

## **ARGENTINE FINANCIAL EMERGENCY LEGAL FRAMEWORK**

After eleven years of enjoying the convertibility between the Argentine Peso and the US Dollar, which determined the exchange ratio between these two currencies at a one to one relation, and as a result of both the emergency of the banking system and lack of confidence on the Argentine Government's capability to reduce the fiscal deficit, the Minister of Economy was forced to enact several new regulations on an emergency basis.

This was the starting point of a series of regulations, the most important of which are described hereinafter. This report does not intend to cover all said changes, but merely sets forth a practical guide for doing business in or with Argentina.

1. To facilitate the analysis, we deem it appropriate to start with a short chronology of events:

1.1. During the year 2001, and with an economy in recession, the Argentine government commenced the process of renegotiating its outstanding debt, both with local and international creditors, in order to avoid the default of its obligations.

By the end of the month of November, 2001, rumours of an imminent default of the Argentine sovereign debt together with other local and international unfavourable circumstances, caused a massive withdrawal of deposits from Argentine banking institutions.

The peak of such massive withdrawals took place on Friday November 30, 2001.

Under such circumstances on Monday, December 3, the Government issued Decree 1570/01 (which was complemented by several regulations issued by the Argentine Central Bank immediately thereafter) setting forth, among other regulations:

- Withdrawals in cash (either in Pesos or in Dollars) from bank accounts cannot exceed the maximum amount set forth in the abovementioned Decree (originally \$250 or US\$250 per week and later increased up to the total amount of the salary deposited in salary accounts and \$300 per week for other accounts), save some specific exceptions contemplating particular situations (v.g. payments of salaries to rural workers, etc.);
- All transfers of funds abroad are prohibited, except for those related to foreign trade (which required, however, prior authorization by the Argentine Central Bank in certain cases), payments abroad by local credit card companies and payment of financial and other operations, in the last cases subject always to prior authorization by the Argentine Central Bank.
- Funds received from abroad after December 3, 2001 were exempted from the prohibition and could be retransferred abroad;

- Exportation of foreign currency and precious metals cannot exceed the maximum amount set forth in the abovementioned Decree (originally US\$1,000 and later increased to US\$10,000 per person); and
- Foreign currency originating in export operations from Argentina has to be brought into Argentina within the terms set forth by the respective authorities (except for certain specific exceptions which allow the application of funds directly abroad).

1.2. Several weeks of political and social instability followed the implementation of these new regulations and, as a consequence of the worsening of the economic and social situation the new Government passed Law #25.561 on Public Emergency and Amendment to the Exchange System on January 6, 2002.

In accordance with the provisions of such Law, and other regulations issued thereafter, the following changes were implemented:

- Several sections of Convertibility Law #23,928 were amended or annulled, particularly section 1 which set forth the \$1 = US\$1 exchange rate was annulled. A double exchange market was implemented by Decree #71/02 issued on January 10, 2002: (i) an official exchange market, with an exchange rate of \$1,40 = US\$1, applicable only to those operations and transactions specifically determined by the Argentine Central Bank (v.g. importation and exportation operations, certain financial operations, etc.); and (ii) a free exchange market, with an exchange rate determined freely by the offer and demand, applicable to all operations and transactions not included in the official exchange market;
- Prohibition to use indexing adjustment clauses in contracts (either existing or new ones) agreed to in Pesos continues to be in force (such provision was already in force under Convertibility Law #23,928 but was reinforced by Law #25,561);
- Certain debts with Argentine banking institutions for amounts lower than US\$100,000 were converted to Pesos at a \$1 = US\$1 exchange rate. All other debts with Argentine banking institutions (v.g. those involving amounts higher than US\$100,000) were converted to Pesos at a \$1 = US\$1,40 exchange rate, with a reduction of the interest rate and an extension of the repayment term (later all debts with Argentine banking institutions, regardless of the amount were converted to Pesos at a \$1 = US\$1 exchange rate, but adjustable in accordance with the variation of the Cost of Living (Inflation) index.);
- Obligations to deliver money due as from January 6, 2002, originating in agreements executed between individuals or entities subject to private law rules, agreed upon in Dollars or any other foreign currency or containing dollar or any other foreign currency indexing provisions, become subject to the following rules: 1) obligations were to be settled in pesos at a one \$1 = US\$1 exchange rate as payment on account of the final amount resulting from the procedures set forth in 2 and 3 below; 2) the parties should negotiate the rescheduling of their mutual obligations with a view to sharing equitably the effects of the modification in the \$1 = US\$1 exchange rate during a maximum term of 180 days. Once the new conditions were agreed

upon, any likely differences arising between payments on account and amounts finally agreed upon had to be offset; 3) should the parties fail to reach an agreement, they would be empowered to request a judicial settlement of the issue;

