land, crops or cattle by oil and gas activities, other than the ones specifically and individually foreseen by Decree 287/88. A special working group, including representatives of said agency, would advise the Secretary of the Provinces involved, oil and gas companies and landowners. If this option was not used, parties could sue for damages through the regular court system, as foreseen in Law 17.319.

IV. GAS DISTRIBUTION: PRIVATIZATION OF DIRECT SUPPLY TO CONSUMERS

The Secretary of Energy, through Resolution 385/88, dated July 7, 1988, authorized the construction, operation and commercial exploitation of gas distribution networks for the direct supply of gas to consumers (for domestic, commercial or industrial consumption) by cooperatives, neighbors' associations or Provincial or Municipal agencies. Under this authorization, private suppliers for the first time were given the right to supply gas directly to consumers.

Gas, for this purpose, could be obtained from Gas del Estado main pipelines. Interested companies must consult Gas del Estado prior to filing with it the final project to be carried on, if approved. Once the project receives approval, a supply agreement would be entered into between Gas del Estado and the distributor.

It is important to point out that Gas del Estado, in the meantime, would stop building or exploiting new domiciliary gas distribution systems.

Gas to be supplied to these new ventures would be priced at the average tariff charged by the State-owned company to domestic and industrial clients in the respective area.

Private suppliers would, in turn, have their respective consumer tariffs screened and authorized on an ex-ante basis by the local authorities of the area in which distribution occurred.

V. EXCHANGE CONTROL

The Central Bank of the Argentine Republic issued Communication "A" 1211, dated June 24, 1988, allowing public interest entities to purchase foreign exchange at the Official Exchange Market, for the purchase of scientific books or subscriptions to scientific reviews or newspapers.

The issuance of this Communication showed how severely exchange shortages can, in fact, affect entities whose work is important for development purposes.

On the other hand, it also showed how simple things can become a nightmare when complicated by the joint efforts of regulators and bureaucrats.

Any entity willing to subscribe to a scientific foreign publication must: (i) file Form 4008-G with the Central Bank; (ii) enclose with said form a proforma invoice or a document of "equivalent nature"; (iii) file with the Central Bank documentation evidencing that it is a public interest entity and that, therefore, its purpose is not to make profits; and (iv) enclose a certificate to be issued by the Science and Technology Secretary of the Ministry of Education and Justice, certifying that the publication involved is, in fact, of a scientific nature.

For transactions that normally involve rather small amounts of money, it was a mind-boggling procedure.

VI. NEW REGULATIONS ON PUBLIC EXTERNAL DEBT TO EQUITY CONVERSION

The issuance, on May 27, 1988, of Resolution No. 492 of the Ministry of Economy would allow — taking into account the size of the existing annual conversion quotas — the acceptance by the Argentine Government of a larger number of projects under the Public External Debt Conversion Program.

This resolution established that conversion projects where the amount to be converted exceeded twenty million dollars would require participation by each individual call for bids in the ratio resulting from the following:

a) amounts from twenty to forty million dollars were to be divided by the number of years of duration of the respective project, considering as a year any period exceeding six months;

b) amounts in excess of forty million dollars were to be divided by the number of semesters of duration of the respective projects, considering as a semester any period exceeding three months.

For example, a \$27 million conversion project to be carried out in three years would have access to the amount for which bids are called for \$9 million. The balance between the total amount to be converted in an eligible and awarded project and the portion to be converted in connection with a particular call for bids would be computed against future quotas. The discount offered in the awarded bid would be applicable to all the conversions of the same project, including those made against future quotas.

Likewise, it was again established that any project in which a company, having present or future federal promotional benefits, other than those which may be obtained under Decree 515/87 for the importation of capital goods or those foreseen in Laws 23.101, 23.018 and Decrees 906/83, 168/87, or 1552/86, cannot qualify as eligible for debt to equity conversion.

Resolution No. 26 of the Undersecretary of Economic Policy dated May 31, 1988, amended points a) and b) of Article 10 of Resolution No. 20/87. Article 10 established the procedure which would be used to determine the percentage of the project total cost (70%), which could (as a maximum) be covered with funds obtained through the conversion of public debt instruments.

In addition, for the deduction of the cost of the imported

equipment, point a) included, the deduction of the Value Added Tax corresponding to the total amount of the project, unless it was proved that it did not result in a fiscal credit.

In turn, point b) established that the percentages corresponding to real estate, work capital and any other items that did not correspond to expenses necessary to achieve the investment objective, would be calculated vis-à-vis a total amount of the project determined in accordance with point a).

This resolution also established that the release of the final 10% of the unavailable deposit would be subject to the recipient company evidencing that the respective project was completed as committed in due course.

VII. DEBT TO EQUITY CONVERSION, FOURTH ROUND COMPLETED

On September 22, 1988, the Central Bank of the Argentine Republic held the fourth call for bids to capitalize foreign public debt into private investments. The minimum discount accepted was of 65.10%

Fourteen industrial projects were approved, together with four medium-size projects which were allowed to bid with a 10% discount, calculated on the offered average discount which was 66.0%.

The total investment corresponding to projects approved will be 93.9 million dollars.

The accepted projects included the manufacture of a new Renault automobile, the construction of hotels, manufacture of electric lighting, etc.

VIII. CORPORATIONS ENGAGED IN ILLEGAL FINANCIAL ACTIVITIES CANNOT REQUEST THE MEETING OF CREDITORS UNDER BANKRUPTCY LEGISLATION

In *Grosso, Juan C. v. Regalini, Jorge I.*, the National Commercial Court of Appeals (Chamber A) rendered, on April 20, 1988, an important decision. It denied corporations engaged in illegal (unauthorized by the Central Bank) financial transactions the possibility of meeting creditors in a reorganization procedure governed by Argentine bankruptcy legislation.

The Court held that whomever is performing activities prohibited by law cannot invoke the protection of the law to bridge its

financial difficulties. Otherwise, the law would be used to maintain an illegal activity.

Carrying the Court's rationale one step beyond, it could be argued that he who is engaged in illegal activities could not resort to the Court system to enforce credits arising from illegal activities against third parties.

IX. CREDIT CARD EXPENSES MADE ABROAD BY THE HOLDER

The National Commercial Court of Appeals issued three decisions related to the repayment by the holder of a credit card of expenses made by him abroad, using the credit card, in foreign currency. In *Crédito Liniers S.A. v. Parmeggiani*, Chamber C the Court of Appeals established that the issuer of a credit card must receive from its holder *the same amount* the issuer had to pay in connection with the holder's use of the credit card abroad, plus a commission, irrespective of the existence of possible multiple exchange systems.

In *American Express S.A. v. Mazzarella*, Chamber A validated a clause by which the issuer charges the holder of the card the Australes necessary to purchase Bonex, the sale of which abroad yields enough foreign currency to cancel the amount in foreign currency owed by the holder, for purchases made with the card in a foreign country.

In *Diners Club Argentina S.A. v. Sileoni*, Chamber E upheld the validity of a clause through which the holder of a card assumes all exchange risks.

The above concerns are normal in a country where exchange controls are in various manners normally in place. However, at this very moment, the referred to dictums are moot, since Argentina is going through a period of a substantial freedom of exchange.

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