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# Argentina

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## LEGAL MEMORANDA

### ARGENTINA

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

#### I. A NEW BANK AND INSURANCE PERSONNEL BILL

The Senate of Argentina by a unanimous vote approved a "Stability Law" for banking and insurance workers.

Reportedly, the eighteen radical members of the Senate decided to vote in favor of the bill when it became apparent that the six independents would join the twenty-one Peronists in supporting the bill. The bill had previously passed the Chamber of Deputies. It is expected to be enacted shortly, even though it is still subject to a Presidential veto.

The bill affords a host of rights for certain workers while imposing strict and very costly obligations upon employers. It applies to some 200,000 employees of banks throughout the country, the National Savings and Insurance Institution, insurance companies, and related unions and social services. The board of directors and other high-level employees are specifically excluded.

Article 3 of the bill grants tenure ("estabilidad") to an employee once he completes six months of service. That tenure can only be lost through a summary review (conducted with due process guarantees) if it is found that a worker has committed an offense that is specifically enumerated in the statute (no clear standards are provided). Judicial review of the summary proceeding must be available.

In addition, the bill strictly limits the transferability of employees. "Transfers" are generally prohibited whenever family separation or injury to the employee's personal or materialistic interests might suffer. Employees, however, could consent to be transferred, in which case the respective employer must help to facilitate the relocation and pay the costs of transporting the worker, his family, and his household goods. When a worker without seniority consents to a transfer despite prejudicial effects, the em-

ployer must provide him with "just compensation."

The summary review procedures are set forth in the bill. When a worker, who has served longer than six months, has allegedly committed acts that may constitute cause for dismissal or "serious sanction," the competent organ in his place of work must strictly follow the summary review procedures. The worker must be notified in writing of the proceeding. Within 30 days of notice of the allegedly offending acts, the employer must initiate the procedure and observe due process guarantees. The accused employee is permitted to have legal assistance, to offer evidence, and to challenge any proceeding that does not conform to the law.

The employer must reach a resolution in the proceedings within 60 days of their initiation. The proceedings can be stayed only through the intervention of pending penal actions.

If dismissed, the employee may appeal his dismissal to a conventional judge. If, on appeal, the employee is found to have been dismissed without just cause, he will be reinstated with back pay. An employer who refuses to rehire such an employee becomes liable for the exonerated worker's salary until the worker reaches retirement.

If an employer breaches a contract by cessation of operations, the employee is entitled to indemnification. The indemnification scale is as follows:

<i>Length of service</i>	<i>Indemnity</i>
Less than 5 years	1 month's pay for each year or fraction thereof exceeding 3 months
5 to 25 years	1½ months pay, etc.
Greater than 25 years	2 months pay, etc.

If bankruptcy or liquidation of the employer occurs, the Central Bank or the Higher Administration of Insurance will provide the indemnities.

The hours that an employee may work are also regulated by the new bill. The standard limits are 7 hours per day and 37 hours per week. Overtime is permitted, but it cannot exceed 2 hours per day, 30 hours per month, or 200 hours per year.

An "Honorary Banking Advisory Commission" shall be established, comprised of a chairman from the government and an equal

number of members representing the employers and the workers. The President is to select the number of commission members. The dual purpose of the Commission is to advise the President and to interpret the application of this law. The establishment of an "Honorary Insurance Advisory Commission" is also foreseeable. These broad, yet vague, delegations of power raise a constitutional problem, since they may encroach upon the authority of the judiciary.

## II. NEW ARGENTINE TAX PROGRAMS

### A. *Purpose*

Argentina's tax law permits the use of various methods to increase tax revenues, including voluntary tender regimes that suspend the fines and penalties imposed for tax delinquencies (ley 11.683 (t.o. 1978), art. 3).

The executive branch of the present constitutional government has decreed (i) the implementation of a voluntary tender ("*presentación espontánea*") regime (decreto N° 2364/84); and (ii) a special payment regime for enterprises confronted by grave financial difficulties (decreto N° 2365/84). This short memorandum describes only the voluntary tender regime.

The program has two principal objectives. The first objective is to increase tax revenues to help balance the budget by providing an amnesty designed to induce tax delinquents to pay. Its second purpose is to allow taxpayers who have withheld taxes from the military regime to "regularize" their position vis-à-vis the Treasury, through the payment facilities now authorized in the decree.

### B. *The Voluntary Tender Regime*

Delinquent taxpayers will remain exempt from interest penalties, fines, or other sanctions, if they voluntarily regularize their position with the General Tax Directorate (D.G.I.) in accordance with the decree. This regime applies to those obligations whose maturities fell due on or before June 30, 1984.

Fiscal obligations may be fulfilled in two ways. First, when a tax is owed under the taxpayer's sworn declaration (analogous to a U.S. annual return), the taxpayer presents the declaration simulta-

neously with payment of the assessment in cash or installments. Second, when a tax is not owed (e.g., for a partial prepayment of estimated tax liability), the voluntary tender should also be completed through payment or regularization. In addition, the taxpayer should present his own individual accounting.

Certain forms of delinquency have been deemed undeserving of the tax relief provided through voluntary tender. Hence, the following are excluded from the benefits of the regime: certain cigarette tax assessments, penalties for infractions of the alcohol duty regulations, taxes that should have been withheld or retained by employers and companies, tax liability assessment updates, interest, and other sanctions.

### *C. The Special Payment Facilities Regime*

Whether or not the voluntary tender regime applies, the decree empowers D.G.I. to grant "special payment facilities" (i.e., an extension) allowing taxpayers up to 18 monthly payments. This regime will apply to taxes that arise from sworn declarations or final official determinations, their updated values, indemnity and punitive interest charges, and final sanctions. The decree clarifies that the regime includes the following categories of tax: profits, emergency surtax on profits, capital, net worth, windfalls, value added, production, sales, purchase, and foreign exchange.

Not all taxes in the above-mentioned categories may obtain the full 18 month extension. A shorter, 5 month extension is the maximum allowed for anticipated payments or withholdings not affected (at present value and including interest and other penalties), and for debts arising from administrative appeal findings of the National Fiscal Tribunal.

Special payment facilities are available for those fiscal obligations falling due on or before June 30, 1984. Requests for their application must be submitted on or before December 28, 1984.

Under this decree, the monthly installment payments will be equal and consecutive with respect to the amount of capital to be amortized. They will not earn interest, or be subject to revaluation as provided in Argentine tax law.

*D. The Rehabilitation of Previous Payment Facilitation Plans*

There have been other payment plans in the past. Taxpayers having past due installments whose maturities fell due by June 30, 1984, and who accumulated sufficient arrears for the D.G.I. to consider them subject to forfeiture of earlier amnesty benefits, might invoke the benefits of the earlier plans. Two conditions must be met: (1) the D.G.I. did not notify the taxpayer in certified form that he forfeited his rights to benefit from the earlier plan; and (2) payment in full was made by August 31, 1984 of the unpaid or defectively paid installments, including the interest and update appropriate for the period that had elapsed between the due date of each installment and its actual receipt.

*E. General Dispositions*

The D.G.I. is empowered to dictate any complementary regulations needed to apply this decree, including those relating to terms, forms, guarantees, forfeitures, and minimum installment amounts. Such regulations have, in fact, been promulgated regarding the voluntary tender regime, stamp taxes, withholdings, payment facilities, and rehabilitation of earlier plans. (RG Nos. 2.474, 2.475 and 2.476 published at B.O. of 28/08/84).

EMILIO J. CARDENAS  
CARDENAS, HOPE & OTERO MONSEGUR  
BUENOS AIRES, ARGENTINA