- Employees dismissed without just cause during the term of 180 days counted as from January 6, 2002, are entitled to collect an amount double to the severance payment set forth in the law;
- Deposits (time deposits above US\$5,000, savings accounts above US\$5,000 and checking accounts above US\$10,000) in Dollars and time deposits in Pesos held in Argentine banking institutions were rescheduled and would be returned, in monthly installments and in the original currency in which they were held, but only after the expiration of the terms set forth by the authorities (such term varies depending on the amount of the deposit and the currency in which it was held, being the maximum term that set forth for deposits in Dollars above US\$30,000 which is 24 monthly installments payable as from September 2003). However, in accordance with new regulations issued recently, such rescheduled deposits may be applied for the payment of certain obligations (v.g. taxes, wages and debts with banking institutions) and transferred even before the terms set forth for their repayment has expired;
- Restrictions on cash withdrawals from bank accounts and on transfers of funds abroad continue to be in force; and
- New deposits made in cash after December 3, 2001 and funds received after December 3, 2001 from abroad not related to foreign trade operations are not subject to the restrictions.

1.3. However, again worsening of the economic and social situation led the Government to issue, on February 4, 2002, Decree #214/02 whereby, in principle, all obligations to deliver sums of money, irrespective of the cause or origin thereof—either judicial or extrajudicial—denominated in Dollars or other foreign currencies, existing as of the enactment of Law #25,561 (v.g. January 6, 2002) are converted to Pesos. Furthermore, on February 8, 2002, the Government issued Decree #260/02 whereby the double exchange market (introduced by Decree #71/02 issued on January 10, 2002) was eliminated and a sole and free exchange market was established.

## 2. Current Situation

As a consequence of what is set forth in Decree #214/02 issued on February 4, 2002, Decree #260/02 issued on February 8, 2002 and other complementary regulations issued thereafter, the following is currently in force:

- All deposits in Dollars or other foreign currencies existing in the financial system have been converted into Pesos at a \$1.40 = US\$1 exchange rate or the equivalent thereof in other foreign currencies. A Reference Stabilization Coefficient to be published by the Argentine Central Bank, based on the variation of the Cost of Living (Inflation) index, shall be applied to these deposits;
- All debts in Dollars or other foreign currencies with the financial system, prior to January 6,

2002, irrespective of the amount or nature thereof, have been converted into Pesos at a \$1 = US\$1 exchange rate or the equivalent thereof in any other foreign currencies. A Reference Stabilization Coefficient to be published by the Argentine Central Bank, based on the variation of the Cost of Living (Inflation) index, shall be applied to these debts;

- Any obligations to deliver sums of money denominated in Dollars or any other foreign currencies, based upon or originated in contracts executed prior to January 6, 2002 and not related to the financial system, irrespective of their origin or nature, have been converted to Pesos at a \$1 = US\$1 exchange rate or the equivalent thereof in any other foreign currencies. Furthermore, a Reference Stabilization Coefficient to be published by the Argentine Central Bank, based on the variation of the Cost of Living (Inflation) index, shall be applied to these obligations. However, if due to the enforcement of this provision, the resulting value of the good or service were higher or lower than that prevailing at the time of payment, then either party may request an equitable readjustment of the price. In the case of continuing contracts or contracts to be performed at a given moment in the future, this readjustment may be requested annually, unless the term of the contract were shorter or the difference in value were ostensibly disproportionate. Should no agreement be reached, the controversy shall be settled in court. This procedure may not be requested by the party who is in default under the relevant agreement;
- Limits on withdrawals in cash (either in Pesos or in Dollars) from bank accounts can not exceed the maximum amounts set forth by the authorities (v.g.; the total amount of the monthly salary deposited in the case of salary accounts (v.g. accounts specifically opened by employers to deposit their employees' salary) and \$300 per week in the case of other accounts), except for some specific exceptions contemplating particular situations (v.g. payments of salaries to rural workers, etc.). However, checks may be drawn against checking accounts in Pesos and funds may be wire transferred from accounts in Pesos to other accounts in Pesos without limitations;
- Time Deposits in Pesos, and time deposits, savings accounts and checking accounts originally held in Dollars and now converted to Pesos at a \$1.40 = US\$1 exchange rate are rescheduled and will be returned in Pesos only after the expiration of the term set forth by the authorities (such term varies depending on the amount of the deposit and the currency it was originally held in, being the maximum term that for deposits originally held in Dollars in excess of \$42,000 which are going to be returned in 24 instalments payable as from September 2003). However, in the event of checking accounts originally held in Dollars by legal entities, the total balance of such accounts may be transferred to an account in Pesos and such transferred balance is not subject, in such case, to rescheduling. Same situation applies to checking accounts and savings accounts originally held in Dollars by individuals, but in these cases only \$14,000 or \$7,000, respectively, may be transferred to an account in Pesos in order to avoid rescheduling. However, the balance above \$14,000 in the event of checking accounts and \$7,000 in the event of savings accounts will be rescheduled. Notwithstanding the above, such rescheduled deposits may be applied for the payment of certain obligations (v.g. taxes, wages and debts with banking institutions) and even transferred before the terms set forth for their repayment has expired;
- There is only a sole and free exchange market for the purchase and sale of foreign currency,

with an exchange rate determined freely by the offer and demand, which is applicable to all operations and transactions;

- Purchase of Dollars in the free exchange market may only be made in cash, except for certain specific cases in which purchase of Dollars against checks or debits from bank accounts are allowed (v.g. payments of importation of goods, payments of services related to the importation and exportation of goods, payment of financial obligations with the prior authorization of the Argentine Central Bank, payments of revenues and dividends, etc.);
- All transfers of funds abroad need the authorization of Argentine Central Bank, except for those related to (i) foreign trade (which require, however, prior authorization by the Argentine Central Bank in certain cases), (ii) payments abroad by local credit card companies, (iii) certain financial operations, in this case subject to prior authorization by the Argentine Central Bank, (iv) funds received from abroad after December 3, 2001; and (v) other cases to be authorized on a case by case basis by the Argentine Central Bank. However, a recently enacted regulation sets forth that transfers of funds abroad by legal entities for the repayment of financial loans, or payment of revenues or dividends to be made within the term of 90 days counted as from February 8, 2002 require prior approval of the Argentine Central Bank. Therefore, a *contrario sensu* interpretation of this new rule should lead to the conclusion that, once the abovementioned 90-day term has elapsed, transfer of funds abroad for the repayment of financial loans or payment of revenues or dividends may not require prior authorization from the Argentine Central Bank;

Payments abroad relating to importation operations must be done within the minimum payment terms set forth in the regulations. As from 02/12/2002, the terms to pay import operations abroad in foreign currency must adapt to the following parameters:

- I) Payment of imports and financing thereof having shipment dates prior to 02/11/2002 or covered by documentary credits opened prior to such date: They may be processed via the free exchange market up to five business days prior to their maturity date, in accordance with applicable regulations referred to the financing term at the time the letter of credit is opened or shipment date, as the case may be. However, current accounts outstanding as of 01/10/2002 for the import of goods must have been previously reported to the Central Bank of the Argentine Republic.
- II) New operations for the importation of goods with shipment dates as from 02/11/2002, which are not covered by documentary credits opened by local financial entities prior to such date:
  - i) Vital products and raw materials and intermediate goods deemed vital (according to the tariff positions determined by the pertinent authority): They may be paid in advance. However, evidence must be furnished to the acting financial entity, proving that the goods have been nationalized within the 90 days following the date of payment.
  - ii) Other raw materials and intermediate goods: The minimum payment term is 45

days counted as from shipping date. Imports with shipment dates subsequent to 01/10/2002 may be paid in cash, irrespective of the manner in which they are instrumented, when the importer simultaneously brings in pre-financing of exports from abroad in an amount that is not under the sale of exchange.

iii) Capital goods:

- a) Operations having a FOB value not in excess of US\$200,000: The minimum term of payment is 180 days as from shipment date, it being admitted that advance payments of up to 30% prior to shipment date may be made.
  - b) Operations having a FOB value exceeding US \$200,000: The minimum payment term is 360 days as from shipment date. Advance payments of up to 20% prior to shipment are allowed (this percentage may be extended up to 35% against delivery of shipping documents).
    - i) Inputs, equipment and spare parts for nuclear power stations and off-shore installations for the production of hydrocarbons: Advance payment is allowed. However, evidence must be furnished to the acting financial entity that the goods have been nationalized within the 90 days following the payment date.
    - ii) Merchandise in general: The minimum term of payment is 90 or 180 days as from shipment date, according to the class of asset in question.
    - iii) Remaining goods not included in the preceding points: Financing of the payment may not be under 360 days as from shipment date.
- Funds originating in exportation operations from Argentina have to be brought into Argentina and exchanged in the free exchange market within the terms set forth by the respective authorities (except for certain specific exceptions which allow the application of funds directly abroad). The terms within which such funds must be brought into Argentina and exchanged in the free exchange market vary depending on the class of assets in question and go from 15 days to 180 days counted as from shipment date. However, regarding exportation operations financed with the intervention of a local financial entity, and regarding certain specific goods, the terms resulting from the financing granted by local or foreign financial entities will apply (nonetheless, the backup documentation regarding such payment terms must be filed within certain specific terms).
- Exportation of foreign currency and precious metals can not exceed the maximum amount of US\$10,000;
- New deposits made in cash after December 3, 2001 and funds received from abroad after December 3, 2001 not related to foreign trade operations are not subject to any of the above-mentioned restrictions. Therefore, they may be freely disposed of (either withdrawing them in cash without limit or, in the event of funds received from abroad, retransferring them abroad);

- Prohibition to use indexing adjustment clauses (including the Reference Stabilization Coefficient to be published by the Argentine Central Bank) in new contracts agreed to in Pesos continues to be in force.
- There is no prohibition to execute new contracts in Dollars.

### 3. New Contracts. Invoices

Obligations arising from new contracts, executed after January 6, 2002, may be agreed to in Dollars and the debtor must, in principle, pay in Dollars. Same situation applies to invoices issued in Dollars after January 6, 2002. However, given the fact that (i) no savings or checking accounts may be currently held in Dollars in Argentine banking institutions, (ii) wire transfers in Dollars within the Argentine banking system are no longer possible, and (iii) payments in cash in excess of \$1,000 are not allowed, it is not feasible to request from the debtor payment in Dollars within Argentina.

However, an alternative in this case would be to execute new agreements in Dollars but setting forth that, in the event that payment in Dollars is not possible due to legal restrictions (as those existing today), the debtor may pay its obligations in Pesos in an amount sufficient to acquire certain securities that upon being sold allow the Company to obtain the amount due in Dollars.

### 4. Restrictions To Labor Terminations.

Section 16 of Law 25,561, provided for a 180-day suspension of dismissals without fair cause. Thereafter, Decree 50/02 – published on January 9, 2002 – set forth that such suspension would become operative since January 6, i.e. it shall remain in effect until July 6, 2002.

Law 25,561 does not prohibit dismissals but, in case of dismissals without fair cause, the employer shall pay the dismissed worker twice the severance payment he/she is entitled to collect.

As per the statistics of the Labor Ministry, there were approximately 34,000 dismissals during January 2002, i.e. twice the figure for December 2001.

For such reason, the Executive Branch issued Decrees 264/02 and 265/02 (published on February 11, 2002) limiting, but not prohibiting, the employer's right to dismiss employees without cause, further demanding compliance with prior requirements for such dismissals to be effective.

Such requirements entail the institution of administrative proceedings with the ensuing extension of terms and payment of salaries to the worker during the pendency thereof.

Consequently, as a step prior to dismissing an employee without cause, it will be necessary to start proceedings before the Ministry of Labor. The type of proceedings will vary depending on the number of workers involved, as follows:

- a) If the workers to be dismissed without cause represent more than 15% of the payroll, it will be necessary to institute the so-called "preventive crisis proceedings" before giving notice of the

dismissals (see further details of “crisis proceedings” below);

- b) If the workers to be dismissed without cause represent less than 15% of the payroll, the Company shall give prior notice thereof to the Ministry of Labor (and to the Union if the employee is unionized), informing and providing evidence of the reasons supporting such decision. The Ministry may decide, depending on the circumstances and the number of employees to be dismissed, to start proceedings proposing different alternatives to avoid such dismissals.

If the relevant proceedings mentioned in a) and b) above have not been followed beforehand, the dismissal shall be regarded as a dismissal without cause (even if the dismissal of employees has been decided by the Company on the grounds of lack of work or force majeure events), the employer shall be required to pay twice the severance payment as stipulated in Law 25,561 and the proceedings described in subparagraphs a) or b) shall be instituted provided the employee files a claim with the Ministry of Labor or the Union. In such event, the Ministry may demand prompt interruption of the dismissals and declare any dismissals ineffective, forcing the employer to follow the applicable aforementioned proceedings.

If the Company decides to suspend personnel due to lack of work or force majeure events, the proceedings described in a) and b) shall also apply.

The parties to the “crisis proceedings” are the employer, the Trade Union and the Ministry, and it may be brought at the request of any of them. Under these proceedings, the Company must submit documents and information proving the reasonableness of the action sought (dismissals and/or suspensions). The employer must also file the financial statements for the last three fiscal years, proposals to overcome the crisis, actions to be taken as concerns investments or organizational changes, outplacement of workers, etc.

The proceedings consist in meetings with the Trade Union and the Ministry intended to reach an agreement on the actions to be taken. During the pendency of these proceedings, the Company is not authorized to adopt any decision that may impair the workers; in turn, Trade Unions are not permitted to take actions against the Company.

If the parties agree upon the terms and conditions of the actions to be implemented, said agreement shall be submitted for approval by the Ministry; otherwise, the proceedings shall continue until the expiration of the relevant terms.

Even if the proceedings are concluded and no agreement is reached, the administrative authority is entitled to start mandatory settlement proceedings.

Total or partial failure to institute the aforementioned proceedings shall entitle the Ministry to impose the penalties for infringement of labor regulations with the consequent application of fines depending on the type of infringement.

In view of the above, and pursuant to current legal provisions, the above-mentioned proceedings shall not apply in the following cases:

- Worker's resignation;
- Indirect dismissal decided by the worker;
- Dismissal with fair cause;
- Termination of the relationship by mutual agreement of the parties.

## 5. Amendment of Argentine Insolvency Proceedings and Bankruptcy Law, And Debt of the Private Sector

Law #25,563, enacted February 14<sup>th</sup>, 2002, amended the Argentine Insolvency Proceedings And Bankruptcy Law #24,522 temporarily and until December 10, 2003. It also established certain new rules for debts of the private sector:

### (i) Amendment of Argentine Insolvency Proceedings and Bankruptcy Law ("ABL")

- The period granted to debtor during which he enjoys the exclusivity of the right to submit to his creditors proposed compositions by categories and obtain their approval in order to avoid bankruptcy decree was increased from 30 days to 180 days. This exclusivity period, which formerly could only be extended for a further 60-day term, may now be extended for a second 180-day term.
- All exclusivity periods for ongoing insolvency proceedings have been extended for an at least 180-day term.
- The debtor's composition proposal including a debt rebate must no longer imply payment by debtor of at least 40% of the general claims existing prior to the filing, but may encompass payment of less than that.
- An extension of one year was established for all debtors to fulfil their obligations arising from a Composition.
- No bankruptcy petitions may be filed against any debtor for a 180-day period, save for the possibility of requesting precautionary measures.

### (ii) Debt of the Private Sector.

- Financial institutions have ninety (90) days to reschedule their credits as at November 30, 2001 against the debtors of the system by means of an agreement executed with each of them, within the scope of the provisions of law 25,561. The rescheduling shall take into account the terms of the rebate, stay, rate and other conditions that are reasonable under the new exchange and cash flow circumstances of natural and artificial persons.
- All forced execution proceedings, including mortgages and pledges, stemming out of any obligation prior to this law, were suspended for a 180-day term, save some special cases (v.g. those claims of an alimony nature and those derived from liability arising from the perpetration of crimes, labor claims, those which do not fall on the debtor's abode or on other property assigned by the latter to production, commerce or rendering of services, those derived

from civil liability and against insurance companies, obligations originated after February 14h, 2002, and those cases when the enforcement of the bankruptcy decree has already commenced, with the pertinent liquidation of assets).

- All acts of disposal beyond the debtor's ordinary course of business shall be null and void during the period of suspension, unless such acts are expressly approved by the creditors.

We remain available for any further clarifications you may deem necessary.